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Section 1, R.S. § 516, established Office of Education and provided for purpose and duties of Office.

Section 2, R.S. § 517, provided for appointment of a Commissioner of Education to manage Office of Education.

EFFECTIVE DATE OF REPEAL

Section 301(b)(2)(A) of Pub. L. 92–318 provided that the repeal is effective July 1, 1972.

EXECUTIVE ORDER NO. 11185


Section, act May 26, 1930, ch. 330, 46 Stat. 384, provided for appointment of an Assistant Commissioner of Education.


Section, Pub. L. 90–576, title III, § 303(a)–(d), Oct. 16, 1968, 82 Stat. 1095, related to collection and dissemination of information, providing in subsec. (a) for duties of Commissioner of Education, subsec. (b) for counseling and technical assistance in rural areas, in subsec. (c) for preparation and availability of catalog of Federal education assistance programs, and subsec. (d) for authorization of appropriations.

CHAPTER 2—TEACHING OF AGRICULTURAL, TRADE, HOME ECONOMICS, AND INDUSTRIAL SUBJECTS


properly appropriated money for salaries of teachers, supervisors, and directors of agricultural subjects.


SHORT TITLE

Section 2 of act June 8, 1936, ch. 541, 49 Stat. 1488, as amended by act Aug. 1, 1946, ch. 725, title I, §101, 60 Stat. 775, provided that the act of Feb. 23, 1917, ch. 114, 39 Stat. 929 (enacting sections 11 to 15 and 16 to 26 of this title), was to be known as the Smith-Hughes Vocational Education Act. The 1917 act was also known as the Vocational Education Act of 1917.

The act of June 8, 1936, ch. 541, 49 Stat. 1488 (enacting sections 15i to 15ggg of this title), which was repealed by Pub. L. 90–576, title I, §103, Oct. 16, 1968, 82 Stat. 1091, was known as the Vocational Education Act of 1917.

§§ 15 to 15g. Omitted

CODIFICATION


Section 15i, acts June 8, 1936, ch. 541, §4, 49 Stat. 1489; Aug. 1, 1946, ch. 725, title I, §101, 60 Stat. 775; Aug. 2, 1956, ch. 871, title III, §301, 70 Stat. 925, required that Federal funds be matched by State and local funds in order to receive benefits of section 15i et seq. of this title.


For general subject matter of sections 15i to 15m, see section 1241 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Title 20—Education

§§ 15aa to 15jj

Section 103 of Pub. L. 90–576 provided that the repeal is effective July 1, 1969.

§ 15m. Omitted

Section, acts June 8, 1936, ch. 541, §6a, 49 Stat. 1490, limited expenditures on industrial plant training and was omitted in the amendment of act June 8, 1936 by act Aug. 1, 1946, ch. 725, 60 Stat. 775.


Section 15p, acts June 8, 1936, ch. 541, §8, 49 Stat. 1490; Aug. 1, 1946, ch. 725, title I, §101, 60 Stat. 777; Aug. 2, 1956, ch. 871, title III, §301, 70 Stat. 925, required that industrial-plant training be provided after the fiscal year ending June 30, 1939, and that no more than 10 percent be used for the purchase or acquisition of equipment.


For general subject matter of sections 15o to 15q, see section 1241 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Section 103 of Pub. L. 90–576 provided that the repeal is effective July 1, 1969.


§§ 15aaa to 15ggg

TITLE 20—EDUCATION

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For general subject matter of sections 15aaa to 15ggg, see section 1241 et seq. of this title.

**Effective Date of Repeal**

Section 103 of Pub. L. 90–576 provided that the repeal is effective July 1, 1969.


Section 15cc, act Aug. 1, 1946, ch. 725, title II, § 207, as added Aug. 2, 1956, ch. 871, title III, § 301, 70 Stat. 927, provided that out of appropriations made available for grants to States under sections 11 to 14 of this title, States are to meet costs for certification and/or examination of teachers, supervisors, directors of agricultural subjects, directors of trade, home economics, and industrial subjects and to require that States match at least 20 percent of these costs.

For general subject matter of sections 15aaa to 15jj of this title, see section 1241 et seq. of this title.

**Effective Date of Repeal**

Section 103 of Pub. L. 90–576 provided that the repeal is effective July 1, 1969.


**For general subject matter of sections 15aaa to 15ggg, see section 1241 et seq. of this title.**


Section 27, act Feb. 23, 1917, ch. 114, §§17, 39 Stat. 936, provided for State replacement of lost funds and for limitations on use of funds.


Section, act Mar. 10, 1924, ch. 46, §§4, 43 Stat. 18, extended benefits of chapter to Territory of Hawaii.

Effective Date of Repeal

Section 47(e) of Pub. L. 86–624 provided that: ‘‘The amendment made by paragraphs (1) and (2) of subsection (b) and paragraphs (1), (2), and (3) of subsection (d) of section 14 [amending sections 12, 14, and 238 of this title] shall be applicable in the case of fiscal years beginning after June 30, 1960.’’


Section 31, act Mar. 18, 1930, ch. 71, §1, 46 Stat. 27, extended to Virgin Islands the benefits of Vocational Education Act of 1916 (sections 151 to 15m, 15o to 15q, 15aa to 15j), and 15aaa to 15gg of this title).

Section 32, act Mar. 18, 1930, ch. 71, §§12, 64 Stat. 27; 1933 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1933, 18 F.R. 2053, 67 Stat. 631, authorized distribution of funds to Virgin Islands.

Section 33, act Mar. 18, 1930, ch. 71, §§3, 64 Stat. 27; 1933 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1933, 18 F.R. 2053, 67 Stat. 631, set conditions governing use and payment of funds in Virgin Islands.

Section 34, act Aug. 1, 1956, ch. 852, §9, 70 Stat. 909, extended to Guam the benefits of Vocational Education Act of 1916.

Effective Date of Repeal

Section 103 of Pub. L. 90–576 provided that the repeal is effective July 1, 1969.
46a. Employment of aliens by Secretary.
46. Duties of Secretary.
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50. Reception and arrangement of specimens and objects of art.
50a. Gellatly art collection; estimates of sums needed for preservation and maintenance.
51. Library.
52. Evidence of title to site and buildings.
53. Protection of property.
54. Appropriation of interest.
55. Acceptance of other sums.
56. Disposal of unappropriated money.
57. Disbursements.
58. Omitted.
60. Army articles furnished to National Museum.
61 to 65. Repealed.
65a. Director of the National Museum.
66. Repealed.
67. Right of repeal.
68. Repealed.
69. Anthropological researches; cooperation of Institution with States, educational institutions, or scientific organizations.
70. Authorization of appropriations; cooperative work.

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71a. Additions; payment of construction costs from trust funds.
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72. Board of Trustees.
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74. Maintenance.
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SUBCHAPTER I—CHARTER PROVISIONS

§ 41. Incorporation of institution

The President, the Vice President, the Chief Justice, and the heads of executive departments are constituted an establishment by the name of the Smithsonian Institution for the increase and diffusion of knowledge among men, and by that name shall be known and have perpetual succession with the powers, limitations, and restrictions hereinafter contained, and no other.

(R.S. § 5579; Feb. 27, 1877, ch. 69, 19 Stat. 253; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

CONFDICATION


R.S. §§ 5579 to 5594 (codified as sections 41 to 46, 48, 50, 51 to 53, 54 to 57, and 67 of this title) constituted Title 73 of the Revised Statutes, entitled “The Smithsonian Institution.” A preamble to these sections was as follows: “James Smithson, esquire, of London, in the kingdom of Great Britain, having by his last will and testament given the whole of his property to the United States of America, to found, at Washington, under the name of the ‘Smithsonian Institution,’ an establishment for the increase and diffusion of knowledge among men; and the United States having, by an act of Congress, received said property and accepted said trust; therefore, for the faithful execution of said trust, according to the will of the liberal and enlightened donor.”

R.S. § 5579, as originally enacted, constituted the President, the Vice-President, the Secretaries of State, the Treasury, War, and the Navy, the Postmaster-General, the Attorney-General, the Chief Justice, the Commissioner of the Patent Office, and the Governor of the District of Columbia, and such persons as they might elect honorary members, an establishment by the name of the “Smithsonian Institution,” for the purposes and with the powers specified in the section as set forth here.

AMENDMENTS

1894—Act Mar. 12, 1894, substituted “the Chief Justice, and heads of executive departments” for “the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney General, the Chief Justice, the Commissioner of Patents, the governor of the District of Columbia, and other such persons as they may elect honorary members”.

1877—Act Feb. 27, 1877, substituted “Patents” for “Patent Office”.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–72, § 1, Aug. 15, 2003, 117 Stat. 888, provided that: “This Act [enacting section 2521–8 of Title 41, Public Contracts, enacting provisions set out as notes under section 75b of this title and section 3521 of Title 5, Government Organization and Employees, and amending provisions set out as a note under section 50 of this title] may be cited as the ‘Smithsonian Facilities Authorization Act.’”

SHORT TITLE OF 1966 AMENDMENT


§ 42. Board of Regents; members

(a) The business of the Institution shall be conducted at the city of Washington by a Board
§ 43. Appointment of regents; terms of office; vacancies

The regents to be selected shall be appointed as follows: The Members of the Senate by the President thereof; the Members of the House by the Speaker thereof; and the nine other persons by joint resolution of the Congress. The Members of the House so appointed shall serve for the term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner to serve until the fourth Wednesday in December, in the second year succeeding their appointment. The Senators so appointed shall serve during the term for which they shall hold, without re-election, their office as Senators. Vacancies, occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other nine members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolution of Congress.

Codification

Amendments

§ 44. Organization of board; expenses; gratuitous services

The Board of Regents shall meet in the city of Washington and elect one of their number as chancellor, who shall be the presiding officer of the Board of Regents, and called the chancellor of the Smithsonian Institution, and a suitable person as Secretary of the institution, who shall also be the secretary of the Board of Regents. The board shall also elect three of their own body as an executive committee, and shall fix the time for the regular meetings of the board; and, on application of any three of the regents to the Secretary of the institution, it shall be his duty to appoint a special meeting of the Board of Regents, of which he shall give notice, by letter, to each of the members; and, at any meeting of the board, eight shall constitute a quorum to do business. Each member of the board shall be paid his necessary traveling and other actual expenses, in attending meetings of the board, which shall be audited by the executive committee, and recorded by the Secretary of the board; but his service as regent shall be gratuitous.

Codification
R.S. § 5582 derived from act Aug. 10, 1846, ch. 178, §3, 9 Stat. 103.

Amendments
1970—Pub. L. 91–551 increased number of members required to constitute a quorum from five to eight.

§ 45. Special meetings of members

The members of the institution may hold stated and special meetings, for the supervision of the affairs of the institution and the advice and instruction of the Board of Regents, to be called in the manner provided for in the by-laws of the institution, at which the President, and in his absence the Vice President, shall preside.

Codification
R.S. § 5585 derived from act Aug. 10, 1846, ch. 178, §8, 9 Stat. 103.

§ 46. Duties of Secretary

The Secretary of the Board of Regents shall take charge of the building and property of the institution, and shall, under their direction, make a fair and accurate record of all their proceedings, to be preserved in the institution until no longer needed in conducting current business; and shall also discharge the duties of librarian and of keeper of the museum, and may, with the consent of the Board of Regents, employ assistants.

Codification
§ 46a. Employment of aliens by Secretary

The Secretary of the Smithsonian Institution, subject to adequate security and other investigations as he may determine to be appropriate, and subject further to a prior determination by him that no qualified United States citizen is available for the particular position involved, is authorized to employ and compensate aliens in a scientific or technical capacity at authorized rates of compensation without regard to statutory provisions prohibiting payment of compensation to aliens.


§ 47. Acting Secretary

The chancellor of the Smithsonian Institution may, by an instrument in writing filed in the office of the Secretary thereof, designate and appoint a suitable person to act as Secretary of the Institution when there shall be a vacancy in said office, and whenever the Secretary shall be unable from illness, absence, or other cause to perform the duties of his office; and in such case the person so appointed may perform all the duties imposed on the Secretary by law until the vacancy shall be filled or such inability shall cease. The said chancellor may change such designation and appointment from time to time as the interests of the Institution may in his judgment require.

(May 13, 1884, ch. 44, 23 Stat. 21.)

Prior Provisions

Similar prior provisions were contained in act Jan. 24, 1879, ch. 21, 20 Stat. 264.

§ 48. Salary and removal of Secretary and assistants

The Secretary and his assistants shall, respectively, receive for their services such sums as may be allowed by the Board of Regents; and shall be removable by the Board of Regents whenever, in their judgment, the interests of the institution require such removal.

(R.S. § 5584.)

Codification


Laboratory Space, Gamboa, Panama

Pub. L. 111–11, title XV, § 15102, Mar. 30, 2009, 123 Stat. 1456, provided that:

“(a) Authority To Construct.—The Board of Regents of the Smithsonian Institution is authorized to construct laboratory space to accommodate the trial research program of the Smithsonian tropical research institute in Gamboa, Panama.

“(b) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section a total of $14,000,000 for fiscal years 2009 and 2010. Such sums shall remain available until expended.”

Veritas Astrophysical Observatory Project: Authorization of Construction and Appropriations


“SECTION 1. AUTHORIZING BOARD OF REGENTS OF SMITHSONIAN INSTITUTION TO CARRY OUT CONSTRUCTION AND RELATED ACTIVITIES IN SUPPORT OF VERITAS ASTROPHYSICAL OBSERVATORY PROJECT.

“The Board of Regents of the Smithsonian Institution is authorized to carry out construction and related activities in support of the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project at the Fred Lawrence Whipple Observatory Base Camp on Mount Hopkins, Arizona, or other similar location.

“SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated $1,000,000 for fiscal year 2005 to carry out section 1.”

Collection and Preservation of Artifacts Relating to September 11th Attacks


“(a) IN GENERAL.—The Secretary of the Smithsonian Institution shall collect and preserve in the National
§ 50

SMITHSONIAN ASTROPHYSICAL OBSERVATORY SUBMILLIMETER ARRAY: AUTHORIZATION OF CONSTRUCTION AND APPROPRIATIONS

Pub. L. 106–383, Oct. 27, 2000, 114 Stat. 1459, provided that:

"(1) IN GENERAL.—The Board of Regents of the Smithsonian Institution is authorized to plan, design, construct, and equip laboratory, administrative, and support space to house base operations for the Smithsonian Astrophysical Observatory Submillimeter Array located on Mauna Kea at Hilo, Hawaii.

"SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

"(a) There are authorized to be appropriated to the Board of Regents of the Smithsonian Institution to carry out this Act, $2,000,000 for fiscal year 2001, and $5,000,000 to carry out this section.

SMITHSONIAN INSTITUTION TRANSPORTATION PROGRAM

Pub. L. 105–178, title I, §121(a), June 9, 1998, 112 Stat. 204, provided that:

"(1) IN GENERAL.—The Secretary [of Transportation] shall allocate funds made available by this subsection for obligation at the discretion of the Secretary of the Smithsonian Institution, in consultation with the Secretary, to carry out projects and activities described in paragraph (2).

"(2) ELIGIBLE USES.—Amounts allocated under paragraph (1) may be obligated only—

"(A) for transportation-related exhibitions, exhibits, and educational outreach programs;

"(B) to enhance the care and protection of the Nation’s collection of transportation-related artifacts;

"(C) to acquire historically significant transportation-related artifacts; and

"(D) to support research programs within the Smithsonian Institution that document the history and evolution of transportation, in cooperation with other museums in the United States.

"SEC. 2. AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $1,000,000 for each of fiscal years 1998 through 2003 to carry out this subsection.

"(4) APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of any project or activity under this subsection shall be 100 percent and such funds shall remain available until expended.

NATIONAL HEALTH MUSEUM

Pub. L. 105–78, title VII, Nov. 13, 1997, 111 Stat. 1324, known as the National Health Museum Development Act, which provided that the National Health Museum would be located on or near the Mall, established the National Health Museum Commission and its duties, including submission of a report to the President and Congress, provided that all Commission activities would be administered in accordance with the Federal Advisory Committee Act, provided for compensation of Commission members who were not officers or employees of the U.S., appropriated funds, and specified the Commission would terminate 60 days after submission of the report, was repealed, except for section 702, by Pub. L. 107–303, title III, §303, Nov. 27, 2002, 116 Stat. 2561. Section 702 of Pub. L. 105–78 amended section 1067 of Pub. L. 103–337, set out as a note under section 176 of Title 10, Armed Forces.

WEST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY BUILDING

Pub. L. 103–151, Nov. 24, 1990, 107 Stat. 1515, provided that:

"SECTION 1. PLANNING, DESIGN, AND CONSTRUCTION OF WEST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY BUILDING.

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, and construct the West Court of the National Museum of Natural History building.

"SEC. 2. FUNDING.

"No appropriated funds may be used to pay any expense of the planning, design, and construction authorized by section 1.

EAST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY BUILDING


"SECTION 1. ADDITIONAL SPACE IN NATIONAL MUSEUM OF NATURAL HISTORY.

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, and equip approximately 80,000 square feet of space in the East Court of the National Museum of Natural History building.

"SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to the Smithsonian Institution for fiscal year 1991 and succeeding fiscal years not to exceed $30,000,000 to carry out this Act.

[Section 1(b) of Pub. L. 103–98 provided that: “The amendment made by subsection (a) [amending section 2 of Pub. L. 101–455, set out above] shall take effect as of October 24, 1990.”]

CHARLES MCC. MATHIAS, JR. LABORATORY FOR ENVIRONMENTAL RESEARCH

Pub. L. 111–11, title XV, §15161, Mar. 30, 2009, 123 Stat. 1456, provided that:

"(a) AUTHORITY TO DESIGN AND CONSTRUCT.—The Board of Regents of the Smithsonian Institution is authorized to design and construct laboratory and support space to accommodate the Mathias Laboratory at the Smithsonian Environmental Research Center in Edgewater, Maryland.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $1,000,000 for each of fiscal years 2009 through 2011. Such sums shall remain available until expended.

"(c) AUTHORIZATION OF APPROPRIATIONS.—Effective October 1, 1986, there is authorized to be appropriated
to the Board of Regents of the Smithsonian Institution $1,000,000 to carry out the purposes of this section.

"(d) Transfer of Funds.—Any portion of the sums appropriated to carry out the purposes of this section may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

SMITHSONIAN ASTROPHYSICAL OBSERVATORY AND SMITHSONIAN TROPICAL RESEARCH INSTITUTE; AUTHORIZATION OF CONSTRUCTION AND APPROPRIATIONS


"That the Board of Regents of the Smithsonian Institution is authorized to plan and construct facilities for the Smithsonian Astrophysical Observatory and the Smithsonian Tropical Research Institute.

"SEC. 2. Effective October 1, 1986, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution:

"(a) $4,500,000 for the Smithsonian Astrophysical Observatory; and

"(b) $11,100,000 for the Smithsonian Tropical Research Institute.

"SEC. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

FRED LAWRENCE WHipple OBSERVATORY; PURCHASE OF LAND


"That the Smithsonian Institution is authorized to purchase land in Santa Cruz County, Arizona, for the permanent headquarters of the Fred Lawrence Whipple Observatory.

"SEC. 2. Effective October 1, 1984, there is authorized to be appropriated $150,000 to carry out the purposes of this Act."

CONSTRUCTION OF NATIONAL MUSEUM OF AFRICAN ART, CENTER FOR EASTERN ART, AND STRUCTURES FOR RELATED EDUCATIONAL FACILITIES

Pub. L. 97–203, June 24, 1982, 96 Stat. 129, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to construct a building for the National Museum of African Art and a center for Eastern art together with structures for related educational activities in the area south of the original Smithsonian Institution Building adjacent to Independence Avenue at Tenth Street Southwest, in the city of Washington.

"SEC. 2. Effective October 1, 1982, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $65,500,000 to carry out the purposes of this Act [this note]. Except for funds obligated or expended for planning, administration, and management expenses, and architectural or other consulting services, no funds appropriated pursuant to this section shall be obligated or expended until such time as there is available to such Board, from private donations or from other non-Federal sources, a sum which, when combined with the funds so appropriated, is sufficient to carry out the purposes of this Act.

"SEC. 3. Any portion of the sums appropriated to carry out the purposes of this Act [this note] may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

SMITHSONIAN INSTITUTION; DEVELOPMENT OF PROPERTY ADJACENT TO ORIGINAL BUILDING

Pub. L. 96–36, July 20, 1979, 93 Stat. 94, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to plan for the development of the area south of the original Smithsonian Institution Building adjacent to Independence Avenue at Tenth Street, Southwest, in the city of Washington.

"SEC. 2. Effective October 1, 1979, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $500,000 to carry out the purposes of this Act.

"SEC. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

SMITHSONIAN INSTITUTION PLANS FOR AND CONSTRUCTION OF MUSEUM SUPPORT FACILITIES; APPROVAL OF PLANS AND SPECIFICATIONS; SITUS; TRANSFER OF LAND; APPROPRIATIONS; CONTRACTS BY GENERAL SERVICES ADMINISTRATION

Pub. L. 111–11, title XV, § 15103, Mar. 30, 2009, 123 Stat. 1456, provided that:

"(a) In General.—The Board of Regents of the Smithsonian Institution is authorized to construct a greenhouse facility at its museum support facility in Suitland, Maryland, to maintain the horticultural operations of, and preserve the orchid collection held in trust by, the Smithsonian Institution.

"(b) Authorization of Appropriations.—There is authorized to be appropriated $12,000,000 to carry out this section. Such sums shall remain available until expended."


"The Regents of the Smithsonian Institution are authorized to prepare plans for, and to construct, museum support facilities to be used for (1) the care, curation, conservation, deposit, preparation, and study of the national collections of scientific, historic, and artistic objects, specimens, and artifacts; (2) the related documentation of such collections of the Smithsonian Institution; and (3) the training of museum conservators. No appropriation shall be made to construct the facilities authorized by this Act until the Committee on Public Works and Transportation of the House of Representatives and the Committee on Rules and Administration of the Senate, by resolution approve the final plans and specifications of such facilities.

"SEC. 2. The museum support facilities referred to in section 1 shall be located on federally owned land within the metropolitan area of Washington, District of Columbia. Any Federal agency is authorized to transfer land under its jurisdiction to the Smithsonian Institution for such purposes without reimbursement.

"SEC. 3. There is authorized to be appropriated to the Smithsonian Institution $21,500,000 to carry out this Act (other than section 4). Any portion of the sums appropriated for such purposes may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes.

"SEC. 4. Additional space and resources for national collections held by the Smithsonian Institution.

"(a) In General.—The Board of Regents of the Smithsonian Institution may plan, design, construct, and equip additional special use storage and laboratory space at the museum support facility of the Smithsonian Institution in Suitland, Maryland, to accommodate the care, preservation, conservation, deposit, and study of national collections held in trust by the Institution.

"(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—

"(1) $2,000,000 for fiscal year 2003;

"(2) $10,000,000 for fiscal year 2004; and
“(3) such sums as are necessary for each of fiscal years 2005 through 2008.”


**National Museum**

The National Museum was not created by any express statutory provision for that purpose. It was first mentioned in an appropriation for postage for “the National Museum in the Smithsonian Institution.” contained in act June 20, 1874, ch. 328, §1, 18 Stat. 103. An appropriation for a building for the use of the National Museum was made by act Mar. 3, 1879, ch. 182, §1, 20 Stat. 397, and annual appropriations have continuously been made for expenses of heating, etc., such building.

**Transportation of Property**

Quartermaster-General and his officers were required to receive and transport property for National Museum by a provision of act July 5, 1884, 217, 23 Stat. 107.

§ 50a. Gellatly art collection; estimates of sums needed for preservation and maintenance

The Smithsonian Institution is authorized to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the John Gellatly art collection.

(Aug. 5, 1929, ch. 9, 46 Stat. 5.)

§ 51. Library

The Regents shall make, from the interest of the fund, an appropriation, not exceeding an average of $25,000 annually, for the gradual formation of a library composed of valuable works pertaining to all departments of human knowledge.

(R.S. § 5587.)

**Codification**

R.S. § 5587 derived from act Aug. 10, 1846, ch. 178, §6, 9 Stat. 103.

**Public Use of Research and Study Facilities of Certain Institutions**

Under provisions of R.S. § 94 and act Mar. 3, 1875, ch. 179, 18 Stat. 122, the Joint Committee on the Library of Congress was authorized to extend the use of the Library to the Regents of the Smithsonian Institution. These provisions were not classified to the Code, being rendered superfluous by a general declaration of public policy by Congress, by a joint resolution adopted Apr. 12, 1892, 27 Stat. 395, to the effect that facilities for study and research in the Library of Congress, the National Museum, and similar institutions shall be afforded investigators, students, etc., in the several states and territories as well as in the District of Columbia.

§ 52. Evidence of title to site and buildings

The site and lands selected for buildings for the Smithsonian Institution shall be deemed appropriated to the institution, and the record of the description of such site and lands, or a copy thereof, certified by the chancellor and Secretary of the Board of Regents, shall be received as evidence in all courts of the extent and boundaries of the lands appropriated to the institution.

(R.S. § 5588.)

**Codification**


§ 53. Protection of property

All laws for the protection of public property in the city of Washington shall apply to, and be in force for, the protection of the lands, buildings, and other property of the Smithsonian Institution. All moneys recovered by or accruing to, the institution shall be paid into the Treasury of the United States, to the credit of the Smithsonian bequest, and separately accounted for.

(R.S. § 5589.)

**Codification**


§ 53a. Authorization of appropriations

Appropriations are authorized for the maintenance of the Astrophysical Observatory and the making of solar observations at high altitudes; for repairs and alterations of buildings and grounds occupied by the Smithsonian Institution in the District of Columbia and elsewhere; and for preparation of manuscripts, drawings, and illustrations for publications.


§ 54. Appropriation of interest

So much of the property of James Smithson as has been received in money, and paid into the Treasury of the United States, being the sum of $541,379.63, shall be lent to the United States Treasury and invested in public debt securities with maturities requested by the Smithsonian Institution bearing interest at rates determined by the Secretary of the Treasury, based upon current market yields on outstanding marketable obligations of the United States of comparable maturities, and this interest is hereby appropriated for the perpetual maintenance and support of the Smithsonian Institution; and all expenditures and appropriations to be made, from time to time, to the purposes of the Institution shall be exclusively from the accruing interest, and not from the principal of the fund. All the moneys and stocks which have been, or may hereafter be, received into the Treasury of the United States, on account of the fund bequeathed by James Smithson, are hereby pledged to refund to the Treasury of the United States the sums hereby appropriated.

(R.S. § 5590; Pub. L. 97–199, §1, June 22, 1982, 96 Stat. 121.)

**Codification**


**Amendments**

1982—Pub. L. 97–199 substituted “and invested in public debt securities with maturities requested by the
Smithsonian Institution bearing interest at rates determined by the Secretary of the Treasury, based upon current market yields on outstanding marketable obligations of the United States of comparable maturities, and this interest is hereby" for "", 6 per centum per annum interest; and 6 per centum interest on the trust fund and residuary legacy received into the United States Treasury, payable in half-yearly payments, on the first of January and July in each year, is", substituted "purposes of the Institution" for "purposes of the institution", and substituted "are hereby pledged" for "are pledged".

**Effective Date of 1982 Amendment**

Section 2 of Pub. L. 97–199 provided that: "The amendment made by the first section [amending this section] shall apply with respect to fiscal years beginning after September 30, 1982.''

§ 55. Acceptance of other sums

The Secretary of the Treasury is authorized and directed to receive into the Treasury, on the same terms as the original bequest of James Smithson, such sums as the Regents may, from time to time, see fit to deposit, not exceeding, with the original bequest, the sum of $1,000,000. This shall not operate as a limitation on the power of the Smithsonian Institution to receive money or other property by gift, bequest, or devise, and to hold and dispose of the same in promotion of the purposes thereof.

(R.S. §5591; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

**Codification**

R.S. §5591 derived from act Feb. 5, 1867, ch. 34, §1, 14 Stat. 391.

**Amendments**

1894—Act Mar. 12, 1894, made limitation on deposits into the Treasury inapplicable to receipt of gifts, bequests and devises and dispositions of money or other property.

§ 56. Disposal of unappropriated money

The Regents are authorized to make such disposal of any other moneys which have accrued, or shall hereafter accrue, as interest upon the Smithsonian fund, not herein appropriated, or not required for the purposes herein provided, as they shall deem best suited for the promotion of the purpose of the testator.

(R.S. §5592.)

**Codification**


§ 57. Disbursements

Whenever money is required for the payment of the debts or performance of the contracts of the institution, incurred or entered into in conformity with the provisions of sections 41 to 46, 48, 50, 51 to 53, 54 to 57, and 67 of this title, or for making the purchases and executing the objects authorized by said sections, the Board of Regents, or the executive committee thereof, may certify to the chancellor and secretary of the board that such sum of money is required, whereupon they shall examine the same, and, if they shall approve thereof, shall certify the same to the proper officer of the Treasury for payment. The board shall submit to Congress, at each session thereof, a report of the operations, expenditures, and condition of the institution.

(R.S. § 5593.)

**Codification**


**Termination of Reporting Requirements**

For termination, effective May 15, 2000, of provisions in this section relating to submitting a report to Congress at each session of Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 192 of House Document No. 103–7.

§ 58. Omitted

**Codification**

Section, act Mar. 3, 1899, ch. 424, §1, 30 Stat. 1085, which required that the salaries of officers and employees paid from appropriations under the Smithsonian Institution be reported to Congress annually, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 192 of House Document No. 103–7.


All collections of rocks, minerals, soils, fossils, and objects of natural history, archaeology, and ethnology, made by the National Ocean Survey, the United States Geological Survey, or by any other parties for the Government of the United States, when no longer needed for investigations in progress shall be deposited in the National Museum.


**Codification**

Words "Coast and Interior Survey" appearing in act Mar. 3, 1879, were in prior editions of the Code changed to "Coast and Geodetic Survey." Congress never created a Coast and Interior Survey. In a communication dated Nov. 6, 1940, the Director of the Geological Survey explained that the words "Coast and Interior Survey" were inadvertently incorporated upon authority of report contained in Senate Misc. Doc. No. 9, 45th Congress, 3d Session, which recommended the "Coast and Geodetic Survey" be changed to "United States Coast and Interior Survey" and an organization be created in the Interior Department to be known as the "United States Geological Survey." Congress adopted only the latter suggestion.

CHANGE OF NAME


NATIONAL MUSEUM

Establishment of the National Museum, see note set out under section 50 of this title.

NATIONAL MUSEUM OF AMERICAN HISTORY


For provision deeming references to the Museum of History and Technology in laws and regulations to be references to the National Museum of American History, see section 3 of Pub. L. 96–441, set out as a note under section 71 of this title.

MUSEUM OF HISTORY AND TECHNOLOGY FOR THE SMITHSONIAN INSTITUTION

Act June 28, 1955, ch. 201, 69 Stat. 189, authorized construction of a building for a Museum of History and Technology, which was redesignated the National Museum of American History, for the use of the Smithsonian Institution, at a cost not to exceed $36,000,000.

§ 60. Army articles furnished to National Museum

The Secretary of the Army is authorized to furnish to the National Museum, for exhibition, upon request therefor by the administrative head thereof, such articles of arms, materiel, equipment, or clothing as have been issued from time to time to the United States Army, or which have been or may hereafter be produced for the United States Army, and which are objects of general interest or of foreign or curious research, provided that such articles can be spared.


AMENDMENTS

1951—Act Oct. 31, 1951, struck out “are surplus or” after “articles”.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

SECRETARY OF AIR FORCE

For transfer of certain personal property and personal property functions, insofar as they pertain to the Air Force, from Secretary of the Army to Secretary of the Air Force, see Secretary of Defense Transfer Order No. 39 [22 F.R.], eff. May 18, 1949.

§§ 61 to 64. Repealed. Oct. 31, 1951, ch. 654, §1(37)–(40), 65 Stat. 702

Section 61, act Mar. 3, 1879, ch. 192, §1, 20 Stat. 397, required archives, records and materials relating to indians of North America to be turned over from Geographical and Geological Survey to Smithsonian Institution for purposes of completion of collection of information and its publication.

Section 62, act Aug. 1, 1914, ch. 223, §1, 38 Stat. 661, authorized Secretary of Commerce to transfer instruments of historical value of the Coast and Geodetic Survey [the National Ocean Survey] to Smithsonian Institution.

Section 63, act June 5, 1920, ch. 235, §1, 41 Stat. 930, related to transfer, by Secretary of Commerce, of Coast and Geodetic Survey [the National Ocean Survey] instruments of historical value, to educational institutions and museums.

Section 64, act Mar. 3, 1883, ch. 143, 22 Stat. 629, related to distribution of appropriate National Museum and Bureau of Fisheries to schools and colleges.


Section, act July 7, 1884, ch. 332, 23 Stat. 214, required Director of National Museum to report annually to Congress on progress of the Museum during the year and its present condition. See section 65a of this title.

§ 65a. Director of the National Museum

(a) Duties; programs and studies; annual report to Congress

The Director of the National Museum under the direction of the Secretary of the Smithsonian Institution shall—

(1) cooperate with museums and their professional organizations in a continuing study of museum problems and opportunities, both in the United States and abroad;

(2) prepare and carry out programs by grant, contract, or directly for training career employees in museum practice for cooperation with museums, their professional organizations, and institutions of higher education either at the Smithsonian Institution or at the cooperating museum, organization, or institutions;

(3) prepare and distribute significant museum publications;

(4) perform research on, and otherwise contribute to, the development of museum techniques, with emphasis on museum conservation and the development of a national institute for museum conservation;

(5) cooperate with departments and agencies of the Government of the United States operating, assisting, or otherwise concerned with museums; and

(6) report annually to the Congress on progress in these activities.

(b) Authorization of appropriations

There are hereby authorized to be appropriated to the Smithsonian Institution for the fiscal year 1961, the sum of $803,000, and for the fiscal year 1962, the sum of $1,000,000.


AMENDMENTS

which had authorized appropriations of $1,000,000 each year for fiscal years 1978, 1979, and 1980.

1979—Subsec. (b). Pub. L. 94–339 substituted provisions authorizing the appropriation of $1,000,000 each year for fiscal years 1978, 1979, and 1980, for provisions under which there had been authorized to be appropriated whatever sums as might be necessary to carry out the purposes of the section, with a proviso that no more than $1,000,000 could be appropriated annually through fiscal year 1977, of which no less than $200,000, was to be allocated and used to carry out subsec. (a)(4) of this section.

1974—Subsec. (a)(4). Pub. L. 93–345, § 1, inserted "with emphasis on museum conservation and the development of a national institute for museum conservation" after "museum techniques".

Subsec. (b). Pub. L. 93–345, § 2, substituted provisions limiting the amount which may be appropriated annually through fiscal year 1977, with no less than $200,000 annually to be allocated and used to carry out the purposes of subsection (a)(4) of this section for provisions limiting to $1,000,000 the amount which could be appropriated annually through fiscal year 1974, of which $300,000 annually had to be allocated and used according to the formula of 30% per centum for purposes of subsec. (a)(2), 33% per centum for assistance to museums under section 954(c) of this title, and 33% per centum for assistance to museums under section 956(c) of this title.

1970—Subsec. (a)(2). Pub. L. 91–629, § 2, inserted provisions that programs be prepared and carried out by contract, grant, or directly and which authorized the training of career employees in museum practices in cooperation with institutions of higher education, and substituted provisions which authorized training programs to be conducted either at the Smithsonian Institution, or at the cooperating museum, organization, or institutions, for provisions which authorized such programs to be conducted at the best locations.

Subsec. (b). Pub. L. 91–629, § 1, substituted provisions which authorized to be appropriated such sums as necessary to carry out the purposes of this section, with no more than $1,000,000 to be appropriated annually through fiscal year 1974, of which $300,000 annually to be allocated in the enumerated manner, for provisions which authorized to be appropriated to carry out this section, not to exceed $200,000 for the fiscal year ending June 30, 1968, $250,000 for the fiscal years ending June 30, 1969, and June 30, 1970, and $300,000 for the fiscal year ending June 30, 1971, and in each subsequent fiscal year, only such sums as the Congress hereafter authorizes by law.

**TERMINATION OF REPORTING REQUIREMENTS**

For termination, effective May 15, 2000, of reporting provisions in subsec. (a)(6) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 192 of House Document No. 103–7.


§ 67. Right of repeal

Congress may alter, amend, add to, or repeal any of the provisions of sections 41 to 46, 48, 50, 51 to 53, and 54 to 57, of this title; but no contract or individual right made or acquired under such provisions shall be thereby divested or impaired.

(R.S. § 5594.)

**CODIFICATION**


Section, act Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1081, related to advertisements for proposals for purchases and services.

§ 69. Anthropological researches; cooperation of Institution with States, educational institutions, or scientific organizations

The Secretary of the Smithsonian Institution is hereby authorized to cooperate with any State, educational institution, or scientific organization in the United States to continue independently or in cooperation anthropological researches among the American Indians and the natives of lands under the jurisdiction or protection of the United States and the excavation and preservation of archaeological remains.

(Apr. 10, 1928, ch. 335, § 1, 45 Stat. 413; Aug. 22, 1949, ch. 494, § 1, 63 Stat. 623.)

**AMENDMENTS**

1949—Act Aug. 22, 1949, substituted "to continue independently or in cooperation anthropological" for "for continuing ethnological" and inserted "and the natives of lands under the jurisdiction or protection of the United States".

§ 70. Authorization of appropriations; cooperative work

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $20,000, which shall be available until expended for the purposes stated in section 69 of this title: Provided, That at such time as the Smithsonian Institution is satisfied that any State, educational institution, or scientific organization in any of the United States is prepared to contribute to such investigation and when, in its judgment such investigation shall appear meritorious, the Secretary of the Smithsonian Institution may direct that an amount from this sum equal to that contributed by such State, educational institution, or scientific organization, not to exceed $2,000, to be expended from such sum in any one State during any calendar year, be made available for cooperative investigation: Provided further, That all such cooperative work and division of the result thereof shall be under the direction of the Secretary of the Smithsonian Institution: Provided further, That where lands are involved which are under the jurisdiction of the Bureau of Indian Affairs or the National Park Service, cooperative work thereon shall be under such regulations and conditions as the Secretary of the Interior may provide.

(Apr. 10, 1928, ch. 335, § 2, 45 Stat. 413.)

**SUBCHAPTER II—NATIONAL GALLERY OF ART**

§ 71. Designation of site

The area bounded by Seventh Street, Constitution Avenue, Fourth Street, and North Mall Drive, Northwest, in the District of Columbia, is appropriated to the Smithsonian Institution as a site for a National Gallery of Art. The Smithsonian Institution is authorized to permit the A. W. Mellon Educational and Charitable Trust
(hereinafter referred to as the donor) to construct on said site for the Smithsonian Institution a building to be designated the National Gallery of Art, and to remove any existing structure and landscape the grounds within said area. The adjoining area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive, Northwest, in the District of Columbia, is reserved as a site for future additions to the National Gallery of Art. The project shall be in accordance with plans and specifications approved by the Commission of Fine Arts.

SMITHSONIAN AMERICAN ART MUSEUM

Pub. L. 106–385, Oct. 27, 2000, 114 Stat. 1463, provided that:

"SECTION 1. RENAMING OF NATIONAL MUSEUM OF AMERICAN ART.

(a) IN GENERAL.—The National Museum of American Art, as designated under section 1 of Public Law 96–441 (20 U.S.C. 71 note), shall be known as the 'Smithsonian American Art Museum'.

(b) REFERENCES IN LAW.—Any reference in any law, regulation, document, or paper to the National Museum of American Art shall be considered to be a reference to the Smithsonian American Art Museum.

"SEC. 2. EFFECTIVE DATE.

"Section 1 shall take effect on the day after the date of enactment of this Act (Oct. 27, 2000)."

Pub. L. 96–441, §§ 1, 3, 4, Oct. 13, 1980, 94 Stat. 1884, provided:

"That the bureau of the Smithsonian Institution designated as the National Collection of Fine Arts by section 8(c) of the joint resolution entitled 'Joint Resolution Providing for the Construction and Maintenance of a National Gallery of Art', approved March 24, 1937 (20 U.S.C. 71 note), shall be known as the 'National Museum of American Art'.

"SEC. 3. Any reference in any law, regulation, document, or paper to the National Collection of Fine Arts or the Museum of History and Technology shall on and after the effective date of this Act (Oct. 13, 1980) be considered to be a reference to the National Museum of American Art and the National Museum of American History, respectively.

"SEC. 4. This Act shall take effect on the day after the date of enactment of this Act (Oct. 13, 1980)."

Act Mar. 24, 1937, ch. 50, 50 Stat. 51, sections 1 to 5 of which are incorporated as sections 71, 72 to 74, and 75 of this title, provided in section 8(c) that: "The existing bureau of the Smithsonian Institution now designated as a national gallery of art shall hereafter be known as the National Collection of Fine Arts.''

GENERAL POST OFFICE BUILDING; TRANSFER TO SMITHSONIAN INSTITUTION FOR USE AS ART GALLERIES; RELOCATION OF UNITED STATES INTERNATIONAL TRADE COMMISSION


"That at such time as it is declared to be excess property pursuant to section 2(d) of this Act, the Administrator of General Services (hereinafter in this Act referred to as the 'Administrator') is authorized to transfer to the Smithsonian Institution, in accordance with section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 480) (now 40 U.S.C. 521–527, 529), without reimbursement, and for use by the Smithsonian Institution for certain art galleries and related functions, the General Post Office Building with any attached underground structures and the site of such building, located between Seventh and Eighth Streets Northwest and E and F Streets Northwest, in the District of Columbia.

(a) The Administrator, at the earliest practicable date, shall relocate all operations of the United States International Trade Commission (hereinafter in this Act referred to as the 'Commission') to a building in downtown Washington, District of Columbia. The Administrator's determination as to such relocation shall be based on studies and investigations to be made by the Chairman of the Commission shall have full opportunity to consult and cooperate with the Administrator. Such consultation shall include opportunity for the Administrator to participate jointly with the Chairman in surveys of available buildings and to submit views and recommendations to the Administrator with respect to space suitable for the Commission's operations. The Administrator shall advise the Chairman in writing of the building to which the operations of the Commission are to be relocated. The Administrator's determination of such relocation shall not take effect for a period of at least sixty days after the date such determination is made and the Chairman is advised of the building to which the operations of the Commission are to be relocated. In the event the Chairman disagrees with the Administrator's determination of such relocation, the Chairman, within thirty days after the Administrator is advised of the building to which the operations of the Commission are to be relocated, may make a written request for review of such determination to the Administrator, and the Administrator shall conduct a formal review of such determination.

(b) The Chairman and the Administrator shall each report separately in writing to the Committees on Environment and Public Works, Finance, Rules and Administration, and Governmental Affairs (now Committee on Homeland Security and Governmental Affairs) of the Senate and to the Committees on Public Works and Transportation, Ways and Means, House Administration, and Government Operations of the House of Representatives not later than sixty days after the date of enactment of this Act [Oct. 19, 1984] and every thirty days thereafter on the status of the relocation required by this section.

"(c) During the period in which the Commission and the United States Postal Service continue to occupy the General Post Office Building referred to in the first section of this Act, the Administrator shall maintain such building in order to prevent its deterioration and to assure that conditions therein are safe and the building is presentable and suitable to the normal operations of the Commission and such Services.

"(d) Upon accomplishment of the relocation required by subsection (a) of this section, the Administrator shall declare the property referred to in the first section of this Act to be excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 472] (now 40 U.S.C. 102).

"SEC. 3. There is authorized to be appropriated to the Board of Regents of the Smithsonian Institution for the renovation and repair of the National Building for the years 1984, 1985, and 1986, $40,000,000 for fiscal years beginning after September 30, 1984, for renovation and repair, after the transfer made under the first section of this Act, of the General Post Office Building referred to in such section. Any portion of the sums appropriated under this section may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such renovation and repair. No contract for such renovation or repair shall be advertised or entered into before the end of the period of thirty days of continuous session of Congress beginning on the date the Smithsonian Institution submits to the Committees on Public Works and Transportation and House and Senate Committees of Appropriations of Representatives and the Committees on Environment and Public Works and Rules and Administration of the Senate the plans and advanced engineering and design of such renovation and repair. For purposes of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.'"
§ 71a. Additions; payment of construction costs from trust funds

The Trustees of the National Gallery of Art are authorized to construct within the area reserved as a site for future additions by the third sentence of section 71 of this title one or more buildings to serve as additions to the National Gallery of Art. The cost of constructing any such building shall be paid from trust funds administered by such Trustees. The plans and specifications for any such building shall be approved by the Commission of Fine Arts and the National Capital Planning Commission.

(Pub. L. 90–376, § 1, July 5, 1968, 82 Stat. 286.)

 CODIFICATION

Section was not enacted as part of act Mar. 24, 1937, ch. 50, 50 Stat. 51, which comprises this subchapter.

TRANSFER OF JURISDICTION

Section 4 of Pub. L. 90–376 provided that: ‘‘The Commissioner [Mayor] of the District of Columbia is authorized to transfer to the United States such jurisdiction as the District of Columbia may have over any of the property within the area referred to in the first section of this Act [this section].’’

PUBLIC UTILITY: PAYMENT OF COST OF RELOCATION OR PROTECTION FROM TRUST FUNDS

Section 5 of Pub. L. 90–376 provided that: ‘‘If any public utility (whether privately or publicly owned) located within the area referred to in the first section of this Act [this section] is required to be relocated or protected by reason of the construction within such area of any addition to the National Gallery of Art, the cost of such relocation or protection shall be paid from trust funds administered by the Trustees of the National Gallery of Art.’’

§ 71b. Status of completed addition

Any building constructed under authority of section 71a of this title shall, upon completion, be a part of the National Gallery of Art.


 CODIFICATION

Section was not enacted as part of act Mar. 24, 1937, ch. 50, 50 Stat. 51, which comprises this subchapter.

§ 72. Board of Trustees

(a) Establishment

There is established in the Smithsonian Institution a bureau, which shall be directed by a board to be known as the Trustees of the National Gallery of Art, whose duty it shall be to maintain and administer the National Gallery of Art and site thereof and to execute such other functions as are vested in the board by this subchapter. The board shall be composed as follows: The Chief Justice of the United States, the Secretary of State, the Secretary of the Treasury, and the Secretary of the Smithsonian Institution, ex officio; and five general trustees who shall be citizens of the United States, to be chosen as hereinafter provided. No officer or employee of the Federal Government shall be eligible to be chosen as a general trustee.

(b) Method of selection; term of office

The general trustees first taking office shall be chosen by the Board of Regents of the Smithsonian Institution, subject to the approval of the donor, and shall have terms expiring one each on July 1 of 1939, 1941, 1943, 1945, and 1947, as designated by the Board of Regents. A successor shall be chosen by a majority vote of the general trustees and shall have a term expiring ten years from the date of the expiration of the term for which his predecessor was chosen, except that a successor chosen to fill a vacancy occurring prior to the expiration of such term shall be chosen only for the remainder of such term.

(Mar. 24, 1937, ch. 50, § 2, 50 Stat. 52.)

DELEGATION OF FUNCTIONS BY SECRETARY OF STATE TO DIRECTOR OF UNITED STATES INFORMATION AGENCY


(For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6531 of Title 22, Foreign Relations and Intercourse.)

§ 73. Acceptance of gift from A. W. Mellon

Upon completion of the National Gallery of Art, the board shall accept for the Smithsonian Institution as a gift from the donor a collection of works of art which shall be housed and exhibited in the National Gallery of Art.

(Mar. 24, 1937, ch. 50, § 3, 50 Stat. 52.)

§ 74. Maintenance

(a) Pledge of funds for upkeep; authorization of appropriations

The faith of the United States is pledged that, on completion of the National Gallery of Art by the donor in accordance with the terms of this subchapter and the acquisition from the donor of the collection of works of art, the United States will provide such funds as may be necessary for the upkeep of the National Gallery of Art and the administrative expenses and costs of operation thereof, including the protection and care of works of art acquired by the board, so that the National Gallery of Art shall be at all times properly maintained and the works of art contained therein shall be exhibited regularly to the general public free of charge. For these purposes, and to provide, prior to the completion of the National Gallery of Art, for the protection and care of the works of art in said Gallery and for administrative and operating expenses and equipment preparatory to the opening of the Gallery to the public, there are authorized to be appropriated such sums as may be necessary.

(b) Acceptance of gifts and other property; investment of funds

The board is authorized to accept for the Smithsonian Institution and to hold and administer gifts, bequests, or devises of money, securi-
ties, or other property of whatsoever character for the benefit of the National Gallery of Art. Unless otherwise restricted by the terms of the gift, bequest, or devise, the board is authorized to sell or exchange and to invest or reinvest in such investments as it may determine from time to time the moneys, securities, or other property composing trust funds given, bequeathed, or devised to or for the benefit of the National Gallery of Art. The income as and when collected shall be placed in such depositaries as the board shall determine and shall be subject to expenditure by the board.

(c) Appointment and compensation of officers and employees

The board shall appoint and fix the compensation and duties of a director, an assistant director, a secretary, and a chief curator of the National Gallery of Art, and of such other officers and employees of the National Gallery of Art as may be necessary for the efficient administration of the functions of the board. Such director, assistant director, secretary, and chief curator shall be compensated from trust funds available to the board for the purpose, and their appointment and salaries shall not be subject to the civil-service laws or chapter 51 and subchapter III of chapter 53 of title 5. The director, assistant director, secretary, and chief curator shall be well qualified by experience and training to perform the duties of their office and the original appointment to each such office shall be subject to the approval of the donor.

(d) Review of actions of board

The actions of the board, including any payment made or directed to be made by it from any trust funds, shall not be subject to review by any officer or agency other than a court of law.


Codification

In subsec. (c), “chapter 51 and subchapter III of chapter 53 of title 5” substituted for “the Classification Act of 1949, as amended” on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Amendments


1939—Subsec. (a). Act Apr. 13, 1939, inserted in last sentence “and to provide, prior to the completion of the National Gallery of Art, for the protection and care of the works of art in said Gallery and for administrative and operating expenses and equipment preparatory to the opening of the Gallery to the public”.

Repeals

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §4, 80 Stat. 632, 635.

§74a. Permanent loan of funds by Board of Trustees to Treasury; semiannual interest payments to Board

The Secretary of the Treasury is authorized and directed to receive into the Treasury from time to time as a permanent loan by the Board of Trustees of the National Gallery of Art to the United States sums in cash of not to exceed $5,000,000 in the aggregate, and to pay interest on the principal amount of such loan at a rate which is the higher of the rate of 4 per centum per annum or a rate which is .25 percentage points less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding long-term marketable obligations of the United States, adjusted to the nearest one-eighth of 1 per centum, payable semiannually. Such interest is permanently appropriated for payment to the Board of Trustees of the National Gallery of Art.


Codification

Section was not enacted as part of act Mar. 24, 1937, ch. 50, 50 Stat. 51, which comprises this subchapter.

Amendments

1976—Pub. L. 94–418 inserted provision authorizing alternate interest rate to existing interest rate of 4 per centum per annum.

§75. Authority and functions of the board

(a) Official seal; bylaws, rules, and regulations; quorum

The board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations, as it deems necessary for the administration of its functions under this subchapter, including, among other matters, bylaws, rules, and regulations relating to the acquisition, exhibition, and loan of works of art, the administration of its trust funds, and the organization and procedure of the board. The board may function notwithstanding vacancies, and three members of the board shall constitute a quorum for the transaction of business.

(b) Quality of works of art

In order that the collection of the National Gallery of Art shall always be maintained at a high standard and in order to prevent the introduction therein of inferior works of art, no work of art shall be included in the permanent collection of the National Gallery of Art unless it be of similar high standard of quality to those in the collection acquired from the donor.

(c) Powers and obligations

The board shall have all the usual powers and obligations of a trustee in respect of all trust funds administered by it and all works of art acquired by it.

(d) Annual reports

The board shall submit to the Smithsonian Institution an annual report of its operations under this subchapter, including a detailed statement of all acquisitions and loans of works of art and of all public and private moneys received and disbursed.

(Mar. 24, 1937, ch. 50, §5, 50 Stat. 53.)
SUBCHAPTER III—NATIONAL PORTRAIT GALLERY

§ 75a. Definitions

For the purposes of this subchapter—
(a) The term “Board” means the Board of Regents of the Smithsonian Institution.
(b) The term “Commission” means the National Portrait Gallery Commission as provided for in this subchapter.
(c) The term “Gallery” means the National Portrait Gallery established by this subchapter.
(d) The term “gift” includes a gift, bequest, or devise, whether outright or in trust, and any legal instrument by which the gift is effected.
(e) The term “portraiture” includes portraits and reproductions thereof made by any means or process, whether invented or developed herefore or hereafter.


AMENDMENTS

1976—Subsec. (e). Pub. L. 94–209 substituted “includes portraits and reproductions thereof made by any means or process, whether invented or developed heretofore or hereafter” for “for purposes of this subchapter shall mean painted or sculptured likenesses”.

SHORT TITLE

Pub. L. 87–443, § 1, provided: “That this Act [enacting this subchapter] may be cited as the ‘National Portrait Gallery Act’.”

§ 75b. Establishment of National Portrait Gallery; functions

(a) There is established in the Smithsonian Institution a bureau which shall be known as the National Portrait Gallery. The functions of such bureau shall be those authorized by this subchapter. The use for the purposes of the Gallery of any part of the building transferred to the Smithsonian Institution pursuant to the Act of March 28, 1958 (72 Stat. 68), is authorized.
(b) The Gallery shall function as a free public museum for the exhibition and study of portraiture and statuary of the United States and of the artists who created the history, development, and culture of the people of the United States.


REFERENCES IN TEXT

Act of March 28, 1958, referred to in subsec. (a), is act Mar. 28, 1958, Pub. L. 85–357, 72 Stat. 68, which was not classified to the Code.

PATENT OFFICE BUILDING IMPROVEMENTS

“(a) AUTHORIZATION OF USE OF FUNDS.—
“(1) IN GENERAL.—The Board of Regents of the Smithsonian Institution may plan, design, and construct improvements to the interior and exterior of the Patent Office Building (including the construction of a roof covering for the courtyard), using funds available to the Institution from nonappropriated sources.
“(2) DEFINITION.—In this section, the term ‘Patent Office Building’ means the building transferred to the Smithsonian Institution pursuant to Public Law 85–357 (72 Stat. 68).

“(b) DESIGN AND SPECIFICATIONS.—The design and specifications for any exterior alterations authorized by subsection (a) shall be—
“(1) submitted by the Secretary of the Smithsonian Institution (referred to in this section as the ‘Secretary’) to the Commission of Fine Arts for comments and recommendations; and
“(2) subject to the review and approval of the National Capital Planning Commission in accordance with section 8722 of title 40, United States Code, and section 16 of the Act of June 20, 1938 (sec. 6–641.15, D.C. Official Code).
“(c) AUTHORITY OF HISTORIC PRESERVATION AGENCIES.—
“(1) IN GENERAL.—The Secretary shall—
“(A) take into account the effect of the improvements authorized by subsection (a) on the historic character of the Patent Office Building; and
“(B) provide the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such improvements.
“(2) STATUS OF SMITHSONIAN.—In carrying out this subsection, and in carrying out other projects in the District of Columbia which are subject to the review and approval of the National Capital Planning Commission in accordance with section 16 of the Act of June 20, 1938 (sec. 6–641.15, D.C. Official Code), the Smithsonian Institution shall be deemed to be an agency for purposes of compliance with regulations promulgated by the Advisory Council on Historic Preservation pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f).”

§ 75c. Creation of National Portrait Gallery Commission; members; functions; powers

There is created the National Portrait Gallery Commission. The number, manner of appointment and tenure of the members of the Commission shall be such as the Board may from time to time prescribe. The Board may delegate to the Commission any function of the Gallery or any function of the Board with respect to the Gallery. The Board may make rules and regulations for the conduct of the affairs of the Commission and the operation of the Gallery, and to the extent and under such limitations as the Board deems advisable, the Board may delegate to the Commission the power to make such rules and regulations.


§ 75d. Acceptance of gifts; title to property

(a) The Board is authorized to accept for the Smithsonian Institution gifts of any property for the benefit of the Gallery.
(b) Legal title to all property (except property of the United States) held for the use or benefit of the Gallery shall be vested in the Smithsonian Institution.


§ 75e. Powers of Board

For the purpose of carrying out any function authorized by section 75b of this title, the Board may—
§ 75f. Director; appointment and compensation; officers and employees

(a) The Board may appoint and fix the compensation and duties of a director of the Gallery, and his appointment and salary shall not be subject to the civil-service laws or chapter 51 and subchapter III of chapter 53 of title 5. The Board may employ such other officers and employees as may be necessary for the efficient administration, operation, and maintenance of the Gallery.

(b) The Board may delegate to the Secretary of the Smithsonian Institution, any of its functions pursuant to paragraph (a).

(2) preserve or restore any item acquired pursuant to paragraph (1).

(3) display, loan, store, or otherwise hold any such item.

(4) sell, exchange, donate, return, or otherwise dispose of any such item.


§ 75g. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.


§ 75h. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.


SUBCHAPTER IV—SMITHSONIAN GALLERY OF ART

§§ 76, 76a. Omitted

CODIFICATION
Section 76, act May 17, 1938, ch. 238, § 1, 52 Stat. 399, directed National Capital Park and Planning Commission to designate and President to assign a site for a building to house and display national collections of fine arts, portraits of eminent Americans, and works of artists deserving of recognition.

Section 76a, act May 17, 1938, ch. 238, § 2, 52 Stat. 399, created Smithsonian Gallery of Art Commission which terminated upon approval by Regents of Smithsonian Institution of design for buildings and grounds.

§ 76b. Functions of Regents

(a) Solicitation of construction funds

The Regents are authorized to solicit and receive subscriptions of funds from private sources for the purposes specified in this subsection.

(b) Construction of building

The Regents may, subject to the approval of the President, authorize the preparation of the site and the construction of the building, including approaches and landscaping of the grounds: Provided, That the Administrator of General Services shall supervise the preparation of the plans and specifications, make all necessary contracts, and supervise construction.

(c) Name of building; supervision and control

The name of the building shall be the Smithsonian Gallery of Art (hereinafter referred to as the “Gallery”), and it shall be under the supervision and control of the Regents and the Secretary of the Smithsonian Institution.


TRANSFER OF FUNCTIONS


Functions of Director of Procurement relating to selection of location and sites of public buildings transferred to Federal Works Administrator by Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§ 76c. Policy to foster appreciation of past and contemporary art

(a) Solicitations of private donations

It shall be the policy of the Regents to maintain a worthy standard for the acceptance of art objects for exhibition in the Gallery, and to foster by public exhibitions from time to time in Washington, and other parts of the United States a growing appreciation of art, both of past and contemporary time; and the Regents are authorized to solicit and receive private donations of works of art and contributions of funds from private sources for the purchase of works of art. Funds so received shall be placed in a special deposit account with the Treasurer of the United States, and may be expended by the Regents to meet the cost of the construction of the building, including furnishings and equipment therefor, to obtain necessary drawings and specifications, make necessary surveys and estimates of cost, defray necessary administrative expenses, and secure other needed services.

(b) Solicitation of funds to acquire and sell works of art, employ artists, award scholarships, etc.

In order to encourage the development of contemporary art and to effect the widest distribu-
tion and cultivation in matters of such art, the Regents are authorized to solicit and receive funds from private sources, to acquire (by purchase or otherwise) and sell contemporary works of art or copies thereof, to employ artists and other personnel, award scholarships, conduct exhibitions, and generally to do such things and have such other powers as will effectuate the purposes of this subsection. Funds received by the Regents under this subsection shall be placed in a special deposit account with the Treasurer of the United States and may be expended by the Regents for the purposes enumerated in this subsection and for no other purposes: Provided, That the Regents shall not incur any obligations under this subsection in excess of the funds available therefor.

(May 17, 1938, ch. 238, §4, 52 Stat. 400.)

§76d. Donations of works of art from Government agencies

The Administrator of General Services and other agencies of the Government are authorized to donate to the Gallery any works of art now or hereafter under their control.


TRANSFER OF FUNCTIONS

Functions of Federal Works Agency and of all agencies thereof, together with functions of Federal Works Administrator, transferred to Administrator of General Services, and Federal Works Agency and office of Federal Works Administrator abolished by section 103 of act June 30, 1949. See Historical and Revision Notes under section 303(b) of Title 40, Public Buildings, Property, and Works. Section 303(b) of Title 40 was amended generally by Pub. L. 109–313, §2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Smithsonian Institution now or hereafter under their control.

§76e. Housing or exhibiting objects of art possessed by Smithsonian Institution

Such objects of art as the Government or the Smithsonian Institution now possess, or such as may hereafter be acquired, may be housed or exhibited in the Gallery, with the approval of and under such regulations as the Regents and Secretary of the Smithsonian Institution may prescribe.

(May 17, 1938, ch. 238, §6, 52 Stat. 401.)

§76f. Appointment, compensation, and duties of Director of Gallery; personnel

The Regents may appoint and fix the compensation and duties of a Director of the Gallery and may employ such other officers and employees as may be necessary for the efficient operation and administration of the Gallery.

(May 17, 1938, ch. 238, §7, 52 Stat. 401.)

§76g. Authorization of appropriations

There are authorized to be appropriated annually such sums as may be necessary to maintain and administer the Gallery, including the salaries of the Director and of other necessary officers and employees, and for special public exhibitions at Washington and elsewhere.

(May 17, 1938, ch. 238, §8, 52 Stat. 401.)

SUBCHAPTER V—JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

§76h. Board of Trustees

(a) Establishment

(1) In general

There is established in the Smithsonian Institution a bureau, which shall be directed by a board to be known as the Trustees of the John F. Kennedy Center for the Performing Arts (hereafter in this subchapter referred to as the “Board”), whose duty it shall be to maintain and administer the John F. Kennedy Center for the Performing Arts and site therefor as the National Center for the Performing Arts, a living memorial to John Fitzgerald Kennedy, and to execute such other functions as are vested in the Board by this subchapter.

(2) Membership

The Board shall be composed of—

(A) the Secretary of Health and Human Services;
(B) the Librarian of Congress;
(C) the Secretary of State;
(D) the Chairman of the Commission of Fine Arts;
(E) the Mayor of the District of Columbia;
(F) the Superintendent of Schools of the District of Columbia;
(G) the Director of the National Park Service;
(H) the Secretary of Education;
(I) the Secretary of the Smithsonian Institution;
(J) (i) the Speaker and the Minority Leader of the House of Representatives;
(ii) the chairman and ranking minority member of the Committee on Transportation and Infrastructure of the House of Representatives; and
(iii) three additional Members of the House of Representatives appointed by the Speaker of the House of Representatives;
(K) (i) the Majority Leader and the Minority Leader of the Senate;
(ii) the chairman and ranking minority member of the Committee on Environment and Public Works of the Senate; and
(iii) three additional Members of the Senate appointed by the President of the Senate; and
(L) thirty-six general trustees, who shall be citizens of the United States, to be appointed in accordance with subsection (b) of this section.

(b) General trustees

The general trustees shall be appointed by the President of the United States. Each trustee shall hold office as a member of the Board for a term of 6 years, except that—
(1) any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of the term;

(2) a member shall continue to serve until the successor of the member has been appointed; and

(3) the term of office of a member appointed before July 21, 1994, shall expire as designated by the President at the time of appointment.

c) Advisory Committee on the Arts

There shall be an Advisory Committee on the Arts composed of such members as the President of the United States may designate, to serve at the pleasure of the President. Persons appointed to the Advisory Committee on the Arts, including officers or employees of the United States, shall be persons who are recognized for their knowledge of, or experience or interest in, one or more of the arts in the fields covered by the John F. Kennedy Center for the Performing Arts. The President shall designate the Chairman of the Advisory Committee on the Arts. In making such appointments the President shall give consideration to such recommendations as may from time to time be submitted to him by leading national organizations in the appropriate art fields. The Advisory Committee on the Arts shall advise and consult with the Board and make recommendations to the Board regarding existing and prospective cultural activities to be carried out by the John F. Kennedy Center for the Performing Arts. The Advisory Committee on the Arts shall assist the Board in carrying out section 76k(a) of this title. Members of the Advisory Committee on the Arts shall serve without compensation.


2002—Subsec. (a). Pub. L. 107–117 inserted heading, struck out par. (1), inserted par. heading, struck out “‘hereby’ before ‘‘established’’, struck out second sentence, and added par. (2). Prior to amendment, first sentence read as follows: “The Board shall be composed as follows: The Secretary of Health and Human Services, the Librarian of Congress, the Director of the United States Information Agency, the Chairman of the Commission of Fine Arts, the Mayor of the District of Columbia, the Superintendent of Schools of the District of Columbia, the Director of the National Park Service, the Secretary of Education, the Secretary of the Smithsonian Institution, the chairman and ranking minority member of the Committee on Public Works and Transportation of the House of Representatives and 3 additional Members of the House of Representatives appointed by the Speaker of the House of Representatives.”

1994—Pub. L. 103–279, §2(b)(1)(A), substituted section catchline for former section catchline. Subsec. (a). Pub. L. 103–279, §2(b)(1)(A), inserted heading, in first sentence inserted “as the National Center for the Performing Arts, a living memorial to John Fitzgerald Kennedy,” after “and site thereof”, and in second sentence substituted “Superintendent of Schools of the District of Columbia” for “Chairman of the District of Columbia Recreation Board” and “the chairman and ranking minority member of the Committee on Public Works and Transportation of the House of Representatives and 3 additional Members of the House of Representatives appointed by the Speaker of the House of Representatives, and the chairman and ranking minority member of the Committee on Environment and Public Works of the Senate and 3 additional Members of the Senate appointed by the President of the Senate” for “three Members of the Senate appointed by the President of the Senate, and three Members of the House of Representatives appointed by the Speaker of the House of Representatives”.

2019—Subsec. (b). Pub. L. 110–338, §2(c), inserted heading and amended text generally. Prior to amendment, text read as follows: “The general trustees shall be appointed by the President of the United States and each such trustee shall hold office as a member of the Board for a term of ten years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, (2) the terms of any members appointed prior to August 19, 1963, shall expire as designated by the President at the time of appointment, and (3) the terms of the first fifteen members appointed to the Board pursuant to the amendments made by the National Cultural Center Amendments Act of 1963 shall expire, as designated by the President at the time of appointment, three on September 1, 1964, three on September 1, 1966, three on September 1, 1968, three on September 1, 1970, and three on September 1, 1972.”


1963—Subsec. (a). Pub. L. 88–100, §1, substituted “thirty” for “fifteen” after “ex officio; and”.

Subsec. (b). Pub. L. 88–100, §2, inserted provisions governing the terms of the additional fifteen general trustees added to the Board by section 1 of Pub. L. 88–100.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 2(b)(2) of Pub. L. 103–279 provided that: “(A) SUPERINTENDENT OF SCHOOLS OF THE DISTRICT OF COLUMBIA.—The amendment made by paragraph (1)(C)(i) [amending this section] shall take effect on the date of expiration of the term of the Chairman of the District of Columbia Recreation Board serving as a trustee of the John F. Kennedy Center for the Performing Arts on the date of enactment of this Act [July 21, 1994].

(B) MEMBERS OF CONGRESS.—The amendment made by paragraph (1)(C)(ii) [amending this section] shall take effect on the date of enactment of this Act.”

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–338, §1, Oct. 3, 2008, 122 Stat. 3731, provided that: “This Act [enacting section 76m of this title, amending this section and section 76c of this title, and enacting provisions set out as a note under this section] may be cited as the ‘John F. Kennedy Center Reauthorization Act of 2008’.”
Section 2 of Pub. L. 88–260 provided that: “In addition to the amendments made by the first section of this Act [enacting sections 76n to 76q, and amending sections 76s to 76v of this title], any designation or reference to the National Cultural Center in any other law, map, regulation, document, record, or other paper of the United States shall be held to designate or refer to such Center as the John F. Kennedy Center for the Performing Arts.”

Congressional Findings


(1) the late John Fitzgerald Kennedy served with distinction as President of the United States and as a Member of the Senate and the House of Representatives;

(2) by the untimely death of John Fitzgerald Kennedy the United States and the world have suffered a great loss;

(3) the late John Fitzgerald Kennedy was particularly devoted to education and cultural understanding and the advancement of the performing arts;

(4) it is fitting and proper that a living institution of the performing arts, designated as the National Center for the Performing Arts, named in the memory and honor of this great leader, shall serve as the sole national monument to his memory within the District of Columbia and its environs;

(5) such a living memorial serves all of the people of the United States by preserving, fostering, and transmitting the performing arts traditions of the people of the United States and other countries by producing and presenting music, opera, theater, dance, and other performing arts; and

(6) such a living memorial should be housed in the John F. Kennedy Center for the Performing Arts, located in the District of Columbia.”

§ 76i. John F. Kennedy Center for the Performing Arts

(a) In general

The Board shall construct for the Smithsonian Institution, with funds raised by voluntary contributions, a building to be designated as the John F. Kennedy Center for the Performing Arts on a site in the District of Columbia bounded by the Inner Loop Freeway on the east, the Theodore Roosevelt Bridge approaches on the south, Rock Creek Parkway on the west, New Hampshire Avenue and F Street on the north, which shall be selected for such purpose by the National Capital Planning Commission. The National Capital Planning Commission shall acquire by purchase, condemnation, or otherwise, lands necessary to provide for the John F. Kennedy Center for the Performing Arts and related facilities. Such building shall be in accordance with plans and specifications approved by the Commission of Fine Arts.

(b) Parking garage additions and site improvements

(1) In general

Substantially in accordance with the plan entitled “Site Master Plan—Drawing Number 1997–2 April 29, 1997,” and map number NCR 844/82571, the Board may design and construct—

(A) an addition to the parking garage at each of the north and south ends of the John...
F. Kennedy Center for the Performing Arts; and
(B) site improvements and modifications.

(2) Availability
The plan shall be on file and available for public inspection in the office of the Secretary of the Center.

(3) Limitation on use of appropriated funds
No appropriated funds may be used to pay the costs (including the repayment of obligations incurred to finance costs) of—
(A) the design and construction of an addition to the parking garage authorized under paragraph (1)(A);
(B) the design and construction of site improvements and modifications authorized under paragraph (1)(B) that the Board specifically designates will be financed using sources other than appropriated funds; or
(C) any project to acquire large screen format equipment for an interpretive theater, or to produce an interpretive film, that the Board specifically designates will be financed using sources other than appropriated funds.


§ 76j. Duties of Board

(a) Programs, activities, and goals

(1) In general
The Board shall—
(A) present classical and contemporary music, opera, drama, dance, and other performing arts from the United States and other countries;
(B) promote and maintain the John F. Kennedy Center for the Performing Arts as the National Center for the Performing Arts—
(i) by developing and maintaining a leadership role in national performing arts education policy and programs, including developing and presenting original and innovative performing arts and educational programs for children, youth, families, adults, and educators designed specifically to foster an appreciation and understanding of the performing arts;
(ii) by developing and maintaining a comprehensive and broad program for national and community outreach, including establishing model programs for adaptation by other presenting and educational institutions; and
(iii) by conducting joint initiatives with the national education and outreach programs of the Very Special Arts, an entity affiliated with the John F. Kennedy Center for the Performing Arts which has an established program for the identification, development, and implementation of model programs and projects in the arts for disabled individuals;
(C) strive to ensure that the education and outreach programs and policies of the John F. Kennedy Center for the Performing Arts meet the highest level of excellence and reflect the cultural diversity of the United States;
(D) provide facilities for other civic activities at the John F. Kennedy Center for the Performing Arts;
(E) provide within the John F. Kennedy Center for the Performing Arts a suitable memorial in honor of the late President;
(F) develop, and update annually, a comprehensive building needs plan for the features of the John F. Kennedy Center for the Performing Arts in existence on July 21, 1994;
(G) with respect to the building and site of the John F. Kennedy Center for the Performing Arts, plan, design, and construct each capital repair, replacement, improvement, rehabilitation, alteration, or modification necessary to maintain the functionality of the building and site at current standards of life, safety, security, and accessibility;
(H) provide—
(i) information and interpretation; and
(ii) with respect to the building and site of the John F. Kennedy Center for the Performing Arts, all necessary maintenance, repair, and alteration of, and all janitorial, security, and other services and equipment necessary for the operations of, the building and site, in a manner consistent with requirements for high quality operations; and
(I) ensure that safe and convenient access to the site of the John F. Kennedy Center for the Performing Arts is provided for pedestrians and vehicles.

(2) Administrative powers and duties
(A) Authority to enter into contracts
The Board, in accordance with applicable law, may enter into contracts or other arrangements with, and make payments to, public agencies or private organizations or other private persons in order to carry out the functions of the Board under this subchapter. The authority described in the preceding sentence includes utilizing the services and facilities of other agencies, including the Department of the Interior, the General Services Administration, and the Smithsonian Institution.

(B) Preparation of budget
The Board shall prepare a budget pursuant to sections 1104, 1105(a), and 1512(b) of title 31.

(C) Use of agency personnel
The Board may utilize or employ the services of the personnel of any agency or instrumentality of the Federal Government or the District of Columbia, with the consent of the
agency or the instrumentality concerned, on a reimbursable basis, and utilize voluntary and uncompensated personnel.

(D) Selection of contractors

In carrying out the duties of the Board under this subchapter, the Board may negotiate any contract—

(i) for planning, design, engineering, or construction of buildings to be erected on the John F. Kennedy Center Plaza under section 76q–1 of this title and for landscaping and other improvements to the Plaza; or

(ii) for an environmental system for, a protection system for, or a repair to, maintenance of, or restoration of the John F. Kennedy Center for the Performing Arts, with selected contractors and award the contract on the basis of contractor qualifications as well as price.

(E) Maintenance of halls

The Board shall maintain the Hall of Nations, the Hall of States, and the Grand Foyer of the John F. Kennedy Center for the Performing Arts in a manner that is suitable to a national performing arts center that is operated as a Presidential memorial and in a manner consistent with other national Presidential memorials.

(F) Maintenance of grounds

The Board shall manage and operate the grounds of the John F. Kennedy Center for the Performing Arts in a manner consistent with National Park Service regulations and agreements in effect on July 21, 1994. No change in the management and operation of the grounds may be made without the express approval of Congress and of the Secretary of the Interior.

(b) Restriction on additional memorials

(1) Except as provided in paragraph (2) of this subsection, the Board shall assure that after December 2, 1983, no additional memorials or plaques in the nature of memorials shall be designated or installed in the public areas of the John F. Kennedy Center for the Performing Arts.

(2) Paragraph (1) of this subsection shall not apply to—

(A) any plaque acknowledging a gift from a foreign country;

(B) any plaque on a theater chair or a theater box acknowledging the gift of such chair or box; and

(C) any inscription on the marble walls in the north or south galleries, the Hall of States, or the Hall of Nations acknowledging a major contribution;

which plaque or inscription is permitted under policies of the Board in effect on December 2, 1983.

(3) For purposes of this subsection, testimonials and benefit performances shall not be construed to be memorials.

(4) Paragraph (1) of this subsection shall apply to—

(a) the site of the John F. Kennedy Center for the Performing Arts.

(5) Paragraph (1) of this subsection shall not apply to—

(A) a building which is no longer in existence on July 21, 1994.

(b) the Performing Arts Plaza; or

(c) the Hall of States, the Grand Foyer of the Kennedy Center for the Performing Arts, and the Hall of Nations acknowledging the gift of such building.

(E) Maintenance of halls

The Board shall maintain the Hall of Nations, the Hall of States, and the Grand Foyer of the John F. Kennedy Center for the Performing Arts in a manner consistent with other national Presidential memorials.

(F) Maintenance of grounds

The Board shall manage and operate the grounds of the John F. Kennedy Center for the Performing Arts in a manner consistent with National Park Service regulations and agreements in effect on July 21, 1994. No change in the management and operation of the grounds may be made without the express approval of Congress and of the Secretary of the Interior.

ACCESS TO JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS


(1) STUDY.—The Secretary [of Transportation], in cooperation with the District of Columbia, the John F. Kennedy Center for the Performing Arts, and the Department of the Interior and in consultation with other interested persons, shall conduct a study of methods to improve pedestrian and vehicular access to the John F. Kennedy Center for the Performing Arts.

(2) Report.—The Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report containing the results of the study with an assessment of the impacts (including environmental, aesthetic, economic, and historical im-
§ 76k. Powers of Board

(a) Solicitation and acceptance of gifts

The Board is authorized to solicit and accept for the John F. Kennedy Center for the Performing Arts, as a bureau of the Smithsonian Institution, and to hold and administer gifts, bequests, or devises of money, securities, or other property of whatsoever character for the benefit of the John F. Kennedy Center for the Performing Arts. Unless otherwise restricted by the terms of the gift, bequest, or devise, the Board is authorized to sell or exchange and to invest or reinvest in such investments as it may determine from time to time the moneys, securities, or other property composing trust funds given, bequeathed, or devised to or for the benefit of the John F. Kennedy Center for the Performing Arts. The income as and when collected shall be placed in such depositaries as the Board shall determine and shall be subject to expenditure by the Board.

(b) Appointment of officers and employees

(1) Chairperson and Secretary

The Board shall appoint and fix the compensation and duties of a Chairperson of the John F. Kennedy Center for the Performing Arts, who shall serve as the chief executive officer of the Center, and a Secretary of the John F. Kennedy Center for the Performing Arts. The Chairperson and Secretary shall be well qualified by experience and training to perform the duties of their respective offices.

(2) Senior level executive and other employees

The Chairperson of the John F. Kennedy Center for the Performing Arts may appoint—

(A) a senior level executive who, by virtue of the background of the individual, shall be well suited to be responsible for facilities management and services and who may, without regard to the provisions of title 5, be appointed and compensated with appropriated funds, except that the compensation may not exceed the maximum rate of pay prescribed for level IV of the Executive Schedule under section 5315 of title 5; and

(B) such other officers and employees of the John F. Kennedy Center for the Performing Arts as may be necessary for the efficient administration of the functions of the Board.

(c) Transfer of property

Not later than October 1, 1995, the property, liabilities, contracts, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions transferred from the Secretary of the Interior pursuant to the amendments made by the John F. Kennedy Center Act Amendments of 1994 shall be transferred, subject to section 1331 of title 31, to the Board as the Board and the Secretary of the Interior may determine appropriate. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which, and subject to the terms under which, the funds were originally authorized and appropriated.

(d) Transfer of personnel

(1) In general

Employees of the National Park Service assigned to duties related to the functions being undertaken by the Board shall be transferred with their functions to the Board not later than October 1, 1995.

(2) Rights and benefits

Transferred employees shall remain in the Federal competitive service and retain all rights and benefits provided under title 5. For a period of not less than 3 years after the date of transfer of an employee under paragraph (1), the transferred employee shall retain the right of priority consideration under merit promotion procedures or lateral reassignment for all vacancies within the Department of the Interior.

(3) Park Police

All United States Park Police and Park Police guard force employees assigned to the John F. Kennedy Center for the Performing Arts shall remain employees of the National Park Service.

(4) Costs

All usual and customary costs associated with any adverse action or grievance proceeding resulting from the transfer of functions under this section that are incurred before October 1, 1995, shall be paid from funds appropriated to the John F. Kennedy Center for the Performing Arts.

(5) Reorganization authority

Nothing contained in this section shall prohibit the Board from reorganizing functions at the John F. Kennedy Center for the Performing Arts in accordance with laws governing reorganizations.

(e) Review of Board actions

The actions of the Board relating to performing arts and to payments made or directed to be made by the Board from any trust funds shall not be subject to review by any officer or agency other than a court of law.

(f) Collective bargaining

(1) “Theatrical employee” defined

As used in this subsection, the term “theatrical employee” means a nonappropriated fund employee of the Board, who is engaged in a box office, performing, or theatrical trade that is the subject of a collective bargaining agreement as of January 1, 1994, including any change in the trade as a result of a technological advance.
(2) Collective bargaining

(A) In general


(i) each theatrical employee shall be considered to be an “employee” within the meaning of section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)); and

(ii) with respect to a theatrical employee, the Board shall be considered to be an “employer” within the meaning of section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)).

(B) Rights and obligations

With respect to each theatrical employee, the theatrical employee and the Board shall have all of the rights and obligations specified in such Acts.

(g) Pedestrian and vehicular access

Subject to approval of the Secretary of the Interior under section 76(a)(2)(F) of this title, the Board shall develop plans and carry out projects to improve pedestrian and vehicular access to the John F. Kennedy Center for the Performing Arts.


REFERENCES IN TEXT


The Management Relations Act, 1947, referred to in subsec. (f)(2), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of Title 29. For complete classification of this Act to the Code, see section 141 of Title 29 and Tables.

AMENDMENTS

Subsec. (b). Pub. L. 103–279, § 4(b), inserted heading and amended text generally. Prior to amendment, text read as follows: “The Board shall appoint and fix the compensation and duties of a director, an assistant di-

rector, and a secretary of the John F. Kennedy Center for the Performing Arts and of such other officers and employees of the John F. Kennedy Center for the Performing Arts as may be necessary for the efficient administration of the functions of the Board. The director, assistant director, and secretary shall be well qualified by experience and training to perform the duties of their office.”

Subsec. (c). Pub. L. 103–279, § 4(c), added heading and text of subsec. (c) and struck out text of former subsec. (c). Prior to amendment, text read as follows: “The actions of the Board, including any payment made or directed to be made by it from any trust funds, shall not be subject to review by any officer or agency other than a court of law.”
Subsecs. (d) to (f). Pub. L. 103–279, § 4(c), added subsecs. (d) to (f).


§ 76f. Official seal, Board vacancies and quorum, trustee powers and obligations, reports, support services, and review and audit

(a) Adoption of seal; Board function notwithstanding vacancies; quorum

The Board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations, as it deems necessary for the efficient administration of its functions under this subchapter, including, among other matters, bylaws, rules, and regulations relating to the administration of its trust funds and the organization and procedure of the Board. The Board may function notwithstanding vacancies and twelve members of the Board shall constitute a quorum for the transaction of business.

(b) Powers and obligations of Board in respect of trust funds

The Board shall have all the usual powers and obligations of a trustee in respect of all trust funds administered by it.

(c) Annual report of operations and finances

The Board shall submit to the Smithsonian Institution and to Congress an annual report of the operations of the Board under this subchapter, including a detailed statement of all public and private moneys received and disbursed by it.

(d) Inspector General

The functions of the Board funded by funds appropriated pursuant to section 76r of this title shall be subject to the requirements for a Federal entity under the Inspector General Act of 1978 (5 U.S.C. App.). The Inspector General of the Smithsonian Institution is authorized to carry out the requirements of such Act on behalf of the Board, on a reimbursable basis when requested by the Board.

(e) Property and personnel compensation

(1) In general

The Board may procure insurance against any loss in connection with the property of the Board and other assets administered by the Board. Each employee and volunteer of the Board shall be considered to be a civil em-

1See References in Text note below.
employee of the United States (within the meaning of the term ‘employee’ as defined in section 8101(1) of title 5), except that the Board shall continue to provide benefits with respect to any disability or death resulting from a personal injury to a nonappropriated fund employee of the Board sustained while in the performance of the duties of the employee for the Board pursuant to the workers compensation statute of the jurisdiction in which the John F. Kennedy Center for the Performing Arts is located. The disability or death benefits referred to in the preceding sentence, whether under the workers compensation statute referred to in the preceding sentence or under chapter 81 of title 5, shall continue to be the exclusive liability of the Board and the United States with respect to all employees and volunteers of the Board.

(2) Federal tort claims

For the purposes of chapter 171 of title 28, an employee of the Board shall be considered to be an ‘employee of the government’ and the Board shall be considered to be a ‘Federal agency’. No employee of the Board may bring suit against the United States or the Board under the Federal tort claims procedure of chapter 171 of title 28 for disability or death resulting from personal injury sustained while in the performance of the duties of the employee for the Board.


REFERENCES IN TEXT

Section 76 of this title, referred to in subsec. (d), was inserted in title 20 by Pub. L. 91–689, renumbered as section 13, and a new section 12 was added, by Pub. L. 107–224, § 2, Sept. 18, 2002, 116 Stat. 1340. Sections 12 and 13 are classified to sections 76a–1 and 76r, respectively, of this title.


AMENDMENTS

1988—Subsecs. (d) to (f). Pub. L. 105–226 redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: ‘‘Not less than once every 3 years, the Comptroller General shall review and audit the accounts of the John F. Kennedy Center for the Performing Arts for the purpose of examining expenditures of funds appropriated under the authority provided by this subchapter.’’

1994—Subsec. (c). Pub. L. 103–279, § 5(1), substituted ‘‘the operations of the Board’’ for ‘‘its operations’’.

Subsecs. (d) to (f). Pub. L. 103–279, §§ 5(2), added subsecs. (d) to (f) and struck out former subsec. (e) which related to maintenance, repair, alteration, security, information, and other services and former subsec. (f) which related to audits.

1992—Subsec. (e)(3). Pub. L. 102–500 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ‘‘There is authorized to be appropriated to the Secretary of the Interior to carry out this subsection—

‘‘(A) for fiscal year 1991, not more than—

‘‘(i) $6,750,000 for annual maintenance, repairs, alterations, and operating services; and

‘‘(ii) $15,000,000 for deferred maintenance, repairs, and alterations; and

‘‘(B) for fiscal year 1992, not more than—

‘‘(i) $9,850,000 for annual maintenance, repairs, alterations, and operating services; and

‘‘(ii) $15,512,000 for deferred maintenance, repairs, and alterations.’’

1990—Subsec. (d). Pub. L. 101–449, § 3, struck out subsec. (d) which read as follows: ‘‘The Board shall transmit to Congress a detailed report of any memorial which it proposes to provide within the John F. Kennedy Center for the Performing Arts under authority of paragraph (5) of this title, and no such memorial shall be provided until the Board of Regents of the Smithsonian Institution shall have approved such memorial.’’

Subsec. (e). Pub. L. 101–449, § 1, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ‘‘The Secretary of the Interior, acting through the National Park Service, shall provide maintenance, security, information, interpretation, janitorial and all other services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts. There is authorized to be appropriated to carry out this subsection not to exceed $2,800,000 for the fiscal year ending June 30, 1978, $471,000 for the transition period ending September 30, 1978, $1,100,000 for the fiscal year ending September 30, 1977, and $4,000,000 for the fiscal year ending September 30, 1978. There is authorized to be appropriated to carry out this subsection not to exceed $4,287,000 for the fiscal year ending September 30, 1980, and not to exceed $4,300,000 for the fiscal year ending September 30, 1981, and not to exceed $4,544,000 for the fiscal year ending September 30, 1982, and not to exceed $4,247,000 for the fiscal year ending September 30, 1979.’’

Subsec. (f). Pub. L. 101–449, § 2, amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ‘‘The General Accounting Office is authorized and directed to review and audit, regularly, the accounts of the Kennedy Center for the Performing Arts, for the purpose of determining the continuing ability of the Center to pay its share of future operating costs, and for the purpose of assuring that the cost-of-living formula fairly and accurately reflects the use of the building.’’


§ 76m. Photovoltaic system

(a) In general

The Board may study, plan, design, engineer, and construct a photovoltaic system for the main roof of the John F. Kennedy Center for the Performing Arts.

(b) Report

Not later than 60 days before beginning construction of the photovoltaic system pursuant to subsection (a), the Board shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the feasibility and design of the project.

§ 76n. Repealed


§ 76o. Borrowing authority to finance parking facilities

(a) Revenue bonds

To finance necessary parking facilities for the Center, the Board may issue revenue bonds to the Secretary of the Treasury payable from revenues accruing to the Board. The total face value of all bonds so issued shall not be greater than $20,400,000. Such obligations shall have maturities agreed upon by the Board and the Secretary of the Treasury but not in excess of fifty years. Such obligations may be redeemable at the option of the Board before maturity in such manner as may be stipulated in such obligations, but the obligations thus redeemed shall not be refinanced by the Board.

(b) Interest

Effective as of October 12, 1984, the obligations of the Board incurred under subsection (a) of this section shall bear no interest, and the requirement of the Board to pay the unpaid interest which has accrued on such obligations is terminated.

(c) Kennedy Center Revenue Bond Sinking Fund

There is hereby established in the Treasury of the United States a sinking fund, the Kennedy Center Revenue Bond Sinking Fund (hereinafter referred to as the “Fund”), which shall be used to retire the obligations of the Board incurred under subsection (a) of this section upon the respective maturities of such obligations. The Board shall pay into the Fund, beginning on January 1, 1987 and ending on January 1, 2016, the annual sum of $200,000 in amortization of the principal amount of the obligations. Such sums shall be invested by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to and form a part of the Fund. Moneys in the Fund shall be used exclusively to retire the obligations of the Board incurred under subsection (a) of this section. Adjustments of not greater than plus or minus 5 per centum may be made from time to time in the annual payments to the Fund in order to correct any gains or deficiencies as a result of fluctuations in interest rates over the life of the investments: Provided, however, That a final adjustment shall be made between the Board and the Secretary of the Treasury at the end of the
amortization period to correct any overall gain or deficiency in the Fund. The terms of this adjustment shall be covered by a memorandum of understanding between the Board and the Secretary of the Treasury to be consummated on or before the time the initial payment into the Fund is made.


§76p. Acceptance and disposition of gifts to the United States contributed in honor or memory of the late President John F. Kennedy

The Secretary of the Treasury is authorized to accept on behalf of the United States any gift to the United States which the Secretary finds has been contributed in honor of or in memory of the late President John F. Kennedy and to pay the money to such appropriation or other accounts, including the appropriation accounts established pursuant to appropriations authorized by this subchapter, as in the judgment of the Secretary will best effectuate the intent of the donor.


AMENDMENTS


1964—Pub. L. 88–260 substituted “$20,400,000” for “$15,400,000” in two places.

§76q. Sole national memorial to the late John F. Kennedy within the city of Washington and environs

The John F. Kennedy Center for the Performing Arts, designated by this subchapter, shall be the sole national memorial to the late John Fitzgerald Kennedy within the city of Washington and its environs.


§76q–1. John F. Kennedy Center Plaza

(a) Definitions

In this section, the following definitions apply:

(1) Air rights

The term “air rights” means real property interests conveyed by deed, lease, or permit for the use of space between streets and alleys within the boundaries of the Project.

(2) Center

The term “Center” means the John F. Kennedy Center for the Performing Arts.

(3) Green spaces

The term “green spaces” means areas within the boundaries of the Project or affected by the Project that are covered by grass, trees, or other vegetation.

(4) Plaza

The term “Plaza” means improvements to the area surrounding the John F. Kennedy Center building carried out under the Project and comprised of transportation elements (including roadways, sidewalks, and bicycle lanes) and non-transportation elements (including landscaping, green space, open public space, water, sewer, and utility connections).

(5) Project

The term “Project” means the Plaza project, as described in the TEA–21 report, providing for construction of a Plaza adjacent to the Center and for improved bicycle, pedestrian, and vehicular access to and around the Center. The term includes planning, design, engineering, and construction of the Plaza, buildings to be constructed on the Plaza, and related transportation improvements and may include any other elements of the Project identified in the TEA–21 report.

(b) Responsibilities of the Secretary

(1) In general

The Secretary shall be responsible for the Project and may undertake such activities as may be necessary to construct the Project, other than buildings to be constructed on the Plaza, substantially as described in the TEA–21 report.

(2) Planning, design, engineering, and construction

The Secretary shall be responsible for the planning, design, engineering, and construction of the Project, other than buildings to be constructed on the Plaza.

(3) Agreements with the Board and other agencies

The Secretary shall enter into memoranda of agreement with the Board and any appropriate Federal or other governmental agency to facilitate the planning, design, engineering, and construction of the Project.

(4) Consultation with the Board

The Secretary shall consult with the Board to maximize efficiencies in planning and executing the Project, including the construction of any buildings on the Plaza.

(5) Contracts

Subject to the approval of the Board, the Secretary may enter into contracts on behalf
of the Center related to the planning, design, engineering, and construction of the Project.

(6) Project Team

(A) Establishment

To further construction of the Project, the Secretary shall establish a Project Team.

(B) Membership

The Project Team shall be composed of the following members:

(i) The Secretary (or the Secretary’s designee).
(ii) The Administrator of General Services (or the Administrator’s designee).
(iii) The Chairman of the Board (or the Chairman’s designee).
(iv) Such other individuals as the Project Team considers appropriate.

(C) Project Director

The Project Team shall have a Project Director who shall be appointed by the Secretary, in consultation with the Administrator of General Services and the Chairman of the Board. The Project Director shall report directly to the Project Team.

(c) Responsibilities of the Board

(1) In general

The Board, in consultation with the Project Team, may undertake such activities as may be necessary to construct buildings on the Plaza for the Project.

(2) Receipt of transfers of air rights

The Board may receive from the District of Columbia such transfers of air rights as may be necessary for the planning, design, engineering, and construction of the Project.

(3) Construction of buildings

The Board, in consultation with the Project Team, may construct, with non-appropriated funds, buildings on the Plaza for the Project and shall be responsible for the planning, design, engineering, and construction of the buildings.

(4) Acknowledgment of contributions

(A) In general

The Board may acknowledge private contributions used in the construction of buildings on the Plaza for the Project in the interior of the buildings, but may not acknowledge private contributions on the exterior of the buildings.

(B) Applicability of other requirements

Any acknowledgment of private contributions under this paragraph shall be consistent with the requirements of section 76(b) of this title.

(5) Approval by Project Team

Notwithstanding section 76k(e) of this title, any decision by the Board that will significantly affect, as determined by the Project Team in consultation with the Board, the scope, cost, schedule, or engineering feasibility of any element of the Project, other than buildings to be constructed on the Plaza, shall be subject to the approval of the Project Team.

(d) Responsibilities of the District of Columbia

(1) Modification of highway system

Notwithstanding any State or local law, the Mayor of the District of Columbia, in consultation with the National Capital Planning Commission and the Secretary, shall have exclusive authority to amend or modify the permanent system of highways of the District of Columbia as may be necessary to meet the requirements and needs of the Project.

(2) Conveyances

(A) Authority

Notwithstanding any State or local law, the Mayor of the District of Columbia shall have exclusive authority to convey or dispose of any interests in real estate (including air rights or air space as that term is defined by District of Columbia law) owned or controlled by the District of Columbia, as may be necessary to meet the requirements and needs of the Project.

(B) Conveyance to the Board

Not later than 90 days following the date of receipt of notification from the Secretary of the requirements and needs of the Project, the Mayor of the District of Columbia shall convey or dispose of to the Board without compensation interests in real estate described in subparagraph (A).

(3) Agreements with the Board

The Mayor of the District of Columbia shall have the authority to enter into memorandum of agreement with the Board and any Federal or other governmental agency to facilitate the planning, design, engineering, and construction of the Project.

(e) Ownership

(1) Roadways and sidewalks

Upon completion of the Project, responsibility for maintenance and oversight of roadways and sidewalks modified or improved for the Project shall remain with the owner of the affected roadways and sidewalks.

(2) Maintenance of green spaces

Subject to paragraph (3), upon completion of the Project, responsibility for maintenance and oversight of any green spaces modified or improved for the Project shall remain with the owner of the affected green spaces.

(3) Buildings and green spaces on the Plaza

Upon completion of the Project, the Board shall own, operate, and maintain the buildings and green spaces established on the Plaza for the Project.

(f) National highway boundaries

(1) Realignment of boundaries

The Secretary may realign national highways related to proposed changes to the Northern and Southern Interchanges and the E Street Approach recommended in the TEA–21 report in order to facilitate the flow of traffic in the vicinity of the Center.

(2) Access to Center from I–66

The Secretary may improve direct access and egress between Interstate Route 66 and the Center, including its garages.
(g) GAO review
Until completion of the Project, the Comptroller General shall review the management and oversight of construction of the Project by the Board and report periodically on the results of the review to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.


REFERENCES IN TEXT
Section 1214 of the Transportation Equity Act for the 21st Century, referred to in subsec. (a)(7), is section 1214 of Pub. L. 105–178, which enacted provisions set out as notes under sections 50 and 76 of this title, section 460m–29a of Title 16, Conservation, and section 202 of Title 23, Highways, and enacted provisions listed in a table of National Wildlife Refuges set out under section 668dd of Title 16.

PRIOR PROVISIONS
A prior section 12 of Pub. L. 85–874 was renumbered section 13 and is classified to section 76r of this title.

AMENDMENTS
Subsec. (c)(1). Pub. L. 108–410, §3(b)(1), inserted “, in consultation with the Project Team,” after “The Board”.
Subsec. (g). Pub. L. 108–410, §3(c), added subsec. (g).

§ 76r. Authorization of appropriations

(a) Maintenance, repair, and security
There are authorized to be appropriated to the Board to carry out section 76j(a)(1)(H) of this title—

(1) $20,200,000 for fiscal year 2008;
(2) $21,800,000 for fiscal year 2009;
(3) $22,500,000 for fiscal year 2010;
(4) $23,500,000 for fiscal year 2011; and
(5) $21,500,000 for fiscal year 2012.

(b) Capital projects
There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 76j(a)(1) of this title—

(1) $20,200,000 for fiscal years 1999, 2000, and 2001;
(2) $14,000,000 for each of fiscal years 2002 and 2003; and
(3) $15,000,000 for each of fiscal years 2002 and 2003.

(c) John F. Kennedy Center Plaza
There is authorized to be appropriated to the Secretary of Transportation for capital costs incurred in the planning, design, engineering, and construction of the project authorized by section 76q–1 of this title (including roadway improvements related to the North and South Interchanges and construction of the John F. Kennedy Center Plaza, but not including construction of any buildings on the plaza) a total of $400,000,000 for fiscal years 2003 through 2010. Such sums shall remain available until expended.

(d) Photovoltaic system
There are authorized to be appropriated to the Board such sums as are necessary to carry out section 76m of this title, to remain available until expended.

(e) Limitation on use of funds
No funds appropriated pursuant to this section may be used for any direct expense incurred in the production of a performing arts attraction, for personnel who are involved in performing arts administration (including any supply or equipment used by the personnel), or for production, staging, public relations, marketing, fundraising, ticket sales, or education. Funds appropriated directly to the Board shall not affect nor diminish other Federal funds sought for any performing arts function and may be used to reimburse the Board for that portion of costs that are Federal costs reasonably allocated to building services and theater maintenance and repair.


PRIOR PROVISIONS
A prior section 13 of Pub. L. 85–874 was renumbered section 14 and is classified to section 76s of this title.

AMENDMENTS
2008—Subsecs. (a), (b). Pub. L. 110–338, §4(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) Maintenance, repair, and security.—There are authorized to be appropriated to the Board to carry out section 76j(a)(1)(H) of this title—

(1) $17,000,000 for fiscal year 2004;
(2) $18,000,000 for each of fiscal years 2005 and 2006; and
(3) $19,100,000 for fiscal year 2007.

(b) Capital projects.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 76j(a)(1) of this title—

(1) $15,000,000 for fiscal year 2004;
(2) $18,000,000 for each of fiscal years 2005 and 2006; and
(3) $20,000,000 for fiscal year 2007.

Subsec. (d), (e). Pub. L. 110–338, §4(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).
Subsec. (b), Pub. L. 109–306, §1(b), struck out “and” at end of par. (1), substituted “and 2006; and” for “, 2006,” in par. (2), and added par. (3).
2004—Subsecs. (a), (b). Pub. L. 108–410 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) MAINTENANCE, REPAIR, AND SECURITY.—There are authorized to be appropriated to the Board to carry out section 76j(a)(1)(H) of this title—

(1) $13,000,000 for fiscal year 1999;
(2) $14,000,000 for each of fiscal years 2000 and 2001; and
(3) $15,000,000 for each of fiscal years 2002 and 2003.

(b) CAPITAL PROJECTS.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 76j(a)(1) of this title—

(1) $20,000,000 for each of fiscal years 1999, 2000, and 2001;
(2) $19,000,000 for fiscal year 2002; and
(3) $17,000,000 for fiscal year 2003.”
§ 76aa. Site for museum and sculpture garden
(a) Appropriation and availability

The area bounded by Seventh Street, Independence Avenue, Ninth Street, and Jefferson Drive, in the District of Columbia, is hereby appropriated to the Smithsonian Institution as the permanent site of a museum and the area bounded by Seventh Street, Jefferson Drive, Ninth Street, and Madison Drive, in the District of Columbia, is hereby made available to the Smithsonian Institution as the permanent site of a sculpture garden, both areas to be used for the exhibition of works of art.

(b) Powers and duties of Board of Regents

The Board of Regents of the Smithsonian Institution is authorized to remove any existing structure, to prepare architectural and engineering designs, plans, and specifications, and to construct a suitable museum within said area lying south of Jefferson Drive and to provide a sculpture garden for the use of the Smithsonian Institution within the areas designated in subsection (a) of this section.

§ 76bb. Joseph H. Hirshhorn Museum and Sculpture Garden

(a) Designation; administration by Board of Regents; cooperation of Board with Secretary of the Interior

The museum and sculpture garden provided for by this subchapter shall be designated and known in perpetuity as the Joseph H. Hirshhorn Museum and Sculpture Garden, and shall be a free public museum and sculpture garden under the administration of the Board of Regents of the Smithsonian Institution. In administering the sculpture garden the Board shall cooperate with the Secretary of the Interior so that the development and use of the Garden is consistent with the open-space concept of the Mall, for which the Secretary of the Interior is responsible, and with related development regarding underground garages and street development.

(b) Federal funds

The faith of the United States is pledged that the United States shall provide such funds as may be necessary for the upkeep, operation, and administration of the Joseph H. Hirshhorn Museum and Sculpture Garden.

(c) Uses

The Joseph H. Hirshhorn Museum and Sculpture Garden shall be the permanent home of the collections of art of Joseph H. Hirshhorn and the Joseph H. Hirshhorn Foundation, and shall be used for the storage, exhibition, and study of works of art, and for the administration of the affairs of the Joseph H. Hirshhorn Museum and Sculpture Garden.

§ 76cc. Board of Trustees

(a) Establishment; powers and duties

There is established in the Smithsonian Institution a Board of Trustees to be known as the Trustees of the Joseph H. Hirshhorn Museum and Sculpture Garden, which shall provide advice and assistance to the Board of Regents of the Smithsonian Institution on all matters re-
§ 76dd. Director, administrator, curators, and other personnel; appointment, compensation, and duties

The Board of Regents of the Smithsonian Institution may appoint and fix the compensation and duties of the director and, subject to his supervision, an administrator and two curators of the Joseph H. Hirshhorn Museum and Sculpture Garden, none of whose appointment, compensation, or duties shall be subject to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5. The Board of Regents may employ such other officers and employees as may be necessary for the efficient administration, operation, and maintenance of the Joseph H. Hirshhorn Museum and Sculpture Garden.


CODIFICATION

“Chapter 51 and subchapter III of chapter 53 of title 5” substituted in text for “the Classification Act of 1949, as amended” on authority of Pub. L. 89–544, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 76ee. Authorization of appropriations

There is authorized to be appropriated not to exceed $15,000,000 for the planning and construction of the Joseph H. Hirshhorn Museum and Sculpture Garden, and such additional sums as may be necessary for the maintenance and operation of such museum and sculpture garden.


SUBCHAPTER VII—NATIONAL AIR AND SPACE MUSEUM

§ 77. National Air and Space Museum

(a) Establishment; board; administration; reimbursement of expenses

There is hereby established under the Smithsonian Institution a bureau to be known as a National Air and Space Museum, which shall be administered by the Smithsonian Institution with the advice of a board to be composed of the Chief of Staff of the Air Force, or his designee, the Chief of Naval Operations, or his designee, the Chief of Staff of the Army, or his designee, the Commandant of the Marine Corps, or his designee, the Commandant of the Coast Guard, or his designee, the Administrator of the National Aeronautics and Space Administration, or his designee, the Administrator of the Federal Aviation Administration, or his designee, the Secretary of the Smithsonian Institution, and three citizens of the United States appointed by the President from civilian life who shall serve at the pleasure of the President. The members of the board shall serve as such members without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the board.

(b) Appointment and compensation of head of museum

The Secretary of the Smithsonian Institution, with the advice of the board, may appoint and fix the compensation and duties of the head of a national air and space museum whose appointment shall not be subject to the civil service laws.


AMENDMENTS

1966—Subsec. (a). Pub. L. 89–509, § 2, changed the name of the museum from the National Air Museum to the National Air and Space Museum, expanded the advisory board to include additional members including the Chief of Staff of the Army, the Commandant of the Marine Corps, the Commandant of the Coast Guard, the Administrator of the National Aeronautics and Space Administration, the Administrator of the Federal Aviation Agency, and an additional member appointed from civilian life to serve at the pleasure of the President and provided for reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Board.

Subsec. (b). Pub. L. 89–509, § 3, substituted “national air and space museum” for “national air museum” and struck out provision that the salary of the head of the
museum shall not be subject to the Classification Act of 1923, as amended.

**Short Title of 1966 Amendment**

Section 1 of Pub. L. 89–509 provided: “That this Act [amending this section, sections 77a, 77c, and 77d of this title, and provisions set out as notes under this section and sections 77b and 77d of this title, and repealing section 77b of this title] may be cited as ‘the National Air Museum Amendments Act of 1965’.”

**Transfer of Functions**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

“Chief of Staff of the Air Force” substituted in subsec. (a) for “Commanding General of the Army Air Forces” pursuant to act July 26, 1947, ch. 343, title II, §§ 77a, 77b, 60 Stat. 503, which transferred functions of Commanding General of the Army Air Forces to Chief of Staff, United States Air Force. Section 208(b) of act July 26, 1947 was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. See sections 8031 and 8034 of Title 10, Armed Forces.

“Federal Aviation Administration” substituted in subsec. (a) for “Federal Aviation Agency” pursuant to act July 26, 1947, ch. 343, title II, §§ 77a, 77b, 60 Stat. 503, which transferred all functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof to Secretary of Transportation and established a Federal Aviation Administration in Department of Transportation. See section 106 of Title 49, Transportation.

** Appropriations**

Section 6 of act Aug. 12, 1946, as amended by section 10 of Pub. L. 89–509, provided that: “There is hereby authorized to be appropriated the sum of $50,000 for the purpose of this Act [this subchapter] and there are hereby authorized to be appropriated annually hereafter such sums as may be necessary to maintain and administer said national air and space museum including salaries and all other necessary expenses.”

**Construction of Museum Center**

Pub. L. 104–222, Oct. 1, 1996, 110 Stat. 3025, provided that:

‘‘SECTION 1. CONSTRUCTION OF MUSEUM CENTER.

‘‘The Board of Regents of the Smithsonian Institution is authorized to construct the Smithsonian Institution National Air and Space Museum Dulles Center at Washington Dulles International Airport.

‘‘SEC. 2. LIMITATION ON USE OF FUNDS.

‘‘No appropriated funds may be used to pay any expense of the construction authorized by section 1.’’

**Extension at Washington Dulles International Airport**

Pub. L. 103–57, Aug. 2, 1993, 107 Stat. 279, provided that:

‘‘SECTION 1. PLAN FOR NATIONAL AIR AND SPACE MUSEUM EXTENSION.

‘‘The Board of Regents of the Smithsonian Institution shall have authority to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport.

‘‘SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

‘‘There is authorized to be appropriated for fiscal years beginning after September 30, 1993, a total of $8,000,000 to carry out this Act.’’

**Ratification of Compensation Paid Head of Museum**

Section 11 of Pub. L. 89–509 provided that: “Payments of compensation heretofore made to the head of the National Air Museum at rates fixed by the Secretary of the Smithsonian Institution without regard to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees] are hereby ratified and affirmed.”

§ 77a. Functions of museum

The national air and space museum shall memorialize the national development of aviation and space flight: collect, preserve, and display aeronautical and space flight equipment of historical interest and significance; serve as a repository for scientific equipment and data pertaining to the development of aviation and space flight; and provide educational material for the historical study of aviation and space flight.


**Amendments**

1966—Pub. L. 89–509 substituted “national air and space museum” for “national air museum”, inserted “and space flight” after “aviation” wherever appearing, and substituted “aeronautical and space flight equipment” for “aeronautical equipment”.


Section, act Aug. 12, 1946, ch. 955, § 3, 60 Stat. 998, directed Secretary of Smithsonian Institution to investigate and survey suitable lands and buildings for selection as a site for national air museum and to make recommendations to Congress.

**Construction Plans; Location; Design; Supervision of Drawings and Specifications; Construction; Authorization and Transfer of Appropriations**

Pub. L. 85–935, Sept. 6, 1958, 72 Stat. 1794, as amended by Pub. L. 89–509, §§ 12, 13, July 19, 1966, 80 Stat. 311, 312, authorized and directed Regents of Smithsonian Institution to prepare plans and to construct a building for a National Air and Space Museum at a certain site with exact location to be approved by National Capital Planning Commission and design to be approved by Commission of Fine Arts and with supervision of work to be by Administrator of General Services Administration and also appropriated such sums as were necessary to carry out the work.

§ 77c. Museum board

(a) Seal; regulations; vacancies

The board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations as it deems necessary for the administration of its functions. The board may function notwithstanding vacancies and six members of the board shall constitute a quorum for the transaction of business.

(b) Annual report

The Smithsonian Institution shall include in its annual report of its operations to Congress a statement of the operations of said national air and space museum, including all public and private moneys received and disbursed.

(Aug. 12, 1946, ch. 955, §§ 4, 6, July 19, 1966, 80 Stat. 310, 311.)
§ 77d. Transfer or loan of aeronautical or space flight equipment to museum

The heads of executive departments and independent agencies of the Government are authorized to transfer or loan to said national air and space museum without charge thereof, aircraft, spacecraft, aircraft and spacecraft parts, instruments, engines, or other aeronautical and space flight equipment or records for exhibition, historical, or educational purposes.


Codification

Section consists of subsec. (a) of section 5 of act Aug. 12, 1946. Subsec. (b) of said section is set out as a note below.

Amendments

1966—Subsec. (a). Pub. L. 89–509, § 6, raised from three to six the number of board members required to constitute a quorum.

Subsec. (b). Pub. L. 89–509, § 7, substituted “national air and space museum” for “national air museum”.

§ 77d. Transfer or loan of aeronautical or space flight equipment to museum

The heads of executive departments and independent agencies of the Government are authorized to transfer or loan to said national air and space museum without charge thereof, aircraft, spacecraft, aircraft and spacecraft parts, instruments, engines, or other aeronautical and space flight equipment or records for exhibition, historical, or educational purposes.


Codification

Section consists of subsec. (a) of section 5 of act Aug. 12, 1946. Subsec. (b) of said section is set out as a note below.

Amendments


Acceptance of Statue of General Mitchell

Section 5(b) of act Aug. 12, 1946, as amended by section 9 of Pub. L. 89–509, provided that: “The Secretary of the Smithsonian Institution, with the advice of the Commission of Fine Arts, is authorized (1) to accept as a gift to the Smithsonian Institution from George H. Stephenson, of Philadelphia, Pennsylvania, a statue of Brigadier General William L. Mitchell of such character as may be deemed appropriate, and (2) without expense to the United States, to cause such statue to be erected at a suitable location on the grounds of the national air and space museum.”

SUBCHAPTER VIII—PALEONTOLOGICAL INVESTIGATIONS

§ 78. Cooperation of Smithsonian Institution with State institutions for continuing paleontological investigations

The Secretary of the Smithsonian Institution is authorized to cooperate with any State, educational institution, or scientific organization in the United States for continuing paleontological investigations, and the excavation and preservation of fossil remains, in areas which will be flooded by the construction of Government dams or otherwise be made unavailable for such investigations because of such construction: Provided, That such investigations and activities shall not duplicate nor affect adversely similar operations being conducted by the Department of Interior in cooperation with the Smithsonian Institution.

(Aug. 15, 1949, ch. 427, § 1, 63 Stat. 606.)

§ 78a. Authorization of appropriations; availability of funds; limit on use of funds during fiscal year; supervision; rules and regulations

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $65,000, which shall be available until expended for the above purposes: Provided, That at such time as the Smithsonian Institution is satisfied that any State agency, or any educational institution or scientific organization in any of the United States, is prepared to contribute to such investigation and when in its judgment such investigation shall appear meritorious, the Secretary of the Smithsonian Institution may make available for such investigation such amounts from this sum as shall be equal to the amounts contributed respectively by each such State agency, or educational institution or scientific organization: Provided further, That the amount to be made available from this sum for such investigation in cooperation with each such State agency, or educational institution or scientific organization, shall not exceed $10,000 in any fiscal year: Provided further, That all such cooperative work and division of the result thereof shall be under the direction of the Secretary of the Smithsonian Institution.

(Aug. 15, 1949, ch. 427, § 2, 63 Stat. 606.)

SUBCHAPTER IX—CANAL ZONE BIOLOGICAL AREA

§ 79. Barro Colorado Island in Gatun Lake to be set aside

The President is authorized and directed to set aside within the Canal Zone an area in Gatun Lake known as Barro Colorado Island in which the natural features shall, except in event of declared national emergency, be left in their natural state for scientific observation and investigation.

(July 2, 1940, ch. 516, § 1, 54 Stat. 724.)

References in Text

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Codification

Section was formerly classified to section 1381 of Title 48, Territories and Insular Possessions.

Termination of War and Emergencies

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 79a. Preservation of natural features for scientific observation and investigation

The purpose of setting aside such an area is to preserve and conserve its natural features, including existing flora and fauna, in as nearly a natural condition as possible, thus providing a place where duly qualified students can make observations and scientific investigations for increase of knowledge, under such conditions and regulations as may be prescribed by the Smithsonian Institution.
§ 79b. Functions of Smithsonian Institution

The Smithsonian Institution shall (a) determine the policy, prescribe conditions under which studies may be pursued within the area, and promulgate regulations for carrying out the purposes of this subchapter; (b) be responsible for the construction and maintenance of laboratories and other facilities on the area provided for the use of students authorized to carry on studies within the confines of the area; (c) deposit into the Treasury of the United States sums donated, subscribed, collected, or otherwise provided students authorized to make observations and investigations within the prescribed area and provide for the collection of such sums for deposit into the Treasury of the United States; (e) make such disposal of any moneys made for use of laboratory or other facilities provided students authorized to make observations and investigations within the prescribed area and for the construction and maintenance of laboratories and other facilities on the area provided for the use of students authorized to make observations and investigations within the prescribed area; (f) make such disposal of any moneys donated, subscribed, collected, or otherwise provided as in its judgment is to the best interest in carrying out the purpose of this subchapter: Provided. That sums contributed or appropriated for specific purposes shall be used for such purpose only; and (f) include in its annual report of its operations to Congress a statement of activities and operations during the preceding year.


§ 79c. Resident manager; powers and duties; compensation

The Smithsonian Institution may select and designate a resident manager to assist in carrying out the policy, conditions, and regulations approved by it in compliance with the purposes of this subchapter. The resident manager shall receive such compensation for his services as may be allowed by the Smithsonian Institution.


§ 79d. Deposit of receipts into Treasury; disbursements

All moneys received by donation, subscription, fees, or otherwise, except the moneys appropriated pursuant to section 79e of this title, for carrying out the purposes of this subchapter shall be deposited into the Treasury as trust funds and are appropriated for such purposes. Disbursements of such funds shall be made by the Secretary of the Treasury through the Fiscal Service on requisitions or vouchers signed by or on authority of the Smithsonian Institution.


§ 79e. Authorization of appropriations

There are authorized to be appropriated annually, from money in the Treasury of the United States; (e) make such disposal of any moneys made for use of laboratory or other facilities provided students authorized to make observations and investigations within the prescribed area and for the collection of such sums for deposit into the Treasury of the United States; (e) make such disposal of any moneys donated, subscribed, collected, or otherwise provided as in its judgment is to the best interest in carrying out the purpose of this subchapter: Provided. That sums contributed or appropriated for specific purposes shall be used for such purpose only; and (f) include in its annual report of its operations to Congress a statement of activities and operations during the preceding year.


§ 79e. Authorization of appropriations

There are authorized to be appropriated annually, from money in the Treasury of the United States; (e) make such disposal of any moneys donated, subscribed, collected, or otherwise provided as in its judgment is to the best interest in carrying out the purpose of this subchapter: Provided. That sums contributed or appropriated for specific purposes shall be used for such purpose only; and (f) include in its annual report of its operations to Congress a statement of activities and operations during the preceding year.

States not otherwise appropriated, such sums as are necessary for the administration of this subchapter and for the maintenance of laboratory or other facilities provided for carrying out the purposes of this subchapter.


Codification
Section was formerly classified to section 1387 of Title 48, Territories and Insular Possessions.

AMENDMENTS
1983—Pub. L. 98–57 struck out ‘‘, not to exceed $750,000’’ after ‘‘such sums’’.
1979—Pub. L. 96–89 substituted ‘‘$750,000’’ for ‘‘$350,000’’.
1965—Pub. L. 89–280 substituted ‘‘$350,000’’ for ‘‘$10,000’’.

Effective Date of 1983 Amendment
Section 2 of Pub. L. 98–57 provided that: ‘‘The provision in the first section of this Act [amending this section] shall take effect on October 1, 1983.’’

Effective Date of 1979 Amendment
Section 2 of Pub. L. 96–89 provided that: ‘‘The provision in section 1 of this Act [amending this section] shall take effect on October 1, 1979.’’

SUBCHAPTER X—NATIONAL ARMED FORCES MUSEUM ADVISORY BOARD

§ 80. National Armed Forces Museum Advisory Board

(a) Establishment; functions
There is established in the Smithsonian Institution a National Armed Forces Museum Advisory Board (hereinafter referred to as the Board), which shall provide advice and assistance to the Regents of the Smithsonian Institution on matters concerned with the portrayal of the contributions which the Armed Forces of the United States have made to American society and culture.

(b) Membership
The Board shall be composed of eleven members, as follows:
(1) The Secretary of Defense, who shall serve as an ex officio member;
(2) The Secretary of the Smithsonian Institution, who shall serve as an ex officio member;
(3) Nine members appointed by the President, (A) three of whom shall be appointed from persons recommended by the Secretary of Defense to represent the Armed Forces, and (B) two of whom shall be appointed from among persons recommended by the Regents of the Smithsonian Institution. Not less than two members appointed by the President shall be from civilian life.

(c) Term of office; vacancies
Members of the Board appointed by the President shall be appointed to serve for a period of six years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term and the terms of office of the members first appointed shall expire, as designated by the President at the time of appointment, three at the end of two years, three at the end of four years, and three at the end of six years.

(d) Quorum
Five members of the Board shall constitute a quorum and any vacancy in the Board shall not affect its power to function.

(e) Compensation, travel and other expenses
The members of the Board shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Board.

(f) Biennial organization; rules and regulations
The Board shall select officers from among its members biennially and shall make such bylaws, rules, and regulations as it deems necessary for the furtherance of its business.


§ 80a. Display of contributions of Armed Forces

(a) Study center; historical collections
The Smithsonian Institution shall commemorate and display the contributions made by the military forces of the Nation toward creating, developing, and maintaining a free, peaceful, and independent society and culture in the United States of America. The valor and sacrifice of the men and women of the Armed Forces shall be portrayed as an inspiration to the present and future generations of America. The demands placed upon the full energies of our people, the hardships endured, and the sacrifice demanded in our constant search for world peace shall be clearly demonstrated. The extensive peacetime contributions the Armed Forces have made to the advance of human knowledge in science, nuclear energy, polar and space exploration, electronics, engineering, aeronautics, and medicine shall be graphically described. The Smithsonian Institution shall interpret through dramatic display significant current problems affecting the Nation’s security. It shall be equipped with a study center for scholarly research into the meaning of war, its effect on civilization, and the role of the Armed Forces in maintaining a just and lasting peace by providing a powerful deterrent to war. In fulfilling its purposes, the Smithsonian Institution shall collect, preserve, and exhibit military objects of historical interest and significance.

(b) National Air and Space Museum provisions unaffected
The provisions of this subchapter in no way recede subchapter VII of this chapter, which established the National Air and Space Museum of the Smithsonian Institution, or any other authority of the Smithsonian Institution.


Change of Name
‘‘National Air and Space Museum’’ substituted for ‘‘National Air Museum’’ in subsec. (b) pursuant to sec-
§ 80b. Selection of site

(a) Authorization of Board of Regents; submission of recommendations to Congress

The Board of Regents of the Smithsonian Institution is authorized and directed, with the advice and assistance of the Board, to investigate and survey lands and buildings in and near the District of Columbia suitable for the display of military collections. The Board of Regents of the Smithsonian Institution shall, after consulting with and seeking the advice of the Commission on Fine Arts, the National Capital Planning Commission, and the General Services Administration, submit recommendations to the Congress with respect to the acquisition of lands and buildings for such purpose.

(b) Public exhibits and study collections; exhibits of military and naval operations

Buildings acquired pursuant to recommendations made under subsection (a) of this section shall be used to house public exhibits and study collections that are not appropriate for the military exhibits of the Smithsonian Institution on the Mall in the District of Columbia. Facilities shall be provided for the display of large military objects and for the reconstruction, in an appropriate way, on lands acquired pursuant to recommendations made under subsection (a) of this section, of exhibits showing the nature of fortifications, trenches, and other military and naval facilities characteristic of the American colonial period, the War of the Revolution, and subsequent American military and naval operations.


§ 80c. Transfer or loan of objects, equipment and records to Smithsonian Institution

The heads of executive departments and independent agencies of the Government are authorized to transfer or loan to the Smithsonian Institution for its use without charge therefor military, naval, aeronautical, and space objects, equipment and records for exhibition, historical, or other appropriate purposes.


§ 80d. Authorization of appropriations

There are authorized to be appropriated to the Smithsonian Institution such sums as may be necessary for the purposes of this subchapter.


SUBCHAPTER XI—WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

§ 80e. Congressional declaration of policy

The Congress hereby finds and declares—

(1) that a living institution expressing the ideals and concerns of Woodrow Wilson would be an appropriate memorial to his accomplishments as the twenty-eighth President of the United States, a distinguished scholar, an outstanding university president, and a brilliant advocate of international understanding;

(2) that the Woodrow Wilson Memorial Commission, created by joint resolution of Congress, recommended that an International Center for Scholars be constructed in the District of Columbia in the area north of the proposed Market Square as part of the Nation’s memorial to Woodrow Wilson;

(3) that such a center, symbolizing and strengthening the fruitful relation between the world of learning and the world of public affairs, would be a suitable memorial to the spirit of Woodrow Wilson; and

(4) that the establishment of such a center would be consonant with the purposes of the Smithsonian Institution, created by Congress in 1846 ‘‘for the increase and diffusion of knowledge among men.’’


SHORT TITLE

Section 1 of Pub. L. 90–637 provided: ‘‘That this Act [enacting this subchapter] may be cited as the ‘Woodrow Wilson Memorial Act of 1968.’’

§ 80f. Woodrow Wilson International Center for Scholars; Board of Trustees of the Center

(a) Establishment

There is hereby established in the Smithsonian Institution a Woodrow Wilson International Center for Scholars and a Board of Trustees of the Center (hereinafter referred to as the ‘‘Center’’ and the ‘‘Board’’), whose duties it shall be to maintain and administer the Center and site thereof and to execute such other functions as are vested in the Board by this subchapter.

(b) Composition of Board

The Board of Trustees shall be composed of 17 members as follows:

(1) the Secretary of State;

(2) the Secretary of Health and Human Services;

(3) the Secretary of Education;

(4) the Chairman of the National Endowment for the Humanities;

(5) the Secretary of the Smithsonian Institution;

(6) the Librarian of Congress;

(7) the Archivist of the United States;

(8) one member appointed by the President from time to time from within the Federal Government; and

(9) 9 members appointed by the President from private life.

(c) Appointment of alternate members by members of Board

Each member of the Board of Trustees specified in paragraphs (1) through (8) of subsection (b) of this section may designate another official to serve on the Board of Trustees in his stead.

(d) Terms of office; vacancies; reappointment

Each member of the Board of Trustees appointed under paragraph (10) of subsection (b) of this section shall serve for a term of six years from the expiration of his predecessor’s term; except that (1) any trustee appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed
shall be appointed for the remainder of such term, and (2) the terms of office of the trustees first taking office shall begin on October 24, 1968, and shall expire as designated at the time of appointment, two at the end of two years, three at the end of four years, and three at the end of six years. No trustee of the Board chosen from private life shall be eligible to serve in excess of two consecutive terms, except that a trustee whose term has expired may serve until his successor has qualified.

(e) Chairman and Vice Chairman of Board

The President shall designate a Chairman and a Vice Chairman from among the members of the Board, chosen from private life.


AMENDMENTS


Subsec. (b)(7) to (9). Pub. L. 105–277, § 1335(i)(1)(B)–(D), redesignated pars. (8) to (10) as (7) to (9), respectively, in par. (9) substituted “‘9’” for “‘10’”, and struck out former par. (7) which read as follows: “‘the Director of the United States Information Agency;’”.

Subsec. (c). Pub. L. 105–277, § 1335(i)(2), substituted “‘8’” for “‘9’”.

1990—Subsec. (b). Pub. L. 101–268, § 1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Board of Trustees shall be composed of sixteen members as follows:“(1) the Secretary of State;“(2) the Director of the United States Information Agency;“(3) the Secretary of Health and Human Services;“(4) the Chairman of the National Endowment for the Humanities;“(5) the Secretary of the Smithsonian Institution;“(6) the Librarian of Congress;“(7) the Archivist of the United States;“(8) one appointed by the President from time to time from the Federal Government; and“(9) eight appointed by the President from private life.”

Subsec. (c). Pub. L. 101–268, § 2(1), substituted “‘9’” for “‘8’”.


Subsec. (b)(2) to (9). Pub. L. 95–426, § 206(a)(2), (3), designated pars. (2) to (8) as (3) to (9), respectively, and added a new par. (2) “the Director of the International Communication Agency”.

Subsec. (c). Pub. L. 95–426, § 206(b)(1), substituted “‘8’” for “‘7’”.

Subsec. (d). Pub. L. 95–426, § 206(b)(2), substituted “‘9’” for “‘8’”.

Effective Date of 1998 Amendment


§ 80g. Powers and duties of Board

(a) Appointment of scholars; gifts, bequests, etc.; grants; location of Center; physical facilities; compensation of officers; plans and specifications for Center

In administering the Center, the Board shall have all necessary and proper powers, which shall include but not be limited to the power to—

(1) appoint scholars, from the United States and abroad, and, where appropriate, provide stipends, grants, and fellowships to such scholars, and to hire or accept the voluntary services of consultants, advisory boards, and panels to aid the Board in carrying out its responsibilities;

(2) solicit, accept, and dispose of gifts, bequests, and devises of money, securities, and other property of whatsoever character for the benefit of the Center; any such money, securities, or other property shall, upon receipt, be deposited with the Smithsonian Institution, and unless otherwise restricted by the terms of the gift, expenditures shall be in the discretion of the Board for the purposes of the Center;

(3) obtain grants from, and make contracts with, State, Federal, local, and private agencies, organizations, institutions, and individuals;

(4) acquire such site as a location for the Center as may subsequently be authorized by the Congress;

(5) acquire, hold, maintain, use, operate, and dispose of any physical facilities, including equipment, necessary for the operation of the Center;

(6) appoint and fix the compensation and duties of the director and such other officers of the Center as may be necessary for the efficient administration of the Center; the director and two other officers of the Center may be appointed and compensated without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5; and

(7) prepare plans and specifications for the Center, including the design and development of all buildings, facilities, open spaces, and other structures on the site in consultation with the President’s Temporary Commission on Pennsylvania Avenue, or its successor, and with other appropriate Federal and local agencies, such plans to include an exterior classic frieze memorial to Woodrow Wilson.

(b) Relocation assistance and programs

The Board shall, in connection with acquisition of any site authorized by Congress, as provided for in paragraph (4) of subsection (a) of this section, provide, to businesses and residents displaced from any such site, relocation assistance, including payments and other benefits, equivalent to that authorized to displace businesses and residents under the Housing Act of 1949, as amended [42 U.S.C. 1411 et seq.]. The Board shall develop a relocation program for existing businesses and residents within the site and submit such program to the government of the District of Columbia for a determination as to its adequacy and feasibility. In providing such relocation assistance and developing such relocation program the Board shall utilize to the maximum extent the services and facilities of the appropriate Federal and local agencies.

FUNCTIONS OF HUMPHREY FELLOW; PUBLICATION AND DISSEMINATION OF HUBERT H. HUMPHREY MEMORIAL LECTURES

§ 80g. Hubert H. Humphrey Fellowship in Social and Political Thought

(a) Establishment in Center

There is hereby established in the Center a Hubert H. Humphrey Fellowship in Social and Political Thought.

(b) Selection of Humphrey Fellow; term; compensation

Each year the Board shall select a distinguished scholar, statesman, or cultural figure, from the United States or abroad, to serve at the Center for a period of up to one year as the Hubert H. Humphrey Fellow in Social and Political Thought (hereinafter in this section referred to as the “Humphrey Fellow”). Each Humphrey Fellow shall receive compensation in an amount, determined by the Board, not to exceed the annual income of the trust fund established under subsection (d) of this section.

(c) Functions of Humphrey Fellow; publication and dissemination by Board of Memorial Lectures

Each Humphrey Fellow shall—

(1) deliver a Hubert H. Humphrey Memorial Lecture; and

(2) carry out such projects and work as are consistent with the Humphrey Fellowship.

The Board shall provide for the publication and dissemination of the Hubert H. Humphrey Memorial Lectures.

(d) Hubert H. Humphrey Fellowship Trust Fund; establishment, composition, investments, etc.

(1) There is hereby established in the Treasury of the United States a trust fund to be known as the Hubert H. Humphrey Fellowship Trust Fund (hereinafter in this section referred to as the “fund”). The Secretary of the Treasury shall deposit into the fund such sums as may be appropriated to the fund under subsection (f) of this section and shall receive into the Treasury and deposit into the fund such sums as may be received as contributions to the fund.

(2) The Secretary of the Treasury shall invest amounts in the fund in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates; and the interest on such investments shall be credited to and form a part of the fund.

(3) Notwithstanding section 80g(a)(2) of this title any gift, bequest, or devise of money, securities, or other property for the benefit of the Hubert H. Humphrey Fellowship in Social and Political Thought received by the Board shall, upon receipt, be deposited into the fund as provided by paragraph (1).

(e) Payments to Board from investments for implementation of Fellowship purposes

The Secretary of the Treasury shall pay to the Board from amounts received as interest on investments under subsection (d)(2) of this section such sums as the Board determines are necessary and appropriate for the purposes of the Humphrey Fellowship.

(f) Authorization of appropriations

There is authorized to be appropriated to the fund for the fiscal year beginning October 1, 1978, $1,000,000.

AMENDMENTS


§ 80h. Administration; quorum

The Board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations as it deems necessary for the administration of its functions under this subchapter, including, among other matters, bylaws, rules, and regulations relating to the administration of its trust funds and the organization and procedure of the Board. A majority of the members of the Board shall constitute a quorum for the transaction of business.

§ 80i. Authorization of appropriations; limitations

There are hereby authorized to be appropriated to the Board such funds as may be necessary to carry out the purposes of this subchapter: Provided, That no more than $200,000 shall be authorized for appropriation through fiscal year 1970 and no part of that appropriation shall be available for construction purposes.

§ 80j. Audit of accounts

The accounts of the Board shall be audited in accordance with the principles and procedures applicable to, and as part of, the audit of the other Federal and trust funds of the Smithsonian Institution.

§ 80k. Donation and transfer of lands and improvements, works of art, and other assets and property of Museum of African Art to Smithsonian Institution

The Board of Regents of the Smithsonian Institution (hereinafter in this subchapter referred to as the “Board”) is authorized to accept a deed or other instrument donating and transferring to the Smithsonian Institution, the land and improvements thereto, collections of works of art, and all other assets and property of the Museum of African Art.
§ 80. Establishment of Museum of African Art; functions

There is established in the Smithsonian Institution a bureau which shall be known as the "Museum of African Art" (hereinafter in this subchapter referred to as the "Museum"). The functions of such bureau shall be those authorized by section 80m(a) of this title.


Construction of National Museum of African Art


§ 80m. Powers of Board

(a) Acquisition, retention, and disposition of property; research and education programs

For the purpose of carrying out sections 80k and 80l of this title, the Board may—

(1) purchase, accept, borrow, or otherwise acquire additional works of art or any other real or personal property for the Museum;

(2) preserve, maintain, restore, display, loan, transfer, store, or otherwise hold any property of whatsoever nature acquired pursuant to section 80k of this title or paragraph (1) of this subsection;

(3) conduct programs of research and education; and

(4) subject to any limitations otherwise expressly provided by law, and, in the case of any gift, subject to any applicable restrictions under the terms of such gift, sell, exchange, or otherwise dispose of any property of whatsoever nature acquired pursuant to section 80k of this title or paragraph (1) of this subsection;

(b) Recommendations of Commission

In carrying out the purposes of this subchapter, the Board shall consider the recommendations of the Commission established pursuant to section 80m of this title.


§ 80n. Commission for the Museum of African Art

(a) Establishment; duties

There is established a Commission for the Museum of African Art (hereinafter the "Commission") which shall provide advice and assistance to the Board concerning the operation and development of the Museum, its collections and programs.

(b) Membership

The Commission shall consist of fifteen members to be appointed by the Board. In addition, the Secretary and an Assistant Secretary of the Smithsonian Institution shall serve as ex officio members. The Board shall appoint to the first term on the Commission no less than ten members of the Board of Trustees of the Museum of African Art who are serving on October 5, 1978. Each initial member so appointed shall serve for a three-year term. Thereafter, in appointing members of the Commission the Board shall continue to include representatives of African descendants in the United States, collectors of African Art, and scholars in the fields of African art and culture.

(c) Terms of office

Members of the Commission shall be appointed to serve for a three-year term, except that after the appointment of the first term of the Commission as specified in subsection (b) of this section, the terms of office of members next appointed shall expire, as designated by the Board at the time of appointment, one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Members may be reappointed.

(d) Quorum; vacancies

A majority of the appointed members of the Commission shall constitute a quorum and any vacancy in the Commission shall not affect its power to function.

(e) Travel, subsistence, and other expenses

Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(f) Selection of officers; bylaws

The Commission shall select officers, from among its members biennially and shall make bylaws to carry out its functions under this subchapter.


§ 80o. Director, officers, and employees; appointment, compensation, and duties

The Board may appoint and fix the compensation and duties of the Director and such other officers and employees of the Museum as may be necessary for the efficient administration, operation, and maintenance of the Museum; the Director and two other employees of the Museum may be appointed and compensated without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5; and all of the employees of the Museum who are serving on the date of the transfer authorized under section 80k of this title shall be offered employment by the Smithsonian under its usual terms of employment and may be appointed without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5.
§ 80p. Funding

(a) Federal funds for Museum

The faith of the United States is pledged that upon the completion of the acquisition in section 80k of this title, the United States will provide such funds as may be necessary for the upkeep of the Museum and the administrative expenses and costs of operation thereof, including the protection and care of works of art acquired by the Board, so the Museum shall at all times be properly maintained and works of art contained therein shall be exhibited regularly to the general public free of charge.

(b) Authorization of appropriations

There is authorized to be appropriated for the first fiscal year under this subchapter, the sum of $1,000,000 and such amounts as may be necessary for the succeeding fiscal years in order to carry out the provisions of this subchapter.


Effective Date

Section effective, except for the provisions in subsec. (b) of this section, on the date of transfer of a deed or other instrument under the provisions of section 80k of this title, see section 7 of Pub. L. 95–414, set out as a note under section 80k of this title.

SUBCHAPTER XIII—NATIONAL MUSEUM OF THE AMERICAN INDIAN

§ 80q. Findings

The Congress finds that—

(1) there is no national museum devoted exclusively to the history and art of cultures indigenous to the Americas;

(2) although the Smithsonian Institution sponsors extensive Native American programs, none of its 19 museums, galleries, and major research facilities is devoted exclusively to Native American history and art;

(3) the Heye Museum in New York, New York, one of the largest Native American collections in the world, has more than 1,000,000 art objects and artifacts and a library of 40,000 volumes relating to the archaeology, ethnology, and history of Native American peoples;

(4) the Heye Museum is housed in facilities with a total area of 90,000 square feet, but requires a minimum of 400,000 square feet for exhibition, storage, and scholarly research;

(5) the bringing together of the Heye Museum collection and the Native American collection of the Smithsonian Institution would—

(A) create a national institution with unrivaled capability for exhibition and research;

(B) give all Americans the opportunity to learn of the cultural legacy, historic grandeur, and contemporary culture of Native Americans;

(C) provide facilities for scholarly meetings and the performing arts;

(D) make available curatorial and other learning opportunities for Indians; and

(E) make possible traveling exhibitions to communities throughout the Nation;

(6) by order of the Surgeon General of the Army, approximately 4,000 Indian human remains from battlefields and burial sites were sent to the Army Medical Museum and were later transferred to the Smithsonian Institution;

(7) through archaeological excavations, individual donations, and museum donations, the Smithsonian Institution has acquired approximately 14,000 additional Indian human remains;

(8) the human remains referred to in paragraphs (6) and (7) have long been a matter of concern for many Indian tribes, including Alaska Native Villages, and Native Hawaiian communities which are determined to provide an appropriate resting place for their ancestors;

(9) identification of the origins of such human remains is essential to addressing that concern; and

(10) an extraordinary site on the National Mall in the District of Columbia (U.S. Government Reservation No. 6) is reserved for the use of the Smithsonian Institution and is available for construction of the National Museum of the American Indian.


Short Title of 1996 Amendment

Pub. L. 104–278, § 1(a), Oct. 9, 1996, 110 Stat. 3355, provided that: ‘‘This Act [enacting section 80q–9a of this title and amending sections 80q–3, 80q–9, and 80q–10 of this title] may be cited as the National Museum of the American Indian Act Amendments of 1996.’’

§ 80q–1. National Museum of the American Indian

(a) Establishment

There is established, within the Smithsonian Institution, a living memorial to Native Americans and their traditions which shall be known as the ‘‘National Museum of the American Indian’’.

(b) Purposes

The purposes of the National Museum are to—

(1) advance the study of Native Americans, including the study of language, literature, history, art, anthropology, and life;

(2) collect, preserve, and exhibit Native American objects of artistic, historical, literary, anthropological, and scientific interest;

(3) provide for Native American research and study programs; and

(4) provide for the means of carrying out paragraphs (1), (2), and (3) in the District of Columbia, the State of New York, and other appropriate locations.


§ 80q–2. Authority of Board of Regents to enter into agreement providing for transfer of Heye Foundation assets to Smithsonian Institution

The Board of Regents is authorized to enter into an agreement with the Heye Foundation, to provide for the transfer to the Smithsonian In-
§ 80q–3. Board of Trustees of National Museum of the American Indian

(a) In general

The National Museum shall be under a Board of Trustees with the duties, powers, and authority specified in this section.

(b) General duties and powers

The Board of Trustees shall—

1. recommend annual operating budgets for the National Museum to the Board of Regents;
2. advise and assist the Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the National Museum;
3. adopt bylaws for the Board of Trustees;
4. designate a chairman and other officers from among the members of the Board of trustees; and
5. report annually to the Board of Regents on the acquisition, disposition, and display of Native American objects and artifacts and on other appropriate matters.

(c) Sole authority

Subject to the general policies of the Board of Regents, the Board of Trustees shall have the sole authority to—

1. lend, exchange, sell, or otherwise dispose of any part of the collections of the National Museum, with the proceeds of such transactions to be used for additions to the collections of the National Museum or additions to the endowment of the National Museum, as the case may be;
2. purchase, accept, borrow, or otherwise acquire artifacts and other objects for addition to the collections of the Natural Museum; and
3. specify criteria for use of the collections of the National Museum for appropriate purposes, including research, evaluation, education, and method of display.

(d) Authority

Subject to the general policies of the Board of Regents, the Board of Trustees shall have authority to—

1. provide for restoration, preservation, and maintenance of the collections of the National Museum;
2. solicit funds for the National Museum and determine the purposes to which such funds shall be applied; and
3. approve expenditures from the endowment of the National Museum for any purpose of the Museum.

(e) Initial appointments to Board of Trustees

(1) Membership

The initial membership of the Board of Trustees shall consist of—

(A) the Secretary of the Smithsonian Institution;
(B) an Assistant Secretary of the Smithsonian Institution appointed by the Board of Regents;
(C) 8 individuals appointed by the Board of Regents; and
(D) 15 individuals, each of whom shall be a member of the board of trustees of the Heye Museum, appointed by the Board of Regents from a list of nominees recommended by the board of trustees of the Heye Museum.

(2) Special rule

At least 7 of the 23 members appointed under subparagraphs (C) and (D) of paragraph (1) shall be Indians.

(3) Terms

The trustee appointed under paragraph (1)(B) shall serve at the pleasure of the Board of Regents. The terms of the trustees appointed under subparagraph (C) or (D) of paragraph (1) shall be 3 years, beginning on the date of the transfer of the Heye Foundation assets to the Smithsonian Institution.

(4) Vacancies

Any vacancy shall be filled only for the remainder of the term involved. Any vacancy appointment under paragraph (1)(D) shall not be subject to the source and recommendation requirements of that paragraph, but shall be subject to paragraph (2).

(f) Subsequent appointments to Board of Trustees

(1) Membership

Upon the expiration of the terms under subsection (e) of this section, the Board of Trustees shall consist of—

(A) the Secretary of the Smithsonian Institution;
(B) a senior official of the Smithsonian Institution appointed by the Board of Regents; and
(C) 23 individuals appointed by the Board of Regents from a list of nominees recommended by the Board of Trustees.

(2) Special rule

At least 12 of the 23 members appointed under paragraph (1)(C) shall be Indians.

(3) Terms

The trustee appointed under paragraph (1)(B) shall serve at the pleasure of the Board of Regents. Except as otherwise provided in the next sentence, the terms of members appointed under paragraph (1)(C) shall be 3 years. Of the members first appointed under paragraph (1)(C)—

(A) 7 members, 4 of whom shall be Indians, shall be appointed for a term of one year, as designated at the time of appointment; and
(B) 8 members, 4 of whom shall be Indians, shall be appointed for a term of 2 years, as designated at the time of appointment.

1 So in original. Probably should be capitalized.

2 So in original. Probably should be “At”. 
§ 80q–5. Director and staff of National Museum

(a) In general

The Secretary of the Smithsonian Institution shall appoint—

(1) a Director who, subject to the policies of the Board of Trustees, shall manage the National Museum; and

(2) other employees of the National Museum, to serve under the Director.

(b) Offer of employment to Heye Foundation employees

Each employee of the Heye Museum on the day before the date of the transfer of the Heye Foundation assets to the Smithsonian Institution shall be offered employment with the Smithsonian Institution—

(1) under the usual terms of such employment; and

(2) at a rate of pay not less than the rate applicable to the employee on the day before the date of the transfer.

(c) Applicability of certain civil service laws

The Secretary may—

(1) appoint the Director, 2 employees under subsection (a)(2) of this section, and the employees under subsection (b) of this section without regard to the provisions of title 5, governing appointments in the competitive service;

(2) fix the pay of the Director and such 2 employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates; and

(3) fix the pay of the employees under subsection (b) of this section in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, subject to subsection (b)(2) of this section.


§ 80q–5. Museum facilities

(a) National Museum mall facility

The Board of Regents shall plan, design, and construct a facility on the area bounded by Third Street, Maryland Avenue, Independence Avenue, Fourth Street, and Jefferson Drive, Southwest, in the District of Columbia to house the portion of the National Museum to be located in the District of Columbia. The Board of Regents shall pay not more than ¼ of the total cost of planning, designing, and constructing the facility from funds appropriated to the Board of Regents. The remainder of the costs shall be paid from non-Federal sources.

(b) National Museum Heye Center facility

(1) Lease of space from GSA

(A) Terms

Notwithstanding section 586(a) and (b) of title 40, the Administrator of General Services may lease, at a nominal charge, to the Smithsonian Institution space in the Old United States Custom House at One Bowling Green, New York, New York, to house the portion of the National Museum to be located in the city of New York. The lease shall be subject to such terms as may be mutually agreed upon by the Administrator and the Secretary of the Smithsonian Institution. The term of the lease shall not be less than 99 years.

(B) Reimbursement of Federal buildings fund

The Administrator of General Services may reimburse the fund established by section 592 of title 40 for the difference between the amount charged to the Smithsonian Institution for leasing space under this paragraph and the commercial charge under section 586(a) and (b) of title 40 which, but for this paragraph, would apply to the leasing of such space. There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out this paragraph for fiscal years beginning after September 30, 1990.

(2) Construction

(A) Museum facility

The Board of Regents shall plan, design, and construct a significant facility for the National Museum in the space leased under paragraph (1).

(B) Auditorium and loading dock facility

The Administrator of General Services shall plan, design, and construct an auditorium and loading dock in the Old United States Custom House at One Bowling Green, New York, New York, for the shared use of all the occupants of the building, including the National Museum.

(C) Square footage

The facilities to be constructed under this paragraph shall have, in the aggregate, a total square footage of approximately 82,500 square feet.

(3) Repairs and alterations

After construction of the facility under paragraph (2)(A), repairs and alterations of the facility shall be the responsibility of the Board of Regents.

(4) Reimbursement of GSA

The Board of Regents shall reimburse the Administrator for the Smithsonian Institu-
tion’s pro rata share of the cost of utilities, maintenance, cleaning, and other services incurred with respect to the space leased under paragraph (1) and the full cost of any repairs or alterations made by the General Services Administration at the request of the Smithsonian Institution with respect to the space.

(5) Cost sharing

(A) General rules

The Board of Regents shall pay ½ of the costs of planning, designing, and constructing the facility under paragraph (2)(A) from funds appropriated to the Board of Regents. The remainder of the costs shall be paid from non-Federal sources.

(B) Responsibilities of New York City and State

Of the costs which are required to be paid from non-Federal sources under this paragraph, the city of New York, New York, and the State of New York have each agreed to pay $8,000,000 or an amount equal to ½ of the costs of planning, designing, and constructing the facility under paragraph (2)(A), whichever is less. Such payments shall be made to the Board of Regents in accordance with a payment schedule to be agreed upon by the city and State and the Board of Regents.

(C) Limitation on obligations of Federal funds

Federal funds may not be obligated for actual construction of a facility under paragraph (2)(A) in a fiscal year until non-Federal sources have paid to the Board of Regents the non-Federal share of such costs which the Board of Regents estimates will be incurred in such year.

(6) Designation

The facility to be constructed under paragraph (2)(A) shall be known and designated as the “George Gustav Heye Center of the National Museum of the American Indian”.

(e) Museum Support Center facility

The Board of Regents shall plan, design, and construct a facility for the conservation and storage of the collections of the National Museum at the Museum Support Center of the Smithsonian Institution.

(d) Minimum square footage

The facilities to be constructed under this section shall have, in the aggregate, a total square footage of at least 400,000 square feet.

(e) Authority to contract with GSA

The Board of Regents and the Administrator of General Services may enter into such agreements as may be necessary for planning, designing, and constructing facilities under this section (other than subsection (b)(2)(B)). Under such agreements, the Board of Regents shall transfer to the Administrator, from funds available for planning, designing, and constructing such facilities, such amounts as may be necessary for expenses of the General Services Administration with respect to planning, designing, and constructing such facilities.

(f) Limitation on obligation of Federal funds

Notwithstanding any other provision of this subchapter, funds appropriated for carrying out this section may not be obligated for actual construction of any facility under this section until the 60th day after the date on which the Board of Regents transmits to Congress a written analysis of the total estimated cost of the construction and a cost-sharing plan projecting the amount for Federal appropriations and for non-Federal contributions for the construction on a fiscal year basis.


C O N S P I C U O S I N G

“Section 586(a) and (b) of title 40” substituted in subsec. (b)(1)(A) for “section 210(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 409(j))”, “section 592 of title 40” substituted in subsec. (b)(1)(B) for “section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 409(f))”, and “section 586(a) and (b) of title 40” substituted in subsec. (b)(1)(B) for “section 210(j) of such Act” on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

NATIONAL NATIVE AMERICAN VETERANS’ MEMORIAL


“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Native American Veterans’ Memorial Establishment Act of 1994’.

“SEC. 2. FINDINGS.

“The Congress finds the following:

“(1) Native Americans across the Nation—Indians, Native Alaskans, and Native Hawaiians—have a long, proud and distinguished tradition of service in the Armed Forces of the United States.

“(2) Native Americans have historically served in the Armed Forces of the United States in numbers which far exceed their representation in the population of the United States.

“(3) Native American veterans count among themselves a number of Medal of Honor recipients. Their numbers are also conspicuous in the ranks of those who have received other decorations for valor and distinguished service.

“(4) Native Americans have lost their lives in the service of their Nation and in the cause of peace.

“(5) The National Museum of the American Indian was established as a living memorial to Native Americans. Its mission is to advance knowledge and understanding of Native American cultures, including art, history, language, and the contributions Native Americans have made to our society.

“(6) The National Museum of the American Indian is an extraordinary site and an ideal location to establish a National Native American Veterans’ Memorial.

“(7) A National Native American Veterans’ Memorial would further the purposes of the National Museum of the American Indian by giving all Americans the opportunity to learn of the proud and courageous tradition of service of Native Americans in the Armed Forces of the United States.

“SEC. 3. AUTHORITY TO ESTABLISH MEMORIAL.

“(1) In General.—The National Museum of the American Indian (established by the National Museum of the American Indian Act (20 U.S.C. 80g et seq.)), in close consultation with the National Congress of American Indians and other Native American groups, is authorized to construct and maintain a National Native American Veterans’ Memorial (hereafter in this Act referred to as the ‘memorial’).
“(b) LOCATION.—The memorial shall be located at a site determined to be suitable by the Museum within the interior structure of the facility provided for by section 7(a) of such Act (20 U.S.C. 80q–5(a)) (relating to housing the portion of the Museum to be located in the District of Columbia).

“(c) DESIGN AND PLANS.—(1) The National Congress of American Indians, in consultation with the Museum, is authorized to hold a competition to select the design of the memorial. Any design so selected shall be compatible with both the purpose of the Museum, as set forth in section 3(b) of the National Museum of the American Indian Act (20 U.S.C. 80q–1 (b)(b)), and with any existing design plans for the Museum’s structure and its surroundings.

“(2) Any design so selected shall be subject to the approval of the Board of Regents of the Smithsonian Institution.

“SEC. 4. PAYMENT OF EXPENSES AND USE OF NAME.

“(a) Responsibility of National Congress of American Indians.—The National Congress of American Indians shall be solely responsible for acceptance of contributions for, and payment of the expenses of, the establishment of the memorial. No Federal funds may be used to pay any expense of the establishment of the memorial.

“(b) Use of Name.—Use of the name of the Smithsonian Institution or the National Museum of the American Indian in any material regarding the memorial produced by the National Congress of American Indians, other than in a manner simply describing the location of the memorial, shall be subject to consultation with, and the approval of, the Board of Regents of the Smithsonian Institution.”

§ 80q–6. Custom House office space and auditorium

(a) Repairs and alterations

The Administrator of General Services shall make such repairs and alterations as may be necessary in the portion of the Old United States Custom House at One Bowling Green, New York, New York, which is not leased to the Board of Regents under section 80q–5(b) of this title and which, as of November 28, 1989, has not been altered.

(b) Authorization of appropriation

There is authorized to be appropriated to the Administrator of General Services $25,000,000 from the fund established pursuant to section 592 of title 40 to carry out this section and section 80q–5(b)(2)(B) of this title.


Codification


§ 80q–7. Audubon Terrace

(a) In general

The Board of Regents shall—

(1) assure that, on the date on which a qualified successor to the Heye Foundation at Audubon Terrace first takes possession of Audubon Terrace, an area of at least 2,000 square feet at that facility is accessible to the public and physically suitable for exhibition of museum objects and for related exhibition activities;

(2) upon written agreement between the Board and any qualified successor, lend objects from the collections of the Smithsonian Institution to the successor for exhibition at Audubon Terrace; and

(3) upon written agreement between the Board and any qualified successor, provide training, scholarship, technical, and other assistance (other than operating funds) with respect to the area referred to in paragraph (1) for the purposes described in that paragraph.

(b) Determination of charges

Any charge by the Board of Regents for activities pursuant to agreements under paragraph (2) or (3) of subsection (a) of this section shall be determined according to the ability of the successor to pay.

(c) Definition

As used in this section, the terms “qualified successor to the Heye Foundation at Audubon Terrace”, “qualified successor”, and,1 “successor” mean an organization described in section 501(c)(3) of title 26, and exempt from tax under section 501(a) of title 26, that, as determined by the Board of Regents—

(1) is a successor occupant to the Heye Foundation at Audubon Terrace, 3753 Broadway, New York, New York;

(2) is qualified to operate the area referred to in paragraph (1) for the purposes described in that paragraph; and

(3) is committed to making a good faith effort to respond to community cultural interests in such operation.


§ 80q–8. Board of Regents functions with respect to certain agreements and programs

(a) Priority to be given to Indian organizations with respect to certain agreements

In entering into agreements with museums and other educational and cultural organizations to—

(1) lend Native American artifacts and objects from any collection of the Smithsonian Institution;

(2) sponsor or coordinate traveling exhibitions of artifacts and objects; or

(3) provide training or technical assistance; the Board of Regents shall give priority to agreements with Indian organizations, including Indian tribes, museums, cultural centers, educational institutions, libraries, and archives. Such agreements may provide that loans or services to such organizations may be furnished by the Smithsonian Institution at minimal or no cost.

(b) Indian programs

The Board of Regents may establish—

(1) programs to serve Indian tribes and communities; and

(2) in cooperation with educational institutions, including tribally controlled colleges or universities (as defined in section 1801(a) of title 25), programs to enhance the opportuni-

1 So in original. The comma probably should not appear.
ties for Indians in the areas of museum studies, management, and research.

(c) Indian Museum Management Fellowships

The Board of Regents shall establish an Indian Museum Management Fellowship Program to provide stipend support to Indians for training in museum development and management.

(d) Authorization of Appropriations

There is authorized to be appropriated $2,000,000 for each fiscal year, beginning with fiscal year 1991, to carry out subsections (b) and (c) of this section.

§80q–9. Inventory, identification, and return of Indian human remains and Indian funerary objects in possession of Smithsonian Institution

(a) Inventory and identification

(1) The Secretary of the Smithsonian Institution, in consultation and cooperation with traditional Indian religious leaders and government officials of Indian tribes, shall—

(A) inventory the Indian human remains and Indian funerary objects in the possession or control of the Smithsonian Institution; and

(B) using the best available scientific and historical documentation, identify the origins of such remains and objects.

(2) The inventory made by the Secretary of the Smithsonian Institution under paragraph (1) shall be completed not later than June 1, 1996.

(b) Notice in case of identification of tribal origin

If the tribal origin of any Indian human remains or Indian funerary object is identified by a preponderance of the evidence, the Secretary shall so notify any affected Indian tribe at the earliest opportunity.

(c) Return of Indian human remains and associated Indian funerary objects

If any Indian human remains are identified by a preponderance of the evidence as those of a particular individual or as those of an individual culturally affiliated with a particular Indian tribe, the Secretary, upon the request of the descendents of such individual or of the Indian tribe shall expeditiously return such remains (together with any associated funerary objects) to the descendents or tribe, as the case may be.

(d) Return of Indian funerary objects not associated with Indian human remains

If any Indian funerary object not associated with Indian human remains is identified by a preponderance of the evidence as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe, the Secretary, upon the request of the Indian tribe, shall expeditiously return such object to the tribe.

(e) Interpretation

Nothing in this section shall be interpreted as—

(1) limiting the authority of the Smithsonian Institution to return or repatriate Indian human remains or Indian funerary objects to Indian tribes or individuals; or

(2) delaying actions on pending repatriation requests, denying or otherwise affecting access to the courts, or limiting any procedural or substantive rights which may otherwise be secured to Indian tribes or individuals.

(f) Authorization of Appropriations

There is authorized to be appropriated $1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years to carry out this section and section 80q–9a of this title.

§80q–9a. Summary and repatriation of unassociated funerary objects, sacred objects, and cultural patrimony

(a) Summary

Not later than December 31, 1996, the Secretary of the Smithsonian Institution shall provide a written summary that contains a summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony (as those terms are defined in subparagraphs (B), (C), and (D), respectively, of section 3001(3) of title 25, based upon available information held by the Smithsonian Institution. The summary required under this section shall include, at a minimum, the information required under section 3004 of title 25.

(b) Repatriation

Where cultural affiliation of Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony has been established in the summary prepared pursuant to

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2008—Subsec. (b)(2). Pub. L. 110–315 substituted “tribally controlled colleges or universities (as defined in section 1801 of title 25)” for “tribally controlled community colleges (as defined in section 1801 of title 25)”.

1996—Subsec. (a). Pub. L. 104–278, §3, Oct. 9, 1996, 110 Stat. 3355, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1). Subsec. (f). Pub. L. 104–278, §3(b), inserted “and section 80q–9a of this title” after “to carry out this section”.

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EFFECTIVE DATE OF 1998 AMENDMENT

subsection (a) of this section, or where a re-
questing Indian tribe or Native Hawaiian orga-
nization can show cultural affiliation by a pre-
ponderance of the evidence based upon geo-
graphical, kinship, biological, archaeological, anthro-
pological, linguistic, folkloric, oral tradi-
tional, historical, or other relevant information or 
expert opinion, then the Smithsonian Institu-
tion shall expeditiously return such unasso-
ciated funerary object, sacred object, or object 
of cultural patrimony where—
(1) the requesting party is the direct lineal 
descendant of an individual who owned the 
unassociated funerary object or sacred object;
(2) the requesting Indian tribe or Native Ha-
waiian organization can show that the object 
was owned or controlled by the Indian tribe or 
Native Hawaiian organization; or
(3) the requesting Indian tribe or Native Ha-
waiian organization can show that the unasso-
ciated funerary object or sacred object was 
owned or controlled by a member thereof, pro-
vided that in the case where an unassociated 
funerary object or sacred object was owned by a 
member thereof, there are no identifiable 
lineal descendants of said member or the 
lineal descendants, upon notice, have failed to 
make a claim for the object.

(c) Standard of repatriation

If a known lineal descendant or an Indian 
tribe or Native Hawaiian organization requests 
the return of Native American unassociated 
funerary objects, sacred objects, or objects of cul-
tural patrimony pursuant to this subchapter and 
presents evidence which, if standing alone before 
the introduction of evidence to the contrary, 
would support a finding that the Smithsonian 
Institution did not have the right of possession, 
then the Smithsonian Institution shall return 
such objects unless it can overcome such infer-
ence and prove that it has a right of possession 
to the objects.

(d) Museum obligation

Any museum of the Smithsonian Institution 
which repatriates any item in good faith pursu-
ant to this subchapter shall not be liable for 
claims by an aggrieved party or for claims of fi-
duciary duty, public trust, or violations of appli-
cable law that are inconsistent with the provi-
sions of this subchapter.

(e) Statutory construction

Nothing in this section may be construed to 
prevent the Secretary of the Smithsonian Insti-
tution, with respect to any museum of the 
Smithsonian Institution, from making an inven-
tory or preparing a written summary or carry-
ing out the repatriation of unassociated funer-
ary objects, sacred objects, or objects of cultural 
patrimony in a manner that exceeds the require-
ments of this subchapter.

(f) “Native Hawaiian organization” defined

For purposes of this section, the term “Native 
Hawaiian organization” has the meaning pro-
vided that term in section 3001(11) of title 25.
(Pub. L. 101–185, §11A, as added Pub. L. 104–278, 
§4, Oct. 9, 1996, 110 Stat. 3335.)

§ 80q–10. Special committee to review inventory, 
identification, and return of Indian human 
remains and Indian funerary objects

(a) Establishment; duties

Not later than 120 days after November 28, 
1989, the Secretary of the Smithsonian Institu-
tion shall appoint a special committee to moni-
tor and review the inventory, identification, 
and return of Indian human remains and Indian 
funerary objects under section 80q–9 of this title 
and unassociated funerary objects, sacred ob-
jects, and objects of cultural patrimony under 
section 80q–9a of this title. In carrying out its 
duties, the committee shall—
(1) with respect to the inventory and identi-
fication, ensure fair and objective consider-
ation and assessment of all relevant evidence;
(2) upon the request of any affected party or 
otherwise, review any finding relating to the 
origin or the return of such remains or ob-
jects;
(3) facilitate the resolution of any dispute 
that may arise between Indian tribes with re-
spect to the return of such remains or objects; 
and
(4) perform such other related functions as 
the Secretary may assign.

(b) Membership

The committee shall consist of 7 members, of 
whom—
(1) 4 members shall be appointed from among 
nominations submitted by Indian tribes and 
organizations;
(2) at least 2 members shall be traditional 
Indian religious leaders; and
(3) the Secretary shall designate one mem-
ber as chairman.

The Secretary may not appoint to the commit-
tee any individual who is an officer or employee 
of the Government (including the Smithsonian 
Institution) or any individual who is otherwise 
affiliated with the Smithsonian Institution.

(c) Access

The Secretary shall ensure that the members 
of the committee have full and free access to the 
Indian human remains and Indian funerary ob-
jects subject to section 80q–9 of this title and to 
any related evidence, including scientific and 
historical documents.

(d) Pay and expenses of members

Members of the committee shall—
(1) be paid the daily equivalent of the annual 
rate of basic pay payable for grade GS–18 of 
the General schedule under section 5332 of 
title 5; and
(2) be entitled (to the same extent as pro-
vided in section 5703 of such title, with respect 
to employees serving intermittently in the 
Government service) to per diem, travel, and 
transportation expenses;
for each day (including travel time) during 
which they are engaged in the performance of 
their duties.

(e) Rules and administrative support

The Secretary shall prescribe regulations and 
provide administrative support for the commit-
tee.
§ 80q–11. Grants by Secretary of the Interior to assist Indian tribes with respect to agreements for return of Indian human remains and Indian funerary objects

(a) In general

The Secretary of the Interior may make grants to Indian tribes to assist such tribes in reaching and carrying out agreements with—

(1) the Board of Regents for the return of Indian human remains and Indian funerary objects under section 80q–9 of this title; and

(2) other Federal and non-Federal entities for additional returns of Indian human remains and Indian funerary objects.

(b) Authorization of appropriations

There is authorized to be appropriated $1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years for grants under subsection (a) of this section.

(1) the Board of Regents for the return of Indian human remains and Indian funerary objects

(2) other Federal and non-Federal entities

§ 80q–12. Indian organization contribution

The Secretary of the Interior may require the Indian organization receiving the grant to contribute, in cash or in kind, not more than 50 percent of the cost of the renovation or repair involved. Such contribution may be derived from any source other than the Tribal Museum Endowment Fund.

§ 80q–13. Grants by Secretary of the Interior to assist Indian organizations with respect to renovation and repair of museum facilities and exhibit facilities

(a) Grants

The Secretary of the Interior may make grants to Indian organizations, including Indian tribes, museums, cultural centers, educational institutions, libraries, and archives, for renovation and repair of museum facilities and exhibit facilities to enable such organizations to exhibit objects and artifacts on loan from the collections of the Smithsonian Institution or from other sources. Such grants may be made only from the Tribal Museum Endowment Fund.

(b) Indian organization contribution

In making grants under subsection (a) of this section, the Secretary may require the organization receiving the grant to contribute, in cash or in kind, not more than 50 percent of the cost of the renovation or repair involved. Such contribution may be derived from any source other than the Tribal Museum Endowment Fund.

(c) Tribal Museum Endowment Fund

(1) Establishment

There is established in the Treasury a fund, to be known as the ‘‘Tribal Museum Endow-
ment Fund” (hereinafter in this subsection referred to as the “Fund”) for the purpose of making grants under subsection (a) of this section. The Fund shall consist of (A) amounts deposited and credited under paragraph (2), (B) obligations obtained under paragraph (3), and (C) amounts appropriated pursuant to authorization under paragraph (5).

(2) Deposits and credits

The Secretary of the Interior is authorized to accept contributions to the Fund from non-Federal sources and shall deposit such contributions in the Fund. The Secretary of the Treasury shall credit to the Fund the interest on, and the proceeds from sale and redemption of, obligations held in the Fund.

(3) Investments

The Secretary of the Treasury may invest any portion of the Fund in interest-bearing obligations of the United States. Such obligations may be acquired on original issue or in the open market and may be held to maturity or sold in the open market. In making investments for the Fund, the Secretary of the Treasury shall consult the Secretary of the Interior with respect to maturities, purchases, and sales, taking into consideration the balance necessary to meet current grant requirements.

(4) Expenditures and capital preservation

Subject to appropriation, amounts derived from interest shall be available for expenditure from the Fund. The capital of the Fund shall not be available for expenditure.

(5) Authorization of appropriations

There is authorized to be appropriated to the Fund $2,000,000 for each fiscal year beginning with fiscal year 1992.


CODIFICATION

Subsec. (d) of this section, which required the Secretary of the Interior, in consultation with the Secretary of the Treasury, to submit an annual report to Congress on activities under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 108 of House Document No. 103–7.

NATIVE AMERICAN CULTURAL CENTER IN OKLAHOMA CITY, OKLAHOMA: FEASIBILITY STUDY AND REPORT

Pub. L. 102–196, Dec. 9, 1991, 105 Stat. 1620, directed Secretary of the Interior to conduct a study and make a report to Congress on the feasibility of establishing a Native American Cultural Center in Oklahoma City, Oklahoma, and made appropriations for that purpose.

§ 80q–14. Definitions

As used in this subchapter—

(1) the term “Board of Regents” means the Board of Regents of the Smithsonian Institution;

(2) the term “Board of Trustees” means the Board of Trustees of the National Museum of the American Indian;

(3) the term “burial site” means a natural or prepared physical location, whether below, on, or above the surface of the earth, into which, as a part of a death rite or ceremony of a culture, individual human remains are deposited;

(4) the term “funerary object” means an object that, as part of a death rite or ceremony of a culture, is intentionally placed with individual human remains, either at the time of burial or later;

(5) the term “Heye Foundation assets” means the collections, endowment, and all other property of the Heye Foundation (other than the interest of the Heye Foundation in Audubon Terrace) described in the Memorandum of Understanding between the Smithsonian Institution and the Heye Foundation, dated May 8, 1989, and the schedules attached to such memorandum;

(6) the term “Heye Museum” means the Museum of the American Indian, Heye Foundation;

(7) the term “Indian” means a member of an Indian tribe;

(8) the term “Indian tribe” has the meaning given that term in section 4509 of title 25; and

(9) the term “National Museum” means the National Museum of the American Indian established by section 80q–1 of this title;

(10) the term “Native American” means an individual of a tribe, people, or culture that is indigenous to the Americas and such term includes a Native Hawaiian; and

(11) the term “Native Hawaiian” means a member or descendant of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.


§ 80q–15. Authorization of appropriations

(a) Funding

There is authorized to be appropriated to the Board of Regents to carry out this subchapter (other than as provided in sections 80q–5(b)(1)(B), 80q–6, 80q–8, 80q–9, 80q–10, 80q–12, and 80q–13(c)(5) of this title)—

(1) $10,000,000 for fiscal year 1990; and

(2) such sums as may be necessary for each succeeding fiscal year.

(b) Period of availability

Funds appropriated under subsection (a) of this section shall remain available without fiscal year limitation for any period prior to the availability of the facilities to be constructed under section 80q–5 of this title for administrative and planning expenses and for the care and custody of the collections of the National Museum.


SUBCHAPTER XIV—NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE

§ 80r. Findings

Congress finds that—

(1) since its founding, the United States has grown into a symbol of democracy and freedom around the world, and the legacy of African Americans is rooted in the very fabric of the democracy and freedom of the United States;
(2) there exists no national museum within the Smithsonian Institution that—
   (A) is devoted to the documentation of African American life, art, history, and culture; and
   (B) encompasses, on a national level—
      (i) the period of slavery;
      (ii) the era of Reconstruction;
      (iii) the Harlem Renaissance;
      (iv) the civil rights movement; and
      (v) other periods associated with African American life, art, history, and culture; and
(3) a National Museum of African American History and Culture would be dedicated to the collection, preservation, research, and exhibition of African American historical and cultural material reflecting the breadth and depth of the experiences of individuals of African descent living in the United States.


§ 80r–1. Definitions
In this subchapter:
(1) Board of Regents
   The term “Board of Regents” means the Board of Regents of the Smithsonian Institution.
(2) Council
   The term “Council” means the National Museum of African American History and Culture Council established by section 80r–3 of this title.
(3) Museum
   The term “Museum” means the National Museum of African American History and Culture established by section 80r–2 of this title.
(4) Secretary
   The term “Secretary” means the Secretary of the Smithsonian Institution.


§ 80r–2. Establishment of Museum
(a) Establishment
   There is established within the Smithsonian Institution a museum to be known as the “National Museum of African American History and Culture”.
(b) Purpose
   The purpose of the Museum shall be to provide for—
      (1) the collection, study, and establishment of programs relating to African American life, art, history, and culture that encompass—
         (A) the period of slavery;
         (B) the era of Reconstruction;
         (C) the Harlem Renaissance;
         (D) the civil rights movement; and
         (E) other periods of the African American diaspora;
   (2) the creation and maintenance of permanent and temporary exhibits documenting the history of slavery in America and African American life, art, history, and culture during the periods referred to in paragraph (1);
   (3) the collection and study of artifacts and documents relating to African American life, art, history, and culture; and
   (4) collaboration between the Museum and other museums, historically black colleges and universities, historical societies, educational institutions, and other organizations that promote the study or appreciation of African American life, art, history, or culture, including collaboration concerning—
      (A) development of cooperative programs and exhibitions;
      (B) identification, management, and care of collections; and
      (C) training of museum professionals.


§ 80r–3. Council
(a) Establishment
   There is established within the Smithsonian Institution a council to be known as the “National Museum of African American History and Culture Council”.
(b) Duties
   (1) In general
      The Council shall—
         (A) make recommendations to the Board of Regents concerning the planning, design, and construction of the Museum;
         (B) advise and assist the Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the Museum;
         (C) recommend annual operating budgets for the Museum to the Board of Regents;
         (D) report annually to the Board of Regents on the acquisition, disposition, and display of objects relating to African American life, art, history, and culture; and
         (E) adopt bylaws for the operation of the Council.
   (2) Principal responsibilities
      The Council, subject to the general policies of the Board of Regents, shall have sole authority to—
         (A) purchase, accept, borrow, and otherwise acquire artifacts for addition to the collections of the Museum;
         (B) loan, exchange, sell, and otherwise dispose of any part of the collections of the Museum, but only if the funds generated by that disposition are used for additions to the collections of the Museum; or
         (C) specify criteria with respect to the use of the collections and resources of the Museum, including policies on programming, education, exhibitions, and research with respect to—
            (i) the life, art, history, and culture of African Americans;
            (ii) the role of African Americans in the history of the United States from the period of slavery to the present; and
(ii) the contributions of African Americans to society.

(3) Other responsibilities
The Council, subject to the general policies of the Board of Regents, shall have authority—
(A) to provide for preservation, restoration, and maintenance of the collections of the Museum; and
(B) to solicit, accept, use, and dispose of gifts, bequests, and devises of personal property for the purpose of aiding and facilitating the work of the Museum.

(c) Composition and appointment
(1) In general
The Council shall be composed of 19 voting members as provided under paragraph (2).

(2) Voting members
The Council shall include the following voting members:
(A) The Secretary of the Smithsonian Institution.
(B) One member of the Board of Regents, appointed by the Board of Regents.
(C) Seventeen individuals appointed by the Board of Regents—
(i) taking into consideration individuals recommended by organizations and entities that are committed to the advancement of knowledge of African American life, art, history, and culture; and
(ii) taking into consideration individuals recommended by the members of the Council.

(3) Initial appointments
The Board of Regents shall make initial appointments to the Council under paragraph (2) not later than 180 days after December 16, 2003.

(d) Terms
(1) In general
Except as provided in this subsection, each appointed member of the Council shall be appointed for a term of 3 years.

(2) Initial appointees
As designated by the Board of Regents at the time of appointment, of the voting members first appointed under subparagraph (C) of subsection (c)(2) of this section—
(A) six members shall be appointed for a term of 1 year;
(B) six members shall be appointed for a term of 2 years; and
(C) five members shall be appointed for a term of 3 years.

(3) Reappointment
A member of the Council may be reappointed, except that no individual may serve on the Council for a total of more than 2 terms. For purposes of this paragraph, the number of terms an individual serves on the Council shall not include any portion of a term for which an individual is appointed to fill a vacancy under paragraph (4)(B).

(4) Vacancies
(A) In general
A vacancy on the Council—
(i) shall not affect the powers of the Council; and
(ii) shall be filled in the same manner as the original appointment was made.

(B) Term
Any member of the Council appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of that term.

(e) Compensation
(1) In general
Except as provided in paragraph (2), a member of the Council shall serve without pay.

(2) Travel expenses
A member of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, while away from the home or regular place of business of the member in the performance of the duties of the Council.

(f) Chairperson
By a majority vote of its voting members, the Council shall elect a chairperson from its members.

(g) Meetings
(1) In general
The Council shall meet at the call of the chairperson or on the written request of a majority of the voting members of the Council, but not fewer than twice each year.

(2) Initial meetings
During the 1-year period beginning on the date of the first meeting of the Council, the Council shall meet not fewer than 4 times for the purpose of carrying out the duties of the Council under this subchapter.

(h) Quorum
A majority of the voting members of the Council holding office shall constitute a quorum for the purpose of conducting business, but a lesser number may receive information on behalf of the Council.


§ 80r–4. Director and staff of the Museum

(a) Director
(1) In general
The Museum shall have a Director who shall be appointed by the Secretary, taking into consideration individuals recommended by the Council.

(2) Duties
The Director shall manage the Museum subject to the policies of the Board of Regents.

(b) Staff
The Secretary may appoint two additional employees to serve under the Director, except that such additional employees may be appointed without regard to the provisions of title 5 governing appointments in the competitive service.
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(c) Pay

The employees appointed by the Secretary under subsection (b) of this section may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates.


§ 80r–5. Educational and liaison programs

(a) In general

(1) Programs authorized

The Director of the Museum may carry out educational and liaison programs in support of the goals of the Museum.

(2) Specific activities described

In carrying out this section, the Director shall—

(A) carry out educational programs relating to African American life, art, history, and culture, including—
   (i) programs using digital, electronic, and interactive technologies; and
   (ii) programs carried out in collaboration with elementary schools, secondary schools, and postsecondary schools; and

(B) consult with the Director of the Institute of Museum and Library Services concerning the grant and scholarship programs carried out under subsection (b) of this section.

(b) Grant and scholarship programs

(1) In general

In consultation with the Council and the Director of the Museum, the Director of the Institute of Museum and Library Services shall establish—

(A) a grant program with the purpose of improving operations, care of collections, and development of professional management at African American museums;

(B) a grant program with the purpose of providing internship and fellowship opportunities at African American museums;

(C) a scholarship program with the purpose of assisting individuals who are pursuing careers or carrying out studies in the arts, humanities, and sciences in the study of African American life, art, history, and culture;

(D) in cooperation with other museums, historical societies, and educational institutions, a grant program with the purpose of promoting the understanding of modern-day practices of slavery throughout the world; and

(E) a grant program under which an African-American museum (including a non-profit education organization the primary mission of which is to promote the study of African-American diaspora) may use the funds provided under the grant to increase an endowment fund established by the museum (or organization) as of May 1, 2003, for the purposes of—
   (i) enhancing educational programming; and
   (ii) maintaining and operating traveling educational exhibits.

(2) Authorization of appropriations

There are authorized to be appropriated to the Director of the Institute of Museum and Library Services to carry out this subsection—

(A) $15,000,000 for fiscal year 2004; and

(B) such sums as are necessary for each fiscal year thereafter.


§ 80r–6. Building for the National Museum of African American History and Culture

(a) In general

(1) Location

(A) In general

Not later than 12 months after December 16, 2003, the Board of Regents shall designate a site for the Museum.

(B) Sites for consideration

In designating a site under subparagraph (A), the Board of Regents shall select from among the following sites in the District of Columbia:

(i) The Arts and Industries Building of the Smithsonian Institution, located on the National Mall at 900 Jefferson Drive, Southwest, Washington, District of Columbia.

(ii) The area bounded by Constitution Avenue, Madison Drive, and 14th and 15th Streets, Northwest.

(iii) The site known as the “Liberty Loan site”, located on 14th Street Southwest at the foot of the 14th Street Bridge.

(iv) The site known as the “Banneker Overlook site”, located on 10th Street Southwest at the foot of the L’Enfant Plaza Promenade.

(C) Availability of site

(i) In general

A site described in subparagraph (B) shall remain available until the date on which the Board of Regents designates a site for the Museum under subparagraph (A).

(ii) Transfer to Smithsonian Institution

Except with respect to a site described in clause (i) of subparagraph (B), if the site designated for the Museum is in an area that is under the administrative jurisdiction of a Federal agency, as soon as practicable after the date on which the designation is made, the head of the Federal agency shall transfer to the Smithsonian Institution administrative jurisdiction over the area.

(D) Consultation

The Board of Regents shall carry out its duties under this paragraph in consultation with the following:

(i) The Chair of the National Capital Planning Commission.

(ii) The Chair of the Commission on Fine Arts.

(iii) The Chair and Vice Chair of the Presidential Commission referred to in section 80r–8 of this title.
§ 80s. Findings; purpose

(a) Findings

Congress finds as follows:

1. A fundamental principle of American democracy is that individuals should stand up for their rights and beliefs and fight for justice.

2. The actions of those who participated in the Civil Rights movement from the 1950s through the 1960s are a shining example of this principle in action, demonstrated in events as varied as the Montgomery Bus Boycott, the sit-ins, the Freedom Rides, the March on Washington, the drive for voting rights in Mississippi, and the March to Selma.

3. While the Civil Rights movement had many visible leaders, including Thurgood Marshall, Dr. Martin Luther King Jr., and Rosa Parks, there were many others whose impact and experience were just as important to the cause but who are not as well known.

4. The participants in the Civil Rights movement possess an invaluable resource in their first-hand memories of the movement, and the recording of the retelling of their stories and memories will provide a rich, detailed history of our Nation during an important and tumultuous period.

5. It is in the Nation’s interest to undertake a project to collect oral histories of individ-
§ 80s–1

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uals from the Civil Rights movement so future generations will be able to learn of their struggle and sacrifice through primary-source, eyewitness material. A coordinated Federal project would also focus attention on the efforts undertaken by various public and private entities to collect and interpret articles in all formats relating to the Civil Rights movement, and serve as a model for future projects undertaken in museums, libraries, and universities throughout the Nation.

(6) The Library of Congress and the Smithsonian Institution are appropriate repositories to collect, preserve, and make available to the public a collection of these oral histories. The Library and Smithsonian have expertise in the management of documentation projects, and experience in the development of cultural and educational programs for the public.

(b) Purpose

It is the purpose of this subchapter to create a new federally sponsored, authorized, and funded project that will coordinate at a national level the collection of video and audio recordings of personal histories and testimonial of individuals who participated in the American Civil Rights movement and serve as a model for future projects undertaken in museums, libraries, and universities throughout the Nation.

(7) The Library of Congress and the Smithsonian Institution are appropriate repositories to collect, preserve, and make available to the public a collection of these oral histories. The Library and Smithsonian have expertise in the management of documentation projects, and experience in the development of cultural and educational programs for the public.

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§ 80s–2. Private support for civil rights history project
(a) Encouraging solicitation and acceptance of donations

The Librarian of Congress and the Secretary are encouraged to solicit and accept donations of funds and in-kind contributions to support activities under section 80s–1 of this title.

(b) Dedication of funds provided to Library of Congress

Notwithstanding any other provision of law—
(1) any funds donated to the Librarian of Congress to support the activities of the Librarian under section 80s–1 of this title shall be deposited entirely into an account established for such purpose;
(2) the funds contained in such account shall be used solely to support such activities; and
(3) the Librarian of Congress may not deposit into such account any funds donated to the Librarian which are not donated for the exclusive purpose of supporting such activities.


§ 80s–3. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter—
(1) $500,000 for fiscal year 2010; and
(2) such sums as may be necessary for each of the fiscal years 2011 through 2014.


CHAPTER 4—NATIONAL ZOOLOGICAL PARK

Sec. 81. Administration by Regents of Smithsonian Institution.

82. Aid in acquisition of collections.

83. Omitted.

84. Plans for buildings and bridges.

85. Concessions.

§ 81. Administration by Regents of Smithsonian Institution

The National Zoological Park is placed under the direction of the Regents of the Smithsonian Institution, who are authorized to transfer to it any living specimens, whether of animals or plants, in their charge, to accept gifts for the park at their discretion, in the name of the United States, to make exchanges of specimens, and to administer and improve the said Zoological Park for the advancement of science and the instruction and recreation of the people.


AMENDMENTS


ESTABLISHMENT OF PARKS

The National Zoological Park was established under provisions of the District of Columbia Appropriation Act for the Fiscal Year 1890, act Mar. 2, 1889, ch. 370, § 4, 25 Stat. 806, which constituted a commission to select from a certain district along Rock Creek a tract of land, including a section of the creek, suitable for a zoological park, and to purchase the land so selected, or take proceedings for the condemnation thereof, the United States to have title to the land on payment therefor to the owners.

The Rock Creek Park was established by act Sept. 27, 1890, ch. 1001, 26 Stat. 492.

The Potomac Park was established by act Mar. 3, 1897, ch. 375, 29 Stat. 624.

ADDITION OF LANDS

Certain parcels of land were added to the National Zoological Park by acts June 5, 1920, ch. 330, § 1, 41 Stat. 892; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1394.

CONNECTING PARKWAY

Provisions for a parkway connecting Potomac Park with Zoological Park and Rock Creek Park were made by act Mar. 4, 1913, ch. 147, § 27, 37 Stat. 685.

§ 82. Aid in acquisition of collections

The heads of executive departments of the Government are authorized and directed to cause to be rendered all necessary and practicable aid to the said Regents in the acquisition of collections for the Zoological Park.

(Apr. 30, 1890, ch. 173, § 3, 26 Stat. 78.)

§ 83. Omitted

CODIFICATION

Section, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 384, which required that a detailed report of expenses on account of the National Zoological Park be made to Congress at the beginning of each regular session, terminated effective May 15, 2000, pursuant to section 3003 of Pub. L. 106–55, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 192 of House Document No. 103–7.

§ 84. Plans for buildings and bridges

All plans and specifications for the construction of buildings and bridges in the National Zoological Park shall be prepared under the supervision of the Smithsonian Institution.


REORGANIZATION PLAN NO. 4 OF 1966


Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 13, 1966, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

NATIONAL ZOOLOGICAL PARK BUILDINGS AND BRIDGES

All those functions of the Board of Commissioners of the District of Columbia which were vested in the municipal architect of the District of Columbia by the provisions of the Act of August 24, 1912, c. 355, 37 Stat. 437 (20 U.S.C. 81; D.C. Code [former] § 8–134), in respect of buildings of the National Zoological Park, and all functions of that Board which were vested in the engineer of bridges of the District of Columbia by those provisions in respect of bridges of the National Zoological Park, are hereby transferred to the Smithsonian Institution.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:
I transmit herewith Reorganization Plan No. 4 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for a reorganiza-
§ 85. Concessions  
(a) Authorization; use of proceeds for research and educational work  
The Board of Regents of the Smithsonian Institution, in furtherance of the mission of the National Zoological Park to provide for the advancement of science and instruction and recreation of the people, is authorized to negotiate agreements granting concessions at the National Zoological Park to nonprofit scientific, educational, or historic organizations. The net proceeds of such organizations gained from such concessions granted under this subsection shall be used exclusively for research and educational work for the benefit of the National Zoological Park.  

(Pub. L. 89–772, Nov. 6, 1966, 80 Stat. 1322.)  

(b) Voluntary services  
The Smithsonian Institution is authorized to accept the voluntary services of such organizations, and the voluntary services of individuals, for the benefit of the National Zoological Park.  

(Pub. L. 89–772, Nov. 6, 1966, 80 Stat. 1322.)  

CHAPTER 5—GOVERNMENT COLLECTIONS AND INSTITUTIONS FOR RESEARCH, AND MATERIAL FOR EDUCATIONAL INSTITUTIONS  

Sec. 91. Literary and scientific collections accessible to investigators and students.  

92. Admissions to marine biological station for pursuit of investigations.  

93, 94. Repealed.  

§ 91. Literary and scientific collections accessible to investigators and students  
The facilities for study, research and illustration in the Government departments and in the following and any other governmental collections now existing or hereafter to be established in the city of Washington for the promotion of knowledge shall be accessible, under such rules and restrictions as the officers in charge of each department or collection may prescribe, subject to such authority as is now or may hereafter be permitted by law, to the scientific investigators and to duly qualified individuals, students and graduates of any institution of learning in the several States and Territories and the District of Columbia, to wit: One. Of the Library of Congress.  

Two. Of the National Museum.  


Four. Of the Department of Education.  

Five. Of the Bureau of Ethnology.  

Six. Of the Army Medical Museum.  

Seven. Of the Department of Agriculture.  

Eight. Of the United States Fish and Wildlife Service.  

Nine. Of the Botanic Gardens.  

Ten. Of the National Ocean Survey.  


Twelve. Of the Naval Observatory.  

Thirteen. Of the Zoological Park.  


Codification  
Section is from a resolution adopted Apr. 12, 1892, the Deficiencies Appropriation Act of Mar. 3, 1901, and the Legislative Appropriations Act of May 14, 1928, providing that facilities for study and research be afforded to investigators, students, etc., in the several States and Territories as well as in the District of Columbia.  

Amendments  
CHANGE OF NAME


EFFECTIVE DATE OF 1999 AMENDMENT


TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3714, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. United States Patents and Trademark Office, and National Ocean Survey, referred to in this section, are agencies within Department of Commerce.

Functions of all other officers of Department of the Interior and functions of all agencies and employees of such Department, with two exceptions, transferred to Secretary of the Interior, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3714, 64 Stat. 1262, set out in the Appendix to Title 5.


§92. Admissions to marine biological station for pursuit of investigations

The professors, instructors, and students of the several land-grant, agricultural, and mechanical colleges of the United States shall be admitted to the marine biological station on the Gulf of Mexico on the coast of Florida, to pursue such investigation in fish culture and biology as may be practicable, without cost to the Government, under such rules and regulations as may be from time to time prescribed by the Secretary of Interior.


CODIFICATION

Section consists of section 2 of act Mar. 1, 1911. Section 1 thereof authorizing the establishment of the marine biological station on the Gulf coast of the State of Florida, referred to in text, on the condition that the State of Florida donate the necessary land and water rights, is not classified to the Code. The provisions of said section 1 requiring donation of the required land and water rights by the State were amended by act Aug. 1, 1914, ch. 223, §1, 38 Stat. 665, which authorized the donation of the required land and water rights by a corporation, firm, or individual in addition to the State.

TRANSFER OF FUNCTIONS

Bureau of Fisheries in Department of Commerce which administered marine biological station referred to in text under supervision of Secretary of Commerce transferred to Department of the Interior under direction of Secretary of the Interior by Reorg. Plan No. II of 1939, set out in the Appendix to Title 5, Government Organization and Employees, and by Reorg. Plan No. III of 1940, set out in the Appendix to Title 5. Bureau of Fisheries consolidated with Bureau of Biological Survey into Fish and Wildlife Service in Department of the Interior and under supervision of Secretary of the Interior, which was succeeded by United States Fish and Wildlife Service, see section 742b of Title 16, Conservation.
“Secretary of Commerce” substituted in text for “Secretary of Commerce and Labor” pursuant to act Mar. 4, 1913, which changed name of Department of Commerce and Labor to Department of Commerce.

STATION AT SARASOTA, FLORIDA

The Fish and Wildlife Service established a marine biological station at Sarasota, Florida, during the year 1918.

DISPOSAL OF STATION

Secretary of Commerce was authorized to dispose of the marine biological station at Key West, Fla., by act Apr. 29, 1929, ch. 2, 46 Stat. 2.

Under communication of the Fish and Wildlife Service dated Nov. 12, 1946, it was stated the land on which was situated this station was reconveyed to the Key West Realty Company by quit claim deed executed by the Secretary of Commerce.

§§ 93, 94. Repealed. Oct. 31, 1951, ch. 654, § 1(41), (42), 65 Stat. 703

Section 93, act Nov. 19, 1919, ch. 118, 41 Stat. 360, which related to sale of machine tools to trade, technical, and public schools and universities, had been transferred to section 1180a of former Title 10, Army and Air Force, and was later repealed by act Oct. 31, 1951.

Section 94, act May 26, 1928, ch. 760, 45 Stat. 753, which related to transfer of obsolete aeronautical equipment to museums, schools and colleges, had been transferred to section 1180b of former Title 10, Army and Air Force, was later repealed by act Oct. 31, 1951.

CHAPTER 6—AMERICAN PRINTING HOUSE FOR THE BLIND

§ 101. Annual appropriations

For the purpose of enabling the American Printing House for the Blind more adequately to provide books and apparatus for the education of the blind, there is hereby authorized to be apportioned annually to it, such sum as the Congress may determine; which sum shall be expended in accordance with the requirements of sections 101, 102, and 104 of this title, under rules and regulations prescribed by the Secretary of Education, to promote the education of the blind.


CODIFICATION

Prior to amendment by Pub. L. 100–630, section was comprised of two sentences. The first sentence was based on provisions of acts Mar. 3, 1879, and June 25, 1906, and established a perpetual trust fund for purposes of aiding education of the blind in the United States through the American Printing House for the Blind and a permanent annual appropriation thereof, to be expended for purposes authorized by sections 101, 102, and 104 of this title. The second sentence was based on provisions of act Aug. 4, 1919, as amended. See 1988 Amendment note below.

AMENDMENTS

1961—Pub. L. 87–294 struck out provisions which authorized an annual appropriation of not more than $400,000, inserted provisions authorizing an annual appropriation of such sum as the Congress may determine, and required expenditure of such sum under rules and regulations prescribed by the Secretary of Health, Education, and Welfare.

1956—Act Aug. 2, 1956, increased appropriation authorization from $250,000 to $400,000.

1952—Act May 22, 1952, amended second sentence generally, increasing appropriation authorization from $115,000 to $250,000.

1937—Act Aug. 21, 1937, amended second sentence generally, increasing appropriation authorization from $65,000 to $115,000.

1927—Act Feb. 8, 1927, amended second sentence generally, increasing appropriation authorization from $40,000 to $65,000.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 402(b) of Pub. L. 100–630 provided that: ‘‘This section [amending this section] shall take effect on October 1, 1989.’’

EFFECTIVE DATE OF 1961 AMENDMENT

Section 5 of Pub. L. 87–294 provided that: ‘‘The amendments made by this Act [amending this section and section 102 of this title] shall be effective immediately after the date of its enactment [Sept. 22, 1961].’’

SHORT TITLE OF 1988 AMENDMENT

Section 401 of title IV of Pub. L. 100–630 provided that: ‘‘This title [amending this section and enacting provisions set out as notes under this section] may be cited as the ‘American Printing House for the Blind Amendments of 1988’.’’

TRANSFER OF FUNCTIONS

“Secretary of Education” substituted in text for “Secretary of Health, Education, and Welfare” pursuant to sections 301(a)(2)(M) and 507 of Pub. L. 96–88, which are classified to sections 341(a)(2)(M) and 3507 of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Secretary of Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare.

Functions of Secretary of the Treasury over administration of appropriations for American Printing House for Blind (except function relating to administration of perpetual trust fund) transferred to Federal Security Agency, and annual report and vouchers of trustees directed to be furnished to Federal Security Administrator by Reorg. Plan No. II of 1939, § 201(b), eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, set out in the Appendix to Title 5.

Compensation to American Printing House for the Blind for Vested Rights

Section 404 of Pub. L. 100–630 provided that: ‘‘Any and all rights of the American Printing House for the Blind determined to have vested in the perpetual trust fund established by the Act of March 3, 1879 (see Codification note above), shall be deemed to be compensated by the appropriation to the American Printing House for the Blind for fiscal year 1990.’’

Ineffectiveness of References to Perpetual Trust Fund and Annual Appropriations

Section 405 of Pub. L. 100–630 provided that: ‘‘Notwithstanding any Federal law, reference to the perpetual trust fund and permanent annual appropriations theretofore established by the Act of March 3, 1879 (see Codification note above), shall not be given any effect.’’

§ 102. Application of appropriations

The Secretary of Education is authorized to pay over semiannually, to the trustees of the American Printing House for the Blind, located in Louisville, Kentucky, and chartered in 1838 by the Legislature of Kentucky, upon requisition of their president, countersigned by their treasurer, one-half of such annual appropriation upon the following conditions:

(1) Purposes and methods of expenditures

First. (A) Such appropriation shall be expended by the trustees of the American Printing House for the Blind each year in manufacturing and furnishing books and other materials specially adapted for instruction of the blind; and the total amount of such books and other materials so manufactured and furnished by such appropriation shall each year be distributed among all the public and private nonprofit institutions in the States, Territories, and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia, in which blind pupils are educated. Each public and private nonprofit institution for the education of the blind shall receive, in books and other materials, upon requisition of its superintendent, that portion of the appropriation as is shown by the ratio between the number of blind pupils in that institution and the total number of blind pupils in all of the public and private nonprofit institutions in which blind pupils are educated.

Each chief State school officer shall receive, in books and other materials, upon requisition, that portion of the appropriation as is shown by the ratio between the number of blind pupils in public and private nonprofit institutions (in the State) in which blind pupils are educated, other than institutions to which the preceding sentence is applicable, and the total number of blind pupils in the public and private nonprofit institutions in which blind pupils are educated in all of the States, Territories, and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia. The ratio referred to in each of the two immediately preceding sentences shall be computed upon the first Monday in January of each year; and for purposes of such sentences the number of blind pupils in public and private nonprofit institutions in which blind pupils are educated shall be authenticated in such manner and as often as the trustees of the American Printing House for the Blind shall require. For purposes of sections 101, 102, and 104 of this title, an institution for the education of the blind is any institution which provides education exclusively for the blind, or exclusively for the blind and other handicapped children (in which case special classes are provided for the blind); the chief State school officer of a State is the superintendent of public elementary and secondary schools in such State or, if there is none, such other official as the Governor certifies to have comparable responsibility in the State; and a blind pupil is a blind individual pursuing a course of study in an institution of less than college grade.

(B) The portion of the appropriation received by each chief State school officer, in such books and other materials under subparagraph (A) of this paragraph which represents the number of blind pupils in private nonprofit institutions in such State in which blind pupils are educated shall be distributed among such institutions on the basis of the number of blind pupils in each such institution as compared to the total number of such pupils in all of the private nonprofit institutions in which blind pupils are educated in such State.

(C) All books and other materials furnished pursuant to sections 101, 102, and 104 of this title, and control and administration of their use, shall vest only in a public agency. Such books and materials made available pursuant to sections 101, 102 and 104 of this title for use of teachers and blind pupils in any State, Territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia in any school shall be limited to those books and materials which have been approved by an appropriate educational authority or agency of such State, Territory, possession, Commonwealth, or District, or any local educational authority thereof, for use, or are used, in a public elementary or secondary school therein.

(2) Buildings

Second. No part of the appropriation shall be expended in the erection or leasing of buildings; but the trustees of the American Printing House for the Blind may use each year a reasonable sum of the annual appropriation for salaries and other expenses of experts and other staff to assist special committees which may be appointed in performance of their functions, and for expenses of such special committees.
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(3) Sales of books and apparatus at cost

Third. No profit shall be put on any books or tangible apparatus for the instruction of the blind manufactured or furnished by the trustees of said American Printing House for the Blind, located in Louisville, Kentucky; and the price put upon each article so manufactured or furnished shall only be its actual cost.

(4) Income withheld when not properly used

Fourth. The Secretary of the Treasury of the United States shall have the authority to withhold the appropriation whenever he shall receive satisfactory proof that the trustees of said American Printing House for the Blind, located in Louisville, Kentucky, are not using the appropriation for the benefit of the blind in the public and private nonprofit institutions for the education of the blind in the United States.

(5) Bond of treasurer

Fifth. Before any money be paid to the treasurer of the American Printing House for the Blind by the Secretary of the Treasury of the United States, the treasurer of the American Printing House for the Blind shall execute a bond, with two approved sureties, to the amount of $20,000, conditioned that the money so received shall be expended according to this law and all amendments thereto, which shall be held by the Secretary of the Treasury of the United States, and shall be renewed every two years.

(6) Ex officio trustees

Sixth. The superintendent of each public institution for the education of the blind (or his designee) and the chief State school officer (or his designee), of each State and possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia, shall each, ex officio, be a member of the Board of Trustees of the American Printing House for the Blind only for purposes of administering sections 101, 102 and 104 of this title.


Codification

For purposes of codification, the provisions of section 3 of act Mar. 3, 1879, were changed as follows: provision providing for payment of the semi-annual interest upon the bonds was substituted for one providing for payment of one-half the annual appropriation, the word “income” was substituted for “appropriation”, and the word “interest” was substituted for “money” in par. (5), to conform to the modification of act Mar. 3, 1879, by act June 25, 1906, as shown in the note set out under section 101 of this title.

Amendments

1906—Par. First. Pub. L. 91–230, §811(b), designated existing provisions as subpar. (A), made provisions applicable to private nonprofit institutions, and added subpars. (B) and (C).

Par. Fourth. Pub. L. 91–230, §811(b), made provisions applicable to private nonprofit institutions.

1961—Pub. L. 87–294, §1, substituted “Secretary of Health, Education, and Welfare” for “Secretary of the Treasury of the United States” and struck out “permanent” before “annual appropriation” in opening clause.

Par. Second. Pub. L. 87–294, §2, authorized the trustees to use each year a reasonable sum of the annual appropriation for salaries and other expenses of experts and other staff to assist special committees which may be appointed in performance of their functions, and for expenses of such special committees.

Par. Sixth. Pub. L. 87–294, §3, substituted “superintendent of each public institution for the education of the blind (or his designee) and the chief State school officer (or his designee), of each State and possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia,” for “superintendents of the various public institutions for the education of the blind in the United States shall”, and limited the duties of the Board to the administration of sections 101, 102, and 104 of this title.


Effective Date of 1961 Amendment


Transfer of Functions

“Secretary of Education” substituted for “Secretary of Health, Education, and Welfare” in provision preceding par. (1) pursuant to sections 301(a)(2)(M) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(2)(M) and 3507 of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Secretary of Education.


§ 103. Publications for National Library for the Blind

Two copies of each of the publication printed by the American Printing House for the Blind shall be furnished free of charge to the National Library for the Blind located at 1729 H Street Northwest, Washington, District of Columbia.

(Nov. 4, 1919, ch. 93, §1, 41 Stat. 332.)

§ 104. Annual reports by trustees

The trustees of said American Printing House for the Blind shall annually make to the Secretary of Education a report of the items of their expenditure of the appropriation aforesaid during the year preceding their report, and shall annually furnish him with a voucher from each public or private nonprofit institution for the education of the blind, showing that the amount of books and tangible apparatus due has been received.


Codification

The word “appropriation” substituted in text for “income” to conform to the modification of act Mar. 3, 1879, by act June 25, 1906, as shown in the note set out under section 101 of this title.

Amendments

1979—Pub. L. 95–355 made provision applicable to a private nonprofit institution.

Transfer of Functions

“Secretary of Education” substituted in text for “Secretary of Health, Education, and Welfare” pursuant to sections 301(a)(2)(M) and 507 of Pub. L. 96–88, which are classified to sections 344(a)(2)(M) and 3507 of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Secretary of Education.


The distribution of embossed books manufactured by the American Printing House for the Blind at Louisville, Kentucky, out of the income of the fund provided by sections 101, 102, and 104 of this title, shall include one copy of every book so manufactured to be deposited in the Library of Congress at Washington.

(Mar. 4, 1913, ch. 142, § 1, 37 Stat. 748.)

§ 106. Purchases through the General Services Administration

On and after September 8, 1978, the American Printing House for the Blind is authorized to make purchases through the General Services Administration.


Codification

Section is from the Second Supplemental Appropriations Act, 1978, and contained additional provisions relating to Howard University, Gallaudet University, and the National Technical Institute for the Deaf, which are set out as sections 130a and 4383 of this title, respectively.

CHAPTER 6A—VEN丁DING FACILITIES FOR BLIND IN FEDERAL BUILDINGS

Sec. 107. Operation of vending facilities.

107a. Federal and State responsibilities.

107b. Application for designation as State licensing agency; cooperation with Secretary; furnishing initial stock.

107b–1. Access to information with State licensing agencies; election and responsibilities of Committee of Blind Vendors.

107b–2. Omitted.

107b–3. Audit of nonappropriated fund activities.

107c. Repealed.

107d. Expenditures.


107e. Definitions.

107e–1. Repealed.


§ 107. Operation of vending facilities

(a) Authorization

For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this chapter shall be authorized to operate vending facilities on any Federal property.

(b) Preferences regulations; justification for limitation on operation

In authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency as provided in this chapter; and the Secretary, through the Commissioner, shall, after consultation with the Administrator of General Services and other heads of departments, agencies, or instrumentalities of the United States in control of the maintenance, operation, and protection of Federal property, prescribe regulations designed to assure that—

(1) the priority under this subsection is given to such licensed blind persons (including assignment of vending machine income pursuant to section 107d–3 of this title to achieve and protect such priority), and

(2) wherever feasible, one or more vending facilities are established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States.

Any limitation on the placement or operation of a vending facility based on a finding that such
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placement or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary, who shall determine whether such limitation is justified. A determination made by the Secretary pursuant to this provision shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination, along with supporting documentation, in the Federal Register.


CODIFICATION

The content of Pub. L. 93–516, including provisions thereof which amended and enacted various sections of this chapter, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974. See 1974 Amendment note below.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 333) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this chapter should be deemed to have been amended by Pub. L. 93–651, Nov. 21, 1974, 89 Stat. 2–3, in exactly the same manner as it was amended by Pub. L. 93–516.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516 designated first sentence of existing provisions as subsec. (a), substituted "purposes" for "purpose", "vending facilities" for "vending stands", and struck out "where such vending stands may be properly and satisfactorily operated by blind persons". An identical amendment was made by Pub. L. 93–651. See Codification note above.

Subsec. (b). Pub. L. 93–516 designated second sentence of existing provisions as subsec. (b), in the provisions preceding par. (1) of subsec. (a) as so designated, substituted reference to vending facilities for reference to vending stands, substituted provisions requiring priority be given to blind persons for provisions requiring that preference be given so far as feasible to blind persons, substituted provisions authorizing the Secretary after consultation with the Administrator of General Services, and other heads of departments, agencies, or instrumentalities of the United States in control of maintenance, operation, and protection of Federal property to prescribe regulations for provisions authorizing the head of each department or agency in control of such vending stands to prescribe regulations for vending machines income to achieve and protect such preference for such vending stands as shall be determined to be best for the interests of the United States, and added par. (1) and following par. (2). An identical amendment was made by Pub. L. 93–651. See Codification note above.

1964—Act Aug. 3, 1964, provided that in authorizing the operation of vending stands preference shall be given, so far as feasible, to blind persons.

Effective Date of 1964 Amendment

Short Title of 1974 Amendment
Section 200 of title II of Pub. L. 93–516 provided that: "This title (enacting sections 107b-1 to 107b-3 and Sections 107b-4 to 107b-6 of this title, amending this section, sections 107a, 107b, 107d, 107g of this title, and section 5108 of Title 5, Government Organization and Employees, repealing sections 107c and 107f–1 of this title, and enacting provisions set out as notes under this section and section 702 of Title 29, Labor) may be cited as the 'Randolph-Sheppard Act Amendments of 1974'."

An identical provision is in section 200 of Pub. L. 93–651. See Codification note above.

Short Title of 1954 Amendment
Section 1 of act Aug. 3, 1954, provided that: "This Act (enacting section 107e–1 of this title and amending this section and sections 107a, 107b, 107e, and 107f of this title and sections 31 to 41, 42, 49b, and 49g of Title 29, Labor) may be cited as the 'Vocational Rehabilitation Amendments of 1954'."

Short Title
Act June 20, 1936, ch. 638, § 11, as added by Pub. L. 108–136, div. A, title VIII, §§ 852(c), Nov. 24, 2003, 117 Stat. 1556, provided that: "This Act (enacting this chapter) may be cited as the 'Randolph-Sheppard Act'.''

The act June 20, 1936 is also popularly known as the "Randolph-Sheppard Vending Stand Act'."

Congressional Findings
Section 201 of Pub. L. 93–516 provided that: "The Congress finds—"

(1) after review of the operation of the blind vending stand program authorized under the Randolph-Sheppard Act of June 20, 1936 [this chapter], that the program has not developed, and has not been sustained, in the manner and spirit in which the Congress intended at the time of its enactment, and that, in fact, the growth of the program has been inhibited by a number of external forces;

(2) that the potential exists for doubling the number of blind operators on Federal and other property under the Randolph-Sheppard program within the next five years, provided the obstacles to growth are removed, that legislative and administrative means exist to remove such obstacles, and that Congress should adopt legislation to that end; and

(3) that any the following actions must be taken to insure the continued vitality and expansion of the Randolph-Sheppard program—

(1) Insure that the Rehabilitation Services Administration is the principal agency for carrying out this chapter; and the Commissioner

(a) Functions of Secretary; surveys; designation of State licensing agencies; qualifications for license; evaluation of programs

The Secretary of Education shall—

(1) Insure that the Rehabilitation Services Administration is the principal agency for carrying out this chapter; and the Commissioner
shall, within one hundred and eighty days after enactment of the Randolph-Sheppard Act Amendments of 1974, establish requirements for the uniform application of this chapter by each State agency designated under paragraph (5) of this subsection, including appropriate accounting procedures, policies on the selection and establishment of new vending facilities, distribution of income to blind vendors, and the use and control of set-aside funds under section 107f(3) of this title.

(2) Through the Commissioner, make annual surveys of concession vending opportunities for blind persons on Federal and other property in the United States, particularly with respect to Federal property under the control of the General Services Administration, the Department of Defense, and the United States Postal Service;

(3) Make surveys throughout the United States of industries with a view to obtaining information that will assist blind persons to obtain employment;

(4) Make available to the public, and especially to persons and organizations engaged in work for the blind, information obtained as a result of such surveys;

(5) Designate as provided in section 107b of this title the State agency for the blind in each State, or, in any State in which there is no such agency, some other public agency to issue licenses to blind persons who are citizens of the United States for the operating of vending facilities on Federal and other property in such State for the vending of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the State licensing agency, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State; and

(6) Through the Commission, (A) conduct periodic evaluations of the program authorized by this chapter, including upward mobility and other training required by section 107d-4 of this title, and (B) take such other steps, including the issuance of such rules and regulations, as may be necessary or desirable in carrying out the provisions of this chapter.

(b) Duty of State licensing agencies to prefer blind

The State licensing agency shall, in issuing each such license for the operation of a vending facility, give preference to blind persons who are in need of employment. Each such license shall be issued for an indefinite period but may be terminated by the State licensing agency if it is satisfied that the facility is not being operated in accordance with the rules and regulations prescribed by such licensing agency. Such licenses shall be issued only to applicants who are blind within the meaning of section 107e of this title.

(c) Selection of location and type of facility

The State licensing agency designated by the Secretary is authorized, with the approval of the head of the department or agency in control of the maintenance, operation, and protection of the Federal property on which the facility is to be located but subject to regulations prescribed pursuant to section 107 of this title, to select a location for such facility and the type of facility to be provided.

(d) Buildings occupied by United States departments, agencies, and instrumentalities required to provide sites for facilities; exceptions

(1) After January 1, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, lease, or to otherwise occupy, in whole or in part, any building unless, after consultation with the head of such department, agency, or instrumentality and the State licensing agency, it is determined by the Secretary that (A) such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind person, or (B) if a building is to be constructed, substantially altered, or renovated, or in the case of a building that is already occupied on such date by such department, agency, or instrumentality, is to be substantially altered or renovated for use by such department, agency, or instrumentality, the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind person. Each such department, agency, or instrumentality shall provide notice to the appropriate State licensing agency of its plans for occupation, acquisition, renovation, or relocation of a building adequate to permit such State agency to determine whether such building includes a satisfactory site or sites for a vending facility.

(2) The provisions of paragraph (1) shall not apply (A) when the Secretary and the State licensing agency determine that the number of people using the property is or will be insufficient to support a vending facility, or (B) to any privately owned building, any part of which is leased by any department, agency, or instrumentality of the United States and in which, (i) prior to the execution of such lease, the lessor or any of his tenants had in operation a restaurant or other food facility in a part of the building not included in such lease, and (ii) the operation of such a vending facility by a blind person would be in proximate and substantial direct competition with such restaurant or other food facility except that such department, agency, and instrumentality shall make every effort to lease property in privately owned buildings capable of accommodating a vending facility.

(3) For the purposes of this subsection, the term “satisfactory site” means an area determined by the Secretary to have sufficient space, electrical and plumbing outlets, and such other facilities as the Secretary may by regulation prescribe, for the location and operation of a vending facility by a blind person.

(e) State licensing agency in States having vocational rehabilitation plans

In any State having an approved plan for vocational rehabilitation pursuant to the Vocational Rehabilitation Act or the Rehabilitation Act of

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1 So in original. Probably should be “Commissioner,”.
1973 [29 U.S.C. 701 et seq.], the State licensing agency designated under paragraph (5) of subsection (a) of this section shall be the State agency designated under section 101(a)(2)(A) of such Rehabilitation Act of 1973 [29 U.S.C. 721(a)(2)(A)].


REFERENCES IN TEXT

For the date of the enactment of the Randolph–Sheppard Act Amendments of 1974, referred to in subsection (a)(1), see Codification note below.

The Vocational Rehabilitation Act, referred to in subsection (b), is the Vocational Rehabilitation Act of 1973, referred to in section 701 of this Act, the Rehabilitation Act of 1973, and the Vocational Rehabilitation Act Amendments of 1974, referred to in section 701 of this Act.

The content of Pub. L. 93–516, including provisions of section 203 thereof which amended this section, were originally contained in H.R. 1422, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 93rd Congress for the Constitutional elections in November, 1974. See Amendment note below.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 333) H.R. 1422 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this section should be deemed to have been amended by Pub. L. 93–651, title II, § 203, Nov. 21, 1974, 89 Stat. 2–8, 2–9, in exactly the same manner as it was amended by Pub. L. 93–516, Dec. 7, 1974, 88 Stat. 1617.

AMENDMENTS


1995—Subsec. (a)(8)(A). Pub. L. 104–66 struck out “and annually submit to the appropriate committees of Congress a report based on such evaluations,” after “section 107a–4 of this title.”.


Subsec. (a)(2). Pub. L. 93–316, § 203(a)(1), (2), redesignated former par. (1) as (2) and substituted “Through the Commissioner, make annual surveys of concessions vending opportunities for blind persons on Federal and other property in the United States, particularly with respect to Federal property under the control of the General Services Administration, the Department of Defense, and the United States Postal Service” for “Make surveys of concession stand opportunities for blind persons on Federal and other property in the United States”. Former par. (2) redesignated (3). An identical amendment was made by Pub. L. 93–651. See Codification note above.


Subsec. (a)(5). Pub. L. 93–516, § 203(a)(1), (3), redesignated former par. (4) as (5), substituted “State agency for the blind in each State, or, in any State in which there is no such agency, some other public agency to issue licenses to blind persons who are citizens of the United States for the operating of vending facilities” for “State commission for the blind in each State, or, in any State in which there is no such commission, some other public agency to issue licenses to blind persons who are citizens of the United States and at least twenty-one years of age for the operating of vending stands”, and “foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the State licensing agency, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State” for “articles dispensed automatically or in containers or wrapping in which they are placed before receipt by the vending stand, and such other articles as may be approved for each property by the department or agency in control of the maintenance, operation, and protection thereof and the State licensing agency in accordance with the regulations prescribed pursuant to section 107 of this title”, and struck out proviso that effective four years after the enactment of the Vocational Rehabilitation Act Amendments of 1974, in States having an approved plan for vocational rehabilitation pursuant to the Vocational Rehabilitation Act, the licensing agency to be designated hereunder shall be the State agency designated pursuant to section 35(a)(1) of title 29 as the sole agency with respect to vocational rehabilitation of the blind, and that prior to such time, no license shall be granted except upon certification by a vocational rehabilitation agency that the individual is qualified to operate a vending stand. An identical amendment was made by Pub. L. 93–651. See Codification note above.

Subsec. (a)(6). Pub. L. 93–516, § 203(a)(1), (4), redesignated former par. (5) as (6), substantially reenacted existing provisions in cl. (B), and added cl. (A) and provisions preceding cl. (A). An identical amendment was made by Pub. L. 98–351. See Codification note above.

Subsec. (b). Pub. L. 93–516, § 203(b), substituted “operation of a vending facility” for “operation of a vending stand”, struck out one year residency requirement for giving preference, and in provisions relating to qualifications of applicants, struck out “but are able, in spite of such infirmity, to operate such stands”. An identical amendment was made by Pub. L. 93–651. See Codification note above.

Subsecs. (d), (e). Pub. L. 93–516, § 203(d), added subssecs. (d) and (e). An identical amendment was made by Pub. L. 93–651. See Codification note above.

1954—Act Aug. 3, 1954, added to the list of articles which may be vended, articles dispensed automatically or in containers or wrappings received by the stand and to provide that after four years the agency designated pursuant to section 35(a)(1) of title 29 shall be the sole State agency for vocational rehabilitation of the blind and to conduct vending operations in Federal property under the control of the General Services Administration, and the Department of Defense, and the United States Postal Service.
require, prior to that time, certification by agencies as a condition for issuing licenses.

**Effective Date of 1954 Amendment**


**Transfer of Functions**

"Secretary of Education" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to sections 301(a)(4)(B) and 507 of Pub. L. 96-88 which are classified to sections 3417 and 3411 of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Assistant Secretary for Special Education and Rehabilitative Services, see sections 3417 and 3411 of this title.


"Federal Security Administrator" substituted for "Office of Education under the Federal Security Agency, subject to the direction of the Commissioner of Education and such rules and regulations as he may, with the approval of the Federal Security Administrator, prescribe" in subsec. (a) and for "Office of Education" in subsec. (c) by Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5, Government Organization and Employees. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953.

"Secretary of Education" substituted for "Federal Security Administrator" in subsec. (a)(4)(A) and (B) in the event such individual dies or for any other reason ceases to be a licensee or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on the part of the State licensing agency to pay to such individual (or to his estate) the fair value of his interest therein as later determined in accordance with regulations of the State licensing agency and after opportunity for a fair hearing.

(3) that if any funds are set aside, or caused to be set aside, from the net proceeds of the operation of the vending facilities such funds shall be set aside, or caused to be set aside, only to the extent necessary for and may be used only for the purposes of: (A) maintenance and replacement of equipment; (B) the purchase of new equipment; (C) management services; (D) assuring a fair minimum return to operators of vending facilities; and (E) retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time. If it is determined by a majority vote of blind licensees licensed by such State agency, after such agency provides to each such licensee full information on all matters relevant to such proposed program, that funds under this paragraph shall be set aside for such purposes: Provided, however, That in no event shall the amount of such funds to be set aside from the net proceeds of any vending facility exceed a reasonable amount which shall be determined by the Secretary;

(4) to make such reports in such form and containing such information as the Secretary may from time to time require and to comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) to issue such regulations, consistent with the provisions of this chapter, as may be necessary for the operation of this program;

(6) to provide to any blind licensee dissatisfied with any action arising from the operation or administration of the vending facility program an opportunity for a fair hearing, and to agree to submit the grievances of any blind licensee not otherwise resolved by such hearing to arbitration as provided in section 107d-1 of this title.

**$107b. Application for designation as State licensing agency; cooperation with Secretary; furnishing initial stock**

A State agency for the blind or other State agency desiring to be designated as the licensing agency shall, with the approval of the chief executive of the State, make application to the Secretary and agree—

(1) to cooperate with the Secretary in carrying out the purpose of this chapter;

(2) to provide for each licensed blind person such vending facility equipment, and adequate initial stock of suitable articles to be vended therefrom, as may be necessary: Provided, however, That such equipment and stock may be owned by the licensing agency for use of the blind, or by the blind individual to whom the license is issued: And provided further, That if ownership of such equipment is vested in the blind licensee, (A) the State licensing agency shall retain a first option to repurchase such equipment and (B) in the event such individual
93–651. Therefore, for purposes of codification, this section should be deemed to have been amended by Pub. L. 93–651, title II, §204, Nov. 21, 1974, 89 Stat. 2–10, in exactly the same manner as it was amended by Pub. L. 93–516.

AMENDMENTS


Par. (3). Pub. L. 93–516, §204(a)(2), (b), (c), in provisions preceding subpar. (A), substituted “the net proceeds of the operation of the vending facilities” for “the proceeds of the operation of the vending stands”, in subpar. (D), substituted “vending facilities” for “vending stands”, added subpar. (E), and in proviso following subpar. (E) substituted “the net proceeds of any vending facility” for “the proceeds of any vending stand”. An identical amendment was made by Pub. L. 93–651. See Codification note above.

Par. (6). Pub. L. 93–516, §204(a)(3), substituted “vending facility program” for “vending stand program” for “vending stands”, added subpar. (E), and in proviso following subpar. (E) substituted “the net proceeds of any vending facility” for “the proceeds of any vending stand”. An identical amendment was made by Pub. L. 93–651. See Codification note above.

1954—Act Aug. 3, 1954, amended section generally and, among other changes, added pars. (3) to (6).

Effective Date of 1954 Amendment

Transfer of Functions
For transfer of functions, see note set out under section 107a of this title.

§ 107b-1. Access to information with State licensing agencies; election and responsibilities of Committee of Blind Vendors

In addition to other requirements imposed in this title and in this chapter upon State licensing agencies, such agencies shall—

(1) provide to each blind licensee access to all relevant financial data, including quarterly and annual financial reports, on the operation of the State vending facility program;

(2) conduct the biennial election of a Committee of Blind Vendors who shall be fully representative of all blind licensees in the State program;\(^1\) and

(3) insure that such committee’s responsibilities include (A) participation, with the State agency, in major administrative decisions and policy and program development, (B) receiving grievances of blind licensees and serving as advocates for such licensees, (C) participation, with the State agency, in the development and administration of a transfer and promotion system for blind licensees, (D) participation, with the State agency, in developing training and retraining programs, and (E) sponsorship, with the assistance of the State agency, of meetings and instructional conferences for blind licensees.

\(^1\) So in original. The comma probably should be a semicolon.

References in Text


Codification

Section was enacted as part of the Randolph-Sheppard Act Amendments of 1974, and not as part of the Randolph-Sheppard Vending Stand Act which comprises this chapter.

The content of Pub. L. 93–516, including provisions of section 209 thereof which enacted this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 83rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 353) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub. L. 93–651, title II, §209, Nov. 21, 1974, 89 Stat. 2–15, in exactly the same manner as it was enacted by Pub. L. 93–516.

§ 107b-2. Omitted

Codification

Section, Pub. L. 93–516, title II, §210, Dec. 7, 1974, 88 Stat. 1630, required the Secretary to promulgate national standards for funds set aside, to study and report the feasibility of establishing retirement, pension, and health insurance systems for blind licensees, and to evaluate the income assignment methods and required the State agencies to submit certain reports.

The content of Pub. L. 93–516, including provisions of section 210 thereof which enacted this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 83rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 353) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub. L. 93–651, title II, §210, Nov. 21, 1974, 89 Stat. 2–15, in exactly the same manner as it was enacted by Pub. L. 93–516.

§ 107b-3. Audit of nonappropriated fund activities

The Comptroller General is authorized to conduct regular and periodic audits of all nonappropriated fund activities which receive income from vending machines on Federal property, under such rules and regulations as he may prescribe. In the conduct of such audits he and his duly authorized representatives shall have access to any relevant books, documents, papers, accounts, and records of such activities as he deems necessary.


Section, act June 20, 1936, ch. 638, § 4, 49 Stat. 1560; Reorg. Plan No. 2 of 1946, § 6, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1005; Reorg. Plan No. 1 of 1933, §§ 5, 8, eff. Apr. 11, 1933, 18 F.R. 2053, 67 Stat. 631, related to provisions authorizing the Secretary to cooperate with State boards for rehabilitation of handicapped persons, established by the several States pursuant to sections 31 to 42b of Title 29, Labor, as amended and supplemented, in carrying out the provisions of this chapter. See section 701 et seq. of Title 29.

The content of Pub. L. 93–516, including provisions of section 205 thereof which repealed this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 333) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub. L. 93–651, title II, § 211, Nov. 21, 1974, 89 Stat. 2–15, in exactly the same manner as it was enacted by Pub. L. 93–516.

§ 107d. Expenditures

(a) Personal services, rent, printing, etc.

The Secretary is authorized to make such expenditures out of any money appropriated therefore (including expenditures for personal services and rent at the seat of government and elsewhere, books of reference and periodicals, for printing and binding, and for traveling expenses) as he may deem necessary to carry out the provisions of this chapter.

(b) Preference to blind persons in employment

The Secretary shall, in employing such additional personnel as may be necessary, give preference to blind persons who are capable of discharging the required duties.


The content of Pub. L. 93–516, including provisions of section 206 thereof which amended and renumbered this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974. See 1974 Amendment note below.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 333) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this section should be deemed to have been amended and renumbered by Pub. L. 93–651, title II, §§ 206, 208(d), Nov. 21, 1974, 89 Stat. 2–11, 2–14, in exactly the same manner as it was amended and renumbered by Pub. L. 93–516.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–516, § 208(d), struck out requirement that at least 50 percent of the additional personnel be blind persons. An identical amendment was made by Pub. L. 93–651. See Codification note above.

TRANSFER OF FUNCTIONS

For transfer of functions, see note set out under section 107a of this title.

§ 107d–1. Grievances of blind licensees

(a) Hearing and arbitration

Any blind licensee who is dissatisfied with any action arising from the operation or administration of the vending facility program may submit to a State licensing agency a request for a full evidentiary hearing, which shall be provided by such agency in accordance with section 107b(6) of this title. If such blind licensee is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 107d–2 of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

(b) Noncompliance by Federal departments and agencies; complaints by State licensing agencies; arbitration

Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States that has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of this chapter or any regulations issued thereunder (including a limitation on the placement or operation of a vending facility as described in section 107(b) of this title and the Secretary's determination thereon) such licensing agency may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 107d–2 of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.


CODIFICATION

The content of Pub. L. 93–516, including provisions of section 206 thereof which enacted this section, were
§ 107d-2. Arbitration

(a) Notice and hearing

Upon receipt of a complaint filed under section 107d–1 of this title, the Secretary shall convene an ad hoc arbitration panel as provided in subsection (b) of this section. Such panel shall, in accordance with the provisions of subchapter II of chapter 5 of title 5, give notice, conduct a hearing, and render its decision which shall be subject to appeal and review as a final agency action for purposes of chapter 7 of such title 5.

(b) Composition of panel; designation of chairman; termination of violations

(1) The arbitration panel convened by the Secretary to hear grievances of blind licensees shall be composed of three members appointed as follows:

(A) one individual designated by the State licensing agency;

(B) one individual designated by the blind licensee; and

(C) one individual, not employed by the State licensing agency or, where appropriate, its parent agency, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (1)(A), (B), or (C), the Secretary shall designate such member on behalf of such party.

(2) The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(A) one individual designated by the State licensing agency;

(B) one individual, designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(C) one individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (2)(A), (B), or (C), the Secretary shall designate such member on behalf of such party.

§ 107d-3. Vending machine income

(a) Accrual to blind licensee and alternatively to State agency; ceiling on amount for individual license

In accordance with the provisions of subsection (b) of this section, vending machine income obtained from the operation of vending machines on Federal property shall accrue (1) to the blind licensee operating a vending facility on such property, or (2) in the event there is no blind licensee operating such facility on such property, to the State agency in whose State the Federal property is located, for the uses designated in subsection (c) of this section, except that with respect to income which accrues under clause (1) of this subsection, the Commissioner may prescribe regulations imposing a ceiling on income from such vending machines for an individual blind licensee. In the event such a ceiling is imposed, no blind licensee shall receive less vending machine income under such ceiling than he was receiving on January 1, 1974. No limitation shall be imposed on income from vending machines, combined to create a vending facility, which are maintained, serviced, or operated by a blind licensee. Any amounts received by a blind department, agency, or instrumentality are in violation of this chapter, or any regulation issued thereunder, the head of any such department, agency, or instrumentality shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(c) Publication of decisions in Federal Register

The decisions of a panel convened by the Secretary pursuant to this section shall be matters of public record and shall be published in the Federal Register.

(d) Payment of costs by the Secretary

The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses he shall publish in the Federal Register.

Prior Provisions

A prior section 5 of act June 20, 1936, which was classified to section 107e of this title, was renumbered section 4 by Pub. L. 93–516, §206.

Prior Provisions

A prior section 6 of act June 20, 1936, which was classified to section 107f of this title, was renumbered section 4 by Pub. L. 93–516, §206.

Prior Provisions

A prior section 5 of act June 20, 1936, which was classified to section 107e of this title, was renumbered section 4 by Pub. L. 93–516, §206.
licensee that are in excess of the amount permitted to accure to him under any ceiling imposed by the Commissioner shall be disbursed to the appropriate State agency under clause (2) of this subsection and shall be used by such agency in accordance with subsection (c) of this section.

(b) Direct competition between vending machine and vending facility; proportion of accrued income from such vending machines for individual licensee

(1) After January 1, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a blind vending facility shall accrue as specified in subsection (a) of this section. “Direct competition” as used in this section means the existence of any vending machines or facilities operated on the same premises as a blind vending facility except that vending machines or facilities operated in areas serving employees the majority of whom normally do not have direct access to the blind vending facility shall not be considered in direct competition with the blind vending facility. After January 1, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a blind vending facility shall accrue as specified in subsection (a) of this section, except that with respect to Federal property at which at least 50 per centum of the total hours worked on the premises occurs during periods other than normal working hours, 30 per centum of such income shall so accrue.

(2) The head of each department, agency, and instrumentality of the United States shall insure compliance with this section with respect to buildings, installations, and facilities under his control, and shall be responsible for collection of, and accounting for, such vending machine income.

(c) Disposal of accrued vending machine income by State licensing agency

All vending machine income which accrues to a State licensing agency pursuant to subsection (a) of this section shall be used to establish retirement or pension plans, for health insurance contributions, and for provision of paid sick leave and vacation time for blind licensees in such State, subject to a vote of blind licensees as provided under section 107b(3)(E) of this title. Any vending machine income remaining after application of the first sentence of this subsection shall be used for the purposes specified in sections 107b(3)(A), (B), (C), and (D) of this title, and any assessment charged to blind licensees by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

(d) Income from vending machines in certain locations excepted

Subsections (a) and (b)(1) of this section shall not apply to income from vending machines within retail sales outlets under the control of exchange or ships' stores authorized by title 10, or to income from vending machines operated by the Veterans Canteen Service, or to income from vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

(e) Regulations establishing priority for operation of cafeterias

The Secretary, through the Commissioner, shall prescribe regulations to establish a priority for the operation of cafeterias on Federal property by blind licensees when he determines, on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise.

(f) Existing arrangements more favorable to blind licensees unaffected

This section shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind licensees (1) receive a greater percentage or amount of vending machine income than that specified in subsection (b)(1) of this section, or (2) receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

(g) Regulations for compliance

The Secretary shall take such action and promulgate such regulations as he deems necessary to assure compliance with this section.


§ 107d–4. Training programs for maximum vocational potential for blind

The Commissioner shall insure, through promulgation of appropriate regulations, that uniform and effective training programs, including on-the-job training, are provided for blind individuals, through services under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.]. He shall further insure that State agencies provide pro-
grams for upward mobility (including further education and additional training or retraining for improved work opportunities) for all trainees under this chapter, and that follow-along services are provided to such trainees to assure that their maximum vocational potential is achieved.


REFERENCES IN TEXT

CODIFICATION
The content of Pub. L. 93–516, including provisions of section 206 thereof which enacted this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974. Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 353) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub. L. 93–651, title II, §206, Nov. 21, 1974, 89 Stat. 2–13, in exactly the same manner as it was enacted by Pub. L. 93–516.

PRIOR PROVISIONS
A prior section 8 of act June 20, 1936, which was classified to section 107f of this title, was renumbered section 10 by Pub. L. 93–516, §206.

§107e. Definitions
As used in this chapter—
(1) "blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select;
(2) "Commissioner" means the Commissioner of the Rehabilitation Services Administration;
(3) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States;
(4) "Secretary" means the Secretary of Education;
(5) "State" means a State, territory, possession, Puerto Rico, or the District of Columbia;
(6) "United States" includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia;
(7) "vending facility" means automatic vending machines, cafeterias, snack bars, service counters, and other such appropriate auxiliary equipment as the Secretary may by regulation prescribe as being necessary for the sale of the articles or services described in section 107a(a)(5) of this title and which may be operated by blind licensees; and
(8) "vending machine income" means receipts (other than those of a blind licensee) from vending machine operations on Federal property, after cost of goods sold (including reasonable service and maintenance costs), where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind licensee) by a commercial vending concern which operates, services, and maintains vending machines on Federal property, or with the approval of, a department, agency, or instrumentality of the United States.


CODIFICATION
The content of Pub. L. 93–516, including provisions of sections 206 and 207 thereof which amended and renumbered this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-vetoed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974. See 1974 Amendment note below. Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1976, 412 F.Supp. 353) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub. L. 93–651. Therefore, for purposes of codification, this section should be deemed to have been amended and renumbered by Pub. L. 93–651, title II, §§206, 207, Dec. 7, 1974, 88 Stat. 1626, 1628; Pub. L. 93–651, title II, §§206, 207, Nov. 21, 1974, 89 Stat. 2–11, 2–13; Pub. L. 96–98, title III, §301(a)(4)(B), title V, §507, Oct. 17, 1979, 93 Stat. 678, 692.)

AMENDMENTS
1974—Pub. L. 93–516, §207, replaced letter designations with number designations, inserted definitions of "Commissioner", "vending facility", and "vending machine income", and in definition of "blind person" substituted provisions that such person meant a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees, and that in determining whether a person is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select, for provisions that such person meant a person having not more than 10 per centum visual acuity in the better eye with correction and that such blindness shall be certified by a duly licensed ophthalmologist, in definition
of “United States” inserted reference to Puerto Rico, in definition of “State” inserted reference to Puerto Rico, and in definition of “Federal property” inserted reference to Department of Defense and United States Postal Service. An identical amendment was made by Pub. L. 93–651. See Codification note above.

1954—Subsecs. (d), (e). Act Aug. 3, 1954, added subsecs. (d) and (e).

Effective Date of 1954 Amendment

Transfer of Functions
“Secretary of Education” substituted for “Secretary of Health, Education, and Welfare” in par. (4) pursuant to sections 341(a)(4)(B) and 3507 of this title which transferred all functions of Secretary of Health, Education, and Welfare under this chapter to Secretary of Education.

For transfer of functions and offices of Secretary and Department of Health, Education, and Welfare, including Rehabilitation Services Administration and Commissioner thereof, to Secretary and Department of Education, and for delegation of certain functions of Secretary of Education under this chapter to Assistant Secretary for Special Education and Rehabilitative Services, see sections 3417 and 3441 of this title.

CHAPTER 7—INSTRUCTION AS TO NATURE AND EFFECT OF ALCOHOLIC DRINKS AND NARCOTICS

§111. Study in certain schools of effect of alcoholic drinks and narcotics

The nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools, and in the military and naval schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of textbooks in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States.

(May 20, 1886, ch. 362, §1, 24 Stat. 69.)

§112. Enforcement of section 111

It shall be the duty of the proper officers in control of any school described in section 111 of this title to enforce the provisions of this chapter; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this chapter, or shall neglect or fail to make proper provisions for the instruction required and in the manner specified by section 111 of this title, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases.

(May 20, 1886, ch. 362, §2, 24 Stat. 69.)

§113. Teachers’ certificates dependent on passing examination on effect of alcoholic drinks and narcotics

No certificate shall be granted to any person to teach in the public schools of the District of Columbia or Territories who has not passed a satisfactory examination in physiology and hygiene, with special reference to the nature and the effects of alcoholic drinks and other narcotics upon the human system.

(May 20, 1886, ch. 362, §3, 24 Stat. 69.)

CHAPTER 8—HOVERD UNIVERSITY

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 121. Annual report of president and directors.
§ 121. Annual report of president and directors

The president and directors of Howard University shall report to the Secretary of Education the condition of the institution on the 1st of July of each year, embracing therein the number of pupils received and discharged or leaving the same for any cause during the preceding year, and the number remaining; also, the branches of knowledge and industry taught and the progress made therein together with a statement showing the receipts of the institution and from what sources, and its disbursements, and for what objects.


Transfer of Functions

“Secretary of Education” substituted in text for “Secretary of Health, Education, and Welfare” pursuant to sections 301(a)(2)(M) and 507 of Pub. L. 96–88, which are classified to sections 344(a)(2)(M) and 3507 of this title and which transferred all functions of Secretary of Health, Education, and Welfare under this subchapter to Secretary of Education.


Functions of Department of the Interior relating to administration of Howard University transferred to Federal Security Agency to be administered under direction and supervision of Federal Security Administrator by Reorg. Plan No. IV of 1946, set out in the Appendix to Title 5.

Prior Provisions

Similar prior provisions were contained in act July 1, 1898, ch. 546, 63 Stat. 624.

§ 123. Annual appropriations; inspection by Secretary of Education

Annual appropriations are authorized to aid in the construction, development, improvement, endowment, and maintenance of the university, no part of which shall be used for religious instruction. The university shall at all times be open to inspection by the Secretary of Education and shall be inspected by the said Secretary at least once each year.

§ 125. Employees of hospital

(a) Opportunity to transfer; guarantee of rights and benefits

The agreement for transfer of Freedmen's Hospital referred to in section 124 of this title shall include provisions to assure that—

(1) all individuals who are career or career-continuous employees of the hospital on the day preceding the effective date of the transfer of the hospital, except those in positions with respect to which they have been notified not less than six months prior to the effective date of such transfer that their positions are to be abolished, will be offered an opportunity to transfer to Howard University;

(2) Howard University—

(A) will not reduce the salary levels for such employees who transfer;

(B) will deposit currently (1) in the civil service retirement and disability fund referred to in section 8348 of title 5, the employee deductions and agency contributions required by subchapter III of chapter 83 of title 5, and (ii) in the fund referred to in section 8714 of title 5, the employee deductions and agency contributions required by chapter 87 of title 5.

(C) will provide other benefits for such employees as nearly equivalent as may be prac-
ticable to those generally applicable, on the effective date of the transfer of the hospital, to civilian employees of the United States, and

(D) in determining the seniority rights of its employees, Howard University will credit service with Freedmen’s Hospital performed by such employees who transfer, on the same basis as it would credit such service had it been performed for such University;

(3) the transfer will become effective not later than the beginning of the second month which begins after construction of the new hospital facilities authorized by section 126 of this title is commenced.

(b) Placement of employees in comparable Federal positions

The Department of Health, Education, and Welfare shall make every reasonable effort to place in other comparable Federal positions all individuals who are career or career-conditional employees of Freedmen’s Hospital on September 21, 1961 and who do not transfer to Howard University.

(c) Services performed in the employ of United States

Each individual who is an employee of Freedmen’s Hospital on September 21, 1961 and who transfers to Howard University shall, so long as he is continuously in the employ of Howard University, be regarded as continuing in the employ of the United States for the purposes of subchapter III of chapter 83 of title 5, chapter 87 of title 5, and subchapter III of chapter 83 of title 5 of the Civil Service Retirement Act of 1930, as so amended by act May 29, 1930, known as the Civil Service Retirement and Disability Fund Act.

In subsecs. (a)(2)(B) and (c), “subchapter III of chapter 83 of title 5” substituted for “the fund referred to in section 8348 of title 5” for purposes of section 3121(b) of title 26 and section 410 of title 42, service performed by such individual during the period of his employ- ment at Howard University shall be regarded as though performed in the employ of the United States.


Codification

In subsec. (a)(2)(B), “civil service retirement and disability fund referred to in section 8348 of title 5” substituted for “civil service retirement and disability fund required by the Act of May 22, 1920” on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Previously, act May 22, 1920, ch. 88, 41 Stat. 414, was superseded by act May 29, 1930, known as the Civil Service Retirement Act of 1930, which was generally amended by act July 31, 1956, ch. 801, § 401, 70 Stat. 743.

In subsecs. (a)(2)(B) and (c), “subchapter III of chapter 83 of title 5” substituted for “the Civil Service Retirement Act” on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.


Amendments


§ 126. Authorization of appropriations for construction of hospital facilities

For the purpose specified in section 124 of this title, there are authorized to be appropriated such sums as may be necessary for the construction of a building or buildings and facilities, including equipment, and for remodeling of existing buildings (including repair and replacement of equipment) which are to be combined with the building or buildings and facilities so constructed, to provide a hospital with a capacity of not to exceed five hundred beds.


§ 127. Transfer of facilities by University or cessation of operation as teaching hospital facilities; recovery of value by United States

If, within twenty years after the completion of construction (as determined by the Secretary of Health, Education, and Welfare) of the new hospital facilities authorized by section 126 of this title, any of such facilities, or of the facilities transferred pursuant to section 124 of this title and combined with such new facilities, are transferred by Howard University to any other person or entity (except a transfer to the United States) or cease to be operated by the university as teaching hospital facilities, the United States shall be entitled to recover from the transferee or the university, in the case of a transfer, or from the university, if there is no transfer, an amount equal to the then value of such facilities (or so much thereof as is involved in the transfer, as the case may be), such value to be determined by agreement of the parties or by action brought in the United States District Court for the District of Columbia.


Transfer of Functions

Functions of Secretary of Health, Education, and Welfare under laws relating to relationship between Howard University and Department of Health, Education, and Welfare transferred to Secretary of Education by section 3441(a)(2)(M) of this title.

§ 128. Authorization of appropriations for partial support of operation of facilities; separate account

In order to facilitate operation of teaching hospital facilities at Howard University, there are authorized to be appropriated annually to the university such sums as the Congress may determine, for the partial support of the operation of such facilities giving consideration to the cost imposed by the provisions of section 125 of this title and the portion of the agreement under sections 124 to 129 of this title relating to such provisions. The cost of operating such facilities, the appropriations pursuant to this section, and any other income derived from such operation or available for such purpose shall be identified and accounted for separately in the accounts of the university.
§ 129. Financial policy; report to Congress

It is declared to be the policy of the Congress that, to the extent consistent with good medical teaching practice, the Howard University Hospital facilities shall become progressively more self-supporting. In order to further this policy, the President shall submit to the Congress a report, based on a study of the financing of the operation of the hospital, containing his recommendations on the rate at which, consistent with the above policy, Federal financial participation in such cost of operation shall be reduced. Such report shall be submitted not later than the end of the second calendar year following the year in which the construction of the new hospital facilities, authorized by section 126 of this title, is completed.

(Pub. L. 87–262, § 6, Sept. 21, 1961, 75 Stat. 544.)

§ 130. Purchases through the General Services Administration

On and after September 8, 1978, Howard University is authorized to make purchases through the General Services Administration.


CODIFICATION

Section is from the Second Supplemental Appropriations Act, 1978, and contained additional provisions relating to purchases by the American Printing House for the Blind, Gallaudet University, and the National Technical Institute for the Deaf, which are set out in sections 106 and 4362 of this title.

§ 130a. Financial and program audit by Secretary

Funds appropriated in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts to Howard University shall be subject to financial and program audit by the Secretary of Education and the Secretary may withhold all or any portion of these appropriations if he determines that an institution has not cooperated fully in the conduct of such audits.


CODIFICATION

Section is from the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1993, and contained additional provisions relating to the American Printing House for the Blind, Gallaudet University, and the National Technical Institute for the Deaf, which are set out as sections 106a and 4363 of this title, respectively.

SUBCHAPTER II—ENDOWMENT

§ 130aa. Definitions

For purposes of this subchapter—

(1) the term "endowment fund" means a fund, or a tax exempt foundation, established and maintained by Howard University for the purpose of generating income for its support, but which shall not include real estate;

(2) the term "endowment fund corpus" means an amount equal to the grants awarded under this subchapter plus an amount equal to such grants provided by Howard University;

(3) the term "endowment fund income" means an amount equal to the total value of the endowment fund established under this subchapter minus the endowment fund corpus;

(4) the term "Secretary" means the Secretary of Education; and

(5) the term "University" means the Howard University established by the Act of March 2, 1867.


REFERENCES IN TEXT

Act of March 2, 1867, referred to in par. (5), is act Mar. 2, 1867, ch. 162, 14 Stat. 438, as amended. Section 8 of this Act is classified to section 123 of this title. For complete classification of this Act to the Code, see Tables.

EFFECTIVE DATE

Section 209 of title II of Pub. L. 98–480 provided that: "This title [see Short Title note below] shall take effect on October 1, 1984."

SHORT TITLE

Section 201 of title II of Pub. L. 98–480 provided that: "This title [enacting this subchapter, amending section 123 of this title, and enacting provisions set out as a note above] may be cited as the 'Howard University Endowment Act'.''

§ 130aa–1. Program authorized

(a) The Secretary is authorized to establish an endowment program, in accordance with the provisions of this subchapter, for the purpose of establishing or increasing endowment funds, providing additional incentives to promote fundraising activities, and encouraging independence and self-sufficiency at the University.

(b)(1) From the funds appropriated pursuant to this subchapter for endowments in any fiscal year for the University, the Secretary is authorized to make grants to Howard University. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this subchapter such provisions deemed necessary by the Secretary to assure that the purposes of this subchapter will be achieved.

(2) The University may receive a grant under this section only if it has deposited in the endowment fund established under this subchapter an amount equal to such grant and has adequately assured the Secretary that it will administer the endowment fund in accordance with the requirements of this subchapter. The source of funds for this institutional match shall not include Federal funds or funds derived from an existing endowment fund.

(3) The period of any grant under this section shall not exceed twenty years, and during such period the University shall not withdraw or expend any of its endowment fund corpus. Upon the expiration of any grant period, the University may use the endowment fund corpus plus any endowment fund income for any educational purpose.

§ 130aa–2. Investments

(a) The University shall invest its endowment fund corpus and endowment fund income in those low-risk instruments and securities in which a regulated insurance company may invest under the law of the District of Columbia, such as federally insured bank savings account or comparable interest bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.

(b) The University, in investing its endowment fund corpus and income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of his own business affairs.


§ 130aa–3. Withdrawals and expenditures

(a) Defrayment of expenses; restrictions on use of income or corpus; limits on withdrawals or expenditures

The University may withdraw and expend its endowment fund income to defray any expenses necessary to its operation, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor entered into after January 1, 1981. Except as provided in subsection (b) of this section, the University shall not, in the aggregate, withdraw or expend more than 50 per centum of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) Authority of Secretary; withdrawal or expenditure beyond limits; circumstances demonstrating necessity

The Secretary is authorized to permit the University to withdraw or expend more than 50 per centum of its total aggregate endowment fund income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(A) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(B) a life-threatening situation occasioned by a natural disaster or arson; or

(C) another unusual occurrence or exigent circumstance.

(c) Repayment of Federal share of amounts improperly expended or withdrawn; endowment fund corpus; income

(1) If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to 50 per centum of the amount improperly expended (representing the Federal share thereof) plus any income earned thereon.


§ 130aa–4. Enforcement

(a) After notice and an opportunity for a hearing, the Secretary is authorized to terminate and recover any grant awarded under this subchapter if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 130aa–3 of this title;

(2) fails to invest its endowment fund corpus or income in accordance with the investment standards set forth in section 130aa–2 of this title; or

(3) fails to account properly to the Secretary concerning investments and expenditures of its endowment fund corpus or income.

(b) If the Secretary terminates a grant under subsection (a) of this section, the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this subchapter plus any income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this subchapter and to protect the financial interest of the United States.


CODIFICATION

This subchapter, the first time it appears in subsec. (b), was in the original “this Act” which was translated as reading “this title”, meaning title II of Pub. L. 98–480, Oct. 17, 1984, 98 Stat. 2236, as the probable intent of Congress.

§ 130aa–5. Authorization of appropriations

There is authorized to be appropriated $2,000,000 for the purposes authorized under section 130aa–1 of this title. Funds appropriated under this section shall remain available until expended.


CHAPTER 9—NATIONAL TRAINING SCHOOL FOR BOYS

§§ 131 to 152. Omitted

CODIFICATION

Sections provided for the National Training School for Boys which was governed and managed by a Board of Trustees until July 1, 1939, at which time 1939 Reorg. Plan No. 2 (4 F.R. 2731, 38 Stat. 1431) abolished the Board of Trustees and transferred the School and its functions (including the functions of the Board of Trustees) to the Department of Justice, to be administered by the Director of the Bureau of Prisons, under the direction and supervision of the Attorney General. The School was so operated until May 15, 1968, when it was closed pursuant to order of the Attorney General.

1 See Codification note below.
CHAPTER 10—NATIONAL TRAINING SCHOOL FOR GIRLS

§§161 to 174. Omitted
§ 191. Establishment; site; acquisition of land

The Secretary of Agriculture is authorized and directed to establish and maintain a national arboretum for purposes of research and education concerning tree and plant life. For the purposes of this chapter, (1) the President is authorized to transfer to the jurisdiction of the Secretary of Agriculture by Executive order any land which now belongs to the United States within or adjacent to the District of Columbia located along the Anacostia River north of Benning Bridge, and (2) the Secretary of Agriculture is authorized in his discretion to acquire, within the limits of the appropriation authorized by this chapter, by private purchase, condemnation proceedings, or gift, land so located or other land within or adjacent to the District of Columbia: Provided, That the purchase price of any part of said land shall not exceed the full value assessment of such property last made before purchase thereof plus 25 per centum of such assessed value.

(Mar. 4, 1927, ch. 505, §1, 44 Stat. 1422.)

TRANSFER OF FUNCTIONS

Functions of all officers, agencies and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Authority of President under this section to transfer to jurisdiction of Secretary of Agriculture for purposes of this chapter any land belonging to United States within or adjacent to District of Columbia located along Anacostia River north of Benning Bridge delegated to Administrator of General Services, see section 1(18) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

FACILITIES TO HOUSE BONSAI COLLECTIONS


Similar provisions were contained in the following prior appropriations acts:


§ 192. Omitted

CODIFICATION

Section, act Mar. 4, 1927, ch. 505, §2, 44 Stat. 1422, authorized appropriation of $300,000 to be expended for acquisition of land specified in section 191 of this title.

§ 193. Administration of arboretum

In order to stimulate research and discovery the national arboretum established by the Secretary of Agriculture in accordance with the provisions of this chapter shall be under competent scientific direction. The arboretum shall be administered by the Secretary of Agriculture separately from the agricultural, horticultural, and forestry stations of the Department of Agriculture, but it shall be so correlated with them as to bring about the most effective utilization of its facilities and discoveries.

(Mar. 4, 1927, ch. 505, §3, 44 Stat. 1422.)

§ 194. Advisory council

The Secretary of Agriculture is authorized to create an advisory council in relation to the plan and development of the national arboretum to be established under this chapter, to include representatives of national organizations interested in the work of the arboretum.

(Mar. 4, 1927, ch. 505, §4, 44 Stat. 1422.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 195. Gifts, bequests, or devises for benefit of National Arboretum; separate fund in the Treasury

Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to solicit, accept, receive, hold, utilize, and administer on behalf of the United States gifts, bequests, or devises of real and personal property made for the benefit of the National Arboretum or for the carrying out of any of its functions. For the purposes of the Federal income, estate, and gift tax laws, property accepted under the authority of this section shall be considered as a gift, bequest, or devise to the United States. Any gift of money accepted pursuant to the authority granted in this section, or the net proceeds from the liquidation of any property so accepted, or the proceeds of any insurance on any gift property not used for its restoration shall be deposited in the Treasury of the United States for credit to a separate fund and shall be disbursed upon order of the Secretary of Agriculture.


AMENDMENTS

§ 196. Concessions, fees, and voluntary services

(a) In general

Notwithstanding chapters 1 to 11 and section 1302 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, the Secretary of Agriculture, in furtherance of the mission of the National Arboretum, may—

(1) negotiate agreements granting concessions at the National Arboretum to nonprofit scientific or educational organizations the interests of which are complementary to the mission of the National Arboretum, except that the net proceeds of the organizations from the concessions shall be used exclusively for research and educational work for the benefit of the National Arboretum;

(2) provide by concession, on such terms as the Secretary of Agriculture considers appropriate and necessary, for commercial services for food, drink, and nursery sales, if an agreement for a permanent concession under this paragraph is negotiated with a qualified person submitting a proposal after due consideration of all proposals received after the Secretary of Agriculture provides reasonable public notice of the intent of the Secretary to enter into such an agreement;

(3) dispose of excess property, including excess plants and fish, in a manner designed to maximize revenue from any sale of the property, including by way of public auction, except that this paragraph shall not apply to the free dissemination of new varieties of seeds and germ plasm in accordance with section 2201 of title 7;

(4) charge such fees as the Secretary of Agriculture considers reasonable for temporary use by individuals or groups of National Arboretum facilities and grounds for any purpose consistent with the mission of the National Arboretum;

(5) charge such fees as the Secretary of Agriculture considers reasonable for the use of the National Arboretum for commercial photography or cinematography;

(6) publish, in print and electronically and without regard to laws relating to printing by the Federal Government, informational brochures, books, and other publications concerning the National Arboretum or the collections of the Arboretum; and

(7) license use of the National Arboretum name and logo for public service or commercial uses.

(b) Use of funds

Any funds received or collected by the Secretary of Agriculture as a result of activities described in subsection (a) of this section shall be retained in a special fund in the Treasury. Amounts in the special fund shall be available to the Secretary of Agriculture, without further appropriation, for the use and benefit of the National Arboretum as the Secretary of Agriculture considers appropriate.

(c) Acceptance of voluntary services

The Secretary of Agriculture may accept the voluntary services of organizations described in subsection (a)(1) of this section, and the voluntary services of individuals (including employees of the National Arboretum), for the benefit of the National Arboretum.


Codification


Amendments


§ 197. Construction of Chinese Garden at the National Arboretum

A Chinese Garden may be constructed at the National Arboretum established under this chapter with—

(1) funds accepted under section 195 of this title;

(2) authorities provided to the Secretary of Agriculture under section 196 of this title; and

(3) appropriations provided for this purpose.


Codification


Effective Date


CHAPTER 12—FOREIGN AND EXCHANGE STUDENTS

Sec.

221. Instructions of citizens from American republics; Government maintained professional educational institutions.

221a. Instructions of citizens from American republics; United States Military Academy; restrictions; saving provision.

222. Repealed.

225. Fund for education of Iranian students in United States.

226. Cooperative public and private sector program for providing scholarships to students from the Caribbean and Central America.

§ 221. Instructions of citizens from American republics; Government maintained professional educational institutions

The President is authorized, in his discretion and under such regulations as he may prescribe
by Executive order, to permit citizens of the American republics to receive instruction, with or without charge therefor, at professional educational institutions and schools maintained and administered by the Government of the United States or by departments or agencies thereof: Provided, That such citizens shall agree to comply with all regulations for the government of the institutions and schools at which they may be under instruction and to exert every effort to accomplish successfully the courses of instruction prescribed: And provided further, That the regulations prescribed by the President under the authority of this section shall contain provisions limiting the admission of citizens of the American republics to primary schools maintained and administered by the Government of the United States so that there will under no circumstances be any curtailment of the admission of citizens of the United States eligible to receive instruction therein.

(June 24, 1938, ch. 644, 52 Stat. 1034; July 14, 1941, ch. 292, 55 Stat. 588; June 26, 1946, ch. 493, § 1, 60 Stat. 311.)

Codification

Section originally provided that "not more than one citizen of any American republic shall receive instruction at the same time in the United States Military Academy and not more than one in the United States Naval Academy." This phrase has been omitted in view of acts July 14, 1941, and June 26, 1946. See sections 4344, 6857, and 9344 of Title 10, Armed Forces.

§ 221a. Instructions of citizens from American republics; United States Military Academy; restrictions; saving provision

After June 26, 1946, no person shall have authority to permit citizens of the American Republics to receive instruction at the United States Military Academy under the provisions of section 221 of this title. Any person who is receiving instruction at the United States Military Academy on June 26, 1946, under authority of section 221 of this title, may, in the discretion of the President, be permitted to continue to receive such instruction and, if so permitted, shall thereafter be deemed to be receiving instruction under the provisions of sections 4344 and 9344 of title 10.

(June 26, 1946, ch. 493, § 2, 60 Stat. 312.)

Codification

Words "sections 4344 and 9344 of title 10" substituted in text for "section 1 of this Act", meaning section 1 of act June 27, 1946, ch. 493, 60 Stat. 311, on authority of act Aug. 10, 1956, § 49(b), ch. 1041, 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.


Sections, act Aug. 24, 1949, ch. 505, §§ 1–3, 63 Stat. 630, authorized the creation of a special deposit account for sums due or paid by the Republic of Finland to the United States as interest on or in retirement of the principal of the debt incurred under the act of Feb. 25, 1919, as refunded by the agreement dated May 1, 1923, pursuant to authority contained in sections 805 to 809 of former Title 31, Money and Finance, or of any other indebtedness incurred by Finland and owing to the United States as a result of World War I, provided for the use of such fund for exchange of students, professors, etc., for the interchange of books and technical equipment, and for disbursements from the account. See section 251 et seq. of Title 22, Foreign Relations and Intercourse, particularly section 2455.

Continuation of Certain Executive Orders, Agreements, Determinations, Regulations, Contracts, Appointments, and Other Actions

Continuation in full force and effect, and applicability to the appropriate provisions of the Mutual Educational and Cultural Exchange Act of 1961, set out in section 2451 et seq. of Title 22, Foreign Relations and Intercourse, until modified or superseded by appropriate authority, of all Executive orders, agreements, determinations, regulations, contracts, appointments, and other actions issued, concluded, or taken under authority of these sections, see section 111(b) of Pub. L. 87–256, set out as a note under section 2451 of Title 22.

§ 225. Fund for education of Iranian students in United States

There is authorized to be appropriated, out of any funds in the Treasury of the United States not otherwise appropriated, the sum of $110,000, which sum shall be expended by the Secretary of State in his discretion for the education of Iranian students in the United States, in accordance with the obligation of the United States arising out of the agreement contained in an exchange of notes between this Government and the Iranian Government of July 25, July 29, November 9, and November 15, 1924, which agreement settled a claim asserted by the United States.

The said sum of $110,000 shall be deemed a trust fund received by the Secretary of State under the provisions of section 2668a of title 22, and shall be expended as therein provided. The said sum shall be deemed to constitute the fund of $110,000 received by the United States from the Iranian Government in four installments between December 24, 1924, and March 29, 1925, pursuant to the afore-mentioned notes, and deposited in the Treasury of the United States on June 24, 1925, which fund shall be deemed, insofar as the same may be necessary, to have been heretofore appropriated as a trust fund under section 2668a of title 22 and sections 1321 and 1322(a) of title 31. The Secretary of the Treasury shall make payments out of the said fund to or for the account of such persons, in such amounts, at such times, and on such terms, as the Secretary of State or his designee shall certify and the certificates of the Secretary of State or his designee issued hereunder shall be conclusive as to the propriety of payments so made. The expenditure of the said sum by the United States shall constitute full performance of the obligation of the United States to the Iranian Government or any other person arising out of the said notes and shall discharge the Secretary of State and the Secretary of the Treasury with respect to any accountability therefor.

(Sept. 29, 1950, ch. 1110, §§ 1, 2, 64 Stat. 1081.)

Codification

Words "section 2668a of title 22" substituted in text for "the Act of February 27, 1896, (29 Stat. 32, title 31, U.S.C. sec. 547)" and "the said Act of February 27, 1896" to reflect the transfer of section 547 of Title 31, Money and Finance, to section 2668a of Title 22, Foreign Relations and Intercourse.
It is the purpose of this section to encourage the establishment of partnerships between State governments, universities, community colleges, and businesses to support scholarships for talented socially and economically disadvantaged students from eligible countries in the Caribbean and Central America to study in the United States in order to—

(1) improve the diversity and quality of educational opportunities for such students;
(2) assist the development efforts of eligible countries by providing training and educational assistance to persons who can help address the social and economic needs of these countries;
(3) expand opportunities for cross-cultural studies and exchanges and improve the exchange of understanding and principles of democracy;
(4) promote positive and productive relationships between the United States and its neighbor countries in the Caribbean and Central American regions;
(5) give added visibility and focus to the “scholarship diplomacy” efforts of the United States Government by leveraging the monies available for this purpose through the development of partnerships among Federal, State, and local governments and the business and academic communities; and
(6) promote community involvement with the scholarship program as a tool for broadening and strengthening the “American experience” for foreign students.

(b) Establishment of scholarship program

The Administrator of the Agency for International Development shall establish and administer a program of scholarship assistance, in cooperation with State governments, universities, community colleges, and businesses, to provide scholarships to enable socially and economically disadvantaged students from eligible countries in the Caribbean and Central America to study in the United States.

(c) Grants to States

In carrying out this section, the Administrator may make grants to States to provide scholarship assistance for undergraduate degree programs and for training programs of one year or longer in study areas related to the critical development needs of the students’ respective countries.

(d) Agreement with States

The Administrator and each participating State shall agree on a program regarding the educational opportunities available within the State, the selection and assignment of scholarship recipients, and related issues. To the maximum extent practicable, each State shall be given flexibility in designing its program.

(e) Federal share

The Federal share for each year for which a State receives payments under this section shall be not less than 50 percent.

(f) Non-Federal share

The non-Federal share of payments under this section may be in cash, including the waiver of tuition or the offering of in-State tuition or housing waivers or subsidies, or in-kind fairly evaluated, including the provision of books or supplies.

(g) Forgiveness of scholarship assistance

The obligation of any recipient to reimburse any entity for any or all scholarship assistance provided under this section shall be forgiven upon the recipient’s prompt return to his or her country of domicile for a period which is at least one year longer than the period spent studying in the United States with scholarship assistance.

(h) Private sector participation

To the maximum extent practicable, each participating State shall enlist the assistance of the private sector to enable the State to meet the non-Federal share of payments under this section. Wherever appropriate, each participating State shall encourage the private sector to offer internships or other opportunities consistent with the purposes of this section to students receiving scholarships under this section.

(i) Funding

Any funds used in carrying out this section shall be derived from funds allocated for Latin American and Caribbean regional programs under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 and following; relating to the economic support fund).

(j) Definitions

As used in this section—

(1) The term “eligible country” means any country—

(A) which is receiving assistance under chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 and following; relating to development assistance) or chapter 4 of part II of that Act (22 U.S.C. 2346 and following; relating to the economic support fund); and

(B) which is designated by the President as a beneficiary country pursuant to the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.].

(2) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (1) and (j)(1)(A), is Pub. L. 87-195, Sept. 4, 1961, 75

**Effective Date of Repeal**

### Subchapter II—Assistance to Local Educational Agencies for the Education of Children of Low-Income Families


Section 241a, act Sept. 30, 1950, ch. 1124, title II, §101, formerly §201, as added Apr. 11, 1965, Pub. L. 89–10, title I, §2, 79 Stat. 27, renumbered and amended Jan. 2, 1968, Pub. L. 90–247, title I, §§101(a)(10), Aug. 21, 1974, 88 Stat. 501, which authorized appropriations for assistance to local educational agencies whose total basic grants allotment was 90 percent or less than the allotment during the preceding year, was transferred to section 2713 of this title and subsequently omitted from the Code.

**$241b–1. Transferred**

**Amendments**


**Effective Date of Repeal**

### Title 20—Education


Section 241b, act Sept. 30, 1950, ch. 1124, title II, §101, formerly §201, as added Apr. 11, 1965, Pub. L. 89–10, title I, §2, 79 Stat. 27, renumbered and amended Jan. 2, 1968, Pub. L. 90–247, title I, §§101(a)(10), Aug. 21, 1974, 88 Stat. 501, which authorized appropriations for assistance to local educational agencies whose total basic grants allotment was 90 percent or less than the allotment during the preceding year, was transferred to section 2713 of this title and subsequently omitted from the Code.


**Effective Date of Repeal**

Repeal effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95–561, set out as an Effective Date of 1978 Amendment note under section 1221e–3 of this title.

**PART D—GENERAL PROVISIONS**


Section 241h–1, act Sept. 30, 1950, ch. 1124, title II, § 121, formerly § 221, as added and renumbered Jan. 2, 1968, Pub. L. 90–247, §§ 108(a)(5), 110, 81 Stat. 786, 787, and amended Apr. 13, 1970, Pub. L. 91–230, title I, § 112(b)(4), 84 Stat. 121, related to special incentive grants and provided in: subsec. (a) for amount and distribution of such grants; subsec. (b) for application for grant and disapproval only after notice and opportunity for hearing; subsec. (c) definitions of “State effort index” and “national effort index”; and subsec. (d) authorization of appropriations of $50,000,000 for fiscal year ending June 30, 1969, and for each of the succeeding fiscal years ending prior to July 1, 1973.


Section 207 of Pub. L. 85–620 provided that: "The amendments made by this title (amending sections 237, 238, 239, 243, 244 of this title and repealing this section) shall be effective for the period beginning July 1, 1958."

§ 246. Omitted

Section 64 Stat. 969; Aug. 2, 1954, ch. 649, title VIII, § 808(a), 68 Stat. 971, prescribed procedure in cases of temporary Federal activities, and authorized donations of temporary school facilities.


Chapter 14—School Construction in Areas Affected by Federal Activities

Section 251 to 255, 271 to 280, 291 to 302, 311. Omitted

Modification


Section 252, as added Aug. 8, 1953, ch. 400, § 1, 67 Stat. 528, related to applications for assistance, construction projects, and reimbursement.

Section 253 to 254, act. Sept. 23, 1950, ch. 995, title I, §§ 103 to 104, 64 Stat. 967, 968, authorized appropriations, provided for State applications for funds, allotments and payments to States, and to withholding of certification.

Section 255, acts Sept. 23, 1950, ch. 995, title I, § 105, 64 Stat. 969; Aug. 8, 1953, ch. 400, § 2(m), 67 Stat. 528, related to delegation of functions and payment of expenses.

Section 271, as added Aug. 8, 1953, ch. 400, § 1, 67 Stat. 522, related to children for whom local agencies cannot provide education.

Section 272, as added Aug. 8, 1953, ch. 400, § 2(a), 67 Stat. 528, related to applications for assistance, construction projects, and reimbursement.


Section 274, as added Aug. 8, 1953, ch. 400, § 2(c), 67 Stat. 528, related to reappropriations, and to additional grants for non-Federal share.


Section 293, as added Aug. 8, 1953, ch. 400, § 1, 67 Stat. 522; as amended Aug. 3, 1956, ch. 915, title I, § 107, 70 Stat. 969, related to filing and approval of application for assistance.

Section 297, as added Aug. 8, 1953, ch. 400, § 1, 67 Stat. 522, related to payments to local agencies.

Section 298, as added Aug. 8, 1953, ch. 400, § 1, 67 Stat. 522; as amended Aug. 12, 1955, ch. 868, § 7, 69 Stat. 715, related to availability of appropriations, special fund for additional grants, and to payments in cases affected by changes in regulations.


Chapter 15—Studies and Research on Problems in Education

§§ 331 to 332b. Omitted

Modification

Sections constituted the Cooperative Research Act and terminated on and after July 1, 1975, under provisions of section 402(c)(1) of P.L. 93–380. See provi-
sions of Special Projects Act, section 1851 et seq. of this title.


Section 332b, as added Apr. 11, 1963, Pub. L. 88–269, title IV, § 403, 79 Stat. 46; Oct. 17, 1984, Pub. L. 98–480, title VIII, § 801(c), 98 Stat. 2236, provided for composition of the National Advisory Committee on Libraries, provided procedure and grounds for Secretary to terminate or limit payments to States, procedure for judicial review of Secretary's final actions, authorized grants, contracts, and jointfinanced arrangements for exemplary projects and management studies, provided for an annual report to Congress, and for coordination program, and establish State Advisory Councils under this chapter.

Short Title

Section 1 of act June 19, 1956, as amended by section 10(a) of Pub. L. 88–269, which provided that this chapter be cited as the “Library Services and Construction Act,” was repealed by Pub. L. 101–254, title II, § 101(e) [title VII, § 708(a)], Sept. 30, 1990, 104 Stat. 3009–233, 3009–312.
SUBCHAPTER I—PUBLIC LIBRARY SERVICES


SUBCHAPTER II—PUBLIC LIBRARY CONSTRUCTION AND TECHNOLOGY ENHANCEMENT


SUBCHAPTER III—INTERLIBRARY COOPERATION AND RESOURCE SHARING


§§ 361 to 366

TITLE 20—EDUCATION

Page 92

Prior sections 356 to 358 comprised former subchapter
V of this chapter relating to the administration of this
chapter.

SUBCHAPTER IV—LIBRARY SERVICES FOR
INDIAN TRIBES

Section 355f, act June 19, 1956, ch. 407, title IV, § 401,
as added July 19, 1966, Pub. L. 89–511, § 9, 80 Stat. 315,
authorized appropriations for State institutional library services.

title I, § 101(e) [title VII, § 708(a)], Sept. 30,

Section 355f–1, act June 19, 1956, ch. 407, title IV, § 402,
as added and amended July 19, 1966, Pub. L. 89–511, §§ 9,
12(a), 80 Stat. 315, 318, set forth the amount of allotments authorized to be made by the Commissioner to
States, Guam, etc.

Section 361, act June 19, 1956, ch. 407, title IV, § 401, as
2243, related to congressional findings and purpose of
this subchapter and authorization of grants.

Section 355f–2, act June 19, 1956, ch. 407, title IV, § 403,
and the determination of the amount of such payment.
Section 355f–3, act June 19, 1956, ch. 407, title IV, § 404,
as added July 19, 1966, Pub. L. 89–511, § 9, 80 Stat. 316;
set forth the criteria for approval by the Commissioner
of State plans for institutional library services.
Section 355f–4, act June 19, 1956, ch. 407, title IV, § 411,
as added July 19, 1966, Pub. L. 89–511, § 9, 80 Stat. 316,
authorized appropriations for State library services to
the physically handicapped.
Section 355f–5, act June 19, 1956, ch. 407, title IV, § 412,
as added and amended July 19, 1966, Pub. L. 89–511, §§ 9,
12(a), 80 Stat. 316, 318, set forth the amount of allotments authorized to be made by the Commissioner to
States, Guam, etc.
Section 355f–6, act June 19, 1956, ch. 407, title IV, § 413,
and the determination of the amount of such payment.
Section 355f–7, act June 19, 1956, ch. 407, title IV, § 414,
set forth the criteria for approval by the Commissioner
of State plans for library services to the physically
handicapped.
Section 356, act June 19, 1956, ch. 407, title V, § 501,
formerly § 7, 70 Stat. 295, renumbered § 301 and amended
Stat. 317, authorized the Commissioner to withhold
payments to the States, enumerated the grounds for
such withholding, and provided that notice and an opportunity for a hearing to be accorded to the appropriate State agency.
Section 357, act June 19, 1956, ch. 407, title V, § 502,
formerly § 8, 70 Stat. 295, renumbered § 302 and amended
Feb. 11, 1964, Pub. L. 88–269, §§ 1(d), 7(f), 8, 78 Stat. 11, 14,
15, renumbered § 502 and amended July 19, 1966, Pub. L.
89–511, § 10(b), (c), (e), 80 Stat. 317, 318, set forth the administrative provisions of this chapter.
Section 357a, act June 19, 1956, ch. 407, title V, § 503,
formerly § 303, as added Feb. 11, 1964, Pub. L. 88–269,
§ 7(h), 78 Stat. 14, renumbered and amended July 19,
1966, Pub. L. 89–511, § 10(b), 80 Stat. 317, provided for the
reallotment of unused funds under conditions determined by the Commissioner.
Section 358, act June 19, 1956, ch. 407, title V, § 504,
formerly § 9, 70 Stat. 296; Aug. 1, 1956, ch. 852, § 25(d), 70
88–269, §§ 1(e), 7(b), (f), 9, 78 Stat. 11, 14, 16, renumbered
§ 504, and amended July 19, 1966, Pub. L. 89–511, §§ 10(b),
12(a), 80 Stat. 317, 318; Nov. 24, 1967, Pub. L. 90–154, § 6,
81 Stat. 509, defined the terms ‘‘State’’, ‘‘State library
administrative agency’’, ‘‘public library’’, ‘‘construction’’, and ‘‘Secretary’’.

A prior section 361, act June 19, 1956, ch. 407, title IV,
§ 401, as added May 3, 1973, Pub. L. 93–29, title VIII,
§ 801(a), 87 Stat. 57; amended Oct. 17, 1984, Pub. L. 98–480,
title I, § 103(b)(1), 98 Stat. 2237, related to grants to
States for older readers services, prior to the general
amendment of this subchapter by section 114 of Pub. L.
98–480.
Section 362, act June 19, 1956, ch. 407, title IV, § 402, as
2243, specified permitted uses of funds, required maintenance of funding level for public library services, and
provided that nothing in this chapter be construed to
prohibit restricted collections of tribal cultural materials with funds made available under this chapter.
A prior section 362, act June 19, 1956, ch. 407, title IV,
§ 402, as added May 3, 1973, Pub. L. 93–29, title VIII,
§ 801(a), 87 Stat. 57, related to use of Federal funds and
the amount of the Federal share for the cost of carrying out State plans for the provision of older readers’
services, prior to the general amendment of this subchapter by section 114 of Pub. L. 98–480.
Section 363, act June 19, 1956, ch. 407, title IV, § 403, as
2244, related to applications for library services to Indians.
A prior section 363, act June 19, 1956, ch. 407, title IV,
§ 403, as added May 3, 1973, Pub. L. 93–29, title VIII,
§ 801(a), 87 Stat. 58; amended Oct. 17, 1984, Pub. L. 98–480,
title I, § 103(b)(1), 98 Stat. 2237, related to State annual
programs for library services for the elderly, prior to
the general amendment of this subchapter by section
Section 364, act June 19, 1956, ch. 407, title IV, § 404, as
2244, required submission of plans for library services,
on or near Indian reservation, by Indian tribes desiring
to receive special project grant.
A prior section 364, act June 19, 1956, ch. 407, title IV,
§ 404, as added May 3, 1973, Pub. L. 93–29, title VIII,
98–480, title I, § 103(b)(1), 98 Stat. 2237, related to administrative coordination between programs for older readers services under this subchapter with other programs
for older Americans, prior to the general amendment of
this subchapter by section 114 of Pub. L. 98–480.
Section 365, act June 19, 1956, ch. 407, title IV, § 405, as
2244, provided for coordination of programs under this
subchapter with other programs for Indians.
Section 366, act June 19, 1956, ch. 407, title IV, § 406, as
Stat. 903, excluded Indian tribes and Indians in California, Oklahoma, and Alaska from provisions of this subchapter requiring that services be provided on or near
Indian reservations, or to only those Indians who live
on or near Indian reservations.
A prior subchapter IV of this chapter, comprising sections 355f to 355f–7 of this title, related to specialized
State library services, prior to the general amendment
of this chapter by Pub. L. 91–600, § 2(b), Dec. 30, 1970, 84




SUBCHAPTER VI—LIBRARY LITERACY PROGRAMS


SUBCHAPTER VII—EVALUATION AND ASSESSMENT


Section, act June 19, 1956, ch. 407, title VII, § 701, as added Mar. 15, 1990, Pub. L. 101–254, § 22(a), 104 Stat. 107, authorized Secretary to carry out program for purpose of evaluating and assessing programs authorized under this chapter.

SUBCHAPTER VIII—LIBRARY LEARNING CENTER PROGRAMS

PART A—FAMILY LEARNING CENTERS


Section 385b, act June 19, 1956, ch. 407, title VIII, § 803, as added Mar. 15, 1990, Pub. L. 101–254, § 23(a), 104 Stat. 108, provided that funds made available under this part be used for initiation, expansion, and improvement of public library services, acquisition of resources and materials in print and electronic formats, and acquisition of computer hardware and software.


Section 385d, act June 19, 1956, ch. 407, title VIII, § 805, as added Mar. 15, 1990, Pub. L. 101–254, § 23(a), 104 Stat. 109, provided for selection of family learning centers via competitive process, required equitable distribution of grants among States and between urban and rural communities under this subchapter, and established maximum amount per grant for any fiscal year.


PART B—LIBRARY LITERACY CENTERS


Section 386b, act June 19, 1956, ch. 407, title VIII, § 813, as added Mar. 15, 1990, Pub. L. 101–254, § 23(a), 104 Stat. 110, required any State wishing to receive grant to submit to Secretary, through its State library administrative agency, application containing certain required information and assurances, and permitted Secretary to consider priority programs and services in approving such application.

Section 386c, act June 19, 1956, ch. 407, title VIII, § 814, as added Mar. 15, 1990, Pub. L. 101–254, § 23(a), 104 Stat. 111, required library literacy centers to use funds made available under this part to initiate, expand, and improve literacy services and programs, and provided that no more than 25 percent of grant be used by each center to acquire literacy education computers and computer software.

Section 386d, act June 19, 1956, ch. 407, title VIII, § 815, as added Mar. 15, 1990, Pub. L. 101–254, § 23(a), 104 Stat. 111, required any local public library desiring to participate in programs and services conducted pursuant to this part to submit application to State or library literacy center, as selected by State under section 386f of this title, and listed requisite content of such application.

Section 386e, act June 19, 1956, ch. 407, title VIII, § 816, as added Mar. 15, 1990, Pub. L. 101–254, § 23(a), 104 Stat. 112, related to State advisory committees to assist in coordinating services and programs assisted under this part.


CHAPTER 17—NATIONAL DEFENSE EDUCATION PROGRAM

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 401 to 403. Omitted or Repealed.

SUBCHAPTER II—LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER LEARNING

421 to 429. Omitted or Repealed.

SUBCHAPTER III—FINANCIAL ASSISTANCE FOR STRENGTHENING INSTRUCTION IN ACADEMIC SUBJECTS

PART A—GRANTS TO STATES

441 to 445. Omitted.

PART B—GRANTS TO LOCAL EDUCATIONAL AGENCIES

441 to 445. Omitted.
§ 401 SUBCHAPTER IV—NATIONAL DEFENSE FELLOWSHIPS

461 to 465. Omitted.

SUBCHAPTER V—GUIDANCE, COUNSELING, AND TESTING: IDENTIFICATION AND ENCOURAGEMENT OF ABLE STUDENTS

PART A—STATE PROGRAMS

481 to 485. Omitted.

PART B—COUNSELING AND GUIDANCE TRAINING INSTITUTES

491. Omitted.

SUBCHAPTER VI—FOREIGN STUDIES AND LANGUAGE DEVELOPMENT

PART A—CENTERS AND RESEARCH AND STUDIES

511 to 513. Repealed.

PART B—LANGUAGE INSTITUTES

521. Repealed.

SUBCHAPTER VII—RESEARCH AND EXPERIMENTATION IN MORE EFFECTIVE UTILIZATION OF TELEVISION, RADIO, MOTION PICTURES, AND RELATED MEDIA FOR EDUCATIONAL PURPOSES

PART A—RESEARCH AND EXPERIMENTATION

541, 542. Omitted.

PART B—DISSEMINATION OF INFORMATION ON NEW EDUCATIONAL MEDIA

551. Omitted.

PART C—GENERAL PROVISIONS

561 to 563. Omitted.

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

581 to 589. Omitted or Repealed.

SUBCHAPTER IX—INSTITUTES

PART I—GENERAL

591, 592. Omitted.

PART II—INTERNATIONAL AFFAIRS

601, 602. Omitted.

SUBCHAPTER I—GENERAL PROVISIONS

§ 401. Omitted

CODIFICATION

The programs provided for in this chapter have not been funded for a number of years. See Codification notes set out under sections 421, 441, 451, 481, 541, and 591 of this title.


Section, Pub. L. 85–864, title I, §102, Sept. 2, 1958, 72 Stat. 1582, prohibited Federal control of education curriculum, program of instruction, administration, or personnel of any educational institution or school system. See section 1232a of this title.

§ 403. Omitted

CODIFICATION


SUBCHAPTER II—LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER LEARNING

§§ 421 to 425. Omitted

CODIFICATION

This subchapter has not been funded since fiscal year 1975.


§§ 427 to 429. Omitted

CODIFICATION

This subchapter has not been funded since fiscal year 1975.


SUBCHAPTER III—FINANCIAL ASSISTANCE FOR STRENGTHENING INSTRUCTION IN ACADEMIC SUBJECTS

PART A—GRANTS TO STATES

§§ 441 to 445. Omitted

CODIFICATION

This part has not been funded since the fiscal year ending prior to Oct. 1, 1978.


PART B—GRANTS TO LOCAL EDUCATIONAL AGENCIES

§§ 451 to 455. Omitted

CODIFICATION

This part has not been funded since fiscal year 1971.


tions for funds by local educational agencies, approved by the appropriate State educational agency.


SUBCHAPTER IV—NATIONAL DEFENSE FELLOWSHIPS

§§ 461 to 465. Omitted

CODIFICATION

Fellowships under this subchapter have not been authorized since the fiscal year ending June 30, 1973.


This subchapter is no longer funded and was superseded by title III of the Elementary and Secondary Education Act of 1965, which was classified to subchapter II of chapter 24 of this title. Subchapter II of chapter 24 of this title was omitted in the general revision of title III of the Elementary and Secondary Education Act of 1965 by Pub. L. 85-864.


PART B—COUNSELING AND GUIDANCE TRAINING INSTITUTES

§ 491. Omitted

CODIFICATION


SUBCHAPTER VI—FOREIGN STUDIES AND LANGUAGE DEVELOPMENT

PART A—CENTERS AND RESEARCH AND STUDIES


gram of research and studies. See section 1125 of this title.


PART C—GENERAL PROVISIONS

§§ 561 to 563. Omitted

Codification

This subchapter has not been funded since the fiscal year ending in 1968.


SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

§ 581. Omitted

Codification

The programs provided for in this chapter have not been funded for a number of years. See Codification notes set out under sections 421, 441, 451, 461, 481, 541, and 591 of this title.

Section 581, Pub. L. 85–864, title X, § 1001, Sept. 2, 1958, 72 Stat. 1602, authorized Commissioner to appoint advisory committees to advise and consult with respect to administration of National Defense Education Act of 1958 [this chapter] including provisions as to reports to Congress, development of policies and procedures, consultation with agencies, agency functions and authority under other laws, restriction on loans, fellowships and stipends, oath or affirmation, statement of conviction, registration of Communist organization, criminal penalties, and authority to refuse or revoke fellowships.


Section 582, Pub. L. 85–864, title X, § 1002, Sept. 2, 1958, 72 Stat. 1602, authorized Commissioner to appoint advisory committees to advise and consult with respect to administration of National Defense Act, prescribed a membership of twelve, four each from fields of science (engineering, mathematics, or science), humanities, and other appropriate fields, and provided for compensation ($50 per day limitation) and travel expenses of committee members.
Section 583, Pub. L. 85–864, title X, §1003, Sept. 2, 1958, 72 Stat. 1633, exempted members of advisory committees or information councils from conflict-of-interest laws, with certain exceptions.

§§ 584 to 589. Omitted

Codification

The programs provided for in this chapter have not been funded for a number of years. See Codification notes set out under sections 421, 441, 451, 461, 491, and 541, and related provisions of this title.


Section 588, Pub. L. 85–864, title X, §1005, Sept. 2, 1958, 72 Stat. 1604; Pub. L. 96–48, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, provided for judicial review where a State was dissatisfied with Secretary’s final action with respect to the approval of its State plan or with respect to restriction of payments to the State for failure to maintain compliance with conditions governing original approval of such plan.

Section 601, Pub. L. 85–864, title X, §1007, Sept. 2, 1958, 72 Stat. 1604, provided that payment to any individual or to any State or Federal agency, institution of higher education, or any other organization, pursuant to a grant, loan, or contract, could be made in installments, and in advance or by way of reimbursement, and, in case of grants or loans, with necessary adjustments on account of overpayments or underpayments.

Section 602, Pub. L. 85–864, title X, §1007, Sept. 2, 1958, 72 Stat. 1604, authorized appropriations for fiscal year ending June 30, 1959, and for each fiscal year thereafter, of such sums as might be necessary for administrative costs, including administrative expenses of State commissions.

Section 604, Pub. L. 85–864, title X, §1007, Sept. 2, 1958, 72 Stat. 1604, authorized appropriations for fiscal year ending June 30, 1959, and for each fiscal year thereafter, of such sums as might be necessary for administrative costs, including administrative expenses of State commissions.


§§ 591, 592. Omitted

Codification

This part has not been funded since the fiscal year ending June 30, 1968.


Section 614, Pub. L. 85–896, §4, Sept. 6, 1958, 72 Stat. 1777, required submission of report to Commissioner, including financial statement.


Section 616, Pub. L. 85–826, §6, Sept. 6, 1958, 72 Stat. 1777, authorized delegation of functions.


TABLE 20—EDUCATION
§§ 631 to 647

CHAPTER 18—EARLY EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN


Sections 621 to 624, Pub. L. 90–538, §§ 2–5, Sept. 30, 1968, 82 Stat. 901, 902, popularly known as the "Handicapped Children's Early Education Assistance Act", related to the following subject matter:
Section 621, experimental preschool and early education programs for handicapped children; authorization, special problems of the handicapped, National distribution, urban and rural areas, and scope of activities and services; community coordination of programs; and Federal share and non-Federal contributions.
Section 622, evaluation.
Section 623, definition of handicapped children.
Section 624, appropriations authorization.
For general subject matter of these sections, see sections 1423, 1425, 1401(a), and 1426 of this title, respectively.

CHAPTER 19—SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

Effect of Federal Activities


CHAPTER 20—NATIONAL TECHNICAL INSTITUTE FOR THE DEAF


SHORT TITLE


§ 686. Transferred

Section, Pub. L. 95–355, title I, § 100, Sept. 8, 1978, 92 Stat. 551, which authorized National Technical Institute for the Deaf to make purchases through General Services Administration, was transferred to section 4392 of this title.

CHAPTER 20B—GALLAUDET COLLEGE

SUBCHAPTER I—CONTINUATION AND ADMINISTRATION


Section 691, act June 18, 1954, ch. 324, § 1, 68 Stat. 265, directed that Gallaudet College be successor to Columbia Institution for the Deaf. See section 4391 of this title.

Section 691a, act June 18, 1954, ch. 324, § 2, 68 Stat. 265, stated purposes of Gallaudet College. See section 4391(b) of this title.


Section 691c, act June 18, 1954, ch. 324, § 4, 68 Stat. 265, related to gifts of property to Gallaudet College. See section 4392(a) of this title.

Section 691e, act June 18, 1954, ch. 324, § 6, 68 Stat. 266, related to powers of Board of Directors of Gallaudet College. See section 4393(b) of this title.


Section 691g, Pub. L. 95–355, title I, § 100, Sept. 8, 1978, 92 Stat. 531, which authorized Gallaudet College to make purchases through General Services Administration, was transferred to section 4362 of this title.

SUBCHAPTER II—MODEL SECONDARY SCHOOL FOR THE DEAF

§§ 691h, 691i. Transferred

Section 691h, R.S. § 441; Mar. 4, 1911, ch. 285, 36 Stat. 1179, defined “elementary school” and “construction.”


§§ 691m to 691o. Repealed. Pub. L. 89–329, title VII, § 701(b), Nov. 8, 1965, 79 Stat. 792, which classified to section 1132a et seq. of this title, prior to being amended generally by Pub. L. 105–244, shall be deemed to be a continuation of the comparable programs authorized by the Higher Education Facilities Act of 1963 (this chapter).

§ 701. Omitted

CONTINUATION


SUBCHAPTER I—GRANTS FOR CONSTRUCTION OF UNDERGRADUATE ACADEMIC FACILITIES


§§ 731, 732  TITLE 20—EDUCATION  Page 102


Section 721, Pub. L. 88–204, title I, § 111, Dec. 16, 1963, 77 Stat. 370, related to judicial review, providing in former subsec. (a) for appeal by State of Commissioner’s final action to court of appeals; subsec. (b) findings of Commissioner conclusive if substantially supported, remand for taking further evidence, and new or modified findings conclusive if supported; subsec. (c) jurisdiction of court of appeals and review by Supreme Court.

Effective Date of Repeal
Repeal effective July 1, 1972, see section 161(b)(2) of Pub. L. 92–318.

SUBCHAPTER II—GRANTS FOR CONSTRUCTION OF GRADUATE ACADEMIC FACILITIES


SUBCHAPTER III—LOANS FOR CONSTRUCTION OF ACADEMIC FACILITIES

§§ 741 to 745. Omitted


Effective Date of Repeal
Repeal effective July 1, 1972, see section 161(b)(3) of Pub. L. 92–318.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 751. Omitted

CODIFICATION


CODIFICATION

Section, Pub. L. 88–204, title IV, § 402, Dec. 16, 1963, 77 Stat. 377, related to Federal administration as to higher education facilities, providing in subsecs. (a) and (b) for delegation of functions by Commissioner and for utilization of services and facilities of other agencies and payment for services in advance or by way of reimbursement, now superseded by section 1231 of this title, and in subsec. (c) for appointment of advisory committees and for compensation ($75 per day limitation) and travel expenses of members of such advisory committees.

Effective Date of Repeal
Repeal effective July 1, 1972, see section 161(b)(2) of Pub. L. 92–318.


CODIFICATION


CHAPTER 22—NATIONAL COUNCIL ON THE ARTS


For general subject matter of sections 781 to 788, see section 955 of this title.


Section 782, Pub. L. 88–204, § 3, Sept. 3, 1964, 78 Stat. 905, proscribed Federal control over policy or program determination in the administration of this chapter.


Section 788, Pub. L. 88–204, § 9, Sept. 3, 1964, 78 Stat. 907, authorized appointment of and compensation for secretarial, clerical, and other staff and further authorized procurement by the Chairman of temporary and intermittent services.

EFFECTIVE DATE OF REPEAL


Section, Pub. L. 88–579, § 11, Sept. 3, 1964, 78 Stat. 907, provided that this chapter would not invalidate any act of Congress or Executive order vesting authority in the Commission of Fine Arts or any other Federal advisory body nor would this chapter authorize the National Council on the Arts to undertake any duty or responsibility which belongs to any other Federal advisory body established as of Sept. 3, 1964.

EFFECTIVE DATE OF REPEAL


CHAPTER 23—TRAINING AND FELLOWSHIP PROGRAMS FOR COMMUNITY DEVELOPMENT

§ 801. Congressional findings and purpose

Sec. 801. Congressional findings and purpose.

(a) Need for training and research related to community development

The Congress finds that the rapid expansion of the Nation’s urban areas and urban population has caused severe problems in urban and suburban development and created a national need to (1) provide special training in skills needed for economic and efficient community development, and (2) support research in new or improved methods of dealing with community development problems.

(b) Fellowships for specialists and personnel in urban affairs; grants to institutions of higher education; assistance to States and localities

It is the purpose of this chapter to provide fellowships for the graduate training of professional city and regional planning, management, and housing specialists, and professionally trained personnel with a general capacity in urban affairs and problems: to make grants to and contracts with institutions of higher education (or combinations of such institutions) to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of graduate or professional students to enter the public service; and to assist and encourage the States and localities, in cooperation with public and private
universities and colleges and urban centers and with business firms and associations, labor unions, and other interested associations and organizations, to (1) organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development to those technical, professional, and other persons with the capacity to master and employ such skills who are, or are training to be, employed by a governmental or public body which has responsibility for community development, or by a private nonprofit organization which is conducting or has responsibility for housing and community development programs, and (2) support State and local research that is needed in connection with housing programs and needs, public improvement programing, code problems, efficient land use, urban transportation, and similar community development problems.


CODEFICATION

Pub. L. 93–383, § 402, provided for amendments to title VIII of the Housing and Urban Development Act of 1964. The amendments of the enumerated sections of such title VIII have been executed to comparable sections of title VIII of the Housing Act of 1964 as the probable intent of Congress.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–383 expanded purposes of chapter to include graduate training in regional planning and for training of personnel with a general capacity in urban affairs and problems and authorizing grants and contracts with institutions of higher education for training of graduate or professional students.


Subsec. (b). Pub. L. 91–152 inserted provision that it is the purpose of this chapter to grant fellowships for the graduate training of professional city planning and urban and housing technicians and specialists.

1968—Subsec. (b). Pub. L. 90–448 provided for cooperation with business firms and associations, labor unions, and other interested associations or organizations, included employment by a private nonprofit organization which is conducting or has responsibility for housing and community development programs, and substituted technical, professional, and other persons with the capacity to master and employ such skills’ “technical and professional people.”

§ 802. Fellowships for city planning, management, housing specialists, and persons with general capacity in urban affairs and problems

(a) Criteria

The Secretary is authorized to provide fellowships for the graduate training of professional city planning, management, and housing specialists, and other persons who wish to develop a general capacity in urban affairs and problems as herein provided. Persons shall be selected for such fellowships solely on the basis of ability and upon the recommendation of the Urban Studies Fellowship Advisory Board established pursuant to subsection (b) of this section. Fellowships shall be solely for training in public and private nonprofit institutions of higher education having programs of graduate study in the field of city planning or in related fields (including architecture, civil engineering, economics, municipal finance, public administration, urban affairs, and sociology) which programs are oriented to training for careers in city and regional planning, housing, urban renewal, and community development.

(b) Urban Studies Fellowship Board

There is hereby established the Urban Studies Fellowship Advisory Board (hereinafter referred to as the “Board”), which shall consist of nine members to be appointed by the Secretary as follows: Three from public institutions of higher learning and three from private nonprofit institutions of higher education, who are the heads of departments which provide academic courses appropriately related to the fields referred to in subsection (a) of this section, and three from national organizations which are directly concerned with problems relating to urban, regional, and community development. The Board shall meet upon the request of the Secretary and shall make recommendations to him with respect to persons to be selected for fellowships under this section. Members of the Board shall be entitled to receive transportation expenses and a per diem in lieu of subsistence as authorized for members of advisory committees created pursuant to section 1701h of title 12.


CODEFICATION

Pub. L. 93–383, § 402, provided for amendments to title VIII of the Housing and Urban Development Act of 1964. The amendments of the enumerated sections of such title VIII have been executed to comparable sections of title VIII of the Housing Act of 1964 as the probable intent of Congress.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–383 expanded authority of Secretary to include fellowships in graduate training in city management and for persons wishing to develop a general capacity in urban affairs and added urban affairs to authorized fields of study.

1969—Pub. L. 91–152 substituted provisions authorizing the Secretary to grant fellowships solely on the basis of ability for training in city planning at public and private nonprofit institutions of higher education and establishing the Urban Studies Fellowship Advisory Board for provisions authorizing the Secretary to make matching grants to States to assist in programs providing special training in community development and to support local research and setting forth the provisions required in any plan submitted to the Secretary in order to obtain grants. The former provisions of this section are now set forth in section 803 of this title with minor amendments.

1968—Subsec. (a)(1). Pub. L. 90–448 substituted “technical, professional, and other persons with the capacity to master and employ such skills” for “technical and professional people”, and inserted provisions to include employment by a private nonprofit organization which is conducting or has responsibility for housing and community development programs.
§ 803. Matching grants to States

(a) Purposes

Subject to the provisions of this chapter and in accordance with regulations prescribed by him, the Secretary may make matching grants to States to assist in—

(1) organizing, initiating, developing, or expanding programs to provide special training in skills needed for economic and efficient community development to those technical, professional, and other persons who are, or are training to be, employed by a governmental or public body which has responsibilities for community development, or by a private nonprofit organization which is conducting or has responsibility for housing and community development programs; and

(2) supporting State and local research that is needed in connection with housing programs and needs, public improvement programming, code problems, efficient land use, urban transportation, and similar community development programs, and collecting, collating, and publishing statistics and information relating to such research.

(b) Training in housing management

Grants may be made under subsection (a) of this section to support (1) the training of persons, especially persons of low income, in acquiring the skills needed in the management of housing for low- and moderate-income persons, and (2) research and the dissemination of information with respect to the problems involved in the management of housing for low- and moderate-income persons.

(c) State plan; required provisions

No grants may be made to a State under this section unless the Secretary has approved a plan for the State which—

(1) sets forth the proposed use of the funds and the objectives to be accomplished;

(2) explains the method by which the required amounts from non-Federal sources will be obtained;

(3) provides such fiscal control and fund accounting procedures as may be reasonably necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State under this section;

(4) designates an officer or agency of the State government who has responsibility and authority for the administration of a statewide research and training program as the officer or agency with responsibility and authority for the execution of the State’s program under this section; and

(5) provides that such officer or agency will make such reports to the Secretary in such form, and containing such information, as may be reasonably necessary to enable the Secretary to perform his duties under this section.

(d) Matching funds from non-Federal sources

No grant may be made under this section for any use unless an amount at least equal to such grant is made available from non-Federal sources for the same purpose and for concurrent use.
CHAPTER XVII

§ 804. Limitation on grants to any one State

Not more than 10 per centum of the total amount appropriated for the purposes of this chapter may be used for making grants to any one State.

§ 805. Technical assistance, studies, and publication of information

In order to carry out the purpose of this chapter, the Secretary is authorized to provide technical assistance to State and local governmental or public bodies and to undertake such studies and publish and distribute such information, either directly or by contract, as he shall determine to be desirable. Nothing contained in this chapter shall limit any authority of the Secretary under any other provision of law.

§ 806. Authorization of appropriations; availability of funds

There is authorized to be appropriated for the purpose of making grants and providing fellowships under this chapter, without fiscal year limitation, not to exceed $30,000,000, which amount shall be increased by $3,500,000 on July 1, 1974, and by $3,500,000 on July 1, 1975. Any amounts appropriated under this section shall remain available until expended.

§ 807. Definitions; authorization of appropriations for administrative and other expenses

(a) As used in this chapter the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands; and the term “Secretary” means the Secretary of Housing and Urban Development.

(b) There are authorized to be appropriated such sums as may be necessary for administrative and other expenses in carrying out this chapter.

AMENDMENTS

1969—Pub. L. 91–152 substituted provisions authorizing the Secretary to provide technical assistance, etc., to State and local bodies to carry out the purposes of this chapter for provisions defining “State” and “Secretary” and authorizing to be appropriated such sums as may be necessary for administrative and other expenses. The former provisions of this section are now set forth in section 807 of this title with minor amendments.

1968—Subsec. (a). Pub. L. 90–448 inserted “Guam, American Samoa, the Trust Territory of the Pacific Islands.”

1967—Subsec. (a). Pub. L. 90–19 substituted definition of “Secretary” meaning the Secretary of Housing and Urban Development for “Administrator” meaning the Housing and Home Finance Administrator.

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Chapter 24—Grants for Educational Materials, Facilities and Services, and Strengthening of Educational Agencies

Codification

Sections were omitted in the general revision of title II of the Elementary and Secondary Education Act of 1965, Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which were classified to this chapter (§821 et seq.), subchapter II (§821a et seq.) of chapter 13, and subchapter I (§8101 et seq.) of chapter 40 of this title, were amended generally by Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2201.

Section 842 to 844a, Omitted

Codification


 appropriation under national defense provisions as appropriation under this section

Section, Pub. L. 89–10, title III, §301, Apr. 13, 1970, 84 Stat. 141, provided that any appropriation for the purposes of section V of the National Defense Education Act of 1958, section 481 et seq. of this title, for any fiscal year ending after June 30, 1970, was to be deemed to have been appropriated pursuant to this section.


Subchapter II—Supplementary Educational Centers and Services

Codification


To be deemed to have been appropriated pursuant to this section
**§§ 845 to 848**

**Title 20—Education**

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Effective Date of Repeal

Repeal effective July 1, 1975, see section 402(c)(2) of Pub. L. 93-380.

**§§ 845 to 848. Omitted**

**Codification**


**Part B—Local Educational Agencies**

**§§ 866 to 866d. Omitted**

**Codification**


**Part C—Comprehensive Educational Planning and Evaluation**

**§§ 867 to 867c. Omitted**

**Codification**

and evaluation grants for fiscal years ending prior to

11, 1965, 79 Stat. 51, as amended, was renumbered § 553
Stat. 142, and was classified to section 869 of this title
which was repealed by Pub. L. 91–968, title IV, § 403,

Section 867a, Pub. L. 89–10, title V, § 532, as added
Stat. 146, related to comprehensive planning and eval-
uation grants and to the establishment and functioning
of State planning and evaluation agencies.

Section 867b, Pub. L. 89–10, title V, § 533, as added
Stat. 147, related to the form and content of grant ap-
plications.

Section 867c, Pub. L. 89–10, title V, § 534, as added
Stat. 148, related to the required annual reports.

§ 868. Omitted

CODIFICATION

Section, Pub. L. 89–10, title V, § 541, as added Pub. L.
Stat. 912, which provided for the establishment of a Na-
tional Council on Quality in Education and State advisory
councils, was omitted in the general revision of title V
of the Elementary and Secondary Education Act of
2240.

11, 1965, 79 Stat. 54, which provided for administration
of State plan, was repealed by Pub. L. 91–230, title I,

Provisions similar to those comprising subsecs. (a)(1),
(2)(A), (E), and (a)(3) of this section were contained in
section 510(a), (b), (d) of Pub. L. 89–10, title V, Apr.
11, 1965, 79 Stat. 54, which was classified to section 870(a),
(b), (d) of this title, prior to repeal of section 870 and
general amendment of title V by section 143(a)(4)(A)
and (D) of Pub. L. 91–230, respectively.

PART E—GENERAL PROVISIONS

§§ 869, 869a. Omitted

CODIFICATION

Section 869, Pub. L. 89–10, title V, § 551, as added Pub.
which related to the administration of plans, to hear-
ings, and to the steps following a failure to comply with
the provisions related of this subchapter, was omitted in the
general revision of title V of the Elementary and Sec-
ondary Education Act of 1965, Pub. L. 89–10, title V,

11, 1965, 79 Stat. 54, which provided for judicial review,
was repealed by Pub. L. 91–230, title I, § 143(a)(4)(A),

Provisions similar to those comprising this section
were contained in section 509 of Pub. L. 89–10, title V,
Apr. 11, 1965, 79 Stat. 54, which was classified to sec-

§§ 871 to 880a

§ 871. Repealed. Pub. L. 91–968, title IV, § 403,
Jan. 5, 1971, 84 Stat. 1925

Section, Pub. L. 89–10, title V, § 553, formerly § 507,
I, § 153, Nov. 3, 1966, 80 Stat. 1204; renumbered and
amended Pub. L. 91–230, title I, § 143(a)(4)(A), Apr. 13,
1970, 84 Stat. 142, relating to interchange of personnel of
Office of Education with States, provided in subsec. (a),
definitions; subsec. (b), authorization for interchange
and period of assignment; subsec. (c), Federal personnel
assigned to States, compensation, continuation of Fed-
eral employment benefits, and disability; subsec. (d),
reimbursement by States for services of assigned Fed-
eral personnel; subsec. (e), travel expenses of assigned
Federal personnel; subsec. (f), State personnel assigned
duty with Office of Education; subsec. (g), conflict of
interest, disability of State personnel assigned with Of-

SUBCHAPTER IV—EDUCATION OF
HANICAPPED CHILDREN

§§ 871 to 880a. Repealed. Pub. L. 91–968, title IV,
§ 403, Apr. 13, 1970, 84 Stat. 188

Section 871, Pub. L. 89–10, title VI, § 601, formerly
§ 601(a), as added Pub. L. 89–750, title I, § 161, Nov.
L. 90–247, title I, §§ 151(4), 152(b)(2), title III, § 301(c)(1),
Jan. 2, 1968, 81 Stat. 800, 803, 813, authorized grants to
States for education of handicapped children.

Section 872, Pub. L. 89–10, title VI, § 602, formerly
§ 601(b), as added Pub. L. 89–750, title I, § 161, Nov.
L. 90–247, title I, §§ 151(4), 152(b)(2), title III, § 301(c)(2),
Jan. 2, 1968, 81 Stat. 800, 803, 813, authorized appropriations
to States for education of handicapped children.

Section 873, Pub. L. 89–10, title VI, § 603, as added Pub.
L. 89–750, title I, § 161, Nov. 3, 1966, 80 Stat. 1205; amend-

Section 874, Pub. L. 89–10, title VI, § 604, as added Pub.
L. 89–750, title I, § 161, Nov. 3, 1966, 80 Stat. 1205; amend-

on and requirements of such plans.

Section 876, Pub. L. 89–10, title VI, §606, as added Pub. L. 89–750, title I, §161, Nov. 3, 1966, 80 Stat. 1207, pro-

vided for payments.


Section 878, Pub. L. 89–10, title VI, §607, as added Pub. L. 89–750, title I, §161, Nov. 3, 1966, 80 Stat. 1207, pro-

vided for judicial review: jurisdiction, record; findings, substantial evidence, remand; review by United States Supreme Court.

Section 877a, Pub. L. 89–10, title VI, §608, as added Pub. L. 90–247, title I, §151(5), Jan. 2, 1968, 81 Stat. 801, related to regional resource centers: authorization of appropriations of $7,500,000; $7,750,000; and $10,000,000 for fiscal years ending June 30, 1968, 1969, and 1970, respectively; availability of appropriations for grants and contracts, functions of centers; considerations governing approval, of application; and manner of payment, adjustment of overpayments and underpayments.


tries to make grants and contracts; considerations governing making of grants or contracts; necessary services to be provided by centers; payment of costs of recruitment, development, training and dissemination; definition of "construction": recovery of payments; deter-

mination of children who are both deaf and blind; manner of payment, adjustment of overpayments and underpayments; and authorization of appropriations of $1,000,000; $3,000,000; and $7,000,000 for fiscal years ending June 30, 1968, 1969, and 1970, respectively.

Section 877c, Pub. L. 89–10, title VI, §611, as added Pub. L. 90–247, title I, §151(5), Jan. 2, 1968, 81 Stat. 801, authorized grants or contracts to improve recruitment of educational personnel and dissemination of information concerning educational opportunities for handi-

capped children.


bership; functions; annual report; recommendations; compensation, travel and per diem expenses; advisory professional and technical personnel.


Such sections 871 to 877 comprised Part A—Assistance to States for education of handicapped children.

Section 877a comprised Part B—Regional resource centers for improvement of education of handicapped children.

Section 877b comprised Part C—Centers and services for deaf-blind children.

Section 877c comprised Part D—Recruitment of personnel and information on education of handicapped.

Sections 878 to 880a comprised Part E—General provi-

sions.

**Effective Date of Repeal**

(a) for time of and contents of applications; (b) conditions for approval; and (c) amendments.

Section 880b-3a, Pub. L. 89–10, title VII, § 706, as added Pub. L. 92–230, title I, § 152(a) Apr. 13, 1970, 84 Stat. 151; amended Pub. L. 92–318, title I, § 452, June 23, 1972, 86 Stat. 345, provided for children in schools on or near reservations, subsec. (a) relating to local educational agency status of Indian institution or organization and subsec. (b) to payments to Secretary of Interior and criteria for such payments.


PART A—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

§§ 880b–7 to 880b–9. Omitted

Codification


Codification


§ 883 to 885. Transferred

Codification


PART C—SUPPORTIVE SERVICES AND ACTIVITIES

§§ 880b–12, 880b–13. Omitted

Codification


SUBCHAPTER V—GENERAL PROVISIONS

§ 881. Transferred

Codification


Appendix: APPOINTMENT OF NATIONAL ADVISORY COUNCIL ON BILINGUAL EDUCATION

Section 884, Pub. L. 89–99, title VIII, § 804, as added Pub. L. 93–380, title I, § 106, Aug. 21, 1974, 88 Stat. 512, which related to limitations on refund of payments, was renumbered Pub. L. 89–99, title X, § 106(b) by Pub. L. 95–561, title VIII, § 801(1), (2), Nov. 1, 1978, 92 Stat. 2284, and transferred to section 3383 of this title, and was subsequently omitted in the general amendment of title VII, § 702, Jan. 2, 1968, 81 Stat. 816, 816, which prohibited the use of funds for religious worship or instruction, was renumbered Pub. L. 89–99, title X, § 106(b), Nov. 1, 1978, 92 Stat. 2284, and transferred to section 3384 of this title, and was so renumbered, as amended by Pub. L. 95–561, title IX, § 901(b), Nov. 1, 1978, 92 Stat. 2294, by Pub. L. 93–380, title I, § 164, Apr. 13, 1970, 84 Stat. 153, related to correction education services, providing in subsections (a) for grants for research and demonstration projects; (b) for appointment and functions of advisory committees and furnishing of advice and recommendations of Federal officials and other persons and organizations to the Commissioner; and (c) for authorization of $500,000 for fiscal years ending June 30, 1974, and 1975.

Section 109(b) of Pub. L. 93–380 made such authorizations effective on and after July 1, 1974. Repeal effective July 1, 1975, see section 402(c)(3) of Pub. L. 93–380.

§§ 887c to 887c–2. Transferred

 Codification


 Codification


 Effective Date of Repeal

Repeal effective Sept. 30, 1979, see section 301(b)(1) of Pub. L. 95–561.

§ 887e. Transferred

 Codification


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TITLE 20—EDUCATION

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§ 887a. Omitted

 Codification

Section 887a, Pub. L. 93–380, title I, § 171, Apr. 13, 1970, 84 Stat. 173, which related to consumers’ education programs, was transferred to section 3385 of this title, and was subsequently repealed by Pub. L. 100–297, title V, § 3532(c)(2), Apr. 29, 1988, 102 Stat. 414.


 Codification


 Effective Date of Repeal

Repeal effective Sept. 30, 1979, see section 301(b)(1) of Pub. L. 95–561.

§ 887e. Transferred

 Codification


Section, Pub. L. 90–247, §2, Jan. 2, 1968, 81 Stat. 783, which was not enacted as part of Pub. L. 89–10 which comprised this subchapter, provided for citation of authority and uniform application of rules and regulations.

SUBCHAPTER VI—ETHNIC HERITAGE PROGRAM

§§ 900 to 900a–5. Omitted

CODIFICATION


Section 900a, Pub. L. 89–10, title IX, §902, as added Pub. L. 92–318, title V, §504(a), June 23, 1972, 86 Stat. 347, contained the Congressional statement of policy with regard to the ethnic heritage program.


CHAPTER 25—PAY AND PERSONNEL PROGRAM FOR OVERSEAS TEACHERS

Sec. 901. Definitions.
902. Regulations of Secretary of Defense.
903. Administration.
904. Leave.
905. Quarters, quarters allowances, and storage.
906. Entitlements in addition to basic compensation.
907. Applicability of other laws.

§ 901. Definitions

For the purposes of this chapter, the term—

(1) "teaching position" means those duties and responsibilities which—

(A) are performed on a school-year basis principally in a school operated by the Department of Defense in an overseas area for dependents of members of the Armed Forces and dependents of civilian employees of the Department of Defense, or are performed by an individual who carried out certain teaching activities identified in regulations prescribed by the Secretary of Defense; and

(B) involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction; or

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor’s degree in education from an accredited institution of higher education; or

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity.

(2) "teacher" means an individual—

(A) who is a citizen of the United States,

(B) who is a civilian, and

(C) who is employed in a teaching position described in paragraph (1).

(3) "overseas area" means any area situated outside the United States.

(4) "United States", when used in a geographical sense, means the several States of the United States of America, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Islands).


REFERENCES IN TEXT

For definition of Canal Zone, referred to in par. (4), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Section was formerly classified to section 2351 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS


1996—Par. (1)(A). Pub. L. 104–201, §1606(a)(1), as amended by Pub. L. 105–85, inserted "or are performed by an individual who carried out certain teaching activities identified in regulations prescribed by the Secretary of Defense;" after "teaching;".

Par. (2)(C). Pub. L. 104–201, §1606(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: "whose services are required on a school-year basis in a teaching position."

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(c) of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.
§ 902. Regulations of Secretary of Defense

(a) Employment, compensation, etc., of teachers

Not later than the ninetieth day following July 17, 1959, the Secretary of Defense shall prescribe and issue regulations to carry out the purposes of this chapter. Such regulations shall govern—

(1) the establishment of teaching positions;
(2) the fixing of basic compensation for teachers and teaching positions at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population;
(3) the entitlement of teachers to compensation;
(4) the payment of compensation to teachers;
(5) the appointment of teachers;
(6) the conditions of employment of teachers;
(7) the length of the school year or school years applicable to teaching positions;
(8) the leave system for teachers;
(9) quarters, allowances, and additional compensation for teachers; and
(10) such other matters as may be relevant and appropriate to the purposes of this chapter.

(b) Effective date of regulations

The regulations prescribed and issued by the Secretary of Defense under subsection (a) of this section shall become effective on such date as the Secretary of Defense shall prescribe but not later than the ninetieth day following the date of issuance of such regulations.

§ 903. Administration

(a) Employment and salary practices

The Secretary of Defense shall conduct the employment and salary practices applicable to teachers and teaching positions in the Department of Defense in accordance with this chapter, other applicable law, and the regulations prescribed and issued by the Secretary of Defense under section 902 of this title.

(b) Determination of exempt positions and individuals; establishment of annual salary rate

Subject to section 5103 of title 5, the Secretary of Defense—

(1) shall determine the applicability of paragraph (22) of section 5102(c) of title 5 to positions and individuals in the Department of Defense; and
(2) shall establish the appropriate annual salary rate in accordance with this chapter for each such position and individual to which such paragraph (22) is determined to be applicable.

(c) Rates of basic compensation

The Secretary of Defense shall fix the basic compensation for teachers and teaching positions in the Department of Defense at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population.

(d) Issuance of regulations by Secretary of Defense

The Secretary of Defense may prescribe and issue such regulations as he deems appropriate to carry out his functions under this chapter.

Codification

Section was formerly classified to section 2352 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Apr. 14, 1966, 80 Stat. 117.

Amendments

1966—Subsec. (a)(2). Pub. L. 89–391 substituted provisions for issuance of regulations to fix basic compensation for teachers and teaching positions at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population for former provisions fixing basic compensation for teaching positions in relation to rates of basic compensation for similar positions in the United States.

Effective date of 1966 Amendment

Section 2 of Pub. L. 89–391 provided that: “The amendments made by the first section of this Act (amending this section and section 903 of this title) shall become effective on the first day of the first pay period which begins after the date of enactment of this Act (Apr. 14, 1966).”
AMENDMENTS


Pub. L. 104–201, §1606(b)(1)(A), as amended by Pub. L. 105–85, §1073(c)(9)(B), substituted “Secretary of Defense shall” for “secretary of each military department in the Department of Defense shall”.


Subsec. (c). Pub. L. 104–201, §1606(b)(3), substituted “Secretary of Defense” for “Secretary of each military department” and “the Department of Defense” for “his military department”.

Subsec. (d). Pub. L. 104–201, §1606(b)(4), substituted “Secretary of Defense” for “Secretary of each military department”.

Subsec. (e). Pub. L. 96–470 struck out subsec. (e) which required the Secretary of Defense, on or before the 15th day of January in each calendar year beginning after Apr. 14, 1966, to report to the respective Committees on Post Office and Civil Service of the Senate and House of Representatives information on teachers separated from teaching positions subsequent to the close of the immediately preceding full school year and the number of new teachers appointed to teaching positions at the beginning of the school year current at time of the report, including the number of such new teachers obtained through voluntary reciprocal interchange agreements with school jurisdictions in the United States.

1966—Subsec. (c). Pub. L. 89–391, §1(b), substituted provisions for fixing the basic compensation for teachers and teaching positions at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population for former provisions fixing such rates in relation to the rates of basic compensation for similar positions in the United States but not exceeding the highest rate of basic compensation for similar positions of a comparable level of duties and responsibilities under the municipal government of the District of Columbia.

Pub. L. 89–391, §1(c), inserted provisions designated as subsec. (c) to section 5 of Pub. L. 86–91, but codified as subsec. (e) of this section.


EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(c) of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

EFFECTIVE DATE OF 1966 AMENDMENT


EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–370 effective on first day of first pay period which begins after Sept. 23, 1959, see section 7(b) of Pub. L. 86–370, set out as a note under section 3 of Title 35, Patents.

TEACHERS EMPLOYED BY CANAL ZONE GOVERNMENT SCHOOL SYSTEM ON SEPTEMBER 30, 1979

Subsec. (c) of this section not to apply with respect to any teacher who was employed as a substitute teacher shall be entitled to cumulative leave, with pay, which shall accrue at the rate of one day for each calendar month, or part thereof, of a school year, except that if the school year includes more than eight months, any such teacher who shall have served for the entire school year shall be entitled to ten (or, if such teacher is employed in a supervisory position or higher, not less than ten and not more than thirteen) days of cumulative leave with pay.

(b) Saturdays, Sundays, holidays, and nonwork days

Saturdays, Sundays, regularly scheduled holidays, and other administratively authorized nonwork days shall not be considered to be days of leave for the purposes of subsection (a) of this section.

(c) Purposes for taking leave

Subject to the regulations prescribed and issued by the Secretary of Defense, leave earned by any teacher under subsection (a) of this section may be used by such teacher—

(1) for maternity purposes.

(2) in the event of the illness of such teacher.

(3) in the event of illness, contagious disease, or death in the immediate family of such teacher, and

(4) in the event of any personal emergency.

If appropriate advance notice is given of the intended absence of a teacher, not to exceed three days of such leave may be granted for any purpose in each school year to such teacher.

(d) Credit for persons holding teaching positions and for employees transferred, promoted or reappointed

Any individual—

(1) who is holding a position which is determined to be a teaching position, or

(2) who is an employee of the Federal Government or the municipal government of the District of Columbia who is transferred, promoted, or reappointed, without break in service, from a position under a different leave system to a teaching position,

shall be credited, for the purposes of the leave system provided by this section, with the annual and sick leave to his credit immediately prior to the effective date of such determination, trans-
fer, promotion, or reappointment. Sick leave so credited shall be included in the leave provided for in subsection (a) of this section. Annual leave so credited shall not be included in the leave provided for in such subsection but shall be used under regulations which shall be prescribed by the Secretary of Defense.

(e) Excess of maximum amount of accumulated leave; reduction
In any case in which the amount of sick leave, which is to the credit of any individual under a different leave system immediately prior to the date on which he becomes subject as a teacher to the leave system provided by this section and which is included in the leave provided for in subsection (a) of this section, is in excess of the maximum amount of accumulated leave allowable under subparagraph (2) of such subsection, such excess shall remain to the credit of such teacher until used, but the use during any leave year of an amount in excess of the aggregate amount which shall have accrued during such year shall reduce automatically the maximum allowable amount of accumulated leave at the beginning of the next leave year until such amount no longer exceeds the maximum amount allowable under subparagraph (2) of subsection (a) of this section.

(f) Liquidation of unused leave upon separation
Any annual leave remaining, upon his separation from the service, to the credit of an individual within the purview of this section shall be liquidated in accordance with section 5551 of title 5, except that leave earned or included under subsection (a) of this section shall not be liquidated.

(g) Transfer of leave credit for teachers transferred, promoted or reappointed to positions under different leave system
In the case of any teacher who is transferred, promoted, or reappointed, without break in service, to a position under a different leave system, the annual leave, and any other leave earned or credited under this section, which is to his credit immediately prior to such transfer, promotion, or reappointment, shall be transferred to his credit in the employing agency on an adjusted basis in accordance with regulations which shall be prescribed by the Director of the Office of Personnel Management.

(h) Voluntary leave transfer and bank programs
The Director of Dependents' Education, in consultation with the Director of the Office of Personnel Management—

(1) shall establish for teachers a voluntary leave transfer program similar to the one under subchapter III of chapter 63 of title 5; and

(2) may establish for teachers a voluntary leave bank program similar to the one under subchapter IV of chapter 63 of title 5.

Only leave described in the last sentence of subsection (c) of this section (relating to leave that may be used by a teacher for any purpose) may be transferred under any program established under this subsection.


CONCLUSION
In subsec. (f), “section 5551 of title 5” substituted for “the Act of December 21, 1944 (5 U.S.C. 61b and the following)” on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 2354 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS
1994—Subsec. (a). Pub. L. 103–425, §1(1), inserted “(or, if such teacher is employed in a supervisory position or higher, not less than ten and not more than thirteen)” after “ten”.


1984—Subsec. (a). Pub. L. 98–369 struck out provisions which had directed that not more than seventy-five days of leave could be accumulated to the credit of a teacher at any one time under this subsection.

TRANSFER OF FUNCTIONS

§905. Quarters, quarters allowances, and storage
(a) Entitlement
Under regulations which shall be prescribed by or under authority of the President, each teacher (other than a teacher employed in a substitute capacity) shall be entitled, in addition to basic compensation, to quarters, quarters allowance, and storage as provided by this section.

(b) Furnishing of living quarters or grant of allowance
Each teacher (other than a teacher employed in a substitute capacity) shall be entitled, for each school year for which he performs services as a teacher, to quarters or a quarters allowance equal to those authorized by section 5912 of title 5.

(c) Recess periods
Each teacher (other than a teacher employed in a substitute capacity) who is performing services as a teacher at the close of a school year and agrees in writing to serve as a teacher for the recess period immediately preceding such next school year—

(1) quarters or a quarters allowance equal to those authorized by section 5912 of title 5, or

(2) in lieu of such quarters or quarters allowance, storage (including packing, drayage, unpacking, and transportation to and from storage) of his household effects and personal possessions.
(d) Failure to report for service; liability to United States

If a teacher does not report for service at the beginning of the next school year, he shall, except for reasons beyond his control and acceptable to the Department of Defense, be obligated to the United States in an amount equal to any quarters allowance which he may have received under subsection (c) of this section or in an amount equal to the reasonable value of any quarters or storage which he may have received under such subsection, or both, as the case may be.

(e) Employment in other positions during recess periods

Quarters, quarters allowance, and storage provided under this section shall be in lieu of any quarters, quarters allowance, and storage to which he otherwise might be entitled by reason of employment in another position during any recess period between two school years.

(f) Lease of military family housing by teacher assigned to teach at Guantanamo Bay Naval Station, Cuba

(1) A teacher assigned to teach at Guantanamo Bay Naval Station, Cuba, who is not accompanied at such station by any dependent shall be offered for lease any available military family housing at such station that is suitable for occupancy by the teacher and is not needed to house members of the armed forces and dependents accompanying them or other civilian personnel and any dependents accompanying them.

(2) For any period for which military family housing is leased under paragraph (1) to a teacher described in such paragraph, the teacher shall receive a quarters allowance in the amount determined under subsection (b) of this section. The teacher is entitled to such quarters allowance without regard to whether other Government furnished quarters are available for occupancy by the teacher without charge to the teacher.


 Codification
In subsecs. (b) and (c)(1), ‘‘section 5912 of title 5’’ substituted for ‘‘the Act of June 26, 1930 (5 U.S.C. 118a)’’ on authority of Pub. L. 89–554, §7(b), June 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 2356 of Title 5, Government Organization and Employees.

Section was formerly classified to section 2355 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 631.

AMENDMENTS

1961—Subsec. (d). Pub. L. 87–172 inserted ‘‘except for reasons beyond his control and acceptable to the Department of Defense’’.

 Delegation of Functions
Functions vested in President by subsec. (a) of this section concerning authority to prescribe regulations relating to quarters and quarters allowances delegated to Secretary of State pursuant to Ex. Ord. No. 12228, July 24, 1960, 45 F.R. 49903, set out as a note under section 707 of Title 38, Veterans’ Benefits.

Authority of President under subsec. (a) of this section to prescribe regulations relating to storage (including packing, drayage, unpacking, and transportation to and from storage) of household effects and personal possessions delegated to Administrator of General Services, see section 1(19) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 5, The President.

Secretary of State empowered to prescribe regulations relating to cost-of-living allowances, see section 4(a) of Ex. Ord. No. 10805, Jan. 11, 1961, 26 F.R. 217, set out as a note under section 5921 of Title 5, Government Organization and Employees.

§ 906. Entitlements in addition to basic compensation

(a) Cost-of-living increase and additional compensation

Under regulations which shall be prescribed by or under authority of the President, each teacher (other than a teacher employed in a substitute capacity) shall be entitled, in addition to basic compensation, to—

(1) cost-of-living allowances equal to those authorized by section 5921 of title 5, and

(2) additional compensation equal to that authorized under section 5941 of title 5.

(b) Post differential

The cost-of-living allowances and additional compensation provided under subsection (a) of this section for any teacher shall be based on the teaching position in which he rendered services on a school-year basis, except that, if such teacher is employed in another position during any recess period between two school years, such allowances and compensation for such recess period shall be based on the position in which he is employed during such recess period.


 Codification

Section was formerly classified to section 2356 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 637.

 AMENDMENTS

 Effective Date of 1980 Amendment
Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2603 of Pub. L. 96–465, set out as an Effective Date note under section 3010 of Title 22, Foreign Relations and Intercourse.

 Delegation of Functions
Functions vested in President by subsec. (a) of this section concerning authority to prescribe regulations relating to cost of living allowances delegated to Secretary of State pursuant to Ex. Ord. No. 12228, July 24, 1960, 45 F.R. 49903, set out as a note under section 707 of Title 38, Veterans’ Benefits.

Functions of President under subsec. (a) of this section delegated to Director of Bureau of the Budget, now
Director of Office of Management and Budget, see section 1(10) of Ex. Ord. No. 11230, June 28, 1965, 30 F.R. 8447, set out as a note under section 301 of Title 3, The President.

Secretary of State empowered to prescribe regulations relating to quarters and quarters allowance, see section 4(a) of Ex. Ord. No. 10903, Jan. 11, 1961, 26 F.R. 217, set out as a note under section 5021 of Title 5, Government Organization and Employees.

REGULATIONS APPLICABLE TO PAYMENT OF ADDITIONAL COMPENSATION

For provisions relating to payment of additional compensation authorized by subsec. (a)(2) of this section in accordance with the regulations contained in Ex. Ord. No. 10008, see section 1–101 of Ex. Ord. No. 12228, July 24, 1980, 45 F.R. 49903, set out as a note under section 707 of Title 38, Veterans' Benefits.

§ 907. Applicability of other laws

In the case of any teacher who—

(1) is performing services as a teacher at the close of a school year,

(2) agrees in writing to serve as a teacher for the next school year, and

(3) is employed in another position in the recess period immediately preceding such next school year, or, during such recess period, receives quarters, allowances, or additional compensation, or both, as the case may be,

section 5533 of title 5 shall not apply to such teacher by reason of any such employment during a recess period or any such receipt of quarters, allowances, or additional compensation, or both, as the case may be.


§ 907. Applicability of other laws

In the case of any teacher who—

(1) is performing services as a teacher at the close of a school year,

(2) agrees in writing to serve as a teacher for the next school year, and

(3) is employed in another position in the recess period immediately preceding such next school year, or, during such recess period, receives quarters, allowances, or additional compensation, or both, as the case may be,

section 5533 of title 5 shall not apply to such teacher by reason of any such employment during a recess period or any such receipt of quarters, allowances, or additional compensation, or both, as the case may be.


Codification

"Section 5533 of title 5" substituted in text for "section 301 of the Dual Compensation Act" on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 2358(b) of Title 5, the Dual Compensation Act, and to section 301 of the Dual Compensation Act, as in effect prior to July 24, 1980, see section 5021 of Title 5, Government Organization and Employees, and to section 62 of that title, see section 906 of Pub. L. 89–554, set out as a note under Section 301 of Title 5, Government Organization and Employees.

AMENDMENTS


CHAPTER 25A—OVERSEAS DEFENSE DEPENDENTS’ EDUCATION

Sec.

921. Defense dependents’ education system.

922. Administration of defense dependents’ education system.

923. Space-available enrollment of students; tuition.

923a. Enrollment of certain additional children on tuition-free basis.

924. Annual educational assessment.

925. Budget request for school construction funds for Director of Dependents’ Education.

926. School system for dependents in overseas areas.

927. Allotment formula.

928. School advisory committees.

929. Advisory Council on Dependents’ Education.

930. Study of defense dependents’ education system.

931. Regulations; issuance and contents.

932. Definitions.

§ 921. Defense dependents’ education system

(a) Establishment

The Secretary of Defense shall establish and operate a program (hereinafter in this chapter referred to as the “defense dependents’ education system”) to provide a free public education through secondary school for dependents in overseas areas.

(b) Program purposes and activities

(1) The Secretary shall ensure that individuals eligible to receive a free public education under subsection (a) of this section receive an education of high quality.

(2) In establishing the defense dependents’ education system under subsection (a) of this section, the Secretary shall provide programs designed to meet the special needs of—

(A) the handicapped,

(B) individuals in need of compensatory education,

(C) individuals with an interest in vocational education,

(D) gifted and talented individuals, and

(E) individuals of limited English-speaking ability.

(3) The Secretary shall provide a developmental preschool program to individuals eligible to receive a free public education under subsection (a) of this section who are of preschool age if a preschool program is not otherwise available for such individuals and if funds for such a program are available.

(c) Consultation requirements

The Secretary of Defense shall consult with the Secretary of Education on the educational programs and practices of the defense dependents’ education system.

(d) Optional summer school programs

(1) The Secretary of Defense may provide optional summer school programs in the defense dependents’ education system.

(2) The Secretary shall provide any summer school program under this subsection on the same financial basis as programs offered during the regular school year, except that the Secretary may charge reasonable fees for all or portions of such school programs to the extent that the Secretary determines appropriate.

(3) The amounts received by the Secretary in payment of the fees shall be available to the Department of Defense for defraying the costs of conducting summer school programs under this subsection.


References in Text

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title XIV of Pub. L.
The functions described in this title to an executive determination on the basis of family income.''

''(b) Notwithstanding subsection (a) or any other provision of this title no provision of this title shall be construed to impair or prevent the taking effect of the provision of any other Act providing for the transfer of any of the facilities listed are temporary structures.

''(4) An investment strategy planned for each school to correct deficiencies identified in paragraph (3), including a description of each project to correct such deficiencies, cost estimates, and timelines to complete each project.

''(5) A description of requirements for new schools to be constructed over the next 10 years as a result of changes to the population of military personnel.

''(a) PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program to evaluate the feasibility of using private contractors to operate schools of the defense dependents' education system established under section 1402(a) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921(a)).

''(b) SELECTION OF SCHOOL FOR PROGRAM.—If the Secretary conducts the pilot program, the Secretary shall select one school of the defense dependents' education system for participation in the program and provide for the operation of the school by a private contractor for not less than one complete school year.

''(c) REPORT.—Not later than 30 days after the end of the first school year in which the pilot program is conducted, the Secretary shall submit to Congress a report on the results of the program. The report shall include the recommendation of the Secretary with respect to the extent to which other schools of the defense dependents' education system should be operated by private contractors.''

§ 922. Administration of defense dependents' education system

(a) Operation; Director

The defense dependents' education system is operated through the field activity of the Department of Defense known as the Department of Defense Education Activity. That activity is headed by a Director, who is a civilian and is selected by the Secretary of Defense. The Director reports to an Assistant Secretary of Defense designated by the Secretary of Defense for purposes of this chapter.

(b) Implementation of program functions of Secretary of Defense through Director

Except with respect to the authority to prescribe regulations, the Secretary of Defense may carry out his functions under this chapter through the Director.

(c) Functions of Director

The Director shall—

(1) establish personnel policies, consistent with the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 901 et seq.), for employees in the defense dependents' education system,

(2) have authority to transfer professional employees in the defense dependents' education system from one position to another,

(3) prepare a unified budget for each fiscal year, which shall include necessary funds for construction and operation and maintenance of facilities, for the defense dependents' edu-
cational system for inclusion in the Department of Defense budget for that year,
(4) have authority to establish, in accordance with section 928 of this title, local school advisory committees,
(5) have authority to arrange for inservice and other training programs for employees in the defense dependents’ education system, and
(6) perform such other functions as may be required or delegated by the Secretary of Defense or the Assistant Secretary of Defense designated under subsection (a) of this section.

(d) Establishment of regional or area offices; reports to Congress on reorganizations; authorized number of civilian employees

(1) The Director shall establish appropriate regional or area offices in order to provide for thorough and efficient administration of the defense dependents’ education system.
(2) Whenever the Department of Defense Education Activity is reorganized in a manner that affects the defense dependents’ education system, the Secretary of Defense shall submit a report to the Congress describing the reorganization.
(3) Subject to the approval of the Secretary of Defense, the Department of Defense Education Activity is authorized an appropriate number of civilian employees in its central office and such regional or area office as are established pursuant to paragraph (1).

References to Text
The Department of Defense Overseas Teachers Pay and Personnel Practices Act, referred to in subsec. (c)(1), is Pub. L. 86–95, § 923. Space-available enrollment of students; tuition

§ 923. Space-available enrollment of students; tuition

(a) Enrollment of ineligible child in system school
Subject to subsection (b) of this section and in accordance with regulations issued under subsection (c) of this section, the Director may authorize the enrollment in a school of the defense dependents’ education system of a child not otherwise eligible to enroll in such a school if and to the extent that there is space available for such child in the school.

(b) Determination of amount of tuition; use of payments
(1) Except as otherwise provided under subsection (c) of this section, any child permitted to enroll in a school of the defense dependents’ education system under this section shall be required to pay tuition at a rate determined by the Secretary of Defense, which shall not be less than the rate necessary to defray the average cost of the enrollment of children in the system under this section.

(2) Amounts received under paragraph (1) shall be available to the defense dependents’ education system to assist in defraying the cost of enrollment of children in the system under this section.

(c) Regulations respecting enrollment requirements
(1) The Secretary of Defense may by regulations identify classes of children who shall be eligible to enroll in schools of the defense dependents’ education system under this section if and to the extent that there is space available, establish priorities among such classes, waive the tuition requirement of subsection (b)(1) of this section with respect to any such class, and issue such other regulations as may be necessary to carry out this section.

(2)(A) The Secretary shall include in the regulations prescribed under this subsection a requirement that children in the class of children described in subparagraph (B) shall be subject to the same tuition requirements, or waiver of tuition requirements, as children in the class of children described in subparagraph (C).
(B) The class of children described in this sub-
paragraph are children of members of reserve
components of the Armed Forces who—
(i) are on active duty under an order to ac-
tive duty under section 12301 or 12302 of title
10;
(ii) were ordered to active duty from a loca-
tion in the United States (other than in Alas-
ka or Hawaii); and
(iii) are serving on active duty outside the
United States or in Alaska or Hawaii.

(C) The class of children described in this sub-
paragraph are children of members of reserve
components of the Armed Forces who—
(i) are on active duty under an order to ac-
tive duty under section 12301 or 12302 of title
10;
(ii) were ordered to active duty from a loca-
tion outside the United States (or in Alaska or
Hawaii); and
(iii) are serving on active duty outside the
United States or in Alaska or Hawaii.

(d) Enrollment of certain children in overseas
schools

(1) The Secretary of Defense may authorize
the enrollment in schools of the defense depend-
ents’ education system of children in the follow-
ing classes:
(A) Children of officers and employees of the
United States (other than civilian officers and
employees who are sponsors under section 932(2) of this title) stationed in overseas areas.
(B) Children of employees of contractors em-
ployed in carrying out work for the United
States in overseas areas.
(C) Children of other citizens or nationals of
the United States or of foreign nationals, if
the Secretary determines that enrollment of
such children is in the national interest.

(2) Notwithstanding subsection (c) of this sec-
tion, the Secretary may not waive the tuition
requirements of subsection (b)(1) of this section with respect to children referred to in paragraph (1).

Stat. 2586; Pub. L. 99–145, title XII, §1205, Nov. 8,
Stat. 1483.)

AMENDMENTS
2003—Pub. L. 108–136, §563(b), substituted “Space-
available enrollment of students; tuition” for “Tuition-
paying students” in section catchline.

Subsec. (c), Pub. L. 108–136, §560(a), designated existing provisions as par. (1) and added par. (2).
1989—Subsec. (d)(1)(A). Pub. L. 101–189 substituted “other than civilian officials and employees who are sponsors under section 932(2) of this title” for “(including employees of nonappropriated fund activities of the Department of Defense)”.

EFFECTIVE DATE OF 1989 AMENDMENT
Section 325(c) of Pub. L. 101–189 provided that: “The amendments made by this section [amending this section and section 932 of this title] shall apply with re-
spect to periods of enrollment in schools of the defense dependents’ education system beginning after September 30, 1989.”

§923a. Enrollment of certain additional children on tuition-free basis

(a) Enrollment authorized

Under regulations to be prescribed by the Sec-
retary of Defense, the Secretary may authorize
the enrollment in schools of the defense depend-
ents’ education system on a tuition-free basis of—
(1) the children of full-time, locally-hired employees of the Department of Defense in an
overseas area if such employees are citizens or
nationals of the United States; and
(2) the children of a foreign military member
assigned to the Supreme Headquarters Allied
Powers, Europe, but only in a school of the de-
fense dependents’ education system in Mons,
Belgium.

(b) Funding

The Secretary may use funds available for the
defense dependents’ education system to provide
for the education of children enrolled in the de-
fense dependents’ education system under sub-
section (a).

(c) Special rules regarding enrollment of depend-
ents of foreign military members assigned to
Supreme Headquarters Allied Powers, Eu-
rope

(1) In the regulations required by subsection
(a), the Secretary shall prescribe a methodology
based on the estimated total number of depend-
ents of sponsors under section 932(2) of this title
enrolled in schools of the defense dependents’
education system in Mons, Belgium, to deter-
mine the number of children described in para-
graph (2) of subsection (a) who will be author-
ized to enroll under such subsection. The Sec-
retary shall prescribe such methodology with
the advice and assistance of the commander of
the geographic combatant command with juris-
diction over Mons, Belgium.

(2) If the number of children described in para-
graph (2) of subsection (a) who seek enrollment
in schools of the defense dependents’ education
system in Mons, Belgium, exceeds the number
authorized by the Secretary under paragraph
(1), the Secretary may enroll the additional children
on a space-available, tuition-free basis notwith-
standing section 923(d)(2) of this title.

(Pub. L. 95–561, title XIV, §1404A, as added Pub.
V, §571(a), Oct. 17, 2006, 120 Stat. 2225; Pub. L.
122 Stat. 323; Pub. L. 111–84, div. A, title V, §535, 
Oct. 29, 2009, 123 Stat. 2292.)

AMENDMENTS
2009—Subsec. (a)(2). Pub. L. 111–84, §535(a), struck out “and only through the 2010–2011 school year” before period at end.

Subsec. (c)(1). Pub. L. 111–84, §535(b), inserted at end “The Secretary shall prescribe such methodology with the advice and assistance of the commander of the geographic combatant command with jurisdiction over Mons, Belgium.”


2006—Subsec. (a). Pub. L. 109–364, §571(a)(1), substituted “basis of—” for “basis of”, designated part of
existing provisions as par. (1), substituted ""; and"" for period at end, and added par. (2).

EFFECTIVE DATE OF 2008 AMENDMENT

§924. Annual educational assessment

(a) Contents
The Director shall assess each year the performance of the defense dependents' education system in providing an education of high quality to children enrolled in the system. Such assessment may include the use of educational assessment measures and such other means as the Director determines to be suitable for assessing student performance.

(b) Availability
The results of each annual assessment under subsection (a) of this section with respect to an individual enrolled in the defense dependents' education system shall be made available to the sponsor of such individual, and summary results of each such annual assessment shall be made available to Members of Congress and to professional employees in the system.


§925. Budget request for school construction funds for Director of Dependents' Education
The President shall include in his budget for each fiscal year a separate request for funds for construction of school facilities by the Director.


§926. School system for dependents in overseas areas

(a) Establishment and operation
The Secretary of Defense shall establish and operate a school system for dependents in overseas areas as part of the defense dependents' education system.

(b) Tuition and assistance when schools unavailable
(1) Under such circumstances as the Secretary of Defense may prescribe in regulations, the Secretary may provide tuition to allow dependents in an overseas area where a school operated by the Secretary is not reasonably available to attend schools other than schools established under subsection (a) of this section on a tuition-free basis. Schools to which tuition may be paid under this subsection may include private boarding schools in the United States. Any school to which tuition is paid under this subsection to allow a dependent in an overseas area to attend such school shall provide an educational program satisfactory to the Secretary.

(2)(A) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service of the Navy, may provide financial assistance to sponsors of dependents in overseas areas where schools operated by the Secretary of Defense under subsection (a) of this section are not reasonably available in order to assist the sponsors to defray the costs incurred by the sponsors for the attendance of the dependents at schools in such areas other than schools operated by the Secretary of Defense.

(B) The Secretary of Defense and the Secretary of Homeland Security shall each prescribe regulations relating to the availability of financial assistance under subparagraph (A). Such regulations shall, to the maximum extent practicable, be consistent with Department of State regulations relating to the availability of financial assistance for the education of dependents of Department of State personnel overseas.

(c) Continuation of enrollment for certain dependents of members of Armed Forces involuntarily separated
(1) A member of the Armed Forces serving on active duty on September 30, 1990, who is involuntarily separated during the period beginning on October 1, 1990, and ending on December 31, 2001, and who has a dependent described in paragraph (2) who is enrolled in a school of the defense dependents' education system (or a school for which tuition is provided under subsection (b) of this section) on the date of that separation shall be eligible to enroll or continue the enrollment of that dependent at that school (or another school serving the same community) for the final year of secondary education of that dependent in the same manner as if the member were still on active duty.

(2) A dependent referred to in paragraph (1) is a dependent who on the date of the separation of the member has completed the thirteenth grade and is likely to complete secondary education within the one-year period beginning on that date.

(d) Auxiliary services available to home school students
(1) A dependent who is educated in a home school setting, but who is eligible to enroll in a school of the defense dependents' education system, shall be permitted to use or receive auxiliary services of that school without being required to either enroll in that school or register for a minimum number of courses offered by that school. The dependent may be required to satisfy other eligibility requirements and comply with standards of conduct applicable to students actually enrolled in that school who use or receive the same auxiliary services.

(2) For purposes of paragraph (1), the term "auxiliary services" includes use of academic resources, access to the library of the school, after hours use of school facilities, and participation in music, sports, and other extracurricular and interscholastic activities.


CODIFICATION

Section is comprised of section 1407 of Pub. L. 95–561. Subsec. (e), formerly subsec. (c), of section 1407 enacted section 489 of Title 37, Pay and Allowances of the Uniformed Services.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–181 inserted after first sentence “Schools to which tuition may be paid under this subsection may include private boarding schools in the United States.”


1998—Subsec. (b). Pub. L. 105–261, §561(k), substituted “Under such circumstances as the Secretary of Defense may prescribe in regulations, the Secretary” for “Under such circumstances as he may by regulation prescribe, the Secretary of Defense”.

1997—Subsec. (c)(1). Pub. L. 105–261, §561(k), substituted “during the period beginning on October 1, 1990, and ending on September 30, 2001” for “during the nine-year period beginning on October 1, 1990.”

1995—Subsec. (c)(1). Pub. L. 104–165 substituted “nine-year period” for “five-year period”.

1990—Subsec. (c). Pub. L. 101–510 added subsec. (c) and redesignated former subsec. (c) as (d). See Codification note above.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of Title 10, Armed Forces.

§927. Allotment formula

(a) Establishment by regulation of minimum allotment formula; criteria

The Director shall by regulation establish a formula for determining the minimum allotment of funds necessary for the operation of each school in the defense dependents’ education system. In establishing such formula, the Director shall take into consideration—

(1) the number of students served by a school and the size of the school;

(2) special cost factors for a school, including—

(A) geographic isolation of the school,

(B) a need for special staffing, transportation, or educational programs at the school, and

(C) unusual food and housing costs,

(3) the cost of providing academic services of a high quality as required by section 921(b)(1) of this title; and

(4) such other factors as the Director considers appropriate.

(b) Issuance, etc., of regulations

Any regulation under subsection (a) of this section shall be issued, and shall become effective, in accordance with the procedures applicable to regulations required to be issued by the Secretary of Education in accordance with section 1232 of this title.

(c) Applicability of certain provisions

(1) Children with disabilities

Notwithstanding the provisions of section 921(b)(3) of this title, the provisions of part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.], other than the funding and reporting provisions, shall apply to all schools operated by the Department of Defense under this chapter, including the requirement that children with disabilities, aged 3 to 5, inclusive, receive a free appropriate public education.

(2) Infants and toddlers with disabilities

The responsibility to provide comparable early intervention services to infants and toddlers with disabilities and their families in accordance with individualized family service plans described in section 636 of the Individuals with Disabilities Education Act [20 U.S.C. 1436] and to comply with the procedural safeguards set forth in part C of such Act [20 U.S.C. 1411 et seq.] shall apply with respect to all eligible dependents overseas.

(3) Implementation

In carrying out paragraph (2), the Secretary shall have in effect a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities among Department of Defense entities involved in the provision of such services to such individuals.


REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (c)(1), (2), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and C of the Act are classified generally to subchapters II (§1411 et seq.) and III (§1431 et seq.), respectively, of chapter 33 of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–146 substituted “section 636” for “section 677” and “part C” for “part H”.


Subsec. (c)(3). Pub. L. 106–65, §354(3)(C), substituted “Implementation” for “Implementation timelines” in heading, substituted “in carrying out paragraph (2), the Secretary shall—”, struck out the subpar. (A) designation and “in academic year 1991–1992 and the 2 succeeding academic years, plan and develop a comprehensive” for “in carrying out the provisions of paragraph (2), the Secretary shall—”, struck out the subpar. (B) designation and “in academic year 1992–1993 and the 2 succeeding academic years, plan and develop a comprehensive” for “in carrying out the provisions of paragraph (2), the Secretary shall—”, and struck out the subpar. (C) designation and “in academic year 1993–1994” after “public education”.

pars. (B) and (C) which related to implementation in academic years 1994–1995, 1995–1996, and succeeding academic years.

1991—Subsec. (c). Pub. L. 102–119 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The provisions of the Education for All Handicapped Children Act of 1975 shall apply with respect to all schools operated by the Department of Defense under this chapter."

**Effective Date of 1991 Amendment**
Section 27 of Pub. L. 102–119 provided that:

"(a) Sections 8, 9, and 10—The amendments made by sections 8, 9, and 10 (amending sections 1423, 1451, 1454, and 1455 of this title) shall take effect on October 1, 1991, or on the date of enactment of this Act (Oct. 7, 1991), whichever is later.

"(b) Sections 5, 12, 13, 14, 15, 17, and 18—The amendments made by sections 5, 12, 13, 14, 15, 17, and 18 (amending sections 1413, 1472, 1476, 1477, 1478, 1480, and 1482 of this title) shall take effect July 1, 1992, except that each State shall have the option to have any of the amendments take effect earlier than that date.

"(c) Remaining Provisions—The remaining sections of this Act (enacting section 1464a of this title, amending this section, sections 290, 1087ee, 1400 to 1402, 1404, 1405, 1407, 1411 to 1417, 1419, 1421 to 1425, 1431 to 1433, 1435, 1442, 1443, 1451, 1452, 1461, 1471 to 1473, and 1475 to 1485 of this title, sections 2503 and 2504 of Title 25, Indians, sections 721, 774, 777a, 795m, and 966 of Title 29, Labor, and sections 1396b, 1366, 6022, 6024, 9833, 9855A, 9862, and 9886 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 241, 1087ee, 1400 to 1402, 1404, 1435, 1442, 1443, 1451, 1452, 1461, 1471 to 1473, and 1475 to 1485 of this title) shall take effect on the date of enactment of this Act (Oct. 7, 1991)."

§ 928. School advisory committees

(a) Establishment; functions; membership

(1) The Director shall provide for the establishment of an advisory committee for each school in the defense dependents' education system. An advisory committee for a school shall advise the principal or superintendent of the school with respect to the operation of the school, may make recommendations with respect to curriculum and budget matters, and, except as provided under paragraph (2), shall advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander. The membership of each such advisory committee shall include an equal number of parents of students enrolled in the school and of employees working at the school and, when appropriate, may include a student enrolled in the school. The membership of each such advisory committee shall also include one nonvoting member designated by the organization recognized as the exclusive bargaining representative of the employees working at the school.

(2) In the case of any military installation or overseas area where there is more than one school in the defense dependents' education system, the Director shall provide for the establishment of an advisory committee for such military installation or overseas area to advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander.

(b) Election of members; regulations respecting qualifications and election procedures

Except in the case of a nonvoting member designated under the last sentence of subsection (a)(1) of this section, members of a school advisory committee established under this section shall be elected by individuals of voting age residing in the area to be served by the advisory committee. The Secretary of Defense shall by regulation prescribe the qualifications for election to an advisory committee and procedures for conducting elections of advisory committee members.

(c) Members serve without pay

Members of school advisory committees established under this section shall serve without pay.

§ 929. Advisory Council on Dependents' Education

(a) Establishment; membership; Director

(1) There is established in the Department of Defense an Advisory Council on Dependents' Education (hereinafter in this section referred to as the "Council"). The Council shall be composed of—

(A) the Secretary of Defense and the Secretary of Education, or their respective designees;

(B) 12 individuals appointed jointly by the Secretary of Defense and the Secretary of Education who shall be individuals who have demonstrated an interest in the field of pri-
mary or secondary education and who shall include representatives of professional employee organizations, school administrators, and parents of students enrolled in the defense dependents’ education system, and one student enrolled in such system; and (C) a representative of the Secretary of Defense and of the Secretary of Education.

(2) Individuals appointed to the Council from professional employee organizations shall be individuals designated by those organizations.

(3) The Secretary of Defense, or the Secretary’s designee, and the Secretary of Education, or the Secretary’s designee, shall serve as cochairmen of the Council.

(4) The Director shall be the Executive Secretary of the Council.

(b) Terms of office of members

The term of office of each member of the Council appointed under subsection (a)(2) of this section shall be three years, except that—

(1) of the members first appointed under such paragraph, four shall serve for a term of one year, four shall serve for a term of two years, and four shall serve for a term of three years, as determined by the Secretary of Defense and the Secretary of Education at the time of their appointment, and (2) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

No member appointed under subsection (a)(2) of this section shall serve more than two full terms on the Council.

(c) Meetings; functions

The Council shall meet at least two times each year. The functions of the Council shall be to—

(1) recommend to the Director general policies for operation of the defense dependents’ education system with respect to curriculum selection, administration, and operation of the system.

(2) provide information to the Director from other Federal agencies concerned with primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the defense dependents’ education system.

(3) advise the Director on the design of the study and the selection of the contractor referred to in section §508(a)(2) of this title, and (4) perform such other tasks as may be required by the Secretary of Defense.

(d) Compensation, etc., of members

Members of the Council who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to receive compensation at the daily equivalent of the rate specified at the time of such service for level IV of the Executive Schedule under section 5315 of title 5, including traveltime, and while so serving on the business of the Council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons employed intermittently in the Government service.

(e) Termination

The Council shall continue in existence until terminated by law.


AMENDMENTS

1999—Subsec. (d). Pub. L. 106–65 substituted “level IV of the Executive Schedule under section 5315 of title 5” for “grade GS–18 in section 5332 of title 5”.

1985—Subsec. (a). Pub. L. 99–145, §1204(b)(3)(A), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: “There is established in the Department of Education an Advisory Council on Dependents’ Education (hereinafter in this section referred to as the ‘Council’). The Council shall be composed of—

“(1) the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics, and the Administrator of Education for Overseas Dependents of such department, who shall be co-chairman of the Council;

“(2) twelve individuals appointed by the Secretary of Education, who shall be individuals who have demonstrated an interest in the fields of primary or secondary education and who shall include representatives of professional employee organizations, school administrators, parents of dependents enrolled in the dependents’ education system, and one student enrolled in such system;

“(3) a representative of the Secretary of Education and of the Secretary of Defense.

The Director shall be the Executive Secretary of the Council.”


Subsec. (c). Pub. L. 99–145, §1204(b)(5)(A), substituted “two times each year” for “four times each year” in provisions before par. (1).

Subsec. (c)(2), (3). Pub. L. 99–145, §1204(b)(5)(B), (C), redesignated par. (3) as (2), and struck out par. (2) which required the Council to make recommendations to the Director and to the Secretary of Education on the orderly transfer of the functions under this chapter to the Secretary and Department of Education.

Subsec. (c)(4), (5). Pub. L. 99–145, §1204(b)(5)(C), (D), redesignated par. (5) as (4), and substituted Secretary of Defense for Secretary of Education. Former par. (4) redesignated (3).


Subsec. (a)(1). Pub. L. 96–88, §508(j)(4), provided that the Administrator of Education for Overseas Dependents of the Department of Education was to be a member of the council and its co-chairman.

Subsec. (a)(2). Pub. L. 96–88, §508(j)(5), substituted “Secretary of Education” for “Assistant Secretary”, “demonstrated an interest” for “versed by training or experience”, “parents of dependents” for “sponsors of students”, and “dependents’ education system” for “defense dependents’ education system”.

Subsec. (a)(3). Pub. L. 96–88, §508(j)(6), required membership on the Council for representations of the Secretaries of Education and Defense and struck out requirements for representation of the Commissioner of Education, Director of the National Institute of Education, Director of the Educational Directorate of the National Science Foundation, Chairman of the National Endowment for the Arts, Chairman of the Na-
§ 930. Study of defense dependents' education system

(a) Scope; conduct and report to Director by contractor

(1) The Director may from time to time, but not more frequently than once a year, provide for a comprehensive study of the entire defense dependents' education system. Any such study shall include a detailed analysis of the education programs and the facilities of the system. Any study under paragraph (1) shall be conducted by a contractor selected by the Director after an open competition. After conducting such study, the contractor shall submit a report to the Director describing the results of the study and giving its assessment of the defense dependents' education system.

(b) Consultation requirements respecting study specifications and contractor selection

In designing the specifications for any study to be conducted pursuant to subsection (a)(1) of this section, and in selecting a contractor to conduct such study under subsection (a)(2) of this section, the Director shall consult with the Advisory Council on Dependents' Education established under section 929 of this title.

(c) Reporting requirements of Director

The Director shall submit to the Congress any report submitted to him under subsection (a)(2) of this section describing the results of a study carried out pursuant to subsection (a)(1) of this section, together with the recommendations, if any, of the contractor for legislation or any increase in funding needed to improve the defense dependents' education system. Notwithstanding any law, rule, or regulation to the contrary, such report shall not be submitted to any review before its transmittal to the Congress, but the Secretary of Defense shall, at the time of the transmittal of such report, submit to the Congress such recommendations as he may have with respect to legislation or any increase in funding needed to improve the defense dependents’ education system.


§ 931. Regulations; issuance and contents

The Secretary of Defense shall issue regulations to carry out this chapter. Such regulations shall—

(1) prescribe the educational goals and objectives of the defense dependents’ education system,

(2) establish standards for the development of curricula for the system and for the selection of instructional materials,

(3) prescribe professional standards for professional personnel employed in the system,

(4) provide for arrangements between the Director and commanders of military installations for necessary logistic support for schools of the system located on military installations,

(5) provide for a recertification program for professional personnel employed in the system,

(6) provide for such other matters as may be necessary to ensure the efficient organization and operation of the defense dependents’ education system.


AMENDMENTS

1999—Subsec. (d). Pub. L. 106–65 substituted “The Secretary” for “Not later than 180 days after July 1, 1979, the Secretary” in introductory provisions.

§ 932. Definitions

For purposes of this chapter:
(1) The term “dependent” means a minor individual—
(A) who has not completed secondary schooling, and
(B) who is the child, stepchild, adopted child, ward, or spouse of a sponsor, or who is a resident in the household of a sponsor who stands in loco parentis to such individual and who receives one-half or more of his support from such sponsor.

(2) The term “sponsor” means a person—
(A) who is—
(i) a member of the Armed Forces serving on active duty, or
(ii) a full-time civilian officer or employee of the Department of Defense and a citizen or national of the United States; and
(B) who is authorized to transport dependents to or from an overseas area at Government expense and is provided an allowance for living quarters in that area.

(3) The term “overseas area” means any area situated outside the United States.

(4) The term “United States”, when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Island).

(5) The term “involuntarily separated” has the meaning given that term in section 1141 of title 10.

(6) The term “Director” means the Director of the Department of Defense Education Activity.


AMENDMENTS
1988—Par. (2), Pub. L. 101–189 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘sponsor’ means—
“(A) a member of the Armed Forces serving on active duty, or
“(B) a civilian officer or employee of the Department of Defense paid from appropriated funds.”

EFFECTIVE DATE OF 1989 AMENDMENT
Amendment by Pub. L. 101–189 applicable with respect to periods of enrollment in schools of the defense dependents’ education system beginning after Sept. 30, 1989, see section 325(c) of Pub. L. 101–189, set out as a note under section 923 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS
For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CHAPTER 26—SUPPORT AND SCHOLARSHIP IN HUMANITIES AND ARTS; MUSEUM SERVICES

SUBCHAPTER I—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

§ 951. Declaration of findings and purposes.

The Congress finds and declares the following:
(1) The arts and the humanities belong to all the people of the United States.
(2) The encouragement and support of national progress and scholarship in the humanities and the arts, while primarily a matter for private and local initiative, are also appropriate matters of concern to the Federal Government.
(3) An advanced civilization must not limit its efforts to science and technology alone, but must give full value and support to the other great branches of scholarly and cultural activity in order to achieve a better understanding of the past, a better analysis of the present, and a better view of the future.
(4) Democracy demands wisdom and vision in its citizens. It must therefore foster and support a form of education, and access to the arts and the humanities, designed to make people of all backgrounds and wherever located masters of their technology and not its unthinking servants.
(5) It is necessary and appropriate for the Federal Government to complement, assist, and add to programs for the advancement of the humanities and the arts by local, State, regional, and private agencies and their organizations. In doing so, the Government must be sensitive to the nature of public sponsorship. Public funding of the arts and humanities is subject to the conditions that traditionally govern the use of public money. Such funding should contribute to public support and confidence in the use of taxpayer funds. Public funds provided by the Federal Government must ultimately serve public purposes the Congress defines.
(6) The arts and the humanities reflect the high place accorded by the American people to the nation’s rich cultural heritage and to the fostering of mutual respect for the diverse beliefs and values of all persons and groups.
(7) The practice of art and the study of the humanities require constant dedication and devotion. While no government can call a
great artist or scholar into existence, it is necessary and appropriate for the Federal Government to help create and sustain not only a climate encouraging freedom of thought, imagination, and inquiry but also the material conditions facilitating the release of this creative talent.

(8) The world leadership which has come to the United States cannot rest solely upon superior power, wealth, and technology, but must be solidly founded upon worldwide respect and admiration for the Nation’s high qualities as a leader in the realm of ideas and of the spirit.

(9) Americans should receive in school, background and preparation in the arts and humanities to enable them to recognize and appreciate the aesthetic dimensions of our lives, the diversity of excellence that comprises our cultural heritage, and artistic and scholarly expression.

(10) It is vital to a democracy to honor and preserve its multicultural artistic heritage as well as support new ideas, and therefore it is essential to provide financial assistance to its artists and the organizations that support their work.

(11) To fulfill its educational mission, achieve an orderly continuation of free society, and provide models of excellence to the American people, the Federal Government must transmit the achievement and values of civilization from the past via the present to the future, and make widely available the greatest achievements of art.

(12) In order to implement these findings and purposes, it is desirable to establish a National Foundation on the Arts and the Humanities.


AMENDMENTS

1990—Pub. L. 101–512 amended section generally, substituting provisions relating to declaration of findings and purposes consisting of pars. (1) to (12) for provisions relating to declaration of purpose consisting of cl. (1) to (9).


Cl. (3). Pub. L. 99–194, § 102(2), inserted “and access to the arts and the humanities,” after “form of education” and substituted “people of all backgrounds and wherever located” for “men.”

Cis. (8), (9). Pub. L. 99–194, § 102(3)–(5), added cl. (8) and redesignated former cl. (8) as (9).

1984—Cis. (6) to (8). Pub. L. 98–306, § 3, added cl. (6) and redesignated former cl. (6) and (7) as (7) and (8), respectively.

1973—Cl. (7). Pub. L. 93–133 struck out provisions relating to strengthening the responsibilities of the Office of Education with respect to education in the arts and the humanities.

1970—Cl. (2). Pub. L. 91–346 inserted “in order to achieve a better understanding of the past, a better analysis of the present, and a better view of the future.”
957, and 958 to 960 of this title, repealing sections 781 to 
788 and 790 of this title, and enacting provisions set out 
as notes under section 955 of this title and section 781 
of this title] may be cited as 'The National Foundation 
on the Arts and the Humanities Amendments of 1970.'"

**SHORT TITLE**

Section 1 of Pub. L. 89–209, as renumbered title I, § 1, 
223; renumbered § 1 and amended by Pub. L. 99–194, title 
I, §101, Dec. 20, 1985, 99 Stat. 1332, provided that: "This 
Act [enacting this subchapter, amending sections 784 to 
786 of this title, repealing section 789 of this title, and 
enacting provisions formerly set out as a note under 
section 785 of this title] may be cited as the 'National 
Foundation on the Arts and the Humanities Act of 1965.'"

**SENSE OF CONGRESS REGARDING PURCHASE OF 
AMERICAN-MADE EQUIPMENT AND PRODUCTS**

provided that:

"SEC. 401. SENSE OF CONGRESS.

'It is the sense of the Congress that a recipient (in-
cluding a nation, individual, group, or organization) of 
any form of subsidy, aid, or other Federal assistance 
under the Arts amended by this Act [probably means 
this section, see Short Title of 1990 Amendment note 
above] should, in expending that assistance, purchase 
American-made equipment and products."

"SEC. 402. NOTICE.

'Any entity that provides a form of subsidy, aid, or 
other Federal assistance under the Acts amended by 
this Act shall provide to each recipient of such form of 
subsidy, aid, or other Federal assistance a notice de-
scribing the sense of the Congress stated under section 
401.'"

1979 *WHITE HOUSE CONFERENCE ON THE ARTS*

222–224, called for a White House Conference on the Arts 
to be held no later than Dec. 31, 1979, to help develop a 
climate in which the arts can flourish and to formulate 
recommendations relating to the appropriate growth of 
the arts in all parts of the Nation, established a Na-
tional Conference Planning Council on the Arts to pro-
vide guidance and planning for the Conference, directed 
the Council to submit a report of the Conference to the 
President and to the Congress no later than 180 days 
following the date on which the Conference was called, 
and provided the Council cease to exist 180 days, unless 
extended by the President, but in no event to exceed 
one year, after submission of the report.

1979 *WHITE HOUSE CONFERENCE ON THE HUMANITIES*

224–226, called for a White House Conference on the Hu-
manities to be held no later than Dec. 31, 1979, to help 
develop a climate in which the humanities can flourish 
and to formulate recommendations relating to the ap-
propriate growth of the humanities in all parts of the 
Nation, established a National Planning Council on the 
Humanities to provide guidance and planning for the 
Conference, directed the Council to submit a report of 
the Conference to the President and to the Congress no 
later than 180 days following the date on which the 
Conference was called, and provided the Council cease 
to exist 180 days, unless extended by the President, but 
in no event to exceed one year, after submission of the 
report.

**EXECUTIVE ORDER NO. 12275**

Ex. Ord. No. 12275, Jan. 16, 1981, 46 F.R. 5857, which 
established the Design Liaison Council and provided for 
its membership, functions, etc., was revoked by Ex. 
Ord. No. 12379, § 10, Aug. 17, 1982, 47 F.R. 36099, set 
out as a note under section 14 of the Federal Advisory Com-
mittee Act in the Appendix to Title 5, Government Or-
ganization and Employees.

**§ 952. Definitions**

As used in this subchapter—

(a) The term "humanities" includes, but is not 
limited to, the study and interpretation of the fol-
lowing: language, both modern and classical; 
linguistics; literature; history; jurisprudence; 
philosophy; archeology; comparative religion; 
ethics; the history, criticism, and theory of the 
arts; those aspects of the social sciences which 
have humanistic content and employ human-
istic methods; and the study and application of 
the humanities to the human environment with 
particular attention to reflecting our diverse 
heritage, traditions, and history and to the re-
levance of the humanities to the current condi-
tions of national life.

(b) The term "the arts" includes, but is not 
limited to, music (instrumental and vocal), 
dance, drama, folk art, creative writing, archi-
technology and allied fields, painting, sculpture, 
photography, graphic and craft arts, industrial 
design, costume and fashion design, motion pic-
tures, television, radio, film, video, tape and 
sound recording, the arts related to the presen-
tation, performance, execution, and exhibition 
of such major art forms, all those traditional 
arts practiced by the diverse peoples of this 
country, 1 and the study and application of the 
arts to the human environment.

(c) The term "production" means plays (with 
or without music), ballet, dance and choral per-
formances, concerts, recitals, operas, exhibi-
tions, readings, motion pictures, television, 
radio, film, video, and tape and sound record-
ings, and any other activities involving the exe-
cution or rendition of the arts and meeting such 
standards as may be approved by the National 
Endowment for the Arts established by section 
954 of this title.

(d) The term "project" means programs orga-
nized to carry out the purposes of this sub-
chapter, including programs to foster American 
artistic creativity, to commission works of art, 
to create opportunities for individuals to de-
velop artistic talents when carried on as a part 
of a program otherwise included in this defini-
tion, and to develop and enhance the widest pub-
lic knowledge and understanding of the arts, and 
includes, where appropriate, rental or purchase 
of facilities, purchase or rental of land, and ac-
quision of equipment. Such term also in-
cludes—

(1) the renovation of facilities if (A) the 
amount of the expenditure of Federal funds for 
such purpose in the case of any project does 
not exceed $250,000, or (B) two-thirds of the 
members of the National Council on the Arts or 
the National Council on the Humanities, as 
the case may be (who are present and voting) 
approve of the grant or contract involving an 
expenditure for such purpose; and

(2) for purposes of sections 954(p), 956(e)(10), 
and 956(h) of this title only, the construction 
of facilities if (A) such construction is for 
demonstration purposes or under unusual cir-
stances where there is no other manner in

1 So in original. The period probably should be a comma.
which to accomplish an artistic or humanistic purpose, and (B) two-thirds of the members of the National Council on the Arts and the National Council on the Humanities, as the case may be, (who are present and voting) approve of the grant or contract involving an expenditure for such purpose.

(e) The term “group” includes any State or other public agency, and any nonprofit society, foundation, corporation, institution, organization, association, museum, or establishment in the United States, whether or not incorporated.

(f) The term “workshop” means an activity the primary purpose of which is to encourage the artistic development or enjoyment of amateur, student, or other nonprofessional participants, or to promote scholarship and teaching among the participants.

(g) The term “State” includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(h) The term “local arts agency” means a community organization, or an agency of local government, that primarily provides financial support, services, or other programs for a variety of artists and arts organizations, for the benefit of the community as a whole.

(i) The term “developing arts organization” means a local arts organization of high artistic promise which—

(1) serves as an important source of local arts programming in a community; and

(2) has the potential to develop artistically and institutionally to broaden public access to the arts in rural and innercity areas and other areas that are underserved artistically.

(j) The term “determined to be obscene” means determined, in a final judgment of a court of record and of competent jurisdiction in the United States, to be obscene.

(k) The term “final judgment” means a judgment that is either—

(1) not reviewed by any other court that has authority to review such judgment; or

(2) is not reviewable by any other court.

(l) The term “obscene” means with respect to a project, production, workshop, or program that—

(1) the average person, applying contemporary community standards, would find that such project, production, workshop, or program, when taken as a whole, appeals to the prurient interest;

(2) such project, production, workshop, or program depicts or describes sexual conduct in a patently offensive way; and

(3) such project, production, workshop, or program, when taken as a whole, lacks serious literary, artistic, political, or scientific value.


Amendments

1990—Subsec. (b). Pub. L. 101–512, § 318 [title I, § 102(a)(1), (b)(1)], inserted “all those traditional arts practiced by the diverse peoples of this country” after “forms,” and “and “film, video,” after “radio,”.


Subsec. (g). Pub. L. 101–512, § 318 [title I, § 102(c)], added subsec. (g) to (l).

1985—Subsec. (a). Pub. L. 99–194, § 108, substituted “study and interpretation of the following” for “study of the following” and inserted “to reflecting our diverse heritage, traditions, and history and after particular attention”.

Subsec. (d)(2). Pub. L. 99–194, § 103, inserted “for purposes of sections 954(1) and 956(c)(1)” for “sections 954(1)” and executed the substitution for “sections 954(1)” to reflect the probable intent of Congress.

Subsecs. (h), (i), Pub. L. 101–512, § 318 [title I, § 102(a)(2)], added subsecs. (h) and (i).


Subsec. (d)(1)(B), Pub. L. 96–496, § 101(b), inserted “or the National Council on the Humanities, as the case may be”.

Subsec. (g). Pub. L. 96–496, § 101(c), inserted “of the Northern Marianas Islands”.

1973—Subsec. (d). Pub. L. 93–133 substituted “or purchase of facilities” for “purchase, renovation, or construction of facilities” and added pars. (1) and (2).

1970—Subsec. (a). Pub. L. 91–346 extended term “humanities” to include the study of comparative religion and ethics, and emphasized that particular attention be paid to relevance of humanities to current conditions of national life when engaging in study and application of humanities to human environment.

1968—Subsec. (a). Pub. L. 90–348, § 7, extended term “humanities” to include the study and application of enumerated fields to human environment.

Subsec. (b). Pub. L. 90–348, § 7, extended term “arts” to include study and application of enumerated art forms to human environment.

Subsec. (c). Pub. L. 90–348, § 1, substituted “activity” for “production” in definition of “workshop” and extended enumerated purposes to include promotion of scholarship and teaching among participants.

Effective Date of 1990 Amendment


Effective Date of 1973 Amendment

Amendment by Pub. L. 93–133 effective on and after July 1, 1973, see section 2(b) of Pub. L. 93–133, set out as a note under section 851 of this title.

§ 953. National Foundation on the Arts and the Humanities

(a) Establishment; composition

There is established a National Foundation on the Arts and the Humanities (hereinafter referred to as the “Foundation”), which shall be
(b) *Purpose*

The purpose of the Foundation shall be to develop and promote a broadly conceived national policy of support for the humanities and the arts in the United States, and for institutions which preserve the cultural heritage of the United States pursuant to this subchapter.

(c) *Prohibition against Federal supervision over policy determination, personnel, or curriculum, or administration or operation of any school or other non-Federal body*

In the administration of this subchapter no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the policy determination, personnel, or curriculum, or the administration or operation of any school or other non-Federal agency, institution, organization, or association.

*AMENDMENTS*


1985—Subsec. (a). Pub. L. 99–194, § 4(b), inserted “, and for institutions which preserve the cultural heritage of the United States”.

§ 954. National Endowment for the Arts

(a) *Establishment*

There is established within the Foundation a National Endowment for the Arts.

(b) *Chairperson of the Endowment; term of office; vacancies*

(1) The Endowment shall be headed by a chairperson, to be known as the Chairperson of the National Endowment for the Arts, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The term of office of the Chairperson shall be four years and the Chairperson shall be eligible for reappointment. The provisions of this subsection shall apply to any person appointed to fill a vacancy in the office of Chairperson.

Upon expiration of the Chairperson’s term of office the Chairperson shall serve until the Chairperson’s successor shall have been appointed and shall have qualified.

(c) *Program of contracts, grants-in-aid, or loans to groups and individuals for projects and productions; traditionally underrepresented recipients of financial assistance*

The Chairperson, with the advice of the National Council on the Arts, is authorized to establish and carry out a program of contracts with, or grants-in-aid or loans to, groups or, in appropriate cases, individuals of exceptional talent engaged in or concerned with the arts, for the purpose of enabling them to provide or support—

(1) projects and productions which have substantial national or international artistic and cultural significance, giving emphasis to American creativity and cultural diversity and to the maintenance and encouragement of professional excellence;

(2) projects and productions, meeting professional standards or standards of authenticity or tradition, irrespective of origin, which are of significant merit and which, without such assistance, would otherwise be unavailable to our citizens for geographic or economic reasons;

(3) projects and productions that will encourage and assist artists and enable them to achieve wider distribution of their works, to work in residence at an educational or cultural institution, or to achieve standards of professional excellence;

(4) projects and productions which have substantial artistic and cultural significance and that reach, or reflect the culture of, a minority, inner city, rural, or tribal community;

(5) projects and productions that will encourage public knowledge, education, understanding, and appreciation of the arts;

(6) workshops that will encourage and develop the appreciation and enjoyment of the arts by our citizens;

(7) programs for the arts at the local level;

(8) projects that enhance managerial and organizational skills and capabilities;

(9) projects, productions, and workshops of the kinds described in paragraphs (1) through (8) through film, radio, video, and similar media, for the purpose of broadening public access to the arts; and

(10) other relevant projects, including surveys, research, planning, and publications relating to the purposes of this subsection.

In the case of publications under paragraph (10) of this subsection such publications may be supported without regard for the provisions of section 501 of title 44 only if the Chairperson consults with the Joint Committee on Printing of the Congress and the Chairperson submits to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives a report justifying any exemption from such section 501. Any loans made by the Chairperson under this subsection shall be made in accordance with terms and conditions approved by the Secretary of the Treasury. In selecting individuals and groups of exceptional talent as recipients of financial assistance to be provided under this subsection, the Chairperson shall give particular regard to artists and artistic groups that have traditionally been underrepresented.
(d) Application for payment; regulations and procedures

No payment shall be made under this section except upon application therefor which is submitted to the National Endowment for the Arts in accordance with regulations issued and procedures established by the Chairperson. In establishing such regulations and procedures, the Chairperson shall ensure that—

1. artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public; and

2. applications are consistent with the purposes of this section. Such regulations and procedures shall clearly indicate that obscenity is without artistic merit, is not protected speech, and shall not be funded. Projects, productions, workshops, and programs that are determined to be obscene are prohibited from receiving financial assistance under this subchapter from the National Endowment for the Arts.

The disapproval or approval of an application by the Chairperson shall not be construed to mean, and shall not be considered as evidence that, the project, production, workshop, or program for which the applicant requested financial assistance is or is not obscene.

(e) Limitation on amount of grant to group; grants and contracts of the National Endowment for the Arts

The total amount of any grant to any group pursuant to subsection (c) of this section shall not exceed 50 per centum of the total cost of such project or production, except that not more than 20 per centum of the funds allotted by the National Endowment for the Arts for the purposes of subsection (c) of this section for any fiscal year may be available for grants and contracts in that fiscal year without regard to such limitation.

(f) Eligibility for financial assistance

Any group shall be eligible for financial assistance pursuant to this section only if (1) no part of its net earnings inures to the benefit of any private stockholder or stockholders, or individual or individuals, and (2) donations to such group are allowable as a charitable contribution under the standards of subsection (c) of section 170 of title 26.

(g) Grants to States for projects and productions; applications; terms and conditions of State plans; minimum allotments; excess appropriations; cost limitations; grants to regional groups; non-Federal funding; definitions

1. The Chairperson, with the advice of the National Council on the Arts, is authorized to establish and carry out a program of grants-in-aid to assist the several States in supporting existing projects and productions which meet the standards enumerated in subsection (c) of this section, and in developing projects and productions in the arts in such a manner as will furnish adequate programs, facilities, and services in the arts to all the people and communities in each of the several States.

2. In order to receive assistance under this subsection in any fiscal year, a State shall submit an application for such grants at such time as shall be specified by the Chairperson and accompany such application with a plan which the Chairperson finds—

(A) designates or provides for the establishment of a State agency (hereinafter in this section referred to as the “State agency”) as the sole agency for the administration of the State plan;

(B) provides that funds paid to the State under this subsection will be expended solely on projects and productions approved by the State agency which carry out one or more of the objectives of subsection (c) of this section;

(C) provides that the State agency will make such reports, in such form and containing such information, as the Chairperson may from time to time require, including a description of the progress made toward achieving the goals of the State plan;

(D) provides—

(i) assurances that the State agency has held, after reasonable notice, public meetings in the State to allow all groups of artists, interested organizations, and the public to present views and make recommendations regarding the State plan; and

(ii) a summary of such recommendations and the State agency’s response to such recommendations; and

(E) contains—

(i) a description of the level of participation during the most recent preceding year for which information is available by artists, artists’ organizations, and arts organizations in projects and productions for which financial assistance is provided under this subsection;

(ii) for the most recent preceding year for which information is available, a description of the extent projects and productions receiving financial assistance from the State arts agency are available to all people and communities in the State; and

(iii) a description of projects and productions receiving financial assistance under this subsection that exist or are being developed to secure wider participation of artists, artists’ organizations, and arts organizations identified under clause (i) of this subparagraph or that address the availability of the arts to all people or communities identified under clause (ii) of this subparagraph.

No application may be approved unless the accompanying plan satisfies the requirements specified in this subsection.

3. Of the sums available to carry out this subsection for any fiscal year, each State which has a plan approved by the Chairperson shall be allotted at least $200,000. If the sums appropriated are insufficient to make the allotments under the preceding sentence in full, such sums shall be allotted among such States in equal amounts. In any case where the sums available to carry out this subsection for any fiscal year are in excess of the amount required to make the allotments under the first sentence of this paragraph—
(A) the amount of such excess which is no greater than 25 per centum of the sums available to carry out this subsection for any fiscal year shall be available only to the Chairperson for making grants under this subsection to States and regional groups, and

(B) the amount of such excess, if any, which remains after reserving in full for the Chairperson the amount required under clause (A) shall be allotted among the States which have plans approved by the Chairperson in equal amounts but in no event shall any State be allotted less than $200,000.

(4)(A) The amount of each allotment to a State for any fiscal year under this subsection shall be available to each State, which has a plan approved by the Chairperson in effect on the first day of such fiscal year, to pay not more than 50 per centum of the total cost of any project or production described in paragraph (1). The amount of any allotment made under paragraph (3) for any fiscal year which exceeds $125,000 shall be available, at the discretion of the Chairperson, to pay up to 100 per centum of such cost of projects and productions if such projects and productions would otherwise be unavailable to the residents of that State: Provided, That the total amount of any such allotment for any fiscal year which is exempted from such 50 per centum limitation shall not exceed 20 per centum of the total of such allotment for such fiscal year.

(B) Any amount allotted to a State under the first sentence of paragraph (3) for any fiscal year which is not obligated by the State prior to 60 days prior to the end of the fiscal year for which such sums are appropriated shall be available for making grants to regional groups.

(C) Funds made available under this subsection shall not be used to supplant non-Federal funds.

(D) For the purpose of paragraph (3) and paragraph (4) of this section the term "regional group" means any interstate group, whether or not representative of contiguous States.

(E) For purposes of paragraph (3)(B), the term "State" includes, in addition to the several States of the Union, only those special jurisdictions specified in section 952(g) of this title which have a population of 200,000 or more, according to the latest decennial census.

(5) All amounts allotted or made available under paragraph (3) for a fiscal year which are not granted to a State during such year shall be available at the end of such year to the National Endowment for the Arts for the purpose of carrying out subsection (c) of this section.

(h) Suspension of grants for defaults, noncompliance with provisions and plans, and diversion of funds; repayment of funds

Whenever the Chairperson, after reasonable notice and opportunity for hearing, finds that—

(1) a group is not complying substantially with the provisions of this section;

(2) a State agency is not complying substantially with the terms and conditions of its State plan approved under this section; or

(3) any funds granted to a group or State agency under this section have been diverted from the purposes for which they were allotted or paid,

the Chairperson shall immediately notify the Secretary of the Treasury and the group or State agency with respect to which such finding was made that no further grants will be made under this section to such group or agency until there is no longer any default or failure to comply or the diversion has been corrected, or, if compliance or correction is impossible, until such group or agency repays or arranges the repayment of the Federal funds which have been improperly diverted or expended.

(i) Application for financial assistance; requirements

It shall be a condition of the receipt of financial assistance provided under this section by the Chairperson or the State agency that the applicant for such assistance include in its application—

(1) a detailed description of the proposed project, production, workshop, or program for which the applicant requests such assistance;

(2) a timetable for the completion of such proposed project, production, workshop, or program;

(3) an assurance that the applicant will submit—

(A) interim reports describing the applicant’s—

(i) progress in carrying out such project, production, workshop, or program; and

(ii) compliance with this subchapter and the conditions of receipt of such assistance;

(B) if such proposed project, production, workshop, or program will be carried out during a period exceeding 1 year, an annual report describing the applicant’s—

(i) progress in carrying out such project, production, workshop, or program; and

(ii) compliance with this subchapter and the conditions of receipt of such assistance; and

(C) not later than 90 days after—

(i) the end of the period for which the applicant receives such assistance; or

(ii) the completion of such project, production, workshop, or program;

whichever occurs earlier, a final report to the Chairperson or the State agency (as the case may be) describing the applicant’s compliance with this subchapter and the conditions of receipt of such assistance; and

(4) an assurance that the project, production, workshop, or program for which assistance is requested will meet the standards of artistic excellence and artistic merit required by this subchapter.

(j) Regulations for distribution of financial assistance in installments; implementation

The Chairperson shall issue regulations to provide for the distribution of financial assistance to recipients in installments except in those cases where the Chairperson determines that installments are not practicable. In implementing any such installments, the Chairperson shall ensure that—
(1) not more than two-thirds of such assistance may be provided at the time such application is approved; and

(2) the remainder of such assistance may not be provided until the Chairperson finds that the recipient of such assistance is complying substantially with this section and with the conditions under which such assistance is provided to such recipient.

(k) Reviews to ensure compliance with regulations

The Inspector General of the Endowment shall conduct appropriate reviews to ensure that recipients of financial assistance under this section comply with regulations under this subchapter that apply with respect to such assistance, including regulations relating to accounting and financial matters.

(l) Use of financial assistance for obscene project, production, etc.; repayment of assistance; exceptions

(1) If, after reasonable notice and opportunity for a hearing on the record, the Chairperson determines that a recipient of financial assistance provided under this section by the Chairperson or any non-Federal entity, used such financial assistance for a project, production, workshop, or program that is determined to be obscene, then the Chairperson shall require that until such recipient repays such assistance (in such amount, and under such terms and conditions, as the Chairperson determines to be appropriate) to the Endowment; no subsequent financial assistance be provided under this section to such recipient.

(2) Financial assistance repaid under this section shall be deposited in the Treasury of the United States and credited as miscellaneous receipts.

(3)(A) This subsection shall not apply with respect to financial assistance provided before the effective date of this subsection.

(B) This subsection shall not apply with respect to a project, production, workshop, or program after the expiration of the 7-year period beginning on the latest date on which financial assistance is provided under this section for such project, production, workshop, or program.

(m) Labor standards of professional performers and personnel; healthy and safe working conditions

It shall be a condition of the receipt of any grant under this section that the group or individual of exceptional talent or the State or State agency receiving such grant furnish adequate assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on construction projects assisted under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have with respect to the labor standards specified in this subsection the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

(o) Correlation and development of endowment programs with other Federal and non-Federal programs; expenditure of appropriations

The Chairperson shall correlate the programs of the National Endowment for the Arts insofar as practicable, with existing Federal programs and with those undertaken by other public agencies or private groups, and shall develop the programs of the Endowment with due regard to the contribution to the objectives of this subchapter which can be made by other Federal agencies under existing programs. The Chairperson may enter into interagency agreements to promote or assist with the arts-related activities of other Federal agencies, on a reimbursable or nonreimbursable basis, and may use funds authorized to be appropriated for the purposes of subsection (c) of this section for the costs of such activities.

(p) Program of contracts or grants-in-aid to public agencies and private nonprofit organizations; limitation on payments; authority of Chairperson

(1) The Chairperson of the National Endowment for the Arts, with the advice of the National Council on the Arts, is authorized, in accordance with the provisions of this subsection, to establish and carry out a program of contracts with, or grants-in-aid to, public agencies and private nonprofit organizations, on a national, State, or local level, for the purpose of strengthening quality by—

(A) enabling cultural organizations and institutions to increase the levels of continuing support and to increase the range of contributors to the programs of such organizations or institutions;

(B) providing administrative and management improvements for cultural organizations
and institutions, particularly in the field of long-range financial planning;
(C) enabling cultural organizations and institutions to increase audience participation in, and appreciation of, programs sponsored by such organizations and institutions;
(D) providing additional support for cooperative efforts undertaken by State arts agencies with local arts groups and local arts agencies to promote effective arts activity at the State and local level, including—
(i) support of professional artists in community based residencies;
(ii) support of rural arts development;
(iii) support of and models for regional, statewide, or local organizations to provide technical assistance to cultural organizations and institutions;
(iv) support of and models for visual and performing arts touring; and
(v) support of and models for professional staffing of arts organizations and for stabilizing and broadening the financial base for arts organizations;
(E) stimulating greater cooperation among cultural organizations and institutions especially designed to serve better the communities in which such organizations or institutions are located;
(F) fostering greater citizen involvement in planning the cultural development of a community; and
(G) stimulating artistic activity and awareness which are in keeping with the varied cultural traditions of this Nation.

(2)(A) The Chairperson of the National Endowment for the Arts, with the advice of the National Council on the Arts, is authorized in accordance with this subsection, to establish and carry out a program of contracts with, or grants to, States for the purposes of—
(i) raising the artistic capabilities of developing arts organizations by providing for—
(I) artistic and programmatic development to enhance artistic capabilities, including staff development; and
(II) technical assistance to improve managerial and organizational skills, financial systems management, and long-range fiscal planning; and
(ii) stimulating artistic activity and awareness and broadening public access to the arts in rural and innercity areas and other areas that are underserved artistically.

(B) For purposes of providing financial assistance under this paragraph, the Chairperson shall give priority to the activities described in subparagraph (A)(i).

(C) The Chairperson may not provide financial assistance under this paragraph to a particular applicant in more than 3 fiscal years for the purpose specified in subparagraph (A)(i).

(3) The total amount of any payment made under this subsection for a program or project may not exceed 50 per centum of the cost of such program or project.

(4) In carrying out the program authorized by this subsection, the Chairperson of the National Endowment for the Arts shall have the same authority as is established in subsection (c) of this section and section 959 of this title.

(q) National information and data collection system on the arts, artists and art groups, and audiences; development and implementation plan; state of the arts reports

The Chairperson of the National Endowment for the Arts shall, in ongoing consultation with State and local agencies, relevant organizations, and relevant Federal agencies, continue to develop and implement a practical system of national information and data collection and public dissemination on the arts, artists and arts groups, and their audiences. Such system shall include artistic and financial trends in the various artistic fields, trends in audience participation, and trends in arts education on national, regional, and State levels. Such system shall also include information regarding the availability of the arts to various audience segments, including rural communities. Such system shall be used, along with a summary of the data submitted with State plans under subsection (g) of this section, to prepare a periodic report on the state of the arts in the Nation. The state of the arts report shall include a description of the availability of the Endowment’s programs to emerging, rural, and culturally diverse artists, arts organizations, and communities and of the participation by such artists, organizations, and communities in such programs. The state of the arts report shall be submitted to the President and the Congress, and provided to the States, not later than October 1, 1992, and quadrennially thereafter.

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (i)(3)(A), is October 1, 1990, see section 318 [title IV, §403(a)] of Pub. L. 101–512, set out as an Effective Date of 1990 Amendment note under section 951 of this title.

Reorganization Plan Numbered 14 of 1960, referred to in subsec. (n), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

AMENDMENTS


Subsec. (c)(1). Pub. L. 101–512, §318 [title I, §103(a)(1)], amended par. (1) (generally). Prior to amendment, par. (1) read as follows: “projects and productions which have substantial artistic and cultural significance, giving emphasis to American creativity and cultural diversity and the maintenance and encouragement of professional excellence.”

Subsec. (c)(2). Pub. L. 101–512, §318 [title I, §103(a)(2)], inserted “or tradition” after “authenticity.”


Subsec. (c)(8) to (10). Pub. L. 101–512, §318 [title I, §103(a)(4)–(6)], added pars. (8) and (9) and redesignated former par. (8) as (10).

Subsec. (d). Pub. L. 101–512, §318 [title I, §103(b)], amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “No payment may be made to any group under this section except upon application therefore which is submitted to the National Endowment for the Arts in accordance with regulations and procedures established by the Chairperson.”


Subsec. (g)(2)(E)(i), (ii). Pub. L. 101–512, §318 [title I, §103(d)], added clss. (1) and (2) and struck out former clss. (1) and (2) which read as follows: “(i) a description of the level of participation during the previous 2 years by artists, artists’ organizations, and arts organizations in projects and productions for which financial assistance is provided under this subsection; “(ii) a description of the extent to which projects and productions receiving financial assistance under this subsection are available to all people and communities in the State; and”.

Subsecs. (i) to (k). Pub. L. 101–512, §318 [title I, §103(g)], added subsecs. (i) to (k), and redesignated former subsecs. (i) to (k) as (i) to (n), respectively.


Subsec. (m). Pub. L. 101–512, §318 [title I, §103(i)(1)], substituted “subsection (n)” for “subsection (i)”.

Pub. L. 101–512, §318 [title I, §103(k)(1)], redesignated subsec. (j) as (m). Former subsec. (m) redesignated (n).

Pub. L. 101–512, §318 [title I, §103(g)(1)], redesignated subsec. (j) as (m). Former subsec. (m) redesignated (p).


Pub. L. 101–512, §318 [title I, §103(g)], redesignated subsec. (k) and (l) as (n) and (o), respectively.


Pub. L. 101–512, §318 [title I, §103(g)(1)], redesignated subsec. (p) as (q).


Subsec. (p)(2) to (4). Pub. L. 101–512, §318 [title I, §104], added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and in par. (4), substituted “section 5(c)” for “section 5(o),” which for purposes of codification was translated as “subsection (c) of this section” thus requiring no change in text.


Pub. L. 101–512, §318 [title I, §108(f)], inserted “ongoing” after “shall, in”, substituted “continue to develop and implement” for “develop”, inserted “and public dissemination” after “collection”, struck out “Not later than one year after December 20, 1985, the Chairperson shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a plan for the development and implementation of such system, including a recommendation regarding the need for any additional funds to be appropriated to develop and implement such system,” after “including rural communities,” and substituted “1992, and quadrennially for 1988, and biennially.”

1985—Subsec. (b)(1). Pub. L. 99–194, §105(1), (6), substituted “chairperson” for “chairman” and “Chairperson” for “Chairman.”

Subsec. (b)(2). Pub. L. 99–194, §105(6), (7), substituted “Chairperson” for “Chairman” wherever appearing and “the Chairperson’s” for “his” in two places.

Subsec. (c). Pub. L. 99–194, §105(2)(C), (D), (6), substituted “Chairperson” for “Chairman” wherever appearing and “clause (5)” for “clause (6)”. inserted “In selecting individuals and groups of exceptional talent as recipients of financial assistance to be provided under this subsection, the Chairperson shall give particular regard to artists and artistic groups that have traditionally been underrepresented.”

Subsec. (o)(4) to (8). Pub. L. 99–194, §105(2)(A), (B), added clss. (4) and (5) and redesignated former clss. (4) to (6) as (6) to (8), respectively.

Subsec. (d). Pub. L. 99–194, §105(6), substituted “Chairperson” for “Chairman”.

Subsec. (g). Pub. L. 99–194, §105(6), (8), substituted “Chairperson” for “Chairman” where appearing and “Chairperson” for “Chairman” wherever appearing and “(i) a description of the extent to which projects and productions receiving financial assistance under this subsection are available to all people and communities in the State; and”.


Subsec. (i). Pub. L. 99–194, §105(4), substituted “Secretary of Labor may deem” for “he may deem” in last sentence.

Subsec. (k). Pub. L. 99–194, §105(6), substituted “Chairperson” for “Chairman”.

Subsec. (m). Pub. L. 99–194, §105(8), added subsec. (m). 1980—Subsec. (c). Pub. L. 96–496, §102(a), inserted “and local arts agencies” after “local arts groups”, designated existing provisions as cl. (1), and added clss. (2) to (v).

Subsec. (j)(3). Pub. L. 99–194, §105(6), substituted “Chairperson” for “Chairman”.

Subsec. (m). Pub. L. 99–194, §105(8), added subsec. (m). 1980—Subsec. (c). Pub. L. 96–496, §102(a), (10)(c), inserted “or loans” in provisions preceding cl. (1) and “and cultural diversity” in cl. (1), redesignated cl. (5) as (6), added cl. (5), substituted “Committee on Labor and Public Welfare” in provisions following cl. (6), and provided that any loans made by the Chairperson under subsec. (c) were to be made in accordance with terms and conditions approved by the Secretary of the Treasury.

Subsec. (g)(2)(A). Pub. L. 96–496, §102(b)(1), struck out provision that the Recreation Board, or any successor designated for purposes of this subchapter by the Commissioner of the District of Columbia, was to be considered the “State agency” within the District of Columbia.

Subsec. (g)(4)(A). Pub. L. 96–496, §109(b), substituted “such projects” for “such project”.


Subsec. (k). Pub. L. 96–496, §102(c), authorized the Chairperson to enter into interagency agreements to promote or assist the arts-related activities of other Federal agencies, on a reimbursable or nonreimbursable basis, and to use funds authorized to be appropriated for the purposes of subsec. (c) of this section for the costs of such activities.
Subsecs. (l), Pub. L. 96–496, §102(d), inserted “—on a national, State, or local level,” and “strengthening quality by” in provisions of par. (1) preceding subpar. (A), redesignated subpars. (D) and (E) as (E) and (F), respectively, and added subpar. (D).

Subsec. (m), Pub. L. 96–496, §102(e), struck out subsec. (m) which related to grants or contracts to State arts agencies for photography and film projects.

Subsec. (n), Pub. L. 96–496, §101, struck out provisions preceding par. (1) “in the United States” after “provide or support”.


1976—Subsec. (c), Pub. L. 94–462, §101, struck out provision that amount of each allotment to a State for any fiscal year shall be available to each State which has a plan approved by the Chairman to pay not more than 50 percent of total cost of any project or production described in subsec. (g)(1).

Subsec. (l), Pub. L. 94–462, §301(a), added subsec. (l).

Subsec. (m), Pub. L. 94–462, §901(a), added subsec. (m).

1973—Subsec. (c), Pub. L. 93–133, §3, in opening para-

[opening paragraph, struck out reference to Federal Council on the Arts and Humanities, in cl. (1), substituted “projects and productions” for “production”, in cl. (2), substituted “projects and productions” and “for geographic or economic reasons” for “production” and “in many areas of the country” respectively, in cl. (3), substituted “projects and productions” for “projects”, in cl. (5), substituted “—planning, and publications relating to the purposes of this subsection” for “—planning in the arts”, and added paragraph following cl. (5).]


Subsec. (g)(2), Pub. L. 93–133, §2(a)(4)(B), (C), in provisions preceding cl. (A), substituted “assistance under this subsection” and “—at such time as shall be specified by the Chairman” for “—such assistance” and “—prior to the first day of such fiscal year” respectively, and in cl. (B), struck out exception that in the first fiscal year in which the state was allotted funds after Sept. 29, 1965, the plan may provide that amount not exceeding $25,000 will be expended to conduct a study to plan the development and the establishment of a State agency.

Subsec. (g)(3), Pub. L. 93–133, §2(a)(4)(D), added par. (3) and struck out former par. (3) which read as follows: “From the sums appropriated to carry out the purposes of this subsection for any fiscal year, not less than $65,000 shall be allotted to each State. That part of such sums as may remain after such allotment shall be allotted among the States in equal amounts. ”

Subsec. (g)(4), Pub. L. 93–133, §2(a)(4)(D), added par. (4) and struck out former par. (4) which read as follows: “The amount of each allotment to a State for any fiscal year under this subsection shall be available to each State, which has a plan approved by the Chairman in effect on the first day of such fiscal year, to pay not more than 50 percent of the total cost of any project or production described in paragraph (1), and to pay up to 100 percent of the cost of conducting a study and establishing a State agency under paragraph (2)(B) of this subsection.”

Subsec. (g)(5), Pub. L. 93–133, §2(a)(4)(E), substituted “‘All amounts allotted or made available’” for “‘All amounts allotted’”.

1970—Subsec. (b), Pub. L. 91–346, §5(a)(1), designated existing provisions as cl. (1), and, in cl. (1) as so designated, provided for appointment of the Chairman of the National Endowment for the Arts by the President with the advice and consent of the Senate, and added cl. (2).

Subsec. (c)(3), Pub. L. 91–346, §4, expanded grants-in-

[aid program to enable talented groups or individuals to achieve wider distribution of their works and to work in residence at an educational or cultural institution.]

Subsecs. (d) to (l), Pub. L. 91–346, §5(a)(2), struck out subsec. (d) which provided for the individual appointed as Chairman of the National Council on the Arts to also serve as the Chairman of the National Endowment for the Arts, and redesignated subsecs. (e) to (l), and all references thereto, as subsecs. (d) to (k), respectively.

Subsec. (g)(2)(A), Pub. L. 91–346, §6, permitted the Commission of the District of Columbia to designate a successor to the Recreation Board for the purpose of this chapter.

Subsec. (g)(3), Pub. L. 91–346, §7, provided minimum of $65,000 allotment to each State from sums appropriated for this subsec., authorized remaining funds to be equally allotted among the States, excluded Guam and American Samoa from this section, and provided for equal allotments to States if the sums appropriated are insufficient to satisfy the minimum allotment.

1968—Subsec. (c), Pub. L. 90–348, §23(a), authorized contracts with groups, or in appropriate cases, individuals engaged in the arts, for the purpose of enabling them to provide or support programs and productions in the arts.

Subsec. (f), Pub. L. 90–348, §2(a), provided that contracts as well as grants made by the National Endowment for the Arts be subject to the amount limitation, and eliminated the provision requiring that groups seeking funds from the National Endowment for the Arts submit evidence to the Endowment that it had attempted unsuccessfully to secure an amount of funds equal to the grant applied for by such group, together with a statement of the proportion which any funds it had secured represent the funds applied for by such group.

Subsec. (h)(3), Pub. L. 90–348, §3, substituted “‘Funds appropriated to carry out the purpose of this subsection’” for “‘The funds appropriated pursuant to section 960(c) of this title’”.

Subsec. (h)(5), Pub. L. 90–348, §3, struck out provision that amounts available to the National Endowment for the Arts at the end of the fiscal year shall be limited to the excess of the value of gifts, bequests, and devises, but not to exceed $2,250,000.

Subsecs. (j), (k), Pub. L. 90–348, §23(b), inserted “of exceptional talent” after “the group or individual”.

1967—Subsec. (d), Pub. L. 90–83 struck out provisions setting the compensation for the Chairman of the National Council on the Arts and the National Endowment for the Arts.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.


AppliCability of 1985 Amendment

Section 112 of Pub. L. 99–194 provided that: “The amendments made by sections 105(3) and 107(3) [amending this section and section 956 of this title] shall not apply with respect to plans submitted for financial assistance to be provided with funds appropriated for fiscal year 1986.”

Effective Date of 1973 Amendment

Amendment by Pub. L. 93–133 effective on and after July 1, 1973, see section 2(b) of Pub. L. 93–133, set out as a note under section 951 of this title.
§ 954a. Access to the arts through support of education

(a) Purposes

The purposes of this section are—

(1) to increase accessibility to the arts through providing education to all Americans, including diverse cultures, urban and rural populations by encouraging and developing quality education in the arts at all levels, in conjunction with programs of nonformal education for all age groups, with formal systems of elementary, secondary, and postsecondary education;

(2) to develop and stimulate research to teach quality education in the arts; and

(3) to encourage and facilitate the work of artists, arts institutions, and Federal, State, regional, and local agencies in the area of education in the arts.

(b) Program of contracts or grants

The Chairperson of the National Endowment for the Arts,\(^1\) is authorized to establish and carry out a program of contracts with, or grants to, any State or other public agency, individual, artist, any nonprofit society, performing and nonperforming arts and educational institution or organization, association, or museum in the United States, in order to foster and encourage exceptional talent, public knowledge, understanding, and appreciation of the arts, and to support the education, training, and development of this Nation’s artists, through such activities as projects that will—

(1) promote and improve the availability of arts instruction for American youth and lifelong learning in the arts;

(2) enhance the quality of arts instruction in programs of teacher education;

(3) develop arts faculty resources and talents;

(4) support and encourage the development of improved curriculum materials in the arts;

(5) improve evaluation and assessment of education in the arts programs and instruction;

(6) foster cooperative programs with the Department of Education and encourage partnerships between arts and education agencies at State and local levels, arts organizations, business colleges and universities;

(7) support apprenticeships, internships, and other career oriented work-study experiences for artists and arts teachers, and encourage residencies of artists at all educational levels;

(8) support the use of technology and improved facilities and resources in education in the arts programs at all levels; and

(9) foster the development of demonstration projects, demonstration productions, demonstration workshops, and demonstration programs in arts education and collect, and make available to the public, information on their implementation and effectiveness.

(c) Advisory council on arts education

In order to provide advice and counsel concerning arts education, the Chairperson shall appoint an advisory council on arts education.

\(^{1}\) So in original. The comma probably should not appear.
(A) The Chairperson of the National Endowment for the Arts, who shall be the chairperson of the Council.

(B) Members of Congress appointed for a 2-year term beginning on January 1 of each odd-numbered year as follows:

(i) Two Members of the House of Representatives appointed by the Speaker of the House of Representatives.

(ii) One Member of the House of Representatives appointed by the Minority Leader of the House of Representatives.

(iii) Two Senators appointed by the Majority Leader of the Senate.

(iv) One Senator appointed by the Minority Leader of the Senate.

Members of the Council appointed under this subparagraph shall serve ex officio and shall be nonvoting members of the Council.

(C) 18 members appointed by the President, by and with the advice and consent of the Senate, who shall be selected—

(i) from among private citizens of the United States who—

(I) are widely recognized for their broad knowledge of, or expertise in, or for their profound interest in the arts; and

(II) have established records of distinguished service, or achieved eminence, in the arts;

(ii) so as to include practicing artists, civic cultural leaders, members of the museum profession, and others who are professionally engaged in the arts; and

(iii) so as collectively to provide an appropriate distribution of membership among major art fields and interested citizens groups.

In making such appointments, the President shall give due regard to equitable representation of women, minorities, and individuals with disabilities who are involved in the arts and shall make such appointments so as to represent equally all geographical areas in the United States.

(2) Transition to the new council composition:

(A) Notwithstanding subsection (b)(1)(B) of this section, members first appointed pursuant to such subsection shall be appointed not later than December 31, 1997. Notwithstanding such subsection, such members shall be appointed to serve until December 31, 1998.

(B) Members of the Council serving on the effective date of this subsection may continue to serve on the Council until their current terms expire and new members shall not be appointed under subsection (b)(1)(C) of this section until the number of Presidential appointments is less than 14.

(c) Terms of office; vacancies

Each member appointed under subsection (b)(1)(C) of this section shall hold office for a term of six years, and the terms of office shall be staggered. The terms of office of all Council members appointed under subsection (b)(1)(C) of this section shall expire on the third day of Sep-tember in the year of expiration. No member appointed under subsection (b)(1)(C) of this section shall be eligible for reappointment during the two-year period following the expiration of such member's term. Any member appointed under subsection (b)(1)(C) of this section appointed to fill a vacancy shall serve for the remainder of the term for which such member's predecessor was appointed. Notwithstanding any other provision of this subsection, a member appointed under subsection (b)(1)(C) of this section shall serve after the expiration of such member's term until such member's successor takes office.

(d) Meetings of Council; quorum; written records

(1) The Council shall meet at the call of the Chairperson but not less often than twice during each calendar year. Ten members of the Council shall constitute a quorum. All policy meetings of the Council shall be open to the public.

(2) The Council shall—

(A) create written records summarizing—

(i) all meetings and discussions of the Council; and

(ii) the recommendations made by the Council to the Chairperson; and

(B) make such records available to the public in a manner that protects the privacy of individual applicants, panel members, and Council members.

(e) Compensation of members

Members shall receive compensation at a rate to be fixed by the Chairperson but not to exceed the per diem equivalent of the rate authorized for grade GS–18 by section 5332 of title 5 and be allowed travel expenses including per diem in lieu of subsistence, as authorized by law (section 5703 of title 5) for persons in the Government service employed intermittently.

(f) Advisory functions; policies, programs, and procedures; recommendations; authority of Chairperson; action by Chairperson pursuant to delegation of authority

The Council shall advise the Chairperson with respect to policies, programs, and procedures for carrying out the Chairperson's functions, duties, or responsibilities under this subchapter, and review applications for financial assistance under this subchapter and make recommendations to the Chairperson with respect to the approval of each application and the amount of financial assistance (if any) to provide to each applicant. The Council shall make recommendations to the Chairperson concerning—

(1) whether to approve particular applications for financial assistance under subsections (c) and (p) of section 954 of this title that are determined by panels under section 959(c) of this title to have artistic excellence and artistic merit; and

(2) the amount of financial assistance the Chairperson should provide with respect to each such application the Council recommends for approval.

The Chairperson shall not approve or disapprove any such application until the Chairperson has received the recommendation of the Council on
such application. The Chairperson shall have final authority to approve each application, except that the Chairperson may only provide to an applicant the amount of financial assistance recommended by the Council and may not approve an application with respect to which the Council makes a negative recommendation. In the case of an application involving $30,000, or less, the Chairperson may approve or disapprove such request if such action is taken pursuant to the terms of an expressed and direct delegation of authority from the Council to the Chairperson, and provided that each such action by the Chairperson shall be reviewed by the Council, and that such action shall be used with discretion and shall not become a normal practice of providing assistance under such subsections, except that the terms of any such delegation of authority shall not permit obligations for expenditure of funds under such delegation for any fiscal year which exceed an amount equal to 10 per cent of the sums appropriated for that fiscal year pursuant to subparagraph (A) of paragraph (1) of section 960(a) of this title.


REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (b)(2)(B), probably means Nov. 14, 1997, the date of enactment of Pub. L. 105–83 which amended subsec. (b) of this section generally.

AMENDMENTS


1997—Subsec. (b). Pub. L. 105–83, § 346(e), inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ‘‘The Council shall be composed of the Chairperson of the National Endowment for the Arts, who shall be Chairperson of the Council, and twenty-six other members appointed by the President, and with the advice and consent of the Senate, who shall be selected—

(1) from among private citizens of the United States who (A) are widely recognized for their broad knowledge of, or expertise in, or for their profound interest in, the arts and (B) have established records of distinguished service, or achieved eminence, in the arts;

(2) as to include practicing artists, civic cultural leaders, members of the museum profession, and others who are professionally engaged in the arts; and

(3) so as to provide an appropriate distribution of membership among the major art fields. The President is requested, in the making of such appointments, to give consideration to such recommendations as may, from time to time, be submitted to the President by leading national organizations in these fields. In making such appointments, the President shall give due regard to equitable representation of women, minorities, and individuals with disabilities who are involved in the arts. Members of the Council shall be appointed so as to represent equitably all geographical areas in the United States.”

Subsec. (c). Pub. L. 105–83, § 346(f), inserted “appointed under subsection (b)(1)(C) of this section” after “member” wherever appearing and after “all Council members” in second sentence.

1990—Subsec. (b). Pub. L. 101–512, § 318 [title I, § 106(a)], inserted at end “Members of the Council shall be appointed so as to represent equitably all geographical areas in the United States.”

Subsec. (d). Pub. L. 101–512, § 318 [title I, § 106(b)], designated existing text as par. (1), inserted at end “All policy meetings of the Council shall be open to the public.”, and added par. (2).

Subsec. (f). Pub. L. 101–512, § 318 [title I, § 106(c)], struck out “(1)” and “(2)” before “advise the Chairperson” and “of such applications for”, respectively, struck out “thereon” before “the Chairperson”, inserted before period at end of first sentence “with respect to the approval of each application and the amount of financial assistance (if any) to provide to each applicant”, struck out “, unless the Council fails to make a recommendation thereon within a reasonable time” after “on such application”, substituted “an expressed and direct delegation” for “a delegation” and “, and that such action shall be used with discretion and shall not become a normal practice of providing assistance under such subsections, except that” for “Provided. That.”, inserted “The Chairperson shall have final authority to approve each application, except that the Chairperson may only provide to an applicant the amount of financial assistance recommended by the Council and may not approve an application with respect to which the Council makes a negative recommendation.”, and inserted “The Council shall make recommendations to the Chairperson concerning—” and added pars. (1) and (2) immediately thereafter.

1985—Subsec. (b). Pub. L. 99–194, § 106(1), substituted “Chairperson” for “Chairman” in two places in provisions preceding par. (1), in par. (1) designated existing provisions following “who” as cl. (A) and added cl. (B), and in provisions following par. (3) substituted “the President” for “him” and inserted “In making such appointments, the President shall give due regard to equitable representation of women, minorities, and individuals with disabilities who are involved in the arts.”

Subsec. (c). Pub. L. 99–194, § 106(2), substituted “such member’s” for “his” wherever appearing.

Subsecs. (d), (e). Pub. L. 99–194, § 106(3), (4), substituted “Chairperson” for “Chairman”.

Subsec. (f). Pub. L. 99–194, § 106(5), substituted “Chairperson” for “Chairman” wherever appearing, “the Chairperson’s” for “his”, “until the Chairperson has received” for “until he has received”, and “$30,000” for “$37,500”.

1984—Subsec. (c). Pub. L. 98–306, § 5(a), inserted “Notwithstanding any other provision of this subsection, a member shall serve after the expiration of his term until his successor takes office.”

1980—Subsec. (c). Pub. L. 96–496 provided that the terms of office of all Council members were to expire on the third day of September in the year of expiration.

1976—Subsec. (b). Pub. L. 94–462 inserted “, by and with the advice and consent of the Senate,” after “the President”.

“3” for “2”.
The amendments made by subsections (a) and (b) set out in this section shall be effective after June 30, 1970.

§ 955a. Omitted

Codification


§ 955b. National Medal of Arts

(a) Establishment

There is hereby established a National Medal of Arts, which shall be a medal of such design as is deemed appropriate by the President, on the basis of recommendations submitted by the National Council on the Arts, and which shall be awarded as provided in subsection (b) of this section.

(b) Award of Medal; conditions; recipients; presentation ceremonies

(1) The President shall from time to time award the National Medal of Arts, on the basis of recommendations from the National Council on the Arts, to individuals or groups who in the President's judgment are deserving of special recognition by reason of their outstanding contributions to the excellence, growth, support, and availability of the arts in the United States.

(2) Not more than twelve of such medals may be awarded in any calendar year.

(3) An individual may be awarded the National Medal of Arts only if at the time such award is made such individual—

(A) is a citizen or other national of the United States; or

(B) is an alien lawfully admitted to the United States for permanent residence who (i) has filed an application or petition for naturalization in the manner prescribed by section 1445 of title 8 and (ii) is not permanently ineligible to become a citizen of the United States.

(4) A group may be awarded the National Medal of Arts only if such group is organized or incorporated in the United States.

(5) The presentation of the National Medal of Arts shall be made by the President with such ceremonies as the President may deem proper, including attendance by appropriate Members of Congress.

(c) Availability of funds

Funds made available to the National Endowment for the Arts shall be used to carry out this section.


Codification

Section was enacted as part of the National Foundation on the Arts and the Humanities Act Amendments of 1981, and not as part of the National Foundation on the Arts and the Humanities Act of 1965 which comprises this subchapter.
§ 956. National Endowment for the Humanities

(a) Establishment

There is established within the Foundation the National Endowment for the Humanities.

(b) Chairperson of the Endowment; appointment, term, reappointment; vacancy; expiration of term

(1) The Endowment shall be headed by a chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The term of office of the Chairperson shall be four years, and the Chairperson shall be eligible for reappointment. The provisions of this paragraph shall apply to any person appointed to fill a vacancy in the office of the Chairperson. Upon expiration of the Chairperson’s term of office the Chairperson shall serve until the Chairperson’s successor shall have been appointed and shall have qualified.

(c) Functions of the Endowment; publications; traditionally underrepresented recipients of financial assistance

The Chairperson, with the advice of the National Council on the Humanities (hereinafter established), is authorized to enter into arrangements, including contracts, grants, loans, and other forms of assistance, to—

(1) develop and encourage the pursuit of a national policy for the promotion of progress and scholarship in the humanities;

(2) initiate and support research and programs to strengthen the research and teaching potential of the United States in the humanities by making arrangements with individuals or groups to support such activities; any loans made by the Endowment shall be made in accordance with terms and conditions approved by the Secretary of the Treasury;

(3) initiate and support training and workshops in the humanities by making arrangements with institutions or individuals (fellowships awarded to individuals under this authority may be for the purpose of study or research at appropriate nonprofit institutions selected by the recipient of such aid, for stated periods of time);

(4) initiate and support programs and research which have substantial scholarly and cultural significance and that reach, or reflect the diversity and richness of our American cultural heritage, including the culture of, a minority, inner city, rural, or tribal community;

(5) foster international programs and exchanges;

(6) foster the interchange of information in the humanities;

(7) foster, with groups, education in, and public understanding and appreciation of the humanities;

(8) support the publication of scholarly works in the humanities;

(9) insure that the benefit of its programs will also be available to our citizens where such programs would otherwise be unavailable due to geographic or economic reasons; and

(10) foster programs and projects that provide access to, and preserve materials important to research, education, and public understanding of, the humanities.

In the case of publications under clause (8) of this subsection such publications may be supported without regard for the provisions of section 501 of title 44 only if the Chairperson consults with the Joint Committee on Printing of the Congress and the Chairperson submits to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives a report justifying any exemption from such section 501. In selecting individuals and groups of exceptional talent as recipients of financial assistance to be provided under this subsection, the Chairperson shall give particular regard to scholars, and educational and cultural institutions, that have traditionally been underrepresented.

(d) Coordination and development of Endowment programs with other Federal and non-Federal programs

The Chairperson shall coordinate the programs of the National Endowment for the Humanities, insofar as practicable, with existing Federal programs, designated State humanities agencies and with those undertaken by other public agencies or private groups, and shall develop the programs of the Endowment with due regard to the contribution to the objectives of this subchapter which can be made by other Federal agencies under existing programs.

(e) Limitation on amount of grant for workshop activities for which an admission or other charge is made to the general public

The total amount of any grant under subsection (c)(3) of this section to any group engaging in workshop activities for which an admission or other charge is made to the general public shall not exceed 30 per centum of the total cost of such activities.

(f) Grants-in-aid programs; designation of State administrative agency; matching funds; applications and plans; allotments; cost limitations; grants to regional groups; non-Federal funding; definitions; suspension of grants; single entity limitation

(1) The Chairperson, with the advice of the National Council on the Humanities, is authorized, in accordance with the provisions of this subsection, to establish and carry out a program of grants-in-aid in each of the several States in order to support not more than 50 per centum of the cost of existing activities which meet the standards enumerated in subsection (c) of this section, and in order to develop a program in the humanities in such a manner as will furnish adequate programs in the humanities in each of the several States.

(2)(A) Whenever a State desires to designate or to provide for the establishment of a State agency as the sole agency for the administration of the State plan, such State shall designate the humanities council in existence on the date the State agency is established as the State agency, and shall match from State funds a sum equal to 50 per centum of that portion of Federal financial assistance received by such State under this subsection which is described in the first sen-
tence of paragraph (4) relating to the minimum State grant, or 25 per centum of the total amount of Federal financial assistance received by such State under this subsection, whichever is greater, for the fiscal year involved. In any State in which the State selects the option described in this subparagraph, the State shall submit, before the beginning of each fiscal year, an application for grants and accompany such application with a plan which the Chairperson finds—

(i) designates or provides for the establishment of a State agency (hereinafter in this section referred to as the "State agency") as the sole agency for the administration of the State plan;

(ii) provides that the chief executive officer of the State will appoint new members to the State humanities council designated under the provisions of this subparagraph, as vacancies occur as a result of the expiration of the terms of members of such council, until the chief executive officer has appointed all of the members of such council;

(iii) provides, from State funds, an amount equal to 50 per centum of that portion of Federal financial assistance received by such State under this subsection which is described in the first sentence of paragraph (4) relating to the minimum State grant, or 25 per centum of the total amount of Federal financial assistance received by such State under this subsection, whichever is greater, for the fiscal year involved;

(iv) provides that funds paid to the State under this subsection will be expended solely on programs approved by the State agency which carry out the objectives of subsection (c) of this section and which are designed to bring the humanities to the public;

(v) provides assurances that State funds will be newly appropriated for the purpose of meeting the requirements of this subparagraph;

(vi) provides that the State agency will make such reports, in such form and containing such information, as the Chairperson may require, including a description of the progress made toward achieving the goals of the State plan;

(vii) provides—

(I) assurances that the State agency has held, after reasonable notice, public meetings in the State to allow scholars, interested organizations, and the public to present views and make recommendations regarding the State plan; and

(II) a summary of such recommendations and of the response of the State agency to such recommendations; and

(viii) contains—

(I) a description of the level of participation during the most recent preceding year for which information is available by scholars and scholarly organizations in programs receiving financial assistance under this subsection;

(II) for the most recent preceding year for which information is available, a description of the extent to which the programs receiving financial assistance under this subsection are available to all people and communities in the State; and

(III) a description of programs receiving financial assistance under this subsection that exist or are being developed to secure wider participation of scholars and scholarly organizations identified under subclause (I) of this clause or that address the availability of the humanities to all people or communities identified under subclause (II) of this clause.

No application may be approved unless the accompanying plan satisfies the requirements specified in this subsection.

(B) In any State in which the chief executive officer of the State fails to submit an application under subparagraph (A), the grant recipient in such State shall—

(i) establish a procedure which assures that six members of the governing body of such grant recipient shall be appointed by an appropriate officer or agency of such State, except that in no event may the number of such members exceed 25 per centum of the total membership of such governing body; and

(ii) provide, from any source, an amount equal to the amount of Federal financial assistance received by such grant recipient under this subsection for the fiscal year involved.

(3) Whenever a State selects to receive Federal financial assistance under this subsection for any fiscal year under paragraph (2)(B), any appropriate entity desiring to receive such assistance shall submit an application for such assistance at such time as shall be specified by the Chairperson. Each such application shall be accompanied by a plan which the Chairperson finds—

(A) provides assurances that the grant recipient will comply with the requirements of paragraph (2)(B);

(B) provides that funds paid to the grant recipient will be expended solely on programs which carry out the objectives of subsection (c) of this section;

(C) establishes a membership policy which is designed to assure broad public representation with respect to programs administered by such grant recipient;

(D) provides a nomination process which assures opportunities for nomination to membership from various groups within the State involved and from a variety of segments of the population of such State, and including individuals who by reason of their achievement, scholarship, or creativity in the humanities, are especially qualified to serve;

(E) provides for a membership rotation process which assures the regular rotation of the membership and officers of such grant recipient;

(F) establishes reporting procedures which are designed to inform the chief executive officer of the State involved, and other appropriate officers and agencies, of the activities of such grant recipient;

(G) establishes procedures to assure public access to information relating to such activities;

(H) provides that such grant recipient will make reports to the Chairperson, in such form,
(5)(A) The amount of each allotment to a State for any fiscal year under this subsection shall be available to each State or grant recipient, which has a plan or application approved by the Chairperson in effect on the first day of such fiscal year, to pay not more than 50 per centum of the total cost of any project or production described in paragraph (1). The amount of any allotment made under paragraph (4) for any fiscal year—

(i) which exceeds $125,000, but
(ii) which does not exceed 20 per centum of such allotment,

shall be available, at the discretion of the Chairperson, to pay up to 100 per centum of the cost of programs under this subsection if such programs would otherwise be unavailable to the residents of that State.

(B) Any amount allotted to a State under the first sentence of paragraph (4) for any fiscal year which is not obligated by the State agency or grant recipient prior to sixty days prior to the end of the fiscal year for which such sums are appropriated shall be available to the Chairperson for making grants to regional groups.

(C) Funds made available under this subsection shall not be used to supplant non-Federal funds.

(D) For the purposes of this paragraph, the term “regional group” means any multistate group, whether or not representative of contiguous States.

(E) For purposes of paragraph (4)(B), the term “State” and the term “grant recipient” include, in addition to the several States of the Union, only those special jurisdictions specified in section 902(g) of this title which have a population of 200,000 or more, according to the latest decennial census.

(6) All amounts allotted or made available under paragraph (4) for a fiscal year which are not granted to any entity during such fiscal year shall be available to the National Endowment for the Humanities for the purpose of carrying out subsection (c) of this section.

(7) Whenever the Chairperson, after reasonable notice and opportunity for hearing, finds that—

(A) a group or grant recipient is not complying substantially with the provisions of this subsection;

(B) a State agency or grant recipient is not complying substantially with terms and conditions of its State plan or grant recipient application approved under this subsection; or

(C) any funds granted to any group or State agency or grant recipient under this subsection have been diverted from the purposes for which they are allotted or paid,

the Chairperson shall immediately notify the Secretary of the Treasury and the group, State agency, or grant recipient with respect to which such finding was made that no further grants will be made under this subsection to such group, State agency, or grant recipient until there is no longer a default or failure to comply or the diversion has been corrected, or, if the compliance or correction is impossible, until such group, State agency, or grant recipient re-
pays or arranges the repayment of the Federal funds which have been improperly diverted or expended.

(8) Except as provided in the third sentence of paragraph (4), and paragraphs (5) and (6), the Chairperson may not make grants under this subsection to more than one entity in any State.

(g) Payment of performers and supporting personnel; standards, regulations, and procedures

It shall be a condition of the receipt of any grant under this section that the group, individual, or State agency or entity receiving such grant furnish adequate assurances to the Secretary of Labor that (1) all professional performers and related or supporting professional personnel employed on projects or productions which are financed in whole or in part under this section will be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation as determined by the Secretary of Labor to be the prevailing minimum compensation for persons employed in similar activities; and (2) no part of any project or production which is financed in whole or in part under this section will be performed or engaged in under working conditions which are unhygienic or hazardous or dangerous to the health and safety of the employees engaged in such project or production. Compliance with the safety and sanitary laws of the State in which the performance or part thereof is to take place shall be prima facie evidence of compliance. The Secretary of Labor shall prescribe standards, regulations, and procedures necessary to carry out this subsection.

(h) Program of contracts or grants-in-aid to public agencies and private nonprofit organizations; limitation on payments

(1) The Chairperson of the National Endowment for the Humanities, with the advice of the National Council on the Humanities, is authorized, in accordance with the provisions of this subsection, to establish and carry out a program of contracts with, or grants-in-aid to, public agencies and private nonprofit organizations for the purpose of:

(A) enabling cultural organizations and institutions to increase the levels of continuing support and to increase the range of contributors to the program of such organizations or institutions;
(B) providing administrative and management improvements for cultural organizations and institutions, particularly in the field of long-range financial planning;
(C) enabling cultural organizations and institutions to increase audience participation in, and appreciation of, programs sponsored by such organizations and institutions;
(D) stimulating greater cooperation among cultural organizations and institutions especially designed to serve better the communities in which such organizations or institutions are located;
(E) fostering greater citizen involvement in planning the cultural development of a community; and
(F) for bicentennial programs, assessing where our society and Government stand in relation to the founding principles of the Republic, primarily focused on projects which will bring together the public and private citizen sectors in an effort to find new processes for solving problems facing our Nation in its third century.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the total amount of any payment made under this subsection for a program or project may not exceed 50 per centum of the cost of such program or project.

(B) The Chairperson, with the advice of the Council, may waive all or part of the requirement of matching funds provided in subparagraph (A) of this paragraph, but only for the purposes described in clause (F) of paragraph (1), whenever he determines that highly meritorious proposals for grants and contracts under such clause, could not otherwise be supported from non-Federal sources or from Federal sources other than funds authorized by section 960(a)(3) of this title, unless such matching requirement is waived. Such waiver may not exceed 15 per centum of the amount appropriated in any fiscal year and available to the National Endowment for the Humanities for the purpose of this subsection.

(3) In carrying out the program authorized by this subsection, the Chairperson of the National Endowment for the Humanities shall have the same authority as is established in subsection (c) of this section and section 959 of this title.

(i) Interagency agreements

The Chairperson may enter into interagency agreements to promote or assist with the humanities-related activities of other Federal agencies, on either a reimbursable or nonreimbursable basis, and may use funds authorized to be appropriated for the purposes of subsection (c) of this section for the costs of such activities.

(j) Payment of wages at prevailing rates; authority of Secretary of Labor

It shall be a condition of the receipt of any grant under this section that the group or individual of exceptional talent or the State, State agency, or entity receiving such grant furnish adequate assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on construction projects assisted under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

(k) National information and data collection system on humanities, scholars, educational and cultural groups, and audiences; development and implementation plan; state of the humanities reports

The Chairperson of the National Endowment for the Humanities shall, in ongoing consultation with State and local agencies, other relevant organizations, and relevant Federal agen-
cies, continue to develop and implement a practical system of national information and data collection and public dissemination on the humanities, scholars, educational and cultural groups, and their audiences. Such system shall include cultural and financial trends in the various humanities fields, trends in audience participation, and trends in humanities education on national, regional, and State levels. Such system shall be used, along with a summary of the data submitted with plans under subsection (f) of this section, to prepare a report on the state of the humanities in the Nation. The state of the humanities report shall include a description of the availability of the Endowment’s programs to emerging and culturally diverse scholars, cultural and educational organizations, and communities and of the participation of such scholars, organizations, and communities in such programs. The state of the humanities report shall be submitted to the President and the Congress, and provided the States, not later than October 1, 1992, and quadrennially thereafter.

(i) Eligibility of group for financial assistance
Any group shall be eligible for financial assistance under this section only if—
(1) no part of its net earnings inures to the benefit of any private stockholder or stockholder, or individual or individuals; and
(2) donations to such group are allowable as a charitable contribution under the standards of section 170(c) of title 26.

(m) Annual awards
The Chairperson, with the advice of the National Council on the Humanities, is authorized to make the following annual awards:

(1) The Jefferson Lecture in the Humanities Award to one individual for distinguished intellectual achievement in the humanities. The annual award shall not exceed $10,000.

(2) The Charles Frankel Prize to honor individuals who have made outstanding contributions to the public understanding of the humanities. Not more than 5 individuals may receive such prize each year. Each prize shall not exceed $5,000.

(3) The National Endowment for the Humanities Planning and Evaluation Award to one group for the best plan for the development and implementation of their humanities programs. The award shall not exceed $5,000.

(4) The National Humanities Medal to one individual for distinguished intellectual achievement in the humanities. The award shall not exceed $10,000.

(5) The National Humanities Medallion to one individual for distinguished intellectual achievement in the humanities. The award shall not exceed $5,000.

(6) The Jefferson Award to one individual for distinguished intellectual achievement in the humanities. The award shall not exceed $25,000.

(7) The Chairperson’s Award to one individual for distinguished intellectual achievement in the humanities. The award shall not exceed $10,000.

Amendments

Subsec. (c). Pub. L. 101–512, § 318 [title I, § 107(b)(1)], inserted “enter into arrangements, including contracts, grants, loans, and other forms of assistance, to” after “is authorized to”.

Subsec. (c)(2). Pub. L. 101–512, § 318 [title I, § 107(b)(2)], struck out “(including contracts, grants, loans, and other forms of assistance)” after “arrangements”.

Subsec. (c)(3). Pub. L. 101–512, § 318 [title I, § 107(b)(3)], substituted “initiate and support training and workshops in the humanities by making arrangements with institutions or individuals (fellowships) for” for “award fellowships and grants to institutions or individuals for training and workshops in the humanities. Fellowships”, and inserted closing parenthesis after “periods of time”.

Subsec. (c)(7). Pub. L. 101–512, § 318 [title I, § 107(b)(4)], struck out “through grants or other arrangements” after “is authorized”.


Subsec. (g). Pub. L. 101–512, § 318 [title I, § 107(e)], struck out “not later than 180 days after December 20, 1985” before period at end.


Subsec. (k). Pub. L. 101–512, § 318 [title I, § 107(g)], inserted “ongoing” after “shall, in”, substituted “continue to develop and implement” for “develop”, inserted “and public dissemination” after “collection”, struck out “Not later than one year after December 20, 1985, the Chairperson shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a plan for the development and implementation of such system, including a recommendation regarding the need for any additional funds to be appropriated to develop and implement such system,” after “...and State levels...”, and substituted “1982, and quadrennially for ‘1888, and biennially” for “1988, and biennially”.

Subsecs. (l), (m). Pub. L. 101–512, § 318 [title I, § 107(h)], added subsec. (l)(m) and struck out former subsec. (l) which related to reports and plans required by regulation or directives and the transmittal of such reports and plans to the Equal Employment Opportunity Commission.

1985—Subsec. (b). Pub. L. 99–194, § 107(1), (5), substituted “chairperson” for “chairman” in par. (1), and in par. (2), substituted “Chairperson” for “Chairman” and “the Chairperson’s” for “his” wherever appearing.

Subsec. (c). Pub. L. 99–194, § 107(1), (5), substituted “Chairperson” for “Chairman” wherever appearing, substituted “workshops” for “workshops” in cl. (3),
added cls. (4) and (5) and redesignated existing cls. (4) to (7) as (6) to (9), respectively, substituted “clause (8)” for “clause (6)” in second sentence, and inserted at end “In selecting individuals and groups of exceptional talent as recipients of financial assistance to be provided under this subsection, the Chairperson shall give particular regard to scholars, and educational and cultural institutions, that have traditionally been under-represented.”


Subsec. (f). Pub. L. 99–194, §107(3), (5), substituted “Chairperson” for “Chairman” wherever appearing; in par. (2)(A) substituted “December 20, 1985” for “December 4, 1980”, inserted “officer” after “chief executive” wherever appearing in cl. (ii), struck out “and” at end of cl. (v), substituted “, including a description of the progress made toward achieving the goals of the plan;” for the period at end of cl. (H), and added clss. (vii) and (viii) sentence providing that no application may be approved unless the accompanying plan satisfies the requirements specified in this subsection; in par. (2)(B) substituted “six” and “25” for “four” and “20”, respectively; and in par. (3) struck out “and” at end of cl. (G), substituted “, including a description of the progress made toward achieving the goals of the plan;” for the period at end of cl. (H), and added cls. (i) and (J) and sentence providing that no application may be approved unless the accompanying plan satisfies the requirements specified in this subsection.

Subsec. (g). Pub. L. 99–194, §107(4), substituted “The Secretary of Labor shall prescribe standards, regulations, and procedures necessary to carry out this subsection not later than 180 days after December 20, 1985” for “The Secretary of Labor shall have the authority to prescribe standards, regulations, and procedures as he may deem necessary or appropriate to carry out the provisions of this subsection.”


1989—Subsec. (c). Pub. L. 96–496, §108(c), substituted “Committee on Labor and Human Resources” for “Committee on Labor and Public Welfare” in last sentence.

Subsec. (f)(2). Pub. L. 96–496, §104(a)(1), substituted provisions relating to the designation of State humanities councils as State administrative agencies, requiring matching State funding and submission by States with such agencies to designate administrative State agencies of grant applications and accompanying administrative plans, and prescribing a grant recipient application procedure for provisions requiring entities desiring to receive financial assistance under this subsection to submit grant applications and accompanying administrative plans.

Subsec. (f)(3). Pub. L. 96–496, §104(a)(2), substituted provisions requiring entities desiring to receive financial assistance under this subsection to submit grant applications and accompanying administrative plans for provisions relating to the appointment of grant recipient members.

Subsec. (f)(4). Pub. L. 96–496, §104(a)(3), in provisions preceding subpar. (A), substituted “each State and each grant recipient” for “each grant recipient” and “such States and grant recipients” for “such grant recipients”, in subpar. (A), substituted “34 per centum of the amount of such excess for such” for “the amount of such excess which is no greater than 25 per centum of the sums available to carry out this subsection for any” and inserted “States and regional groups and”, in subpar. (B), substituted “44 per centum of the amount of such excess for such fiscal year for “the amount of such excess, if any, which remains after reserves in full for the Chairman the amount required under subparagraph (A)” and “States and grant recipients” for “grant recipients” and struck out “but in no event shall any grant recipient be allotted less than $200,000” after “Chairman” and added subpar. (C).
§ 956a. National Capital arts and cultural affairs; grant programs

There is hereby authorized a program to support artistic and cultural programs in the Nation’s Capital to be established under the direction of the Commission of Fine Arts. Not to exceed $10,000,000 annually is authorized to provide grants for general operating support to eligible organizations located in the District of Columbia whose primary purpose is performing, exhibiting and/or presenting arts.

Eligibility for grants shall be limited to not-for-profit, non-academic institutions of demonstrated national repute and is further limited to organizations having annual income, exclusive of Federal funds, in excess of $1,000,000 for each of the three years prior to receipt of a grant. Each eligible organization must have its principal place of business in the District of Columbia and in a facility or facilities located in the District of Columbia.

The Chairman of the Commission of Fine Arts shall establish an application process and shall, along with the Chairman of the National Endowment for the Humanities determine the eligibility of applicant organizations.

Of the funds provided for grants, 70 per centum shall be equally distributed among all qualifying organizations and 30 per centum shall be distributed based on the size of an organization’s total annual income, exclusive of Federal funds, compared to the combined total of the annual income, exclusive of Federal funds, of all eligible institutions. No organization shall receive a grant in excess of $650,000 in a single year.

An application process shall be established no later than March 1, 1986, and initial grants shall be awarded no later than June 1, 1986.


“(a) DESIGNATION.—The Capital Children’s Museum located at 800 Third Street, NE, Washington, D.C. (or any successor location), organized under the laws of the District of Columbia, is designated as the ‘National Children’s Museum’.

“(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Capital Children’s Museum referred to in subsection (a) shall be deemed to be a reference to the ‘National Children’s Museum’.

REDESIGNATION OF CAPITAL CHILDREN’S MUSEUM AS NATIONAL CHILDREN’S MUSEUM


“(a) DESIGNATION.—The Capital Children’s Museum located at 800 Third Street, NE, Washington, D.C. (or any successor location), organized under the laws of the District of Columbia, is designated as the ‘National Children’s Museum’.

“(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Capital Children’s Museum referred to in subsection (a) shall be deemed to be a reference to the ‘National Children’s Museum’.

REDESIGNATION OF WASHINGTON OPERA AS NATIONAL OPERA

Pub. L. 106–219, June 20, 2000, 114 Stat. 346, provided that:

“SECTION 1. DESIGNATION.

“The Washington Opera, organized under the laws of the District of Columbia, is designated as the ‘National Opera’.

“SEC. 2. REFERENCES.

“Any reference in a law, map, regulation, document, paper or other record of the United States to the Washington Opera referred to in section 1 shall be deemed to be a reference to the ‘National Opera’.

“AMENDMENTS

2011—Pub. L. 112–74 substituted “Each eligible organization must have its principal place of business in the District of Columbia and in a facility or facilities located in the District of Columbia,” for “The following organizations are deemed eligible to receive grants under this section: Folger Theater, Corcoran Gallery of Art, Phillips Gallery, Arena Stage, the National Building Museum, the National Children’s Museum, the National Symphony Orchestra, the National Opera, and Ford’s Theater,” in second par. and struck out “in addition to those herein named” at end of third par.

2009—Pub. L. 111–88 substituted “$10,000,000” for “$5,000,000” in first par. and “$500,000” for “$500,000” in fourth par.


1999—Pub. L. 106–121 substituted “$7,500,000” for “$5,000,000” in first par.

1989—Pub. L. 100–202 substituted “direction of the Commission of Fine Arts” for “direction of the National Endowment for the Humanities’” in first par. and amended third par. generally. Prior to amendment, third par. read as follows: “The Chairman of the National Endowment for the Humanities shall establish an application process and shall, along with the Chairman of the National Endowment for the Arts and the Chairman of the Commission on Fine Arts determine the eligibility of applicant organizations in addition to those herein named.”


EFFECTIVE DATE OF 1976 AMENDMENT

Section 104(b) of Pub. L. 94–462 provided that: “The amendment made by subsection (a) [amending this section] shall be effective with respect to fiscal year 1977 and succeeding fiscal years.”

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by section 2(a)(6) of Pub. L. 93–133 effective on and after July 1, 1973, see section 2(b) of Pub. L. 93–133, set out as a note under section 861 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsection (a) of this section relating to quadrennially submitting the state of the humanities report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 183 of House Document No. 103–7.

§ 956a.

§ 957. National Council on the Humanities

(a) Establishment

There is established in the National Endowment for the Humanities a National Council on the Humanities.

(b) Composition; basis for selection of members; representation of interests; recommendations of national organizations

The Council shall be composed of the Chairperson of the National Endowment for the Humanities, who shall be the Chairperson of the Council, and twenty-six other members appointed by the President, by and with the advice and consent of the Senate, from private life. Such members shall be individuals who (1) are selected from among private citizens of the United States who are recognized for their broad knowledge of, expertise in, or commitment to the humanities, and (2) have established records of distinguished service and scholarship or creativity and in a manner which will provide a comprehensive representation of the views of scholars and professional practitioners in the humanities and of the public throughout the United States. The President is requested in the making of such appointments to give consideration to such recommendations as may from time to time be submitted to him by leading national organizations concerned with the humanities. In making such appointments, the President shall give due regard to equitable representation of women, minorities, and individuals with disabilities who are involved in the humanities.

(c) Term of office; vacancies; reappointment

Each member shall hold office for a term of six years, except that (1) the members first taking office shall serve, as designated by the President, nine for terms of two years, nine for terms of four years, and eight for terms of six years, and (2) any member appointed to fill a vacancy shall serve for the remainder of the term for which such member’s predecessor was appointed. No member shall be eligible for reappointment during the two-year period following the expiration of such member’s term. Notwithstanding any other provisions of this subsection, a member shall serve after the expiration of such member’s term until such member’s successor takes office.

(d) Meetings; quorum

The Council shall meet at the call of the Chairperson but not less often than twice during each calendar year. Fourteen members of the Council shall constitute a quorum.

(e) Compensation and travel expenses

Members shall receive compensation at a rate to be fixed by the Chairperson but not to exceed the per diem equivalent of the rate authorized for grade GS-18 by section 5332 of title 5 and be allowed travel expenses including per diem in lieu of subsistence, as authorized by law (section 5703 of title 5) for persons in the Government service employed intermittently.

(f) Advisory functions; policies, programs, and procedures; review of applications for financial support; recommendations prerequisite to action of Chairperson; unilateral action by Chairperson pursuant to delegation of authority

The Council shall (1) advise the Chairperson with respect to policies, programs, and procedures for carrying out the Chairperson’s functions, and (2) shall review applications for financial support and make recommendations thereon to the Chairperson. The Chairperson shall not approve or disapprove any such application until the Chairperson has received the recommendation of the Council on such application, unless the Council fails to make a recommendation thereon within a reasonable time. In the case of any application involving $30,000, or less, the Chairperson may approve or disapprove such request if such action is taken pursuant to the terms of a delegation of authority from the Council to the Chairperson, and provided that each such action by the Chairperson shall be reviewed by the Council: Provided, That the terms of any such delegation of authority shall not permit obligations for expenditure of funds under such delegation for any fiscal year which exceed an amount equal to 10 per cent of the sums appropriated for that fiscal year pursuant to subparagraph (B) of paragraph (1) of section 960(a) of this title.

Amendments

1985—Subsec. (b). Pub. L. 99–194, § 108(1), substituted "Chairperson" for "Chairman" in two places, substituted "individuals who (1) are selected from among private citizens of the United States who are recognized for their broad knowledge of, expertise in, or commitment to the humanities, and (2) have established records of" for "selected on the basis of", and inserted provision that in making such appointments, the President shall give due regard to equitable representation of women, minorities, and individuals with disabilities who are involved in the humanities.

Subsec. (c). Pub. L. 99–194, § 108(2), substituted "such member's" for "his" wherever appearing.

Subsecs. (d), (e), Pub. L. 99–194, § 108(3), substituted "Chairperson" for "Chairman" wherever appearing.

1984—Subsec. (c). Pub. L. 98–306, § 8(b), substituted "Notwithstanding any other provisions of this subsection, a member shall serve after the expiration of his term until his successor takes office." for "Until his successor takes office.

1980—Subsec. (f). Pub. L. 96–496 substituted "$30,000" for "$17,500".

1976—Subsec. (b). Pub. L. 94–462 inserted "by and with the advice and consent of the Senate," after "by the President".

1973—Subsec. (f). Pub. L. 93–131 substituted "$17,500" for "$10,000" and inserted proviso that the terms of delegation of authority shall not permit obligations for...
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expenditure of funds under such delegation for any fiscal year which exceeds an amount equal to 10 per centum of the sums appropriated for that fiscal year.


1968—Subsec. (1). Pub. L. 90–348 inserted provisions which authorized the Chairman, in the case of any application involving $10,000 or less, to approve or disapprove the application if such action is pursuant to the terms of a delegation of authority from the Endowment Council and such action is reviewed by the Endowment Council.

Effective Date of 1973 Amendment

Amendment by Pub. L. 93–133 effective on and after July 1, 1973, see section 2(b) of Pub. L. 93–133, set out as a note under section 951 of this title.

References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 957a. Omitted

Codification

Section, Pub. L. 98–146, title II, Nov. 4, 1983, 97 Stat. 946, which directed that persons serving on the National Council on the Humanities continue until their successors are qualified for office, was omitted as superseded. See section 967(c) of this title, as amended by Pub. L. 99–197, 102 Stat. 2325, for provisions that apply to persons serving in such capacity, effective Jan. 1, 1993.

References to GS–16, 17, 18 Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 957a. Federal Council on the Arts and the Humanities

(a) Establishment

There is established within the Foundation a Federal Council on the Arts and the Humanities.

(b) Composition; presiding officer; changes in membership to meet changes in programs or executive branch organization

The Council shall—

(c) Functions

The Council shall—

(1) advise and consult with the Chairperson of the National Endowment for the Arts and the Chairperson of the National Endowment for the Humanities on major problems arising in carrying out the purposes of the Foundation;

(2) advise and consult with the National Museum Services Board and with the Director of the Institute of Museum and Library Services on major problems arising in carrying out the purposes of such Institute;

(3) coordinate, by advice and consultation, so far as is practicable, the policies and operations of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services, including joint support of activities, as appropriate;

(4) promote coordination between the programs and activities of the Foundation and related programs and activities of other Federal agencies;

(5) plan and coordinate appropriate participation (including productions and projects) in major and historic national events;

(6) undertake studies and make reports which address the state of the arts and humanities, particularly with respect to their economic needs and problems; and

(7) encourage an ongoing dialogue in support of the arts and the humanities among Federal agencies.

References to Arts and Humanities

References to the arts and humanities, to the arts, to the humanities, to the arts and humanity, to the arts and humanities among Federal agencies, to the arts and Humanities, and to the Arts and Humanities, were omitted as unnecessary.

Amendments

2010—Subsecs. (b), (c)(2), (3). Pub. L. 111–340 substituted “Institute of Museum and Library Services” for “Institute of Museum Services”.

1993—Subsec. (b). Pub. L. 103–171 substituted “Assistant Secretary for Aging” for “Commissioner on Aging”.


Subsec. (d). Pub. L. 101–512, §318 (title I, §108(b)), struck out subsec. (d) which related to studies on Federal support to museums and the impact of Institute of Museum Services and of conservation and preservation practices.

1985—Subsec. (b). Pub. L. 99–194, §108(b), substituted “Chairperson” for “Chairman” in two places in first sentence, “presiding officer” for “Chairman” in second sentence, and “the President” for “he” in last sentence.


Subsec. (d). Pub. L. 99–194, §108(3), added subsec. (d). Former subsec. (d), relating to a study and report to the President and the Congress on artistic employment opportunities, was struck out.
Subsec. (e), Pub. L. 99–194, §109(3), struck out subsec. (e) which provided for a study and report to the President and the Congress on arts and artifacts indemnification.

1984—Subsec. (b), Pub. L. 98–306, §6(a), inserted “the Director of the Museum Services,”.

Subsec. (c)(4), Pub. L. 98–306, §6(b), struck out “and the Institute of Museum Services” after “Foundation.”

1980—Subsec. (b), Pub. L. 96–496, §§106(a), 109(d), inserted “the Commissioner on Aging,” and substituted “Secretary of Education” for “United States Commissioner of Education.”

Subsec. (c)(6), Pub. L. 96–496, §106(b), added par. (6).

Subsecs. (d), (e), Pub. L. 96–496, §106(c), added subsecs. (d) and (e).

1976—Subsec. (c)(2), (3), Pub. L. 94–462, §206(1), (2), added par. (2), redesignated former par. (2) as (3), and as so redesignated inserted “and the Institute of Museum Services,” after “Humanities.” Former par. (3) redesignated (4).

Subsec. (c)(4), (5), Pub. L. 94–462, §206(1), (3), redesignated former par. (3) as (4), inserted “and the Institute of Museum Services” after “Foundation,” and redesignated former par. (4) as (5).

1973—Subsec. (b), Pub. L. 93–133 included the Commissioner, Public Buildings Service, General Service Administration, a member designated by the Secretary of the Interior, a member designated by the Chairman of the Senate Commission on Art and Antiquities, and a member designated by the Speaker of the House, as members of the Federal Council on the Arts and Humanities.

1970—Subsec. (b), Pub. L. 91–346 included the Archivist of the United States as a member of the Federal Council on the Arts and Humanities.

Effective Date of 1990 Amendment


Effective Date of 1973 Amendment

Amendment by Pub. L. 93–133 effective on and after July 1, 1973, see section 2(b) of Pub. L. 93–133, set out as a note under section 951 of this title.

§ 959. Administrative provisions

(a) General authority of Chairpersons

In addition to any authorities vested in them by other provisions of this subchapter, the Chairperson of the National Endowment for the Arts and the Chairperson of the National Endowment for the Humanities, in carrying out their respective functions, shall each have authority—

(1) to prescribe such regulations as the Chairperson deems necessary governing the manner in which the Chairperson’s functions shall be carried out;

(2) in the discretion of the Chairperson of an Endowment, after receiving the recommendation of the National Council of that Endowment, to receive money and other property donated, bequeathed, or devised to that Endowment without designation of the Endowment whose function it is to carry out the purposes of such property, except that a Chairperson may receive a gift without a recommendation from the Council to provide support for any application or project which can be approved without Council recommendation under the provisions of sections 955(f) and 957(f) of this title, and may receive a gift of $15,000, or less, without Council recommendation in the event the Council fails to provide such recommendation within a reasonable period of time, and to use, sell, or otherwise dispose of such property for the purpose of carrying out sections 954(e) and 956(c) of this title;

(3) to appoint employees, subject to civil service laws, as necessary to carry out the Chairperson’s functions, define their duties, and supervise and direct their activities;

(4) to utilize experts and consultants, including panels of experts, who may be employed as authorized by section 3109 of title 5;

(5) to accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5 for persons in the Government service employed without compensation;

(6) to make advance, progress, and other payments without regard to section 3324 of title 31;

(7) to rent office space in the District of Columbia; and

(8) to make other necessary expenditures.

(b) Rules for distribution of donations, bequests, and devises; gifts with or without conditions; transfers for tax purposes

(1) In any case in which any money or other property is donated, bequeathed, or devised to the Foundation without designation of the Endowment for the benefit of which such property is intended, and without condition or restriction other than that it be used for the purposes of the Foundation, such property shall be deemed to have been donated, bequeathed, or devised in equal shares to each Endowment and each Chairperson of an Endowment shall have authority to receive such property.

(2) In any case in which any money or other property is donated, bequeathed, or devised to the Foundation with a condition or restriction, such property shall be deemed to have been donated, bequeathed, or devised to that Endowment whose function it is to carry out the purpose or purposes described or referred to by the terms of such condition or restriction, and each Chairperson of the Endowment shall have authority to receive such property.

(3) For the purposes of the preceding sentence, if one or more of the purposes of such a condition or restriction is covered by the functions of both Endowments, or if some of the purposes of such a condition or restriction are covered by the functions of one Endowment and other of the purposes of such a condition or restriction are covered by the functions of the other Endowment, the Federal Council on the Arts and the Humanities shall determine an equitable manner for distribution between each of the Endowments of the property so donated, bequeathed, or devised.

(4) For the purposes of the income tax, gift tax, and estate tax laws of the United States, any money or other property donated, bequeathed, or devised to the Foundation or one of its Endowments and received by the Chairperson of an Endowment pursuant to authority derived under this subsection shall be deemed to have been donated, bequeathed, or devised to or for the use of the United States.
(c) Advisory panels; membership; procedures

The Chairperson of the National Endowment for the Arts shall utilize advisory panels to review applications, and to make recommendations to the National Council on the Arts in all cases except cases in which the Chairperson exercises authority delegated under section 955(f) of this title. When reviewing applications, such panels shall recommend applications for projects, productions, and workshops solely on the basis of artistic excellence and artistic merit. The Chairperson shall issue regulations and establish procedures—

(1) to ensure that all panels are composed, to the extent practicable, of individuals reflecting a wide geographic, ethnic, and minority representation as well as individuals reflecting diverse artistic and cultural points of view;

(2) to ensure that all panels include representation of lay individuals who are knowledgeable about the arts but who are not engaged in the arts as a profession and are not members of either artists' organizations or arts organizations;

(3) to ensure that, when feasible, the procedures used by panels to carry out their responsibilities are standardized;

(4) to require panels—

(A) to create written records summarizing—

(i) all meetings and discussions of such panel; and

(ii) the recommendations made by such panel to the Council; and

(B) to make such records available to the public in a manner that protects the privacy of individual applicants and panel members;

(5) to require, when necessary and feasible, the use of site visitations to view the work of the applicant and deliver a written report on the work being reviewed, in order to assist panelists in making their recommendations; and

(6) to require that the membership of each panel change substantially from year to year and to provide that each individual is ineligible to serve on a panel for more than 3 consecutive years.

In making appointments to panels, the Chairperson shall ensure that an individual who has a pending application for financial assistance under this subchapter, or who is an employee or agent of an organization with a pending application, does not serve as a member of any panel before which such application is pending. The prohibition described in the preceding sentence shall commence with respect to such individual beginning on the date such application is submitted and shall continue for so long as such application is pending.

(d) Endowment activities reports

The Chairperson of the National Endowment for the Arts and the Chairperson of the National Endowment for the Humanities shall each submit an annual report to the President for transmittal to the Congress on or before the 15th day of April of each year. The report shall summarize the activities of the Endowment for the preceding year, and may include such recommendations as the Chairperson deems appropriate.

(e) Council activities reports

The National Council on the Arts and the National Council on the Humanities, respectively, may each submit an annual report to the President for transmittal to the Congress on or before the 15th day of April of each year setting forth a summary of its activities during the preceding year or its recommendations for any measures which it considers necessary or desirable.

(f) Post-award evaluation of assisted projects, productions, and programs; reports; extension of time for compliance; failure to satisfy purposes of assistance

(1) The Chairperson of the National Endowment for the Arts and the Chairperson of the National Endowment for the Humanities shall conduct a post-award evaluation of projects, productions, and programs for which financial assistance is provided by their respective Endowments under sections 954(c) and 956(c) of this title. Such evaluation may include an audit to determine the accuracy of the reports required to be submitted by recipients under clauses (i) and (ii) of paragraph (2)(A). As a condition of receiving such financial assistance, a recipient shall comply with the requirements specified in paragraph (2) that are applicable to the project, production, or program for which such financial assistance is received.

(2)(A) The recipient of financial assistance provided by either of the Endowments shall submit to the Chairperson of the Endowment involved—

(i) a financial report containing such information as the Chairperson deems necessary to ensure that such financial assistance is expended in accordance with the terms and conditions under which it is provided;

(ii) a report describing the project, production, or program carried out with such financial assistance; and

(iii) if practicable, as determined by the Chairperson, a copy of such project, production, or program.

(B) Such recipient shall comply with the requirements of this paragraph not later than 90 days after the end of the period for which such financial assistance is provided. The Chairperson may extend the 90-day period only if the recipient shows good cause why such an extension should be granted.

(3) If such recipient substantially fails to satisfy the purposes for which such financial assistance is provided and the criteria specified in subsection (c)(3)(A) of this section, as determined by the Chairperson of the Endowment that provided such financial assistance, then such Chairperson may—

(A) for purposes of determining whether to provide any subsequent financial assistance, take into consideration the results of the post-award evaluation conducted under this subsection;

(B) prohibit the recipient of such financial assistance to use the name of, or in any way associate such project, production, or program with the Endowment that provided such financial assistance; and

\[1\] So in original. Subsec. (c)(3) of this section does not contain a subpar. (A).
(C) if such project, production, or program is published, require that the publication contain the following statement: “The opinions, findings, conclusions, and recommendations expressed herein do not reflect the views of the National Endowment for the Arts or the National Endowment for the Humanities.”


CODIFICATION


AMENDMENTS


Subsec. (b). Pub. L. 101–512, § 318 (title I, § 109(9)), which directed amendment of this section by striking the sixth sentence and all that follows through “pending.” was executed by striking all that follows through “pending.” the second place it appeared to reflect the probable intent of Congress. The provisions struck out read as follows: “In selecting panels of experts under clause (4) to review and make recommendations with respect to the approval of applications for financial assistance under this subchapter, each Chairperson shall appoint individuals who have exhibited expertise and leadership in the field under review, who broadly represent diverse characteristics in terms of aesthetic or humanistic perspective, and geographical factors, and who broadly represent cultural diversity. Each Chairperson shall assure that the membership of panels changes substantially from year to year, and that no more than 20 per centum of the annual appointments shall be for service beyond the limit of three consecutive years on a subpanel. In making appointments, each Chairperson shall give due regard to the need for experienced as well as new members on each panel. Panels of experts appointed to review or make recommendations with respect to the approval of applications or projects for funding by the National Endowment for the Arts shall, when reviewing such applications and projects, recommend for funding only applications and projects that in the context in which they are presented, in the experts’ view, foster excellence, are reflective of exceptional talent, and have significant literary, scholarly, cultural, or artistic merit. Whenever there is pending an application submitted by an individual for financial assistance under section 954(c) of this title, such individual may not serve as a member of any subpanel (or panel where a subpanel does not exist) before which such application is pending. The prohibition described in the previous sentence shall commence on the date the application is submitted and continue for so long as the application is pending.

Pub. L. 101–512, § 318 (title I, § 109(8)), which directed amendment of the fifth sentence of this section by making the substitution for “For the purpose”, was executed by substituting “(4) For the purposes” for “For the purposes” to reflect the probable intent of Congress.

Pub. L. 101–512, § 318 (title I, § 109(4)–(7)), redesignated concluding provisions of subsection (a) as subsec. (b), inserted pars. (1), (2), and (3) designations, and struck out making the substitution for “without condition”. Former subsec. (b) redesignated (d).

Subsec. (c) to (e). Pub. L. 101–512, § 318 (title I, § 109(3), (4), (9)), added subsec. (c), redesignated former subsec. (b) and (c) as (d) and (e), respectively, and struck out former subsec. (e) which related to studies and reports on the state and quality of arts and humanities education in public elementary and secondary schools. Former subsec. (d) redesignated (f).

Subsec. (f). Pub. L. 101–512, § 318 (title I, § 109(2)–(4)), redesignated subsec. (d) as (f) and, in par. (3), substituted “subsection (c)(3)(A) of this section” for “the last sentence of subsection (a) of this section”, and struck out former subsec. (f) which related to report to Congress on selection of experts for appointment to panels, and procedures for recommendations on financial assistance applications.

1985—Subsec. (a). Pub. L. 99–194, § 110(1), substituted “Chairperson” for “Chairman” in two places in provisions preceding cl. (1); in cl. (1) substituted “the chairperson” and “the chairperson’s” for “he” and “his”, respectively; in cl. (2) substituted “Chairperson” for “Chairman” wherever appearing; in cl. (3) substituted “the Chairperson’s” for “his”; in cl. (4) substituted “section 3109 of title 5” for “section 15 of the Administrative Expenses Act of 1946, as amended” (5 U.S.C. 55a) and struck out proviso that any advisory panel appointed to review or make recommendations with respect to the approval of applications or projects for funding was to have broad geographic and culturally diverse representation; and in provisions following par. (8) substituted “Chairperson” for “Chairman” wherever appearing and inserted provisions relating to the selection of a panel of experts to review financial assistance applications and the considerations to be made in the review of such applications.


Subsecs. (d) to (f). Pub. L. 99–194, § 110(3), added subsecs. (d) to (f). Former subsec. (d), relating to studies and reports to the President and the Congress on endowment uses of donations, bequests, and devises, was struck out.


Subsecs. (b), (c). Pub. L. 96–496, § 107(b), (c), substituted “April” for “January”.


1973—Subsec. (a)(2). Pub. L. 93–133, § 2(a)(9), added exception that a Chairman may receive a gift without a recommendation from the Council to provide support for any application or project which can be approved without Council recommendation under the provisions of sections 955(f) and 957(f) of this title, and may receive a gift of $15,000 or less without Council recommendation when the Council fails to recommend within a reasonable period of time.

Subsec. (a)(4). Pub. L. 93–133, § 2(a)(10), inserted proviso that any advisory panel appointed to review or make recommendations with respect to the approval of applications or projects for funding shall have broad geographic representation.

1970—Subsec. (a)(3) to (5). Pub. L. 91–346, § 318, struck out reference to the functions transferred by section 955(a) of this title.

Subsec. (a)(3) to (5). Pub. L. 91–346, § 111(1)–(3), inserted “to” at beginning of cls. (2) to (5).

Subsec. (a)(6) to (8). Pub. L. 91–346, §§ 10, 11(4), (5), redesignated cls. (6) and (7), and all references thereto, as cls. (7) and (8), added new cl. (6), and inserted “to” at beginning of cls. (7) and (8).

1968—Subsec. (a). Pub. L. 90–348 combined provisions of cls. (2) and (3) into cl. (2), and, in cl. (2) as thus com-
bined, extended the area for the exercise of discretion of the Chairman of an Endowment, after receiving the recommendation of the National Council of that Endowment, in the disposition of gifts to include both gifts made with condition and gifts made without condition, redesignated cls. (4) to (8) as (3) to (7), and in provisions following cl. (7), struck out references to cls. (2) and (3) wherever appearing.

**Effective Date of 1990 Amendment**

**Effective Date of 1973 Amendment**
Amendment by Pub. L. 93–133 effective on and after July 1, 1973, see section 2(b) of Pub. L. 93–133, set out as a note under section 951 of this title.

**Effective Date of 1970 Amendment**

**Termination of Reporting Requirements**
For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which certain reporting requirements under subsec. (d) of this section are listed in item 7 on page 183), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) (div. A, § 1402(1)) of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

**Delegation of Certain Reporting Authority**
Memorandum of President of the United States, Dec. 8, 1994, 69 F.R. 74937, provided:
Memorandum for the Chairperson of the National Endowment for the Arts
By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President in the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 956(c)) to provide the specified report relating to the National Endowment for the Arts to the Congress.
You are authorized and directed to publish this memorandum in the Federal Register.

**George W. Bush.**

Memorandum of President of the United States, Dec. 8, 2001, 69 F.R. 74939, provided:
Memorandum for the Chairperson of the National Endowment for the Humanities
By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President in the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 956(c)) to provide the specified report relating to the National Endowment for the Humanities to the Congress.
You are authorized and directed to publish this memorandum in the Federal Register.

**George W. Bush.**

§ 959a. Gifts, bequests, and devises

The National Endowment for the Arts and the National Endowment for the Humanities are on and after August 2, 2005, authorized to solicit, accept, receive, and invest in the name of the United States, gifts, bequests, or devises of money and other property or services and to use such in furtherance of the functions of the National Endowment for the Arts and the National Endowment for the Humanities. Any proceeds from such gifts, bequests, or devises, after acceptance by the National Endowment for the Arts or the National Endowment for the Humanities, shall be paid by the donor or the representative of the donor to the Chairman. The Chairman shall enter the proceeds in a special interest-bearing account to the credit of the appropriate endowment for the purposes specified in each case.


**Codification**
Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the National Foundation on the Arts and the Humanities Act of 1965 which comprises this subchapter.

**Prior Provisions**
Provisions similar to those in this section were contained in the following prior appropriation acts:

§ 960. Authorization of appropriations

(a) Contracts, grants-in-aid, and loans to groups, individuals, public agencies, and private nonprofit organizations; availability of appropriations; guidelines

(1)(A)(i) For the purpose of carrying out section 954(c) of this title, there are authorized to be appropriated to the National Endowment for the Arts $125,800,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993.

(ii) For fiscal years—
(I) 1991 and 1992 not less than 25 percent of the amount appropriated for the respective fiscal year; and
(II) 1993 not less than 27.5 percent of the amount appropriated for such fiscal year;
shall be for carrying out section 954(g) of this title.

(iii) For fiscal years—
(I) 1991 and 1992 not less than 5 percent of the amount appropriated for the respective fiscal year; and
(II) 1993 not less than 7.5 percent of the amount appropriated for such fiscal year;
shall be for carrying out programs under section 954(p)(2) of this title (relating to programs to expand public access to the arts in rural and inner-city areas). Not less than 50 percent of the funds required by this clause to be used for carrying out such programs shall be used for carrying out such programs in rural areas.

(B) For the purpose of carrying out section 956(c) of this title, there are authorized to be ap-
appropriated to the National Endowment for the Humanities $119,900,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993. Of the sums so appropriated for any fiscal year, not less than 20 per centum shall be for carrying out section 956(h)(1) of this title.

(2)(A) There are authorized to be appropriated for each fiscal year ending before October 1, 1993, to the National Endowment for the Arts an amount equal to the sum of—

(i) the total amounts received by such Endowment under section 956(a)(2) of this title, including the value of property donated, bequeathed, or devised to such Endowment; and

(ii) the total amounts received by the grantees of such Endowment from non-Federal sources, including the value of property donated, bequeathed, or devised to such grantees, for use in carrying out projects and other activities under paragraph (1) through paragraph (10) of section 956(c) of this title;

except that the amounts so appropriated to the National Endowment for the Arts shall not exceed $12,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993.

(B) There are authorized to be appropriated for each fiscal year ending before October 1, 1993, to the National Endowment for the Humanities an amount equal to the sum of—

(i) the total amounts received by such Endowment under section 956(a)(2) of this title, including the value of property donated, bequeathed, or devised to such Endowment; and

(ii) the total amounts received by the grantees of such Endowment from non-Federal sources, including the value of property donated, bequeathed, or devised to such grantees, for use in carrying out projects and other activities under paragraph (1) through paragraph (10) of section 956(c) of this title;

except that the amounts so appropriated to the National Endowment for the Humanities shall not exceed $13,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993.

(C) Sums appropriated pursuant to subparagraph (A) and subparagraph (B) for any fiscal year shall remain available for obligation and expenditure until expended.

(3)(A) There are authorized to be appropriated for each fiscal year ending before October 1, 1993, to the National Endowment for the Humanities an amount equal to the sum of—

(i) the total amounts received by such Endowment under section 956(a)(2) of this title, including the value of property donated, bequeathed, or devised to such Endowment; and

(ii) the total amounts received by the grantees and subgrantees of such Endowment from non-Federal sources, including the value of property donated, bequeathed, or devised to such grantees and subgrantees, for use in carrying out activities under paragraph (1) through paragraph (10) of section 956(c) of this title;

except that the amounts so appropriated to the National Endowment for the Humanities shall not exceed $12,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993.

(B) There are authorized to be appropriated for each fiscal year ending before October 1, 1993, to the National Endowment for the Humanities an amount equal to the sum of—

(i) the total amounts received by such Endowment, including the value of property donated, bequeathed, or devised to such Endowment, for the purposes set forth in section 956(h)(1) of this title pursuant to the authority of section 956(a)(2) of this title; and

(ii) the total amounts received by the grantees of such Endowment from non-Federal sources, including the value of property donated, bequeathed, or devised to such grantees, for use in carrying out activities under subparagraph (A) through subparagraph (F) of section 956(h)(1) of this title;

except that the amounts so appropriated to such Endowment shall not exceed $15,150,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993.

(3)(A) There are authorized to be appropriated for each fiscal year ending before October 1, 1993, to the National Endowment for the Arts an amount equal to the sum of—

(i) the total amounts received by such Endowment, including the value of property donated, bequeathed, or devised to such Endowment, for the purposes set forth in section 956(h)(1) of this title; and

(ii) the total amounts received by the grantees of such Endowment from non-Federal sources, including the value of property donated, bequeathed, or devised to such grantees, for use in carrying out activities under subparagraph (A) through subparagraph (F) of section 956(h)(1) of this title;

except that the amounts so appropriated to such Endowment shall not exceed $15,150,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993.

(B) There are authorized to be appropriated for each fiscal year ending before October 1, 1993, to the Chairperson of the National Endowment for the Arts and the Chairperson of the National Endowment for the Humanities, as the case may be, shall issue guidelines to implement the provisions of paragraph (2) and paragraph (3). Such guidelines shall be consistent with the requirements of section 954(e), section 954(l)(2), section 956(f), and section 956(h)(2) of this title, as the case may be, regarding total Federal support of activities, programs, projects, or productions carried out under authority of this subchapter.

(b) Availability of appropriated unexpended funds; notice of availability of funds by advance appropriation

(1) Sums appropriated pursuant to subsection (a) of this section for any fiscal year shall remain available for obligation and expenditure until expended.

(2) In order to afford adequate notice to interested persons of available assistance under this subchapter, appropriations authorized under subsection (a) of this section are authorized to be included in the measure making appropriations for the fiscal year preceding the fiscal year for which such appropriations become available for obligation.

(c) Administrative appropriations

(1) There are authorized to be appropriated to the National Endowment for the Arts $21,200,000 2 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993, to administer the provisions of this subchapter, or any other program for which the Chairperson of the National Endowment for the Arts is responsible, including not to exceed $50,000 for each such fiscal year for official reception and representation expenses. The total amount which may be obligated or expended for such expenses for fiscal year 1995 through the use of appropriated funds or any other source of funds shall not exceed $100,000.

(2) There are authorized to be appropriated to the National Endowment for the Humanities $21,200,000 3 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993.
$17,050,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993, to administer the provisions of this subchapter, or any other program for which the Chairperson of the National Endowment for the Humanities is responsible, including not to exceed $50,000 for each such fiscal year for official reception and representation expenses. The total amount which may be obligated or expended for such expenses for fiscal year 1995 through the use of appropriated funds or any other source of funds shall not exceed $180,000.

(d) Total amount of appropriations

(1) The total amount of appropriations to carry out the activities of the National Endowment for the Arts shall not exceed—

(A) $167,060,000 for fiscal year 1986,

(B) $170,206,400 for fiscal year 1987, and

(C) $177,014,656 for fiscal year 1988.

(2) The total amount of appropriations to carry out the activities for the National Endowment for the Humanities shall not exceed—

(A) $339,678,000 for fiscal year 1986,

(B) $145,057,120 for fiscal year 1987, and

(C) $150,850,405 for fiscal year 1988.

(e) Prohibition of grants to production workshops using admission proceeds for unauthorized purposes

No grant shall be made to a workshop (other than a workshop conducted by a school, college, or university) for a production for which a direct or indirect admission charge is asked if the proceeds, after deducting reasonable costs, are used for purposes other than assisting the grantee to develop high standards of artistic excellence or encourage greater appreciation of the arts and humanities by our citizens.

(f) Availability of appropriations for arts education

(1) Subject to subparagraph (2), in any fiscal year in which the aggregate amount appropriated to the National Endowment for the Arts exceeds $175,000,000, 50 percent of such excess shall be available to carry out section 954a of this title.

(2) In each fiscal year, the amount made available to carry out section 954a of this title shall not exceed $40,000,000, in the aggregate.

(3) Funds made available to carry out section 954a of this title shall remain available until expended.

References in Text


Prior Provisions

This subchapter, Pub. L. 89–209, Sept. 29, 1965, 79 Stat. 845, consisted originally of additional sections 12, 13, and 14, which were classified to sections 961, 962, and 963 of this title prior to repeal. For further details, see Prior Provisions notes set out under sections 961 to 963 of this title.

Amendments

1994—Subsec. (c)(1), (2). Pub. L. 103-382 substituted “fiscal year 1995” for “any fiscal year” and “shall not exceed $100,000” for “shall not exceed $50,000”.

1990—Subsec. (a)(1)(A). Pub. L. 101-512, §318 [title I, §110(a)], designated existing provisions as cl. (i), substituted “$125,800,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993” for “$121,678,000 for fiscal year 1986, $123,425,120 for fiscal year 1987, $128,362,125 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990”, struck out at end “of the sums so appropriated for any fiscal year, not less than 20 per centum shall be for carrying out section 954(g) of this title.”, and added cls. (ii) and (iii).

Subsec. (a)(1)(B). Pub. L. 101-512, §318 [title I, §110(b)], substituted “$119,900,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993” for “$95,207,000 for fiscal year 1986, $99,015,280 for fiscal year 1987, $102,975,891 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990.”.


Subsec. (a)(2)(A). Pub. L. 101-512, §318 [title I, §110(d)(1)], substituted “1993” for “1990” in introductory provisions and “paragraph (10)” for “paragraph (6)” in cl. (ii), and in closing provisions substituted “$33,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993” for “$38,820,000 for fiscal year 1986, $9,172,800 for fiscal year 1987, $9,539,712 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990”.

Subsec. (a)(2)(B). Pub. L. 101-512, §318 [title I, §110(d)(2)], substituted “1993” for “1990” in introductory provisions and “paragraph (10)” for “paragraph (6)” in cl. (ii), and in closing provisions substituted “$12,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993” for “$10,780,000 for fiscal year 1986, $11,211,200 for fiscal year 1987, $11,659,648 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990”.

Subsec. (a)(3)(A). Pub. L. 101-512, §318 [title I, §110(d)(3)], in introductory provisions, substituted “1993” for “1990” and in closing provisions, substituted “$15,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993” for “$20,580,000 for fiscal year 1986, $21,403,200 for fiscal year 1987, $21,259,226 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990”.


Subsec. (a)(3)(B). Pub. L. 101-512, §318 [title I, §110(d)(4)], in introductory provisions, substituted “1993” for “1990” and in closing provisions, substituted “$15,150,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993” for “$15,600,000 for fiscal year 1986, $20,384,000 for fiscal year 1987, $21,199,960 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990”.

Subsec. (a)(3)(C). Pub. L. 101-512, §318 [title I, §110(e)], redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: “If either Chair-
person determines at the end of the ninth month of any fiscal year that funds which would otherwise be available under this paragraph to an Endowment cannot be used, the Chairperson shall transfer such funds to the other Endowment for the purposes described in section 954(p)(1) or section 956(h)(1) of this title, as may be necessary.

Subsec. (a)(3). Pub. L. 101–512, § 318 [title I, § 110(e)(2), redesignated subpar. (d) as (c)].

Subsec. (a)(4). Pub. L. 101–512, § 318 [title I, § 103(h)(2)(B)], which directed the substitution of ‘‘954(p)(1)’’ for ‘‘954(h)(1)’’, could not be executed because ‘‘954(h)(1)’’ does not appear in text.

Subsec. (c)(1). Pub. L. 101–512, § 110(f)(1), substituted ‘‘$21,200,000’’ for ‘‘$20,580,000’’ for fiscal year 1985; substituted ‘‘$15,982,000 for fiscal year 1986, $16,205,280 for fiscal year 1987, $16,853,491 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990’’ for ‘‘$115,500,000 for fiscal year 1981, $127,000,000 for fiscal year 1982, $140,000,000 for fiscal year 1983, $154,000,000 for fiscal year 1984, and $167,500,000 for fiscal year 1985’’.

Subsec. (c)(2)(A). Pub. L. 101–512, § 110(g), added subsec. (c)(2)(B), redesignated former subsec. (d) as (e), and struck out ‘‘under this subchapter’’ after ‘‘No grant shall be made’’.

1984—Subsec. (a)(1)(A). Pub. L. 98–306, § 7(a)(1)(A), substituted ‘‘$329,500,000 for fiscal year 1984, and such sums as may be necessary’’ for ‘‘$154,000,000 for fiscal year 1984, and $170,000,000 for fiscal year 1985’’.

Subsec. (a)(1)(B). Pub. L. 98–306, § 7(a)(1)(B), substituted ‘‘$127,000,000 for fiscal year 1984, and such sums as may be necessary’’ for ‘‘$30,000,000 for fiscal year 1984, and $22,500,000 for fiscal year 1985’’.

Subsec. (a)(2)(A). Pub. L. 98–306, § 7(a)(2)(A), substituted ‘‘$10,000,000 for fiscal year 1984, and such sums as may be necessary’’ for ‘‘$16,500,000 for fiscal year 1984, and $18,500,000 for fiscal year 1985’’.

Subsec. (a)(3)(A). Pub. L. 98–306, § 7(a)(3)(A), substituted ‘‘$26,000,000 for fiscal year 1984, and such sums as may be necessary’’ for ‘‘$36,000,000 for fiscal year 1984, and $40,000,000 for fiscal year 1985’’.

Subsec. (a)(3)(B). Pub. L. 98–306, § 7(a)(3)(B), substituted ‘‘$93,500,000 for fiscal year 1977, $105,000,000 for fiscal year 1978, and such sums as may be necessary for fiscal years 1979 and 1980’’.

Subsec. (a)(4). Pub. L. 98–496, § 108(a), substituted ‘‘$15,500,000 for fiscal year 1981, $127,000,000 for fiscal year 1982, $140,000,000 for fiscal year 1983, $154,000,000 for fiscal year 1984, and $170,000,000 for fiscal year 1985’’ for ‘‘$93,500,000 for fiscal year 1977, $105,000,000 for fiscal year 1978, and such sums as may be necessary for fiscal years 1979 and 1980’’.

Subsec. (a)(1)(B). Pub. L. 96–496, § 108(b), substituted ‘‘$114,500,000 for fiscal year 1981, $126,000,000 for fiscal year 1982, $138,500,000 for fiscal year 1983, $152,000,000 for fiscal year 1984, and $167,500,000 for fiscal year 1985’’ for ‘‘$93,500,000 for fiscal year 1977, $105,000,000 for fiscal year 1978, and such sums as may be necessary for fiscal years 1979 and 1980’’.

Subsec. (a)(2). Pub. L. 96–496, § 108(c), substituted provisions authorizing appropriations for each fiscal year ending before Oct. 1, 1985, for the National Endowments for the Arts and for the Humanities for provisions authorizing appropriations for such endowments for each fiscal year ending prior to Oct. 1, 1980.


Subsec. (a)(4). Pub. L. 96–496, § 108(f), substituted provisions authorizing the Chairman of the National Endowment for the Arts for provisions authorizing and allocating appropriations for the National Endowment for the Arts for the purpose of carrying out subsec. (m) of section 954 of this title.

Subsec. (c). Pub. L. 96–496, § 108(g), substituted provisions authorizing specific appropriations for administrative expenses of the National Endowments for the Arts and for the Humanities for fiscal years 1981 to 1985 for provisions authorizing appropriations for administrative expenses of such endowments of such sums as were necessary.

1976—Subsec. (a)(1)(A). Pub. L. 94–462, § 106(a)1)(A), substituted provisions authorizing appropriations of $93,500,000 for fiscal year 1977, $105,000,000 for fiscal year 1978, and such sums as are necessary for fiscal years 1979 and 1980 to carry out section 954(c) of this title and such sums so appropriated for any fiscal year, not less than 20 per centum to carry out section 954(g) of this title for provisions authorizing appropriations of $54,000,000, $90,000,000, and $113,500,000 for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, respectively, to the National Endowment for the Arts for the purpose of carrying out section 954(c) of this title and to carry out section 954(g) of this title $11,000,000 for the fiscal year ending June 30, 1974 and requiring that not less than 20 per centum of funds appropriated for section 954(c) of this title may be used only for purpose of section 954(g) of this title for fiscal years ending June 30, 1975 and June 30, 1976.

Subsec. (a)(1)(B). Pub. L. 94–462, § 106(a)1)(B), substituted provisions authorizing appropriations of $93,500,000 for fiscal year 1977, $105,000,000 for fiscal year 1978, and such sums as may be necessary for fiscal years 1979 and 1980, not less than 20 per centum of such appropriations to be carried out under section 954(f) of this title, and provisions authorizing appropriations of $54,000,000, $90,000,000, and $113,500,000 for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, respectively, to the National Endowment for the Arts to carry out section 954(c) of this title and to carry out section 954(g) of this title $11,000,000 for the fiscal year ending June 30, 1974 and requiring that not less than 20 per centum of funds appropriated for section 954(c) of this title may be used only for purpose of section 954(g) of this title for fiscal years ending June 30, 1975 and June 30, 1976.


Subsec. (a)(2). Pub. L. 94–462, § 106(a)(2), substituted "October 1, 1980" for "July 1, 1976" and provisions authorizing appropriations not to exceed $17,000,000, $26,500,000, and $35,500,000 for the fiscal years ending June 30, 1976, respectively.

1975—Subsec. (a). Pub. L. 91–346, §§ 5(a)(4), 12(a), struck out reference to the functions transferred by section 954 of this title, and, added provisions to the National Endowment for the Arts of $12,875,000, $21,000,000, and $28,625,000 for the fiscal years ending June 30, 1971, 1972, and 1973, respectively, for the purpose of carrying out section 954(c) of this title, and $4,125,000, $5,500,000, and $6,875,000 for the fiscal years ending June 30, 1971, 1972, and 1973, respectively, for the purposes of section 954(h) of this title, and further appropriated to the National Endowment for the Humanities $17,000,000, $26,500,000, $35,500,000 for the fiscal years ending June 30, 1971, 1972, and 1973, respectively, for the purpose of carrying out section 956(c) of this title.

Subsec. (b). Pub. L. 91–346, § 12(b), placed limitation on appropriation to each Endowment based on an amount equal to the total of amounts received by each Endowment under section 954(a)(2) of this title by placing ceilings of $6,000,000, $7,000,000, and $9,000,000 on the amounts appropriated for the fiscal years ending June 30, 1971, 1972, and 1973, respectively.

1968—Subsec. (a). Pub. L. 90–348, § 6(a), substituted provisions which authorized for the enumerated purposes appropriations totaling $8,000,000 for the fiscal year ending June 30, 1969, and $10,000,000 for the fiscal year ending June 30, 1970 to both the National Endowment for the Arts and the National Endowment for the Humanities, and which authorized the Congress to appropriate funds for subsequent fiscal years for provisions which authorized for grants to groups and individuals for projects and productions, for grants for activities authorized by the Chairman of the National Endowment for the Humanities, and for the functions of the National Council on the Arts in the National Endowment for the Arts of $10,000,000 for the fiscal year ending June 30, 1966, and each of the two succeeding fiscal years, and that the funds appropriated be equally divided between the Endowments of the Foundation.

Subsec. (b). Pub. L. 90–348, § 6(b), substituted provisions authorizing appropriations not to exceed $13,500,000 for the fiscal years ending June 30, 1969, and June 30, 1970, and authorizing the Congress to appropriate funds for subsequent fiscal years for provisions authorizing appropriations for the National Endowment for the Arts not to exceed $2,250,000 for any fiscal year, and authorizing appropriations for the Humanities not to exceed $5,000,000 for any fiscal year.

Subsecs. (c) to (e). Pub. L. 90–348, § 6(c), (d), struck out subsec. (c) which authorized appropriations for the National Endowment for the Arts for each fiscal year, beginning with the fiscal year beginning on July 1, 1966, of $2,750,000, and redesignated subssecs. (d) and (e) as (c) and (d), respectively.

EFFECTIVE DATE OF 1990 AMENDMENT

EFFECTIVE DATE OF 1976 AMENDMENTS
Section 106(b) of Pub. L. 94–462 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal year 1977 and succeeding fiscal years."

**Effective Date of 1973 Amendment**
Amendment by Pub. L. 93–133 effective on and after July 1, 1973, see section 2(b) of Pub. L. 93–133, set out as a note under section 951 of this title.

**Effective Date of 1970 Amendment**

### SUBCHAPTER II—MUSEUM SERVICES

§§ 961 to 969. Omitted

**CODIFICATION**


A prior section 961, Pub. L. 89–209, § 12, Sept. 29, 1965, 79 Stat. 854; Pub. L. 90–575, title V, § 501, Oct. 16, 1968, 82 Stat. 161, related to State educational agencies' acquisition of equipment, remodeling of laboratories, and making loans to strengthen instruction in the humanities and the arts, providing in: subsec. (a) appropriations authorization; subsec. (b) reservation, allotment and reallocation of funds as provided in section 422(a) and (c) of this title; subsec. (c) State plan, submission, requirements, terms and conditions; subsec. (d) approval of State plan by Commissioner, application of section 584(b) and (c) of this title, prior to repeal by Pub. L. 91–230, title VIII, § 807(b), Apr. 13, 1970, 84 Stat. 192.


### SHORT TITLE

Section 201 of title II of Pub. L. 94–462, which provided that title II of Pub. L. 94–462, which enacted this subchapter and amended section 958 of this title, could be cited as the "Museum Services Act", was omitted in the general amendment of title II by Pub. L. 104–208. See chapter 72 (§ 9101 et seq.) of this title.

### CHAPTER 26A—INDEMNITY FOR EXHIBITIONS OF ARTS AND ARTIFACTS

Sec. 971. Agreements to indemnify against loss or damage.

972. Items eligible for indemnity agreements.

973. Application for indemnity agreements.

974. Indemnity limits.

975. Claims for losses.

976. Authorization of appropriations.

977. Omitted.

§ 971. Agreements to indemnify against loss or damage

(a) Authorization of Federal Council on the Arts and Humanities

The Federal Council on the Arts and Humanities (hereinafter in this chapter referred to as the "Council"), established under section 958 of this title, is authorized to make agreements to indemnify against loss or damage such items as may be eligible for such indemnity agreements under section 972 of this title—

(1) in accordance with the provisions of this chapter; and

(2) on such terms and conditions as the Council shall prescribe, by regulation, in order to achieve the purposes of this chapter and, consistent with such purposes, to protect the financial interest of the United States.
§ 972. Items eligible for indemnity agreements

(a) Works of art; printed or published materials; other artifacts or objects; photographs, motion pictures, or tapes

The Council may make an indemnity agreement under this chapter with respect to—

(1) works of art, including tapestries, paintings, sculpture, folk art, graphics, and craft arts;

(2) manuscripts, rare documents, books, and other printed or published materials;

(3) other artifacts or objects; and

(4) photographs, motion pictures, or audio and video tape;

which are (A) of educational, cultural, historical, or scientific value, and (B) in the case of international exhibitions, certified by the Secretary of State or his designee as being in the national interest.

(b) Extension of coverage; “on exhibition” defined

(1) An indemnity agreement made under this chapter shall cover eligible items while on exhibition in the United States or elsewhere preferably when part of an exchange of exhibitions.

(2) For purposes of this subsection, the term “on exhibition” includes that period of time beginning on the date the eligible items leave the premises of the lender or place designated by the lender and ending on the date such items are returned to the premises of the lender or place designated by the lender.


AMENDMENTS

1985—Subsec. (b). Pub. L. 99–194 designated existing provisions as par. (1) and added par. (2).

Effective Date

Section 9 of Pub. L. 94–158 provided that: “This Act [see Short Title note below] shall become effective 30 days after the date of the enactment of this Act [Dec. 20, 1975].”

Short Title

Section 1 of Pub. L. 94–158 provided that: “This Act [enacting this chapter and provisions set out as a note under this section] may be cited as the ‘Arts and Artifacts Indemnity Act’.”

§ 973. Application for indemnity agreements

(a) Parties

Any person, nonprofit agency, institution, or government desiring to make an indemnity agreement for eligible items under this chapter shall make application therefor in accordance with such procedures, in such form, and in such manner as the Council shall, by regulation, prescribe.

(b) Contents

An application under subsection (a) of this section shall—

(1) describe each item to be covered by the agreement (including an estimated value of such item);

(2) show evidence that the items are eligible under section 972(a) of this title; and

(3) set forth policies, procedures, techniques, and methods with respect to preparation for, and conduct of, exhibition of the items, and any transportation related to such items.

(c) Approval

Upon receipt of an application under this section, the Council shall, if such application conforms with the requirements of this chapter, approve the application and make an indemnity agreement with the applicant. Upon such approval, the agreement shall constitute a contract between the Council and the applicant pledging the full faith and credit of the United States to pay any amount for which the Council becomes liable under such agreement. The Council, for such purpose, is hereby authorized to pledge the full faith and credit of the United States.


§ 974. Indemnity limits

(a) Approval of estimated values

Upon receipt of an application meeting the requirements of subsections (a) and (b) of section 973 of this title, the Council shall review the estimated value of the items for which coverage by an indemnity agreement is sought. If the Council agrees with such estimated value, for the purposes of this chapter, the Council shall, after approval of the application as provided in subsection (c) of section 973 of this title, make an indemnity agreement.

(b) Maximum limits of coverage
The aggregate of loss or damage covered by indemnity agreements made under this chapter shall not exceed $10,000,000,000 at any one time for international exhibitions, and $5,000,000,000 at any one time for domestic exhibitions.

(c) Limit for single exhibition
No indemnity agreement for a single exhibition shall cover loss or damage in excess of $1,200,000,000 for international exhibitions, or $750,000,000 for domestic exhibitions.

(d) Deductible limit
If the estimated value of the items covered by an indemnity agreement for a single exhibition is—

(1) $2,000,000 or less, then coverage under this chapter shall extend only to loss or damage in excess of the first $15,000 of loss or damage to items covered;

(2) more than $2,000,000 but less than $10,000,000 then coverage under this chapter shall extend only to loss or damage in excess of the first $25,000 of loss or damage to items covered;

(3) not less than $10,000,000 but less than $125,000,000, then coverage under this chapter shall extend to loss or damage in excess of the first $50,000 of loss or damage to items covered;

(4) not less than $125,000,000 but less than $200,000,000, then coverage under this chapter shall extend to loss or damage in excess of the first $100,000 of loss or damage to items covered;

(5) not less than $200,000,000 but less than $300,000,000, then coverage under this chapter shall extend only to loss or damage in excess of the first $200,000,000 of loss or damage to items covered;

(6) not less than $300,000,000 but less than $400,000,000, then coverage under this chapter shall extend only to loss or damage in excess of the first $300,000,000 of loss or damage to items covered;

(7) not less than $400,000,000 but less than $500,000,000, then coverage under this chapter shall extend only to loss or damage in excess of the first $400,000 of loss or damage to items covered;

(8) $500,000,000 or more, then coverage under this chapter shall extend only to loss or damage in excess of the first $500,000 of loss or damage to items covered.


1 So in original. Probably should be “$200,000,000.”.

2 So in original. Probably should be “this.”.
pursuant to section 974 of this title, the Council shall certify the validity of the claim and the amount of the loss to the Speaker of the House of Representatives and the President pro tempore of the Senate.


§ 976. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary (1) to enable the Council to carry out its functions under this chapter, and (2) to pay claims certified pursuant to section 975(b) of this title.


§ 977. Omitted

CODIFICATION

Section, Pub. L. 94–138, §§8, 20, Dec. 20, 1975, 89 Stat. 846, which required the Federal Council on the Arts and Humanities to report annually to Congress on claims actually paid and pending claims against the Council under this chapter and the aggregate face value of contracts made by the Council which are outstanding, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, section 116(e) of Pub. L. 90–575.

CHAPTER 27—NATIONAL VOCATIONAL STUDENT LOAN INSURANCE


Section 881, Pub. L. 90–287, §2, Oct. 22, 1965, 79 Stat. 1037, provided for certificates of insurance to be issued to individuals as loans and covered by insurance under this chapter, and the aggregate face value of contracts made by the Council which are outstanding, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 167 of House Document No. 103–7.

§ 982. Of appropriations


§ 983. Application of peer review process


§ 984. Recovery of payments

Section 984, Pub. L. 90–460, §1(b)(3), Aug. 3, 1968, 82 Stat. 634, authorized Commissioner to make direct loans to students residing in areas where loans insurable under this chapter are unavailable.

CHAPTER 28—HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE

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§ 1001. General definition of institution of higher education

(a) Institution of higher education

For purposes of this chapter, other than subchapter IV, the term "institution of higher education" means an educational institution in any State that—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d) of this title;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included

For purposes of this chapter, other than subchapter IV, the term "institution of higher education" also includes—

(1) any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) a public or nonprofit private educational institution in any State, in lieu of the requirement in subsection (a)(1), admits as regular students individuals—

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) who will be dually or concurrently enrolled in the institution and a secondary school.

(c) List of accrediting agencies

For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.


AMENDMENTS


Subsec. (a)(3). Pub. L. 110–315, §101(a)(1)(B), inserted “or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary” before semicolon at end.

Subsec. (b)(2). Pub. L. 110–315, §101(a)(2), added par. (2) and struck out former par. (2) which read as follows: “a public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.”

EFFECTIVE DATE OF 2011 AMENDMENT


EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–39, §3, July 1, 2009, 123 Stat. 1935, provided that: “Except as otherwise provided in this Act [see Tables for classification], the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 14, 2008].”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, §3, Aug. 14, 2008, 122 Stat. 3083, provided that: “Except as otherwise provided in this Act [see Tables for classification], or the amendments made by this Act, the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 14, 2008].”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, §3, Oct. 7, 1998, 112 Stat. 1585, provided that: “Except as otherwise provided in this Act [see Tables for classification] or the amendments made by this Act, the amendments made by this Act shall take effect on October 1, 1998.”

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1987 AMENDMENT


EFFECTIVE DATE OF 1986 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENT


“(b)(1) The amendment made by section 301 of this Act to title III of the Act [enacting subchapter III of this chapter] shall take effect October 1, 1981.

“(2) The amendment made by section 404(c)(4) of this Act to section 416(h)(4) of the Act [amending section 707c–2 of this title] shall be effective October 1, 1979.

“(3) The amendment made by section 405 to subpart 4 of part A of title IV of the Act [amending subpart 4 of part A of subchapter IV of this chapter generally] shall take effect October 1, 1981.

“(4) The amendments made by part B of title IV of this Act [enacting sections 707a, 707–2, 1083a, and 1087–la of this title and amending sections 707, 1077, 1078, 1078–1, 1080, 1082, 1085, 1087–1, and 1087–2 of this title] shall take effect, except as otherwise provided therein, on January 1, 1981, and to the extent such amendments make changes in such part B which affect student loans, such changes shall apply to outstanding loans as well as to loans made after the amendments take effect, except that the amendments made by section 415(b) [amending sections 1077(a)(2)(B) and 1078(b)(1)(E) of this title] shall apply with respect to any loan to cover the cost of instruction for any period of instruction beginning on or after January 1, 1981, to any student borrower who has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 [part B of subchapter IV of this chapter] on the date on which the borrower enters into the note or other written evidence of the loan.

“(5) The amendments made by part D of title IV of this Act [enacting sections 1087cc–1, 1087hh, and 10871i of this title and amending sections 1087aa to 1087ag of this title] shall apply to loans made under part E of the Act [part D of subchapter IV of this chapter] on or after October 1, 1980.

“(6) The amendment made by section 701 of this Act adding section 731 of the Act [former section 1132c of this title] shall apply to loans made under section 731 on or after October 1, 1980.”

EFFECTIVE DATE OF 1976 AMENDMENT

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"(1) as specifically otherwise provided; and

"(2) that each amendment made by this Act (not subject to clause (1) of this section) providing for authorization of appropriations shall take effect July 1, 1976."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–152, title II, § 2001(a), Mar. 30, 2010, 124 Stat. 1071, provided that: "This subtitle [subtitle A (§§ 2001–2213) of title II of Pub. L. 111–152, enacting section 1087–1 of this title, amending sections 1002, 1071, 1074, 1075, 1077a, 1078 to 1078–3, 1078–6 to 1078–10, 1082, 1085, 1087, 1087–1, 1087e, 1087h, 1087i, 1087dd, 1087ff, 1087fo to 1087q, 1087vv, 1088, 1091, 1091b, and 1095a of this title, enacting provisions set out as notes under sections 1002, 1057, 1058, 1058–1, 1058q to 1058q, and 1087ss of this title, and amending provisions set out as a note under sections 1078–10 of this title] may be cited as the ‘SAFRA Act.’"

SHORT TITLE OF 2008 AMENDMENT


Pub. L. 110–227, § 1, May 7, 2008, 122 Stat. 749, provided that: "This title [probably means this ‘Act’, enacting section 1087–1 of this title, amending sections 1070a–1, 1071, 1078, 1078–2, 1078–8, 1085, 1087–1, 1087b, 1087d, 1087f, 1087h, 1090, 10922, 10986, 1141, and 1161y of this title, enacting provisions set out as notes under sections 1062, 1070a, 1087d, and 1087f of this title, and repealing provisions set out as a note under section 1078 of this title] may be cited as the ‘Ensuring Continued Access to Student Loans Act of 2008.’"

SHORT TITLE OF 2007 AMENDMENT


Pub. L. 110–84, § 1(a), Sept. 27, 2007, 121 Stat. 794, provided that: "This Act [enacting sections 1070g to 1070u, 1086f, 1089i, 1089j, 1141 of this title, amending sections 1070a, 1070a–13, 1077a, 1078, 1078–3, 1085, 1087–1, 1087e, 1087h, 1087j, 1087l, 1087ff, 1087io to 1087tt of this title, enacting provisions set out as notes under sections 1070a–1, 1071, 1078, 1078–2, 1078–6, 1087dd, 1087ff, 1087io to 1087tt, and 1087vv of this title, and amending provisions set out as a note under section 1078 of this title] may be cited as the ‘Higher Education Extension Act of 2007.’"

Short Title of 2006 Amendments

Pub. L. 109–171, title VII, § 8001(a), Feb. 8, 2006, 120 Stat. 155, provided that: "This subtitle [subtitle A (§§ 8001–8024) of title VII of Pub. L. 109–171, enacting sections 1076a–1 and 1096e of this title, amending sections 1002, 1071, 1074, 1075, 1077a, 1078 to 1078–3, 1078–6 to 1078–10, 1082, 1085, 1087, 1087–1, 1087e, 1087h, 1087i, 1087dd, 1087ff, 1087io to 1087q, 1087vv, 1088, 1091, 1091b, and 1095a of this title, enacting provisions set out as notes under sections 1002, 1057, 1058, 1058–1, 1058q to 1058q, and 1087ss of this title, and amending provisions set out as a note under sections 1078–10 of this title] may be cited as the ‘Higher Education Reconciliation Act of 2005.’"

SHORT TITLE OF 2005 AMENDMENTS


SHORT TITLE OF 2004 AMENDMENTS


SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–420, § 1, Nov. 1, 2000, 114 Stat. 1867, provided that: "This Act [enacting section 1092d of this title, amending section 522 of Title 11, Bankruptcy, and enacting provisions set out as notes under section 1092d of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘College Scholarship Fraud Prevention Act of 2000.’"

Pub. L. 106–386, div. B, title VI, § 1001(a), Oct. 28, 2000, 114 Stat. 1337, provided that: "This section [amending sections 1092 and 1232 of this title and section 14071 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 1092 of this title and section 14071 of Title 42] may be cited as the ‘Campus Sex Crimes Prevention Act.’"

SHORT TITLE OF 1998 AMENDMENTS


SHORT TITLE OF 1997 AMENDMENTS

Pub. L. 105–78, title VI, § 609(a), Nov. 13, 1997, 111 Stat. 1522, provided in part that: "This section [amending sections 1078–3, 1087, to 1087q, and 1087vv of this title and enacting provisions set out as notes under sections 1078–3 and 1087h of this title] may be cited as the ‘Emergency Student Loan Consolidation Act of 1997.’"

SHORT TITLE OF 1996 AMENDMENTS

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sections 1075, 1077, 1077a, 1078, 1078–1, 1078–2, 1078–2, 1078a, 1083, 1086, and 1232 of this title, repealing section 1087–3a of this title, and enacting provisions set out as notes under sections 1060, 1062, 1065 to 1068, 1071, 1077, 1078, 1080, 1083 to 1086, 1091c, 1101, 1104, 1108, 1112, 1115, 1118, 1120, 1122, 1129, 1132, 1133a, 1134, 1136, 1136a, 1136b, 1141, 1176, 1231, 1231a, 1232a, 1232c, 1233, 1234, 1236, 1237, 1371, 1391, and 1412 of this title, and sections 329, 331, 343, 349, 361, and 1626 of Title 7, sections 24, 84, 1464, and 1757 of Title 12, Banks and Banking, sections 203 and 213 of Title 29, Labor, and sections 2751, 2752, and 2754 of Title 42, repealing sections 1, 2, 426, 711 to 721, 731, 732, 746, 1021, 1031, 1032, 1060, 1118, 1119a, 1119b–2, and 1119c–4 of this title, and enacting provisions set out as notes under this title and sections 421a, 241e, 331a, 425, 828, 874, 1005a, 1009, 1070, 1074, 1075, 1076, 1078a, 1083, 1084, 1087a, 1091a, 1132a, 1132a–3, 1135c, 1231, and 1232 of this title, sections 301 and 326a of Title 7, and section 5301 of Title 42 may be cited as the ‘Education Amendments of 1972’.

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–575, § 1, Oct. 16, 1968, 82 Stat. 1014, provided: ‘That this Act [enacting sections 451 to 445, 746, 1056, 1060, 1067, 1087a to 1087c, 1088 to 1088c, 1089, 1109a–1, 1128a, 1133 to 1133b, 1134 to 1134f, 1135, 1135a, 1135b, 1135c, 1136 to 1136b, 1145, 1146 to 1150 of this title, amending this section and sections 421 to 425, 425 note, 426, 441 to 445, 462 to 464, 491 to 494, 511, 513, 562, 581, 584, 588, 591, 711, 713 to 718, 731, 732, 743, 745, 751, 758, 961, 1065, 1096, 1021 to 1024, 1031, 1033, 1051, 1051, 1052, 1062 to 1068, 1071 to 1075, 1077, 1078, 1080, 1083 to 1086, 1091c, 1101, 1104, 1108 to 1111, 1113, 1114, 1115, 1118, 1120, 1122, 1129, 1132, 1145, 1147, 1148, 1161, 1178 of this title, section 1464 of Title 12, Banks and Banking, and sections 2741, 2751 to 2756, and 2809 of Title 42, ‘The Public Health and Welfare, repealing sections 733, 981 to 996 of this title, and section 2757 of Title 42, and enacting provisions set out as notes under this title and sections 421 to 425, 445, 462 to 464, 588, 713, 716 to 718, 743, 751, 981, 986, 1006, 1022, 1024, 1025, 1051, 1056, 1069, 1071, 1077, 1078, 1083, 1088b, and 1109 of this title, and sections 2751, 2753, 2754, and 2809 of Title 42 may be cited as the ‘Higher Education Amendments of 1968’.

SHORT TITLE OF 1966 AMENDMENT


SHORT TITLE


For short title of section 1064 of this title as the Jeanne Clery Disclosure of Campus Security Policy and...
Campus Crime Statistics Act, see section 1029(c)(18) of this title.

HIGHER EDUCATION EXTENSION


SEC. 2. EXTENSION OF PROGRAMS.


(b) PERFORMANCE OF REQUIRED AND AUTHORIZED FUNCTIONS.—If the Secretary of Education, a State, an institution of higher education, a guaranty agency, a lender, or another person or entity—

(1) is required, in or for fiscal year 2004, to carry out certain acts or make certain determinations or payments under a program under the Higher Education Act of 1965, such acts, determinations, or payments shall be required to be carried out, made, or continued during the period of the extension under this section; or

(2) is permitted or authorized, in or for fiscal year 2004, to carry out certain acts or make certain determinations or payments under a program under the Higher Education Act of 1965, such acts, determinations, or payments are permitted or authorized to be carried out, made, or continued during the period of the extension under this section.

(c) EXTENSION AT CURRENT LEVELS.—The amount authorized to be appropriated for a program described in subsection (a) during the period of extension under this section shall be the amount authorized to be appropriated for such program for fiscal year 2004, or the amount appropriated for such program for such fiscal year, whichever is greater. Except as provided in any amendment to the Higher Education Act of 1965 enacted during fiscal year 2005 or 2006, the amount of any payment required or authorized under subsection (b) in or for the period of the extension under this section shall be determined in the same manner as the amount of the corresponding payment required or authorized in or for fiscal year 2004.

(d) ADVISORY COMMITTEES AND OTHER ENTITIES CONTINUED.—Any advisory committee, interagency organization, or other entity that was, during fiscal year 2004, authorized or required to perform any function under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) and the Federal Postsecondary Education Act of 1972 (20 U.S.C. 1087–1 et seq.) or in relation to programs under that Act, shall continue to exist and is authorized or required, respectively, to perform such function for the period of the extension under this section.

(e) ADDITIONAL EXTENSION NOT PERMITTED.—Section 422 of the General Education Provisions Act (20 U.S.C. 1226a) shall not apply to further extend the authorization of appropriations for any program described in subsection (a) on the basis of the extension of such program under this section.

(f) EXCEPTION.—The programs described in subsection (a) for which the authorization of appropriations, or the duration of which, is extended by this section provide provisions applicable in, and students in or from, the Federated States of Micronesia and the Republic of the Marshall Islands only to the extent specified in Public Law 108–188 (48 U.S.C. 1921 et seq.)


STYLISTIC CONSISTENCY

[Pub. L. 103-208, §2(a), Dec. 20, 1993, 107 Stat. 2986, provided that: “The Act [Pub. L. 89-829, see Short Title note above] is amended so that the section designation and section heading of each section of the Act shall be in the form and typeface of the section designation and heading of this section [107 Stat. 2457]."

TERMS DEFINED FOR PURPOSES OF TITLES XIII, XIV, XV OF PUB. L. 102-325

[Pub. L. 102-325, §1(c), July 23, 1992, 106 Stat. 448, as amended by Pub. L. 105-244, title I, §102(a)(8A), Oct. 7, 1998, 112 Stat. 1618, provided that: “Unless otherwise provided therein, terms used in titles XIII, XIV, and XV enacting sections 1145h and 4626 of this title, sections 3301 to 3371 of Title 25, Indians, and sections 2401 to 2405 of Title 29, Labor, amending sections 1211e-1, 1233g, 3412, 4122, 4141, 4146, 4147, 4148, 4122, 4223, 4224, 4225, 5361, and 5411 of this title, section 5515 of Title 26, Government Organization and Employees, sections 4609 to Title 22, Foreign Relations and Intercourse, sections 640c-1, 1810, 1836, and 1852 of Title 25, and sections 295g-8 and 1257f of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1070, 1070a-11, 1070a-21, 1071, 1080, 1088, 1101, 1132a, 1134, 1221-1, 1222e, 1232e, 1452, and 9003 of this title, amending provisions set out as a note under section 1091a of this title, and repealing provisions set out as a note under section 362 of Title 11, Bankruptcy] shall have the same meaning given to such terms in section 101 of the Higher Education Act of 1965 [this section]."

GENERAL PROVISIONS OF 1972 AMENDMENT

[Pub. L. 92-313, §2, June 23, 1972, 86 Stat. 236, provided that: “(a) As used in this Act [see Short Title of 1972 Amendment note above]—

(1) the term ‘Secretary’ means the Secretary of Health, Education, and Welfare [now Secretary of Education]; and

(2) the term ‘Commissioner’ means the Commissioner of Education [now Secretary of Education];
unless the context requires another meaning.

“(b) Unless otherwise specified, the redesignation of a section, subsection, or other designation by any amendment made by this Act shall include the redesignation of any reference to such section, subsection, or other designation in any Act or regulation, however styled.

“(c)(1) Unless otherwise specified, each provision of this Act and each amendment made by this Act shall be effective after June 30, 1972, and with respect to appropriations for the fiscal year ending June 30, 1973, and succeeding fiscal years.

“(2) Unless otherwise specified, in any case where an amendment made by this Act is to become effective after a date set herein, it shall be effective with the beginning of the day which immediately follows the date after which such amendment is effective.

“(3) In any case where the effective date for an amendment made by this Act is expressly stated to be effective after June 30, 1971, such amendment shall be deemed to have been enacted on July 1, 1971.”

RULEMAKING REQUIREMENTS; PUBLICATION IN FEDERAL REGISTER

Pub. L. 90–575, title V, § 505, Oct. 16, 1968, 82 Stat. 1063, authorized the President, on or before Dec. 31, 1969, to submit to the Congress proposals relative to the feasibility of making available a post-secondary education to all young Americans who qualify and seek it.

§ 1002. Definition of institution of higher education for purposes of student assistance programs

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions

Subject to paragraphs (2) through (4) of this subsection, the term “institute of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) a proprietary institution of higher education (as defined in subsection (b) of this section);

(B) a postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) only for the purposes of part C of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purposes of part C of subchapter IV of this chapter, consistent with the requirements of section 1087b(d) of this title.

(2) Institutions outside the United States

(A) In general

For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, nursing school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001(a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made under part C of subchapter IV of this chapter unless—

(i) except as provided in subparagraph (B)(iii)(IV), in the case of a graduate medical school located outside the United States—

(II) the institution—

(aa) has or had a clinical training program that was approved by a State as of January 1, 1992; and

(bb) continues to operate a clinical training program in at least one State that is approved by that State;

(ii) in the case of a nursing school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution’s students complete their clinical training at an approved veterinary school located in the United States; or

(iii) in the case of a nursing school located outside the United States—

(I) the nursing school has an agreement with a hospital, or accredited school of nursing (as such terms are defined in section 296 of title 42), located in the United States that requires the students of the nursing school to complete the students’ clinical training at such hospital or accredited school of nursing; or

(II) the nursing school has an agreement with an accredited school of nursing located in the United States providing that the students graduating from the nursing school located outside of the United States also receive a degree from the accredited school of nursing located in the United States;

(III) the nursing school certifies only Federal Direct Stafford Loans under section 1087e(a)(2)(A) of this title, Federal
Direct Unsubsidized Stafford Loans under section 1087e(a)(2)(D) of this title, or Federal Direct PLUS Loans under section 1087e(a)(2)(B) of this title for students attending the institution;

(IV) the nursing school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution’s cohort default rate during the previous fiscal year; and

(V) not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for Registered Nurses in the year preceding the year for which the institution is certifying a Federal Direct Stafford Loan under section 1087e(a)(2)(A) of this title, a Federal Direct Unsubsidized Stafford Loan under section 1087e(a)(2)(D) of this title, or a Federal Direct PLUS Loan under section 1087e(a)(2)(B) of this title, received a passing score on such examination.

(B) Advisory panel

(i) In general

For the purpose of qualifying as an institution under paragraph (I)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) evaluate the standards of accreditation applied to foreign medical schools; and

(II) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule

If the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(iii) Report

(I) In general

Not later than 1 year after August 14, 2008, the advisory panel described in clause (i) shall submit a report to the Secretary and to the authorizing committees recommending eligibility criteria for participation in the loan programs under part C of subchapter IV of this chapter for graduate medical schools that—

(aa) are located outside of the United States;

(bb) do not meet the requirements of subparagraph (A)(i); and

(cc) have a clinical training program approved by a State prior to January 1, 2008.

(II) Recommendations

In the report described in subclause (I), the advisory panel’s eligibility criteria shall include recommendations regarding the appropriate levels of performance for graduate medical schools described in such subclause in the following areas:

(aa) Entrance requirements.

(bb) Retention and graduation rates.

(cc) Successful placement of students in United States medical residency programs.

(dd) Passage rate of students on the United States Medical Licensing Examination.

(ee) The extent to which State medical boards have assessed the quality of such school’s program of instruction, including through on-site reviews.

(ff) The extent to which graduates of such schools would be unable to practice medicine in 1 or more States, based on the judgment of a State medical board.

(gg) Any areas recommended by the Comptroller General of the United States under section 1101 of the Higher Education Opportunity Act.

(hh) Any additional areas the Secretary may require.

(III) Minimum eligibility requirement

In the recommendations described in subclause (II), the criteria described in subparagraph (A)(i)(bb) shall be a minimum eligibility requirement for a graduate medical school described in subclause (I) to participate in the loan programs under part C of subchapter IV of this chapter.

(IV) Authority

The Secretary may—

(aa) not earlier than 180 days after the submission of the report described in subclause (I), issue proposed regulations establishing criteria for the eligibility of graduate medical schools described in such subclause to participate in the loan programs under part C of subchapter IV of this chapter based on the recommendations of such report; and

(bb) not earlier than one year after the issuance of proposed regulations under item (aa), issue final regulations establishing such criteria for eligibility.

(C) Failure to release information

The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part C of subchapter IV of this chapter.

(D) Special rule

If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part C of subchapter IV
while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment
An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
(A) offers more than 50 percent of such institution’s courses by correspondence (excluding courses offered by telecommunications as defined in section 1091(l)(4)\(^1\) of this title), unless the institution is an institution that meets the definition in section 2363(3)(C) of this title;
(B) enrolls 50 percent or more of the institution’s students in correspondence courses (excluding courses offered by telecommunications as defined in section 1091(l)(4)\(^1\) of this title), unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2- or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
(C) has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree, an associate’s degree or a postsecondary diploma, respectively; or
(D) has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree or an associate’s degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management
An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
(A) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution’s management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
(B) the institution, the institution’s owner, or the institution’s chief executive officer has been convicted of, or has plead nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification
The Secretary shall certify an institution’s qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility
An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria
For the purpose of this section, the term “proprietary institution of higher education” means a school that—
(A)(i) provides an eligible program of training to prepare students for gainful employment in a recognized occupation; or
(ii)(I) provides a program leading to a baccalaureate degree in liberal arts, and has provided such a program since January 1, 2009; and
(II) is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier;
(B) meets the requirements of paragraphs (1) and (2) of section 1001(a) of this title;
(C) does not meet the requirement of paragraph (4) of section 1001(a) of this title;
(D) is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter; and
(E) has been in existence for at least 2 years.

(2) Additional institutions
The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in section 1001(a)(1) of this title, admits as regular students individuals—
(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

\(^{1}\) See References in Text note below.
(B) who will be dually or concurrently enrolled in the institution and a secondary school.

(c) Postsecondary vocational institution

(1) Principal criteria

For the purpose of this section, the term "postsecondary vocational institution" means a school that—

(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001(a) of this title; and

(C) has been in existence for at least 2 years.

(2) Additional institutions

The term "postsecondary vocational institution" also includes an educational institution in any State that, in lieu of the requirement in section 1001(a)(1) of this title, admits as regular students individuals—

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) who will be dually or concurrently enrolled in the institution and a secondary school.


References in Text


Amendments


Subsec. (a)(1)(C), Pub. L. 111–152, §2209(b)(1)(B), inserted “, consistent with the requirements of section 1087e(a)(2) of this title prior to section 1087e(a)(2)(D) of this title”, after “Federal Direct Stafford Loans under section 1087e(a)(2)(A)”.


Subsec. (a)(2)(A)(ii)(V), Pub. L. 111–152, §2209(b)(1)(C)(iii)(II), substituted “a Federal Direct Stafford Loan under section 1087e(a)(2)(A) of this title, a Federal Direct Unsubsidized Stafford Loan under section 1087e(a)(2)(D) of this title, or a Federal Direct PLUS Loan under section 1087e(a)(2)(B) of this title” for “a Federal Stafford Loan under section 1078 of this title, an unsubsidized Federal Stafford Loan under section 1078–8 of this title, or a Federal PLUS loan under section 1078–2 of this title”.


Subsec. (a)(2)(A)(ii)(III), Pub. L. 110–315, §102(a)(1)(B)(iii), added subcl. (II) and struck out former subcl. (II) which read as follows: “the institution of higher education was approved by a State of January 1, 1992; or”.


Subsec. (b)(1)(A), Pub. L. 110–315, §102(d)(1)(A)(ii), added subpar. (A) and struck out former subpar. (A) which read as follows: “provides an eligible program of training to prepare students for gainful employment in a recognized occupation”.

Subsec. (b)(1)(D) to (F), Pub. L. 110–315, §102(c)(2)(A), struck out “and” after semicolon in subpar. (D), substituted “and” for period in subpar. (E), and struck out subpar. (F) which read as follows: “has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.”.

Subsec. (b)(2), Pub. L. 110–315, §102(d)(1)(A)(ii), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The term ‘proprietary institution of higher education’ also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001(a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.”.
Subsec. (c)(2). Pub. L. 110–315, §102(d)(1)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The term ‘postsecondary vocational institution’ also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001(a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.”


Pub. L. 109–171, §8002(1), inserted “(excluding courses offered by telecommunications as defined in section 1091(j)(4) of this title)” after “courses by correspondence”.

Subsec. (a)(3)(B). Pub. L. 109–171, §8002(2), inserted “(excluding courses offered by telecommunications as defined in section 1091(j)(4) of this title)” after “correspondence courses”.

2003—Subsec. (a)(2)(A). Pub. L. 108–98 amended subpar. (A) generally. Prior to amendment, subpar. (A) required the Secretary to establish criteria for approval of institutions outside the United States for purposes of paragraph (1)(C), including certain requirements for graduate medical or veterinary schools.

Subsec. (a)(3)(C). Pub. L. 109–171, §8002(2), inserted “(excluding courses offered by telecommunications as defined in section 1091(j)(4) of this title)” after “correspondence courses”.

Effective Date of 2010 Amendment
Pub. L. 111–182, title II, §2209(b)(2), Mar. 30, 2010, 124 Stat. 101, provided that: “The amendments made by subparagraph (C) of paragraph (1) [amending this section] shall be effective on July 1, 2010, as if enacted as part of section 102(a)(1) of the Higher Education Opportunity Act (Public Law 110–315) and subject to section 102(e) of such Act as amended by section 101(a)(2) of Public Law 111–39 (20 U.S.C. 1002 note).”

Effective Date of 2009 Amendment

Effective Date of 2008 Amendment
Pub. L. 110–315, title I, §102(e), Aug. 14, 2008, 122 Stat. 3086, as amended by Pub. L. 111–39, title I, §161(a)(2), July 1, 2009, 123 Stat. 1955, provided that: “The amendments made by subsections (a)(1), (b), and (d) [amending this section] shall take effect on July 1, 2010, except that, with respect to foreign nursing schools that were eligible to participate in part B of title IV [20 U.S.C. 1071 et seq.] as of the day before the date of enactment of this Act [Aug. 14, 2008], the amendments made by subsection (a)(1)(D) [amending this section] shall take effect on July 1, 2012.”

Effective Date of 2006 Amendment
Pub. L. 109–171, title VIII, §8001(c), Feb. 8, 2006, 120 Stat. 155, provided that: “Except as otherwise provided in this subtitle [subtitle A (§§8001–8024) of title VIII of Pub. L. 109–171, see Short Title of 2006 Amendment note set out under section 1001 of this title] or the amendments made by this subtitle, the amendments made by this subtitle shall be effective on October 1, 1998.”

Effective Date of 2003 Amendment
Pub. L. 108–89, §1(b), Oct. 19, 2003, 117 Stat. 1175, provided that: “This Act [amending this section] and the amendments made by this Act shall be effective as if enacted on October 1, 1998.”

Construction

§1003. Additional definitions

In this chapter and part C of subchapter I of chapter 42 of title 20:

(1) Authorizing committees

The term “authorizing committees” means the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives.

(2) Combination of institutions of higher education

The term “combination of institutions of higher education” means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on the group’s behalf.

(3) Critical foreign language

Except as otherwise provided, the term “critical foreign language” means each of the languages contained in the list of critical languages designated by the Secretary in the Federal Register on August 2, 1985 (50 Fed. Reg. 31412; promulgated under the authority of section 212(d) of the Education for Economic Security Act (repealed by section 2303 of the Augustus F. Hawkins–Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988)), as updated by the Secretary from time to time and published in the Federal Register, except that in the implementation of this definition with respect to a specific title, the Secretary may set priorities according to the purposes of such title and the national security, economic competitiveness, and educational needs of the United States.

(4) Department

The term “Department” means the Department of Education.

(5) Diploma mill

The term “diploma mill” means an entity that—

(A)(i) offers, for a fee, degrees, diplomas, or certificates, that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or training; and

(B) lacks accreditation by an accrediting agency or association that is recognized as an accrediting agency or association of institutions of higher education (as such term is defined in section 1002 of this title) by—

(i) the Secretary pursuant to subpart 2 of part G of subchapter IV of this chapter; or

(ii) a Federal agency, State government, or other organization or association that recognizes accrediting agencies or associations.
(6) Disability
The term “disability” has the same meaning given that term under section 12102(2) of title 42.

(7) Distance education
(A) In general
Except as otherwise provided, the term “distance education” means education that uses one or more of the technologies described in subparagraph (B)—
(i) to deliver instruction to students who are separated from the instructor; and
(ii) to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously.

(B) Inclusions
For the purposes of subparagraph (A), the technologies used may include—
(i) the Internet;
(ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
(iii) audio conferencing; or
(iv) video cassettes, DVDs, and CD–ROMs, if the cassettes, DVDs, or CD–ROMs are used in a course in conjunction with any of the technologies listed in clauses (i) through (iii).

(8) Early childhood education program
The term “early childhood education program” means—
(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;
(B) a State licensed or regulated child care program; or
(C) a program that—
(i) serves children from birth through age six that addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and
(ii) is—
(I) a State prekindergarten program;
(III) a program operated by a local educational agency.

(9) Elementary school
The term “elementary school” has the same meaning given that term under section 7801 of this title.

(10) Gifted and talented
The term “gifted and talented” has the same meaning given that term under section 7801 of this title.

(11) Local educational agency
The term “local educational agency” has the same meaning given that term under section 7801 of this title.

(12) New borrower
The term “new borrower” when used with respect to any date means an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(13) Nonprofit
The term “nonprofit” as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(14) Poverty line
The term “poverty line” means the poverty line (as defined in section 9902(2) of title 42) applicable to a family of the size involved.

(15) School or department of divinity
The term “school or department of divinity” means an institution, or a department or a branch of an institution, the program of instruction of which is designed for the education of students—
(A) to prepare the students to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation); or
(B) to prepare the students to teach theological subjects.

(16) Secondary school
The term “secondary school” has the same meaning given that term under section 7801 of this title.

(17) Secretary
The term “Secretary” means the Secretary of Education.

(18) Service-learning
The term “service-learning” has the same meaning given that term under section 12511(23) of title 42.

(19) Special education teacher
The term “special education teacher” means teachers who teach children with disabilities as defined in section 602 of the Individuals with Disabilities Education Act.

(20) State educational agency
The term “State educational agency” has the same meaning given that term under section 7801 of this title.

(21) State; Freely Associated States
(A) State
The term “State” includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

1 See References in Text note below.
(B) Freely Associated States


(22) State higher education agency

The term “State higher education agency” means the officer or agency primarily responsible for the State supervision of higher education.

(23) Universal design

The term “universal design” has the meaning given in the term in section 502 of title 29.

(24) Universal design for learning

The term “universal design for learning” means a scientifically valid framework for guiding educational practice that—

(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.


Prior sections 1007 to 1010 were omitted in the general amendment of this subchapter by Pub. L. 96–96.


AMENDMENTS


CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

PART B—ADDITIONAL GENERAL PROVISIONS

§1011. Antidiscrimination

(a) In general

Institutions of higher education receiving Federal financial assistance may not use such financial assistance, directly or indirectly, to undertake any study or project or fulfill the terms of any contract containing an express or implied provision that any person or persons of a particular race, religion, sex, or national origin be barred from performing such study, project, or contract, except that nothing in this subsection shall be construed to prohibit an institution from conducting objective studies or projects concerning the nature, effects, or prevention of discrimination, or to have the institution’s curriculum restricted on the subject of discrimination.

(b) Limitations on statutory construction

Nothing in this chapter and part C of subchapter I of chapter 24 of title 42 shall be construed to limit the rights or responsibilities of any individual under the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], or any other law.

References in Text

The Americans with Disabilities Act of 1990, referred to in subsec. (b), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§12101 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 29 and Tables.


PRIOR PROVISIONS

Provisions similar to this section were contained in section 1142 of this title prior to repeal by Pub. L. 105–244.


AMENDMENTS


EFFECTIVE DATE OF 2009 AMENDMENT

§ 1011a. Protection of student speech and association rights

(a) Protection of rights

(1) It is the sense of Congress that no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this chapter and part C of subchapter I of chapter 34 of title 42, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution.

(2) It is the sense of Congress that—

(A) the diversity of institutions and educational missions is one of the key strengths of American higher education;

(B) individual institutions of higher education have different missions and each institution should design its academic program in accordance with its educational goals;

(C) an institution of higher education should facilitate the free and open exchange of ideas;

(D) students should not be intimidated, harassed, discouraged from speaking out, or discriminated against;

(E) students should be treated equally and fairly; and

(F) nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association.

(b) Construction

Nothing in this section shall be construed—

(1) to discourage the imposition of an official sanction on a student that has willfully participated in the disruption or attempted disruption of a lecture, class, speech, presentation, or performance made or scheduled to be made under the auspices of the institution of higher education, provided that the imposition of such sanction is done objectively and fairly; or

(2) to prevent an institution of higher education from taking appropriate and effective action to prevent violations of State liquor laws, to discourage binge drinking and other alcohol abuse, to protect students from sexual harassment including assault and date rape, to prevent hazing, or to regulate unsanitary or unsafe conditions in any student residence.

(c) Definitions

For the purposes of this section:

(1) Official sanction

The term “official sanction”—

(A) means expulsion, suspension, probation, censure, condemnation, reprimand, or any other disciplinary, coercive, or adverse action taken by an institution of higher education or administrative unit of the institution; and

(B) includes an oral or written warning made by an official of an institution of higher education acting in the official capacity of the official.

(2) Protected association

The term “protected association” means the joining, assembling, and residing with others that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.

(3) Protected speech

The term “protected speech” means speech that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.

§ 1011b. Territorial waiver authority

The Secretary is required to waive the eligibility criteria of any postsecondary education program administered by the Department where such criteria do not take into account the unique circumstances in Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.


Prior Provisions


Amendments


Subsec. (b)(1). Pub. L. 110–315, § 104(2), inserted “provided that the imposition of such sanction is done objectively and fairly” after “higher education.”

§ 1144a of this title prior to repeal by Pub. L. 105–244.

Prior Provisions

Provisions similar to this section were contained in section 1144a of this title prior to repeal by Pub. L. 105–244.


Amendments

2008—Pub. L. 110–315 substituted “Territorial waiver authority” for “Treatment of territories and territorial student assistance” in section catchline and struck out subsec. (a) designation and heading and subsec. (b). Text of former subsec. (b) read as follows: “Notwithstanding any other provision of law, an institution of higher education that is located in any of the Freely Associated States, rather than in another State, shall be eligible, if otherwise qualified, for assistance under division 1 of subpart 2 of part A of subchapter IV of this chapter. This subsection shall cease to be effective on September 30, 2004.”
§ 1011c. National Advisory Committee on Institutional Quality and Integrity

(a) Establishment

There is established in the Department a National Advisory Committee on Institutional Quality and Integrity (in this section referred to as the “Committee”) to assess the process of accreditation and the institutional eligibility and certification of institutions of higher education (as defined in section 1002 of this title) under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(b) Membership

(1) In general

The Committee shall have 18 members, of which—

(A) six members shall be appointed by the Secretary;
(B) six members shall be appointed by the Speaker of the House of Representatives, three of whom shall be appointed on the recommendation of the majority leader of the House of Representatives, and three of whom shall be appointed on the recommendation of the minority leader of the House of Representatives; and
(C) six members shall be appointed by the President pro tempore of the Senate, three of whom shall be appointed on the recommendation of the majority leader of the Senate, and three of whom shall be appointed on the recommendation of the minority leader of the Senate.

(2) Qualifications

Individuals shall be appointed as members of the Committee—

(A) on the basis of the individuals’ experience, integrity, impartiality, and good judgment;
(B) from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, representing all sectors and types of institutions of higher education (as defined in section 1002 of this title); and
(C) on the basis of the individuals’ technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration in higher education.

(3) Terms of members

Except as provided in paragraph (5), the term of office of each member of the Committee shall be for six years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of such term.

(4) Vacancy

A vacancy on the Committee shall be filled in the same manner as the original appointment was made not later than 90 days after the vacancy occurs. If a vacancy occurs in a position to be filled by the Secretary, the Secretary shall publish a Federal Register notice soliciting nominations for the position not later than 30 days after being notified of the vacancy.

(5) Initial terms

The terms of office for the initial members of the Committee shall be—

(A) three years for members appointed under paragraph (1)(A);
(B) four years for members appointed under paragraph (1)(B); and
(C) six years for members appointed under paragraph (1)(C).

(6) Chairperson

The members of the Committee shall select a chairperson from among the members.

(c) Functions

The Committee shall—

(1) advise the Secretary with respect to establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part G of subchapter IV of this chapter;
(2) advise the Secretary with respect to the recognition of a specific accrediting agency or association;
(3) advise the Secretary with respect to the eligibility and certification process for institutions of higher education under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, together with recommendations for improvements in such process;
(5) advise the Secretary with respect to the relationship between—

(A) accreditation of institutions of higher education and the certification and eligibility of such institutions; and
(B) State licensing responsibilities with respect to such institutions; and
(6) carry out such other advisory functions relating to accreditation and institutional eligibility as the Secretary may prescribe by regulation.

(d) Meeting procedures

(1) Schedule

(A) Biannual meetings

The Committee shall meet not less often than twice each year, at the call of the Chairperson.

(B) Publication of date

The Committee shall submit the date and location of each meeting in advance to the Secretary, and the Secretary shall publish such information in the Federal Register not later than 30 days before the meeting.

(2) Agenda

(A) Establishment

The agenda for a meeting of the Committee shall be established by the Chairperson and shall be submitted to the members of the Committee upon notification of the meeting.

(B) Opportunity for public comment

The agenda shall include, at a minimum, opportunity for public comment during the Committee’s deliberations.
(3) Secretary’s designee

The Secretary shall designate an employee of the Department to serve as the Secretary’s designee to the Committee, and the Chairperson shall invite the Secretary’s designee to attend all meetings of the Committee.

(4) Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Committee, except that section 14 of such Act shall not apply.

(e) Report and notice

(1) Notice

The Secretary shall annually publish in the Federal Register—

(A) a list containing, for each member of the Committee—
   (i) the member’s name;
   (ii) the date of the expiration of the member’s term of office; and
   (iii) the name of the individual described in subsection (b)(1) who appointed the member; and
   (B) a solicitation of nominations for each expiring term of office on the Committee of a member appointed by the Secretary.

(2) Report

Not later than the last day of each fiscal year, the Committee shall make available an annual report to the Secretary, the authorizing committees, and the public. The annual report shall contain—

(A) a detailed summary of the agenda and activities of, and the findings and recommendations made by, the Committee during the fiscal year preceding the fiscal year in which the report is made;
   (B) a list of the date and location of each meeting during the fiscal year preceding the fiscal year in which the report is made;
   (C) a list of the members of the Committee; and
   (D) a list of the functions of the Committee, including any additional functions established by the Secretary through regulation.

(f) Termination

The Committee shall terminate on September 30, 2014.


REFERENCES IN TEXT


PRIOR PROVISIONS

Provisions similar to this section were contained in section 1145 of title 20 of the U.S.C. 1980, related to local applications for grants, prior to the general amendment of this subchapter by Pub. L. 105–244.


EFFECTIVE DATE OF 2008 AMENDMENT


TRANSITION


(1) the term of each member appointed to the National Advisory Committee on Institutional Quality and Integrity before the date of enactment of this Act shall expire on the date of enactment of this Act; and
(2) no new members shall be appointed to the National Advisory Committee on Institutional Quality and Integrity during the period beginning on the date of enactment of this Act and ending on January 31, 2009; and
(3) no meeting of the National Advisory Committee on Institutional Quality and Integrity shall be convened during such period.”

§1011d. Student representation

The Secretary shall, in appointing individuals to any commission, committee, board, panel, or other body in connection with the administration of this chapter and part C of subchapter I of chapter 34 of title 42, include individuals who are, at the time of appointment, attending an institution of higher education.


PRIOR PROVISIONS


§1011e. Financial responsibility of foreign students

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 or any other Federal law shall be construed to prohibit any institution of higher education from requiring a student who is a foreign national (and not admitted to permanent residence in the United States) to guarantee the future payment of tuition and fees to such institution by—

(1) making advance payment of such tuition and fees;
(2) making deposits in an escrow account administered by such institution for such payments; or
(3) obtaining a bond or other insurance that such payments will be made.

§ 1011f. Disclosures of foreign gifts

(a) Disclosure report
Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is $250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.

(b) Contents of report
Each report to the Secretary required by this section shall contain the following:
(1) For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.
(2) For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.
(3) In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.

(c) Additional disclosures for restricted and conditional gifts
Notwithstanding the provisions of subsection (b) of this section, whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose the following:
(1) For such gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of such conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
(2) For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.

(d) Relation to other reporting requirements
(1) State requirements
If an institution described under subsection (a) of this section is within a State which has enacted requirements for public disclosure of gifts from or contracts with a foreign source that are substantially similar to the requirements of this section, a copy of the disclosure report filed with the State may be filed with the Secretary in lieu of a report required under subsection (a) of this section. The State in which the institution is located shall provide to the Secretary such assurances as the Secretary may require to establish that the institution has met the requirements for public disclosure under State law if the State report is filed.
(2) Use of other Federal reports
If an institution receives a gift from, or enters into a contract with, a foreign source, where any other department, agency, or bureau of the executive branch requires a report containing requirements substantially similar to those required under this section, a copy of the report may be filed with the Secretary in lieu of a report required under subsection (a) of this section.

(e) Public inspection
All disclosure reports required by this section shall be public records open to inspection and copying during business hours.

(f) Enforcement
(1) Court orders
Whenever it appears that an institution has failed to comply with the requirements of this section, including any rule or regulation promulgated under this section, a civil action may be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, to request such court to compel compliance with the requirements of this section.
(2) Costs
For knowing or willful failure to comply with the requirements of this section, including any rule or regulation promulgated thereunder, an institution shall pay to the Treasurer of the United States the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement.

(g) Regulations
The Secretary may promulgate regulations to carry out this section.

(h) Definitions
For the purpose of this section—
(1) the term “contract” means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties;
(2) the term “foreign source” means—
(A) a foreign government, including an agency of a foreign government;
§1011h. Binge drinking on college campuses

(a) Short title

This section may be cited as the “Collegiate Initiative To Reduce Binge Drinking and Illegal Alcohol Consumption”.

(b) Sense of Congress

It is the sense of Congress that, in an effort to change the culture of alcohol consumption on college campuses, all institutions of higher education should carry out the following:

(1) The president of the institution should appoint a task force consisting of school administrators, faculty, students, Greek system representatives, and others to conduct a full examination of student and academic life at the institution. The task force should make recommendations for a broad range of policy and program changes that would serve to reduce alcohol and other drug-related problems. The institution should provide resources to assist the task force in promoting the campus policies and proposed environmental changes that have been identified.

(2) The institution should provide maximum opportunities for students to live in an alcohol-free environment and to engage in stimulating, alcohol-free recreational and leisure activities.

(3) The institution should enforce a “zero tolerance” policy on the illegal consumption of alcohol by students at the institution.

(4) The institution should vigorously enforce the institution’s code of disciplinary sanctions for those who violate campus alcohol policies. Students with alcohol or other drug-related problems should be referred for assistance, including on-campus counseling programs if appropriate.

(5) The institution should adopt a policy to discourage alcoholic beverage-related sponsorship of on-campus activities. It should adopt policies limiting the advertisement and promotion of alcoholic beverages on campus.

(6) The institution should work with the local community, including local businesses, in a “Town/Gown” alliance to encourage responsible policies toward alcohol consumption and to address illegal alcohol use by students.

§ 1011i. Drug and alcohol abuse prevention

(a) Restriction on eligibility

Notwithstanding any other provision of law, no institution of higher education shall be eligible to receive funds or any other form of financial assistance under any Federal program, including participation in any federally funded or guaranteed student loan program, unless the institution certifies to the Secretary that the institution has adopted and has implemented a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees that, at a minimum, includes—

(1) the annual distribution to each student and employee of—
   (A) standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution’s property or as part of any of the institution’s activities;
   (B) a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;
   (C) a description of the health-risks associated with the use of illicit drugs and the abuse of alcohol;
   (D) a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and
   (E) a clear statement that the institution will impose sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by subparagraph (A); and

(2) a biennial review by the institution of the institution’s program to—
   (A) determine the program’s effectiveness and implement changes to the program if the changes are needed;
   (B) determine the number of drug and alcohol-related violations and fatalities that—
      (i) occur on the institution’s campus (as defined in section 1092(f)(6) of this title), or as part of any of the institution’s activities; and
      (ii) are reported to campus officials;
   (C) determine the number and type of sanctions described in paragraph (1)(E) that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution’s campus or as part of any of the institution’s activities; and
   (D) ensure that the sanctions required by paragraph (1)(E) are consistently enforced.

(b) Information availability

Each institution of higher education that provides the certification required by subsection (a) of this section shall, upon request, make available to the Secretary and to the public a copy of each item required by subsection (a)(1) of this section as well as the results of the biennial review required by subsection (a)(2) of this section.

(c) Regulations

(1) In general

The Secretary shall publish regulations to implement and enforce the provisions of this section, including regulations that provide for—

(A) the periodic review of a representative sample of programs required by subsection (a) of this section; and

(B) a range of responses and sanctions for institutions of higher education that fail to implement their programs or to consistently enforce their sanctions, including information and technical assistance, the development of a compliance agreement, and the termination of any form of Federal financial assistance.

(2) Rehabilitation program

The sanctions required by subsection (a)(1)(E) of this section may include the completion of an appropriate rehabilitation program.

(d) Appeals

Upon determination by the Secretary to terminate financial assistance to any institution of higher education under this section, the institution may file an appeal with an administrative law judge before the expiration of the 45-day period beginning on the date such institution is notified of the decision to terminate financial assistance under this section. Such judge shall hold a hearing with respect to such termination, and education (including treatment-referral) to reduce and eliminate the illegal use of drugs and alcohol and the violence associated with such use. Such grants or contracts may also be used for the support of a higher education center for alcohol and drug abuse prevention that will provide training, technical assistance, evaluation, dissemination, and associated services and assistance to the higher education community as determined by the Secretary and institutions of higher education.

(e) Alcohol and drug abuse prevention grants

(1) Program authority

The Secretary may make grants to institutions of higher education or consortia of such institutions, and enter into contracts with such institutions, consortia, and other organizations, to develop, implement, operate, improve, and disseminate programs of prevention, and education (including treatment-referral) to reduce and eliminate the illegal use of drugs and alcohol and the violence associated with such use. Such grants or contracts may also be used for the support of a higher education center for alcohol and drug abuse prevention that will provide training, technical assistance, evaluation, dissemination, and associated services and assistance to the higher education community as determined by the Secretary.
(3) Applications
An institution of higher education, a consorti-
um of such institutions, or another organiza-
tion that desires to receive a grant or contract
under paragraph (1) shall submit an applica-
tion to the Secretary at such time, in such
manner, and containing or accompanied by
such information as the Secretary may rea-
sonably require by regulation.

(4) Additional requirements
(A) Participation
In awarding grants and contracts under
this subsection the Secretary shall make
every effort to ensure—
(i) the equitable participation of private
and public institutions of higher education
(including community and junior colleges);
and
(ii) the equitable geographic partici-
apation of such institutions.

(B) Consideration
In awarding grants and contracts under
this subsection the Secretary shall give ap-
propriate consideration to institutions of
higher education with limited enrollment.

(5) Authorization of appropriations
There are authorized to be appropriated to
carry out this subsection such sums as may be
necessary for fiscal year 2009 and each of the
five succeeding fiscal years.

(Pub. L. 89–329, title I, § 120, as added Pub. L.
2008, 122 Stat. 3093.)

PRIOR PROVISIONS
Provisions similar to subsecs. (a) to (d) of this section
were contained in section 1145g of this title prior to re-
peal by Pub. L. 105–244.

AMENDMENTS
2008—Subsec. (a)(2)(B) to (D). Pub. L. 110–315, § 107(1), added subpars. (B) and (C) and redesignated former subpar.
(B) as (D).

'these subparts as may be necessary for fiscal year 2009
and each of the five succeeding fiscal years' for "$5,000,000
for fiscal year 1999 and such sums as may be necessary
for each of the 4 succeeding fiscal years".

(f) which related to National Recognition Awards for
outstanding alcohol and drug abuse prevention pro-
grams.

§ 1011j. Prior rights and obligations
(a) Authorization of appropriations
(1) Pre-1987 parts C and D of subchapter VII
There are authorized to be appropriated such
sums as may be necessary for fiscal year 2009
and for each succeeding fiscal year to pay obli-
gations incurred prior to October 7, 1998, under
part C of subchapter VII of this chapter, as
such part was in effect during the period—
(A) after the effective date of the Higher Ed-
ucation Amendments of 1992; and
(B) prior to October 7, 1998.

(b) Legal responsibilities
(1) Pre-1987 subchapter VII
All entities with continuing obligations in-
curred under parts A, B, C, and D of sub-
chapter VII of this chapter, as such parts were
in effect before the effective date of the Higher
Education Amendments of 1992, shall be sub-
ject to the requirements of such part as in ef-
flect before the effective date of the Higher

(2) Post-1992 and pre-1998 part C of subchapter
VII
All entities with continuing obligations in-
curred under part C of subchapter VII of this
chapter, as such part was in effect during the
period—
(A) after the effective date of the Higher
Education Amendments of 1992; and
(B) prior to October 7, 1998.

References in Text
Parts A, B, C, and D of subchapter VII of this chapter,
as such parts were in effect before the effective date of
the Higher Education Amendments of 1992, referred to
in subsecs. (a)(1) and (b)(1), means parts A (§1132b et seq.),
B (§1132c et seq.), C (§1132d et seq.), and D (§1132e et seq.) of subchapter VII of this chapter, as in effect
before the effective date of Pub. L. 103–325. For ef-
fective date of Pub. L. 103–325, see section 2 of Pub. L.
102–325, set out as an Effective Date of 1992 Amendment
note under section 1001 of this title. Pub. L. 102–325,
amended subchapter VII of this chapter effective Oct. 1,
1992, by amending parts A to C generally, repealing
part D, and redesignating former part E as D.

Part C of subchapter VII of this chapter, as such part
was in effect during the period after the effective date
of the Higher Education Amendments of 1992 and prior
to October 7, 1998, referred to in subsecs. (a)(2) and
(b)(2), probably means part C (§1132d et seq.) of sub-
chapter VII of this chapter, as in effect during the pe-
riod after the effective date of Pub. L. 103–325 and be-
fore it was amended by Pub. L. 105–244. For effective
date of Pub. L. 102–325, see section 2 of Pub. L.
102–325, set out as an Effective Date of 1992 Amendment
note under section 1001 of this title. Pub. L. 105–244,
chapter VII of this chapter generally, effective Oct. 1,
1998, omitting part C which related to loans for con-
struction, reconstruction, and renovation of academic
housing, and other educational facilities and adding a
new part C (§1139 et seq.) relating to urban community
service.

PRIOR PROVISIONS
Provisions similar to this section were contained in
section 1132a–1 of this title prior to the general amend-
ment of subchapter VII of this chapter by Pub. L.
105–244.
§ 1011k Recovery of payments

(a) Public benefit

Congress declares that, if a facility constructed with the aid of a grant under part A of subchapter VII of this chapter as such part A was in effect prior to October 7, 1998, or part B of such subchapter as part B was in effect prior to July 23, 1992, is used as an academic facility for 20 years following completion of such construction, the public benefit accruing to the United States will equal in value the amount of the grant. The period of 20 years after completion of such construction shall therefore be deemed to be the period of Federal interest in such facility for the purposes of such subchapter as so in effect.

(b) Recovery upon cessation of public benefit

If, within 20 years after completion of construction of an academic facility which has been constructed, in part with a grant under part A of subchapter VII of this chapter as such part A was in effect prior to October 7, 1998, or part B of subchapter VII of this chapter as such part B was in effect prior to July 23, 1992—

(1) the applicant under such parts as so in effect (or the applicant’s successor in title or possession) ceases or fails to be a public or nonprofit institution; or

(2) the facility ceases to be used as an academic facility, or the facility is used as a facility excluded from the term “academic facility” (as such term was defined under subchapter VII of this chapter, as so in effect), unless the Secretary determines that there is good cause for releasing the institution from its obligation,

the United States shall be entitled to recover from such applicant (or successor) an amount which bears to the value of the facility at that time (or so much thereof as constituted an approved project or projects) the same ratio as the amount of Federal grant bore to the cost of the facility financed with the aid of such grant. The value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

(c) Prohibition on use for religion

Notwithstanding the provisions of subsections (a) and (b) of this section, no project assisted with funds under subchapter VII of this chapter (as in effect prior to October 7, 1998) shall ever be used for religious worship or a sectarian activity or for a school or department of divinity.

§ 1011l Diploma mills

(a) Information to the public

The Secretary shall maintain information and resources on the Department’s website to assist students, families, and employers in understanding what a diploma mill is and how to identify and avoid diploma mills.

(b) Collaboration

The Secretary shall continue to collaborate with the United States Postal Service, the Federal Trade Commission, the Department of Justice (including the Federal Bureau of Investigation), the Internal Revenue Service, and the Office of Personnel Management to maximize Federal efforts to—

(1) prevent, identify, and prosecute diploma mills; and

(2) broadly disseminate to the public information about diploma mills, and resources to identify diploma mills.

§ 1011m Certification regarding the use of certain Federal funds

(a) Prohibition

No Federal funds received under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) [and 42 U.S.C. 2751 et seq.] by an institution of higher education or other postsecondary educational institution may be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in subsection (b).

(b) Applicability

The prohibition in subsection (a) applies with respect to the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into any Federal cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal
contract, grant, loan, or cooperative agreement.

(c) Lobbying and earmarks

No Federal student aid funding under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) [and 42 U.S.C. 2751 et seq.] may be used to hire a registered lobbyist or pay any person or entity for securing an earmark.

(d) Certification

Each institution of higher education or other postsecondary educational institution receiving Federal funding under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) [and 42 U.S.C. 2751 et seq.], as a condition for receiving such funding, shall annually certify to the Secretary of Education that the requirements of subsections (a) through (c) have been met.

(e) Actions to implement and enforce

The Secretary of Education shall take such actions as are necessary to ensure that the provisions of this section are implemented and enforced.


References in Text

The Higher Education Act of 1965, referred to in subsecs. (a), (c), and (d), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to this chapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

Codification

Section was enacted as part of the Higher Education Opportunity Act, and not as part of the Higher Education Act of 1965 which comprises this chapter.

Prior Provisions


Part C—Cost of Higher Education

§ 1015. Improvements in market information and public accountability in higher education

(a) Improved data collection

(1) Development of uniform methodology

The Secretary shall direct the Commissioner of Education Statistics to convene a series of forums to develop nationally consistent methodologies for reporting costs incurred by postsecondary institutions in providing postsecondary education.

(2) Redesign of data systems

On the basis of the methodologies developed pursuant to paragraph (1), the Secretary shall redesign relevant parts of the postsecondary education data systems to improve the usefulness and timeliness of the data collected by such systems.

(3) Information to institutions

The Commissioner of Education Statistics shall—

(A) develop a standard definition for the following data elements: (i) tuition and fees for a full-time undergraduate student; (ii) cost of attendance for a full-time undergraduate student, consistent with the provisions of section 1087ll of this title; (iii) average amount of financial assistance received by an undergraduate student who attends an institution of higher education, including— (I) each type of assistance or benefit described in section 1078(a)(2)(C)(ii) of this title; (II) fellowships; and (III) institutional and other assistance; and (iv) number of students receiving financial assistance described in each of subclauses (I), (II), and (III) of clause (iii);

(B) not later than 90 days after October 7, 1998, report the definitions to each institution of higher education and within a reasonable period of time thereafter inform the authorizing committees of those definitions; and

(C) collect information regarding the data elements described in subparagraph (A) with respect to at least all institutions of higher education participating in programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, beginning with the information from academic year 2000–2001 and annually thereafter.

(b) Data dissemination

The Secretary shall make available the data collected pursuant to subsection (a) of this section. Such data shall be available in a form that permits the review and comparison of the data submissions of individual institutions of higher education. Such data shall be presented in a
form that is easily understandable and allows parents and students to make informed decisions based on the costs for typical full-time undergraduate students.

(e) Study

(1) In general

The Commissioner of Education Statistics shall conduct a national study of expenditures at institutions of higher education. Such study shall include information with respect to—

(A) the change in tuition and fees compared with the consumer price index and other appropriate measures of inflation;
(B) faculty salaries and benefits;
(C) administrative salaries, benefits and expenses;
(D) academic support services;
(E) research;
(F) operations and maintenance; and
(G) institutional expenditures for construction and technology and the potential cost of replacing instructional buildings and equipment.

(2) Evaluation

The study shall include an evaluation of—

(A) changes over time in the expenditures identified in paragraph (1);
(B) the relationship of the expenditures identified in paragraph (1) to college costs; and
(C) the extent to which increases in institutional financial aid and tuition discounting practices affect tuition increases, including the demographics of students receiving such discounts, the extent to which financial aid is provided to students with limited need in order to attract a student to a particular institution, and the extent to which Federal financial aid, including loan aid, has been used to offset the costs of such practices.

(3) Final report

The Commissioner of Education Statistics shall submit a report regarding the findings of the study required by paragraph (1) to the appropriate committees of Congress not later than September 30, 2002.

(4) Higher education market basket

The Bureau of Labor Statistics, in consultation with the Commissioner of Education Statistics, shall develop a higher education market basket that identifies the items that comprise the costs of higher education. The Bureau of Labor Statistics shall provide a report on the market basket to the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives not later than September 30, 2002.

(5) Fines

In addition to actions authorized in section 1094(c) of this title, the Secretary may impose a fine in an amount not to exceed $25,000 on an institution of higher education for failing to provide the information described in paragraph (1) in a timely and accurate manner, or for failing to otherwise cooperate with the National Center for Education Statistics regarding efforts to obtain data on the cost of higher education under this section and pursuant to the program participation agreement entered into under section 1094 of this title.

(d) Promotion of the Department of Education Federal student financial aid website

The Secretary shall display a link to the Federal student financial aid website of the Department in a prominent place on the homepage of the Department’s website.

(e) Enhanced student financial aid information

(1) Implementation

The Secretary shall continue to improve the usefulness and accessibility of the information provided by the Department on college planning and student financial aid.

(2) Dissemination

The Secretary shall continue to make the availability of the information on the Federal student financial aid website of the Department widely known, through a major media campaign and other forms of communication.

(3) Coordination

As a part of the efforts required under this subsection, the Secretary shall create one website accessible from the Department’s website that fulfills the requirements under subsections (b), (f), and (g).

(f) Improved availability and coordination of information concerning student financial aid programs for military members and veterans

(1) Coordination

The Secretary, in coordination with the Secretary of Defense and the Secretary of Veterans Affairs, shall create a searchable website that—

(A) contains information, in simple and understandable terms, about all Federal and State student financial assistance, readmission requirements under section 1091c of this title, and other student services, for which members of the Armed Forces (including members of the National Guard and Reserves), veterans, and the dependents of such members or veterans may be eligible; and
(B) is easily accessible through the website described in subsection (e)(3).

(2) Implementation

Not later than one year after August 14, 2008, the Secretary shall make publicly available the Armed Forces information website described in paragraph (1).

(3) Dissemination

The Secretary, in coordination with the Secretary of Defense and the Secretary of Veterans Affairs, shall make the availability of the Armed Forces information website described in paragraph (1) widely known to members of the Armed Forces (including members of the National Guard and Reserves), veterans, the dependents of such members or veterans, States, institutions of higher education, and the general public.

(4) Definition

In this subsection, the term ‘‘Federal and State student financial assistance’’ means any
grant, loan, work assistance, tuition assistance, scholarship, fellowship, or other form of financial aid for pursuing a postsecondary education that is—
(A) administered, sponsored, or supported by the Department of Education, the Department of Defense, the Department of Veterans Affairs, or a State; and
(B) available to members of the Armed Forces (including members of the National Guard and Reserves), veterans, or the dependents of such members or veterans.

(g) Promotion of availability of information concerning other student financial aid programs

(1) Definition
For purposes of this subsection, the term “nondepartmental student financial assistance program” means any grant, loan, scholarship, fellowship, or other form of financial aid for students pursuing a postsecondary education that is—
(A) distributed directly to the student or to the student’s account at an institution of higher education; and
(B) operated, sponsored, or supported by a Federal department or agency other than the Department of Education.

(2) Availability of other student financial aid information
The Secretary shall ensure that—
(A) not later than 90 days after the Secretary receives the information required under paragraph (3), the eligibility requirements, application procedures, financial terms and conditions, and other relevant information for each nondepartmental student financial assistance program are searchable and accessible through the Federal student financial aid website in a manner that is simple and understandable for students and the students’ families; and
(B) the website displaying the information described in subparagraph (A) includes a link to the National Database on Financial Assistance for the Study of Science, Technology, Engineering, and Mathematics pursuant to paragraph (4), and the information on military benefits under subsection (f), once such Database and information are available.

(3) Nondepartmental student financial assistance programs
The Secretary shall request all Federal departments and agencies to provide the information described in paragraph (2)(A), and each Federal department or agency shall—
(A) promptly respond to surveys or other requests from the Secretary for the information described in such paragraph; and
(B) identify for the Secretary any nondepartmental student financial assistance program operated, sponsored, or supported by such Federal department or agency.

(4) National STEM Database
(A) In general
The Secretary shall establish and maintain, on the website described in subsection (e)(3), a National Database on Financial Assistance for the Study of Science, Technology, Engineering, and Mathematics (in this paragraph referred to as the “STEM Database”). The STEM Database shall consist of information on scholarships, fellowships, and other programs of Federal, State, local, and, to the maximum extent practicable, private financial assistance available for the study of science, technology, engineering, or mathematics at the postsecondary and postbaccalaureate levels.

(B) Database contents
The information maintained on the STEM Database shall be displayed on the website in the following manner:

(i) Separate information
The STEM Database shall provide separate information for each of the fields of science, technology, engineering, and mathematics, and for postsecondary and postbaccalaureate programs of financial assistance.

(ii) Information on targeted assistance
The STEM Database shall provide specific information on any program of financial assistance that is targeted to individuals based on financial need, merit, or student characteristics.

(iii) Contact and website information
The STEM Database shall provide—
(I) standard contact information that an interested person may use to contact a sponsor of any program of financial assistance included in the STEM Database; and
(II) if such sponsor maintains a public website, a link to the website.

(iv) Search and match capabilities
The STEM Database shall—
(I) have a search capability that permits an individual to search for information on the basis of each category of the information provided through the STEM Database and on the basis of combinations of categories of the information provided, including—
(aa) whether the financial assistance is need- or merit-based; and
(bb) by relevant academic majors;
and
(II) have a match capability that—
(aa) searches the STEM Database for all financial assistance opportunities for which an individual may be qualified to apply, based on the student characteristics provided by such individual; and
(bb) provides information to an individual for only those opportunities for which such individual is qualified, based on the student characteristics provided by such individual.

(v) Recommendation and disclaimer
The STEM Database shall provide, to the users of the STEM Database—
(I) a recommendation that students and families should carefully review all
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of the application requirements prior to applying for any aid or program of student financial assistance; and

(ii) a disclaimer that the non-Federal programs of student financial assistance presented in the STEM Database are not provided or endorsed by the Department or the Federal Government.

(C) Compilation of financial assistance information

In carrying out this paragraph, the Secretary shall—

(i) consult with public and private sources of scholarships, fellowships, and other programs of student financial assistance; and

(ii) make easily available a process for such entities to provide regular and updated information about the scholarships, fellowships, or other programs of student financial assistance.

(D) Contract authorized

In carrying out the requirements of this paragraph, the Secretary is authorized to enter into a contract with a private entity with demonstrated expertise in creating and maintaining databases such as the one required under this paragraph, under which contract the entity shall furnish, and regularly update, all of the information required to be maintained on the STEM Database.

(5) Dissemination of information

The Secretary shall take such actions, on an ongoing basis, as may be necessary to disseminate information under this subsection and to encourage the use of the information by interested parties, including sending notices to secondary schools and institutions of higher education.

(h) No user fees for Department financial aid websites

No fee shall be charged to any individual to access—

(1) a database or website of the Department that provides information about higher education programs or student financial assistance, including the College Navigator website (or successor website) and the websites and databases described in this section and section 1015a of this title; or

(2) information about higher education programs or student financial assistance available through a database or website of the Department.


PRIOR PROVISIONS


AMENDMENTS


CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 2009 AMENDMENT


STUDENT-RELATED DEBT STUDY REQUIRED

Pub. L. 105–244, title VIII, §803, Oct. 7, 1998, 112 Stat. 1805, which required the Secretary of Education to conduct a study to analyze the distribution and increase in student-related debt, submit a report to congressional committees, and include certain information as part of the comparative information provided to families about the costs of higher education, was repealed by Pub. L. 110–315, title IX, §931(1), Aug. 14, 2008, 122 Stat. 3456.

§1015a. Transparency in college tuition for consumers

(a) Definitions

In this section:

(1) College Navigator website

The term “College Navigator website” means the College Navigator website operated by the Department and includes any successor website.

(2) Cost of attendance

The term “cost of attendance” means the average annual cost of tuition and fees, room and board, books, supplies, and transportation for an institution of higher education for a
first-time, full-time undergraduate student enrolled in the institution.

(3) Net price

The term "net price" means the average yearly price actually charged to first-time, full-time undergraduate students receiving student aid at an institution of higher education after deducting such aid, which shall be determined by calculating the difference between—

(A) the institution’s cost of attendance for the year for which the determination is made; and

(B) the quotient of—

(i) the total amount of need-based grant aid and merit-based grant aid, from Federal, State, and institutional sources, provided to such students enrolled in the institution for such year; and

(ii) the total number of such students receiving such need-based grant aid or merit-based grant aid for such year.

(4) Tuition and fees

The term “tuition and fees” means the average annual cost of tuition and fees for an institution of higher education for first-time, full-time undergraduate students enrolled in the institution.

(b) Calculations for public institutions

In making the calculations regarding cost of attendance, net price, and tuition and fees under this section with respect to a public institution of higher education, the Secretary shall calculate the cost of attendance, net price, and tuition and fees at such institution in the manner described in subsection (a), except that—

(1) the cost of attendance, net price, and tuition and fees shall be calculated for first-time, full-time undergraduate students enrolled in the institution who are residents of the State in which such institution is located; and

(2) in determining the net price, the average need-based grant aid and merit-based grant aid described in subsection (a)(3)(B) shall be calculated based on the average total amount of such aid received by first-time, full-time undergraduate students who are residents of the State in which such institution is located, divided by the total number of such resident students receiving such need-based grant aid or merit-based grant aid at such institution.

(c) College affordability and transparency lists

(1) Availability of lists

Beginning July 1, 2011, the Secretary shall make publicly available on the College Navigator website, in a manner that is sortable and searchable by State, the following:

(A) A list of the five percent of institutions in each category described in sub-section (d) that have the highest tuition and fees for the most recent academic year for which data are available.

(B) A list of the five percent of institutions in each such category that have the highest net price for the most recent academic year for which data are available.

(C) A list of the five percent of institutions in each such category that have the largest increase, expressed as a percentage change, in tuition and fees over the most recent three academic years for which data are available, using the first academic year of the three-year period as the base year to compute such percentage change.

(D) A list of the five percent of institutions in each such category that have the largest increase, expressed as a percentage change, in net price over the most recent three academic years for which data are available, using the first academic year of the three-year period as the base year to compute such percentage change.

(E) A list of the ten percent of institutions in each such category that have the lowest tuition and fees for the most recent academic year for which data are available.

(F) A list of the ten percent of institutions in each such category that have the lowest net price for the most recent academic year for which data are available.

(2) Annual updates

The Secretary shall annually update the lists described in paragraph (1) on the College Navigator website.

(d) Categories of institutions

The lists described in subsection (c)(1) shall be compiled according to the following categories of institutions that participate in programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42:

(1) Four-year public institutions of higher education.

(2) Four-year private, nonprofit institutions of higher education.

(3) Four-year private, for-profit institutions of higher education.

(4) Two-year public institutions of higher education.

(5) Two-year private, nonprofit institutions of higher education.

(6) Two-year private, for-profit institutions of higher education.

(7) Less than two-year public institutions of higher education.

(8) Less than two-year private, nonprofit institutions of higher education.

(9) Less than two-year private, for-profit institutions of higher education.

(e) Reports by institutions

(1) Report to Secretary

If an institution of higher education is included on a list described in subparagraph (C) or (D) of subsection (c)(1), the institution shall submit to the Secretary a report containing the following information:

(A) A description of the major areas in the institution’s budget with the greatest cost increases.

(B) An explanation of the cost increases described in subparagraph (A).

(C) A description of the steps the institution will take toward the goal of reducing costs in the areas described in subparagraph (A).

(D) In the case of an institution that is included on the same list under subparagraph (C) or (D) of subsection (c)(1) for two or more
consecutive years, a description of the progress made on the steps described in subparagraph (C) of this paragraph that were included in the institution’s report for the previous year.

(E) If the determination of any cost increase described in subparagraph (A) is not within the exclusive control of the institution—

(i) an explanation of the extent to which the institution participates in determining such cost increase;

(ii) the identification of the agency or instrumentality of State government responsible for determining such cost increase; and

(iii) any other information the institution considers relevant to the report.

(2) Information to the public

The Secretary shall—

(A) issue an annual report that summarizes all of the reports by institutions required under paragraph (1) to the authorizing committees; and

(B) publish such report on the College Navigator website.

(f) Exemptions

(1) In general

An institution shall not be placed on a list described in subparagraph (C) or (D) of subsection (c)(1), and shall not be subject to the reporting required under subsection (e), if the dollar amount of the institution’s increase in tuition and fees, or net price, as applicable, is less than $600 for the three-year period described in such subparagraph.

(2) Update

Beginning in 2014, and every three years thereafter, the Secretary shall update the dollar amount described in paragraph (1) based on annual increases in inflation, using the Consumer Price Index for each of the three most recent preceding years.

(g) State higher education spending chart

The Secretary shall annually report on the College Navigator website, in charts for each State, comparisons of—

(1) the percentage change in spending by such State per full-time equivalent student at all public institutions of higher education in such State, for each of the five most recent preceding academic years;

(2) the percentage change in tuition and fees for such students for all public institutions of higher education in such State for each of the five most recent preceding academic years; and

(3) the percentage change in the total amount of need-based aid and merit-based aid provided by such State to full-time students enrolled in the public institutions of higher education in the State for each of the five most recent preceding academic years.

(h) Net price calculator

(1) Development of net price calculator

Not later than one year after August 14, 2008, the Secretary shall, in consultation with institutions of higher education and other appropriate experts, develop a net price calculator to help current and prospective students, families, and other consumers estimate the individual net price of an institution of higher education for a student. The calculator shall be developed in a manner that enables current and prospective students, families, and consumers to determine an estimate of a current or prospective student’s individual net price at a particular institution.

(2) Calculation of individual net price

For purposes of this subsection, an individual net price of an institution of higher education shall be calculated in the same manner as the net price of such institution is calculated under subsection (a)(3), except that the cost of attendance and the amount of need-based and merit-based aid available shall be calculated for the individual student as much as practicable.

(3) Use of net price calculator by institutions

Not later than two years after the date on which the Secretary makes the calculator developed under paragraph (1) available to institutions of higher education, each institution of higher education that receives Federal funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 shall make publicly available on the institution’s website a net price calculator to help current and prospective students, families, and other consumers estimate a student’s individual net price at such institution of higher education. Such calculator may be a net price calculator developed—

(A) by the Department pursuant to paragraph (1); or

(B) by the institution of higher education, if the institution’s calculator includes, at a minimum, the same data elements included in the calculator developed under paragraph (1).

(4) Disclaimer

Estimates of an individual net price determined using a net price calculator required under paragraph (3) shall be accompanied by a clear and conspicuous notice—

(A) stating that the estimate—

(i) does not represent a final determination, or actual award, of financial assistance;

(ii) shall not be binding on the Secretary, the institution of higher education, or the State; and

(iii) may change;

(B) stating that the student must complete the Free Application for Federal Student Aid described in section 1090 of this title in order to be eligible for, and receive, an actual financial aid award that includes Federal grant, loan, or work-study assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(C) including a link to the website of the Department that allows students to access the Free Application for Federal Student Aid described in section 1090 of this title.
Consumer information

Availability of title IV institution information

Not later than one year after August 14, 2008, the Secretary shall make publicly available on the College Navigator website, in simple and understandable terms, the following information about each institution of higher education that participates in programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, for the most recent academic year for which satisfactory data are available:

A statement of the institution’s mission.

(B) The total number of undergraduate students who applied to, were admitted by, and enrolled in the institution.

(C) For institutions that require SAT or ACT scores to be submitted, the reading, writing, mathematics, and combined scores on the SAT or ACT, as applicable, for the middle 50 percent range of the institution’s first-time, full-time, and part-time students enrolled in the institution, at the undergraduate and (if applicable) graduate levels.

(E) The number of degree- or certificate-seeking undergraduate students enrolled at the institution who have transferred from another institution.

(F) The percentages of male and female undergraduate students enrolled in the institution.

(G) Of the first-time, full-time, degree- or certificate-seeking undergraduate students enrolled at the institution—

(i) the percentage of such students who are from the State in which the institution is located;

(ii) the percentage of such students who are from other States; and

(iii) the percentage of such students who are international students.

(H) The percentages of first-time, full-time, degree- or certificate-seeking students enrolled at the institution, disaggregated by race and ethnic background.

(I) The percentage of undergraduate students enrolled at the institution who are formally registered with the office of disability services of the institution (or the equivalent office) as students with disabilities, except that if such percentage is three percent or less, the institution shall report “three percent or less”.

(J) The percentages of first-time, full-time, degree- or certificate-seeking undergraduate students enrolled at the institution who obtain a degree or certificate within—

(i) the normal time for completion of, or graduation from, the student’s program;

(ii) 150 percent of the normal time for completion of, or graduation from, the student’s program; and

(iii) 200 percent of the normal time for completion of, or graduation from, the student’s program;

(K) The number of certificates, associate degrees, baccalaureate degrees, master’s degrees, professional degrees, and doctoral degrees awarded by the institution.

(L) The undergraduate major areas of study at the institution with the highest number of degrees awarded.

(M) The student-faculty ratio, the number of full-time and part-time faculty, and the number of graduate assistants with primarily instructional responsibilities, at the institution.

(N)(i) The cost of attendance for first-time, full-time undergraduate students enrolled in the institution who live on campus;

(ii) the cost of attendance for first-time, full-time undergraduate students enrolled in the institution who live off campus; and

(iii) in the case of a public institution of higher education and notwithstanding subsection (b)(1), the costs described in clauses (i) and (ii), for—

(I) first-time, full-time students enrolled in the institution who are residents of the State in which the institution is located; and

(II) first-time, full-time students enrolled in the institution who are not residents of such State.

(O) The average annual grant amount (including Federal, State, and institutional aid) awarded to a first-time, full-time undergraduate student enrolled at the institution who receives financial aid.

(P) The average annual amount of Federal student loans provided through the institution to undergraduate students enrolled at the institution.

(Q) The total annual grant aid awarded to undergraduate students enrolled at the institution, from the Federal Government, a State, the institution, and other sources known by the institution.

(R) The percentage of first-time, full-time undergraduate students enrolled at the institution receiving Federal, State, and institutional grants, student loans, and any other type of student financial assistance known by the institution, provided publicly or through the institution, such as Federal work-study funds.

(S) The number of students enrolled at the institution receiving Federal Pell Grants.

(T) The institution’s cohort default rate, as defined under section 1085(m) of this title.

(U) The information on campus safety required to be collected under section 1092(i) of this title.

(V) A link to the institution’s website that provides, in an easily accessible manner, the following information:

(i) Student activities offered by the institution.

(ii) Services offered by the institution for individuals with disabilities.

(iii) Career and placement services offered by the institution to students during and after enrollment.

(iv) Policies of the institution related to transfer of credit from other institutions.

(W) A link to the appropriate section of the Bureau of Labor Statistics website that
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provides information on regional data on starting salaries in all major occupations.

(X) Information required to be submitted under paragraph (4) and a link to the institution pricing summary page described in paragraph (5).

(Y) In the case of an institution that was required to submit a report under subsection (e)(1), a link to such report.

(Z) The availability of alternative tuition plans, which may include guaranteed tuition plans.

(2) Annual updates

The Secretary shall annually update the information described in paragraph (1) on the College Navigator website.

(3) Consultation

The Secretary shall regularly consult with current and prospective college students, family members of such students, institutions of higher education, and other experts to improve the usefulness and relevance of the College Navigator website, with respect to the presentation of the consumer information collected in paragraph (1).

(4) Data collection

The Commissioner for Education Statistics shall continue to update and improve the Integrated Postsecondary Education Data System (referred to in this section as “IPEDS”), including the reporting of information by institutions and the timeliness of the data collected.

(5) Institution pricing summary page

(A) Availability of list of participating institutions

The Secretary shall make publicly available on the College Navigator website in a sortable and searchable format a list of all institutions of higher education that participate in programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, which list shall, for each institution, include the following:

(i) The tuition and fees for each of the three most recent academic years for which data are available.

(ii) The net price for each of the three most recent academic years for which data are available.

(iii)(I) During the period beginning July 1, 2010, and ending June 30, 2013, the net price for students receiving Federal student financial aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, disaggregated by the income categories described in paragraph (6), for the most recent academic year for which data are available.

(II) Beginning July 1, 2013, the net price for students receiving Federal student financial aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, disaggregated by the income categories described in paragraph (6), for each of the three most recent academic years for which data are available.

(iv) The average annual percentage change and average annual dollar change in such institution’s tuition and fees for each of the three most recent academic years for which data are available.

(v) The average annual percentage change and average annual dollar change in such institution’s tuition and fees for each of the three most recent preceding academic years for which data are available.

(vi) A link to the webpage on the College Navigator website that provides the information described in paragraph (1) for the institution.

(B) Annual updates

The Secretary shall annually update the lists described in subparagraph (A) on the College Navigator website.

(6) Income categories

(A) In general

For purposes of reporting the information required under this subsection, the following income categories shall apply for students who receive Federal student financial aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42:

(i) $0–30,000.

(ii) $30,001–48,000.

(iii) $48,001–75,000.

(iv) $75,001–110,000.

(v) $110,001 and more.

(B) Adjustment

The Secretary may adjust the income categories listed in subparagraph (A) using the Consumer Price Index if the Secretary determines such adjustment is necessary.

(j) Multi-year tuition calculator

(1) Development of multi-year tuition calculator

Not later than one year after August 14, 2008, the Secretary shall, in consultation with institutions of higher education, financial planners, and other appropriate experts, develop a multi-year tuition calculator to help current and prospective students, families of such students, and other consumers estimate the amount of tuition an individual may pay to attend an institution of higher education in future years.

(2) Calculation of multi-year tuition

The multi-year tuition calculator described in paragraph (1) shall—

(A) allow an individual to select an institution of higher education for which the calculation shall be made;

(B) calculate an estimate of tuition and fees for current and prospective students, families of such students, and other consumers;

(i) using the tuition and fees for such institution, as reported under subsection (i)(5)(A)(i), for the most recent academic year for which such data are reported; and

(ii) determining an estimated annual percentage change for each year for which the calculation is made, based on the annual percentage change in such institution’s tuition and fees, as reported under subsection (i)(5)(A)(iv), for the most recent
three-year period for which such data are reported;

(C) calculate an estimate of the total amount of tuition and fees to complete a program of study at such institution, based on the normal duration of such program, using the estimate calculated under subparagraph (B) for each year of the program of study;

(D) provide the individual with the option to replace the estimated annual percentage change described in subparagraph (B)(i) with an alternative annual percentage change specified by the individual, and calculate an estimate of tuition and fees for each year and an estimate of the total amount of tuition and fees using the alternative percentage change;

(E) in the case of an institution that offers a multi-year tuition guarantee program, allow the individual to have the estimates of tuition and fees described in subparagraphs (B) and (C) calculated based on the provisions of such guarantee program for the tuition and fees charged to a student, or cohort of students, enrolled for the duration of the program of study; and

(F) include any other features or information determined to be appropriate by the Secretary.

(3) Availability and comparison

The multi-year tuition calculator described in paragraph (1) shall be available on the College Navigator website and shall allow current and prospective students, families of such students, and consumers to compare information and estimates under this subsection for multiple institutions of higher education.

(4) Disclaimer

Each calculation of estimated tuition and fees made using the multi-year tuition calculator described in paragraph (1) shall be accompanied by a clear and conspicuous notice—

(A) stating that the calculation—

(i) is only an estimate and not a guarantee of the actual amount the student may be charged;

(ii) is not binding on the Secretary, the institution of higher education, or the State; and

(iii) may change, subject to the availability of financial assistance, State appropriations, and other factors;

(B) stating that the student must complete the Free Application for Federal Student Aid described in section 1090 of this title in order to be eligible for, and receive, an actual financial aid award that includes Federal grant, loan, or work-study assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(C) including a link to the website of the Department that allows students to access the Free Application for Federal Student Aid described in section 1090 of this title.

(k) Student aid recipient survey

(1) Survey required

The Secretary, acting through the Commissioner for Education Statistics, shall conduct, on a State-by-State basis, a survey of recipients of Federal student financial aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42—

(A) to identify the population of students receiving such Federal student financial aid;

(B) to describe the income distribution and other socioeconomic characteristics of recipients of such Federal student financial aid;

(C) to describe the combinations of aid from Federal, State, and private sources received by such recipients from all income categories;

(D) to describe the—

(i) debt burden of such loan recipients, and their capacity to repay their education debts; and

(ii) the impact of such debt burden on the recipients’ course of study and post-graduation plans;

(E) to describe the impact of the cost of attendance of postsecondary education in the determination by students of what institution of higher education to attend; and

(F) to describe how the costs of textbooks and other instructional materials affect the costs of postsecondary education for students.

(2) Frequency

The survey shall be conducted on a regular cycle and not less often than once every four years.

(3) Survey design

The survey shall be representative of students from all types of institutions, including full-time and part-time students, undergraduate, graduate, and professional students, and current and former students.

(4) Dissemination

The Commissioner for Education Statistics shall disseminate to the public, in printed and electronic form, the information resulting from the survey.

(l) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out this section.


REFERENCES IN TEXT

Title IV, referred to in the heading of subsec. (l)(1), means title IV of the Higher Education Act of 1965, Pub. L. 89–329, which is classified generally to subchapter IV of this chapter and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of title IV to the Code, see Tables.

PRIOR PROVISIONS


§ 1015b. Textbook information

(a) Purpose and intent
The purpose of this section is to ensure that students have access to affordable course materials by decreasing costs to students and enhancing transparency and disclosure with respect to the selection, purchase, sale, and use of course materials. It is the intent of this section to encourage all of the involved parties, including faculty, students, administrators, institutions of higher education, bookstores, distributors, and publishers, to work together to identify ways to decrease the cost of college textbooks and supplemental materials for students while supporting the academic freedom of faculty members to select high quality course materials for students.

(b) Definitions
In this section:

(1) Bundle
The term “bundle” means one or more college textbooks or other supplemental materials that may be packaged together to be sold as course materials for one price.

(2) College textbook
The term “college textbook” means a textbook or a set of textbooks, used for, or in conjunction with, a course in postsecondary education at an institution of higher education.

(3) Course schedule
The term “course schedule” means a listing of the courses or classes offered by an institution of higher education for an academic period, as defined by the institution.

(4) Custom textbook
The term “custom textbook”—
(A) means a college textbook that is compiled by a publisher at the direction of a faculty member or other person or adopting entity in charge of selecting course materials at an institution of higher education; and
(B) may include, alone or in combination, items such as selections from original instructor materials, previously copyrighted publisher materials, copyrighted third-party works, and elements unique to a specific institution, such as commemorative editions.

(5) Institution of higher education
The term “institution of higher education” has the meaning given the term in section 1002 of this title.

(6) Integrated textbook
The term “integrated textbook” means a college textbook that is—
(A) combined with materials developed by a third party and that, by third-party contractual agreement, may not be offered by publishers separately from the college textbook with which the materials are combined; or
(B) combined with other materials that are so interrelated with the content of the college textbook that the separation of the college textbook from the other materials would render the college textbook unusable for its intended purpose.

(7) Publisher
The term “publisher” means a publisher of college textbooks or supplemental materials involved in or affecting interstate commerce.

(8) Substantial content
The term “substantial content” means parts of a college textbook such as new chapters, new material covering additional eras of time, new themes, or new subject matter.

(9) Supplemental material
The term “supplemental material” means educational material developed to accompany a college textbook that—
(A) may include printed materials, computer disks, website access, and electronically distributed materials; and
(B) is not being used as a component of an integrated textbook.

(c) Publisher requirements

(1) College textbook pricing information
When a publisher provides a faculty member or other person or adopting entity in charge of selecting course materials at an institution of higher education receiving Federal financial assistance with information regarding a college textbook or supplemental material, the publisher shall include, with any such information and in writing (which may include electronic communications), the following:

(A) The price at which the publisher would make the college textbook or supplemental material available to the bookstore on the campus of, or otherwise associated with, such institution of higher education and, if available, the price at which the publisher makes the college textbook or supplemental material available to the public.
(B) The copyright dates of the three previous editions of such college textbook, if any.
(C) A description of the substantial content revisions made between the current edition of the college textbook or supplemental material and the previous edition, if any.
(D)(i) Whether the college textbook or supplemental material is available in any other format, including paperback and unbound; and
(ii) for each other format of the college textbook or supplemental material, the price at which the publisher would make the college textbook or supplemental material in the other format available to the bookstore on the campus of, or otherwise associated with, such institution of higher education and, if available, the price at which the publisher makes such other format of the college textbook or supplemental material available to the public.

(2) Unbundling of college textbooks from supplemental materials
A publisher that sells a college textbook and any supplemental material accompanying such college textbook as a single bundle shall
also make available the college textbook and each supplemental material as separate and unbundled items, each separately priced.

(3) Custom textbooks

To the maximum extent practicable, a publisher shall provide the information required under this subsection with respect to the development and provision of custom textbooks.

(d) Provision of ISBN college textbook information in course schedules

To the maximum extent practicable, each institution of higher education receiving Federal financial assistance shall:

(1) disclose, on the institution’s Internet course schedule and in a manner of the institution’s choosing, the International Standard Book Number and retail price information of required and recommended college textbooks and supplemental materials for each course listed in the institution’s course schedule used for preregistration and registration purposes, except that—
   (A) if the International Standard Book Number is not available for such college textbook or supplemental material, then the institution shall include in the Internet course schedule the author, title, publisher, and copyright date for such college textbook or supplemental material; and
   (B) if the institution determines that the disclosure of the information described in this subsection is not practicable for a college textbook or supplemental material, then the institution shall so indicate by placing the designation “To Be Determined” in lieu of the information required under this subsection; and

(2) if applicable, include on the institution’s written course schedule a notice that textbook information is available on the institution’s Internet course schedule, and the Internet address for such schedule.

(e) Availability of information for college bookstores

An institution of higher education receiving Federal financial assistance shall make available to a college bookstore that is operated by, or in a contractual relationship or otherwise affiliated with, the institution, as soon as is practicable upon the request of such college bookstore, the most accurate information available regarding—

(1) the institution’s course schedule for the subsequent academic period; and
(2) for each course or class offered by the institution for the subsequent academic period—
   (A) the information required by subsection (d)(1) for each college textbook or supplemental material required or recommended for such course or class;
   (B) the number of students enrolled in such course or class; and
   (C) the maximum student enrollment for such course or class.

(f) Additional information

An institution disclosing the information required by subsection (d)(1) is encouraged to disseminate to students information regarding—

(1) available institutional programs for renting textbooks or for purchasing used textbooks;
(2) available institutional guaranteed textbook buy-back programs;
(3) available institutional alternative content delivery programs; or
(4) other available institutional cost-saving strategies.

(g) GAO report

Not later than July 1, 2013, the Comptroller General of the United States shall report to the authorizing committees on the implementation of this section by institutions of higher education, college bookstores, and publishers. The report shall particularly examine—

(1) the availability of college textbook information on course schedules;
(2) the provision of pricing information to faculty of institutions of higher education by publishers;
(3) the use of bundled and unbundled material in the college textbook marketplace, including the adoption of unbundled materials by faculty and the use of integrated textbooks by publishers; and
(4) the implementation of this section by institutions of higher education, including the costs and benefits to such institutions and to students.

(h) Rule of construction

Nothing in this section shall be construed to supersede the institutional autonomy or academic freedom of instructors involved in the selection of college textbooks, supplemental materials, and other classroom materials.

(i) No regulatory authority

The Secretary shall not promulgate regulations with respect to this section.


PRIOR PROVISIONS


EFFECTIVE DATE


ESTABLISHMENT OF PILOT PROGRAM FOR COURSE MATERIAL RENTAL


“(a) PILOT GRANT PROGRAM.—From the amounts appropriated pursuant to subsection (e), the Secretary of Education (referred to in this section as the ‘Secretary’) shall make grants on a competitive basis to
not more than ten institutions of higher education to support pilot programs that expand the services of bookstores to provide the option for students to rent course materials in order to achieve savings for students.

“(b) APPLICATION.—An institution of higher education that desires to obtain a grant under this section shall submit an application to the Secretary at such time, in such form, and containing or accompanied by such information, agreements, and assurances as the Secretary may reasonably require.

“(c) USE OF FUNDS.—The funds made available by a grant under this section may be used for—

“(1) purchase of course materials that the entity will make available by rent to students;

“(2) any equipment or software necessary for the conduct of a rental program;

“(3) hiring staff needed for the conduct of a rental program, with priority given to hiring enrolled undergraduate students; and

“(4) building or acquiring extra storage space dedicated to course materials for rent.

“(d) EVALUATION AND REPORT.—

“(1) EVALUATIONS BY RECIPIENT.—After a period of time to be determined by the Secretary, each institution of higher education that receives a grant under this section shall submit a report to the Secretary on the effectiveness of their rental programs in reducing textbook costs for students.

“(2) REPORT TO CONGRESS.—Not later than September 30, 2010, the Secretary shall submit a report to Congress on the effectiveness of the textbook rental pilot programs under this section, and identify the best practices developed in such pilot programs. Such report shall contain an estimate by the Secretary of the savings achieved by students who participate in such pilot programs.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2009 and 2010.”

§ 1015c. Database of student information prohibited

(a) Prohibition

Except as described in subsection (b), nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to authorize the development, implementation, or maintenance of a Federal database of personally identifiable information on individuals receiving assistance under this chapter and part C of subchapter I of chapter 34 of title 42, attending institutions receiving assistance under this chapter and part C of subchapter I of chapter 34 of title 42, or otherwise involved in any studies or other collections of data under this chapter and part C of subchapter I of chapter 34 of title 42, including a student unit record system, or any other system that tracks individual students over time.

(b) Exception

The provisions of subsection (a) shall not apply to a system (or a successor system) that—

(1) is necessary for the operation of programs authorized by subchapter II, IV, or VII or part C of subchapter I of chapter 34 of title 42; and

(2) was in use by the Secretary, directly or through a contractor, as of the day before August 14, 2008.

(c) State databases

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall prohibit a State or a consortium of States from developing, implementing, or maintaining State-developed databases that track individuals over time, including student unit record systems that contain information related to enrollment, attendance, graduation and retention rates, student financial assistance, and graduate employment outcomes.


PRIOR PROVISIONS


§ 1015d. In-State tuition rates for members of the armed forces on active duty, spouses, and dependent children

(a) Requirement

In the case of a member of the armed forces who is on active duty for a period of more than 30 days and whose domicile or permanent duty station is in a State that receives assistance under this chapter and part C of subchapter I of chapter 34 of title 42, such State shall not charge such member (or the spouse or dependent child of such member) tuition for attendance at a public institution of higher education in the State at a rate that is greater than the rate charged for residents of the State.

(b) Continuation

If a member of the armed forces (or the spouse or dependent child of a member) pays tuition at a public institution of higher education in a State at a rate determined by subsection (a), the provisions of subsection (a) shall continue to apply to such member, spouse, or dependent while continuously enrolled at that institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside the State.

(c) Effective date

This section shall take effect at each public institution of higher education in a State that receives assistance under this chapter and part C of subchapter I of chapter 34 of title 42 for the first period of enrollment at such institution that begins after July 1, 2009.

(d) Definitions

In this section, the terms “armed forces” and “active duty for a period of more than 30 days” have the meanings given those terms in section 101 of title 10.


PRIOR PROVISIONS

§ 1015e. State higher education information system pilot program

(a) Purpose

It is the purpose of this section to carry out a pilot program to assist not more than five States to develop State-level postsecondary student data systems to—

(1) improve the capacity of States and institutions of higher education to generate more comprehensive and comparable data, in order to develop better-informed educational policy at the State level and to evaluate the effectiveness of institutional performance while protecting the confidentiality of students’ personally identifiable information; and

(2) identify how to best minimize the data-reporting burden placed on institutions of higher education, particularly smaller institutions, and to maximize and improve the information institutions receive from the data systems, in order to assist institutions in improving educational practice and postsecondary outcomes.

(b) Definition of eligible entity

In this section, the term “eligible entity” means—

(1) a State higher education system; or

(2) a consortium of State higher education systems, or a consortium of individual institutions of higher education, that is broadly representative of institutions in different sectors and geographic locations.

(c) Competitive grants

(1) Grants authorized

The Secretary shall award grants, on a competitive basis, to not more than five eligible entities to enable the eligible entities to—

(A) design, test, and implement systems of postsecondary student data that provide the maximum benefits to States, institutions of higher education, and State policymakers; and

(B) examine the costs and burdens involved in implementing a State-level postsecondary student data system.

(2) Duration

A grant awarded under this section shall be for a period of not more than three years.

(d) Application requirements

An eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including a description of—

(1) how the eligible entity will ensure that student privacy is protected and that individually identifiable information about students, the students’ achievements, and the students’ families remains confidential in accordance with section 1232g of this title (commonly known as the “Family Educational Rights and Privacy Act of 1974”); and

(2) how the activities funded by the grant will be supported after the three-year grant period.

(e) Use of funds

A grant awarded under this section shall be used to—

(1) design, develop, and implement the components of a comprehensive postsecondary student data system with the capacity to transmit student information within a State;

(2) improve the capacity of institutions of higher education to analyze and use student data;

(3) select and define common data elements, data quality, and other elements that will enable the data system to—

(A) serve the needs of institutions of higher education for institutional research and improvement;

(B) provide students and the students’ families with useful information for decision-making about postsecondary education; and

(C) provide State policymakers with improved information to monitor and guide efforts to improve student outcomes and success in higher education;

(4) estimate costs and burdens at the institutional level for the reporting system for different types of institutions; and

(5) test the feasibility of protocols and standards for maintaining data privacy and data access.

(f) Evaluation; reports

Not later than six months after the end of the projects funded by grants awarded under this section, the Secretary shall—

(1) conduct a comprehensive evaluation of the pilot program authorized by this section; and

(2) report the Secretary’s findings, as well as recommendations regarding the implementation of State-level postsecondary student data systems, to the authorizing committees.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


AMENDMENTS


EFFECTIVE DATE OF 2009 AMENDMENT


§ 1015f. State commitment to affordable college education

(a) Maintenance of effort required

A State shall provide—

(1) for public institutions of higher education in such State for any academic year beginning on or after July 1, 2008, an amount
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which is equal to or greater than the average amount provided for non-capital and non-direct research and development expenses or costs by such State to such institutions of higher education during the five most recent preceding academic years for which satisfactory data are available; and 

(2) for private institutions of higher education in such State for any academic year beginning on or after July 1, 2008, an amount which is equal to or greater than the average amount provided for student financial aid for paying costs associated with postsecondary education by such State to such institutions during the five most recent preceding academic years for which satisfactory data are available.

(b) Adjustments for biennial appropriations

The Secretary shall take into consideration any adjustments to the calculations under subsection (a) that may be required to accurately reflect funding levels for postsecondary education in States with biennial appropriation cycles.

(c) Waiver

The Secretary shall waive the requirements of subsection (a), if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of a State or State educational agency, as appropriate.

(d) Violation of maintenance of effort

Notwithstanding any other provision of law, the Secretary shall withhold from any State that violates subsection (a) and does not receive a waiver pursuant to subsection (c) any amount that would otherwise be available to the State under section 1141 of this title until such State has made significant efforts to correct such violation.


PRIOR PROVISIONS


PART D—ADMINISTRATIVE PROVISIONS FOR DELIVERY OF STUDENT FINANCIAL ASSISTANCE

§ 1018. Performance-Based Organization for delivery of Federal student financial assistance

(a) Establishment and purpose

(1) Establishment

There is established in the Department a Performance-Based Organization (hereafter referred to as the “PBO”) which shall be a discrete management unit responsible for managing the administrative and oversight functions supporting the programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as specified in subsection (b) of this section.

(2) Purposes

The purposes of the PBO are—

(A) to improve service to students and other participants in the student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, including making those programs more understandable to students and their parents;

(B) to reduce the costs of administering those programs;

(C) to increase the accountability of the officials responsible for administering the operational aspects of these programs;

(D) to provide greater flexibility in the management and administration of the Federal student financial assistance programs;

(E) to integrate the information systems supporting the Federal student financial assistance programs;

(F) to implement an open, common, integrated system for the delivery of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(G) to develop and maintain a student financial assistance system that contains complete, accurate, and timely data to ensure program integrity.

(b) General authority

(1) Authority of Secretary

Notwithstanding any other provision of this part, the Secretary shall maintain responsibility for the development and promulgation of policy and regulations relating to the programs of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42. In the exercise of its functions, the PBO shall be subject to the direction of the Secretary. The Secretary shall—

(A) request the advice of, and work in cooperation with, the Chief Operating Officer in developing regulations, policies, administrative guidance, or procedures affecting the Federal student financial assistance programs authorized under subchapter IV of

1 So in original. Probably should be “unforeseen”.
this chapter and part C of subchapter I of chapter 34 of title 42;

(B) request cost estimates from the Chief Operating Officer for system changes required by specific policies proposed by the Secretary; and

(C) assist the Chief Operating Officer in identifying goals for—

(i) the administration of the systems used to administer the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(ii) the updating of such systems to current technology.

(2) PBO functions

Subject to paragraph (1), the PBO shall be responsible for the administration of Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, excluding the development of policy relating to such programs but including the following:

(A) The administrative, accounting, and financial management functions for the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, including—

(i) the collection, processing, and transmission of data to students, institutions, lenders, State agencies, and other authorized parties;

(ii) the design and technical specifications for software development and procurement for systems supporting the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(iii) all software and hardware acquisitions and all information technology contracts related to the administration and management of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(iv) all aspects of contracting for the information and financial systems supporting the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(v) providing all customer service, training, and user support related to the administration of the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(vi) ensuring the integrity of the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(B) Annual development of a budget for the activities and functions of the PBO, in consultation with the Secretary, and for consideration and inclusion in the Department’s annual budget submission.

(3) Additional functions

The Secretary may allocate to the PBO such additional functions as the Secretary and the Chief Operating Officer determine are necessary or appropriate to achieve the purposes of the PBO.

(4) Independence

Subject to paragraph (1), in carrying out its functions, the PBO shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions.

(5) Audits and review

The PBO shall be subject to the usual and customary Federal audit procedures and to review by the Inspector General of the Department.

(6) Changes

(A) In general

The Secretary and the Chief Operating Officer shall consult concerning the effects of policy, market, or other changes on the ability of the PBO to achieve the goals and objectives established in the performance plan described in subsection (c) of this section.

(B) Revisions to agreement

The Secretary and the Chief Operating Officer may revise the annual performance agreement described in subsection (d)(4) of this section in light of policy, market, or other changes that occur after the Secretary and the Chief Operating Officer enter into the agreement.

(c) Performance plan, report, and briefing

(1) Performance plan

(A) In general

Each year, the Secretary and Chief Operating Officer shall agree on, and make available to the public, a performance plan for the PBO for the succeeding 5 years that establishes measurable goals and objectives for the organization.

(B) Consultation

In developing the 5-year performance plan and any revision to the plan, the Secretary and the Chief Operating Officer shall consult with students, institutions of higher education, Congress, lenders, the Advisory Committee on Student Financial Assistance, and other interested parties not less than 30 days prior to the implementation of the performance plan or revision.

(C) Areas

The plan shall include a concise statement of the goals for a modernized system for the delivery of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 and identify action steps necessary to achieve such goals. The plan shall address the PBO’s responsibilities in the following areas:

(i) Improving service

Improving service to students and other participants in student financial aid pro-
grams authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, including making those programs more understandable to students and their parents.

(ii) Reducing costs
Reducing the costs of administering those programs.

(iii) Improvement and integration of support systems
Improving and integrating the systems that support those programs.

(iv) Delivery and information system
Developing open, common, and integrated systems for programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(v) Other areas
Any other areas identified by the Secretary.

(2) Annual report
Each year, the Chief Operating Officer shall prepare and submit to Congress, through the Secretary, an annual report on the performance of the PBO, including an evaluation of the extent to which the PBO met the goals and objectives contained in the 5-year performance plan described in paragraph (1) for the preceding year. The annual report shall include the following:

(A) An independent financial audit of the expenditures of both the PBO and the programs administered by the PBO.


(C) The results achieved by the PBO during the year relative to the goals established in the organization’s performance plan.

(D) The evaluation rating of the performance of the Chief Operating Officer and senior managers under subsections (d)(4) and (e)(2) of this section, including the amounts of bonus compensation awarded to these individuals.

(E) Recommendations for legislative and regulatory changes to improve service to students and their families, and to improve program efficiency and integrity.

(F) Other such information as the Director of the Office of Management and Budget shall prescribe for performance based organizations.

(3) Consultation with stakeholders
The Chief Operating Officer, in preparing the report described in paragraph (2), shall establish appropriate means to consult with students, borrowers, institutions, lenders, guaranty agencies, secondary markets, and others involved in the delivery system of student aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42—

(A) regarding the degree of satisfaction with the delivery system; and

(B) to seek suggestions on means to improve the delivery system.

(4) Briefing on enforcement of student loan provisions
The Secretary shall, upon request, provide a briefing to the members of the authorizing committees on the steps the Department has taken to ensure—

(A) the integrity of the student loan programs; and

(B) that lenders and guaranty agencies are adhering to the requirements of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(d) Chief Operating Officer

(1) Appointment
The management of the PBO shall be vested in a Chief Operating Officer who shall be appointed by the Secretary to a term of not less than 3 and not more than 5 years, and compensated without regard to chapters 33, 51, and 53 of title 5. The appointment shall be made on the basis of demonstrated management ability and expertise in information technology, including experience with financial systems, and without regard to political affiliation or activity.

(2) Reappointment
The Secretary may reappoint the Chief Operating Officer to subsequent terms of not less than 3 and not more than 5 years, so long as the performance of the Chief Operating Officer, as set forth in the performance agreement described in paragraph (4), is satisfactory.

(3) Removal
The Chief Operating Officer may be removed by—

(A) the President; or

(B) the Secretary, for misconduct or failure to meet performance goals set forth in the performance agreement in paragraph (4).

The President or Secretary shall communicate the reasons for any such removal to the authorizing committees.

(4) Performance agreement

(A) In general
Each year, the Secretary and the Chief Operating Officer shall enter into an annual performance agreement, that shall set forth measurable organization and individual goals for the Chief Operating Officer.

(B) Transmittal
The final agreement, and any revision to the final agreement, shall be transmitted to the authorizing committees, and made publicly available.

(5) Compensation

(A) In general
The Chief Operating Officer is authorized to be paid at an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, including any applicable local-
ity-based comparability payment that may be authorized under section 5304(h)(2)(B) of such title. The compensation of the Chief Operating Officer shall be considered for purposes of section 207(c)(2)(A) of title 18 to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of such title.

(B) Bonus

In addition, the Chief Operating Officer may receive a bonus in an amount that does not exceed 50 percent of such annual rate of basic pay, based upon the Secretary’s evaluation of the Chief Operating Officer’s performance in relation to the goals set forth in the performance agreement described in paragraph (2).

(C) Payment

Payment of a bonus under subparagraph (B) may be made to the Chief Operating Officer only to the extent that such payment does not cause the Chief Operating Officer’s total aggregate compensation in a calendar year to equal or exceed the amount of the President’s salary under section 102 of title 3.

(e) Senior management

(1) Appointment

(A) In general

The Chief Operating Officer may appoint such senior managers as that officer determines necessary without regard to the provisions of title 5 governing appointments in the competitive service.

(B) Compensation

The senior managers described in subparagraph (A) may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) Performance agreement

Each year, the Chief Operating Officer and each senior manager appointed under this subsection shall enter into an annual performance agreement that sets forth measurable organization and individual goals. The agreement shall be subject to review and renegotiation at the end of each term.

(3) Compensation

(A) In general

A senior manager appointed under this subsection may be paid at an annual rate of basic pay of not more than the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of such title. The compensation of a senior manager shall be considered for purposes of section 207(c)(2)(A) of title 18 to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of such title.

(B) Bonus

In addition, a senior manager may receive a bonus in an amount such that the man-
erning appointments in the competitive service, technical and professional employees to administer the functions of the PBO. These employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(h) Establishment of fair and equitable system for measuring staff performance

The PBO shall establish an annual performance management system, subject to compliance with title 5, and consistent with applicable provisions of law and regulations, which strengthens the effectiveness of the PBO by providing for establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the performance plan of the PBO and its performance planning procedures, including those established under the Government Performance and Results Act of 1993, and communicating such goals or objectives to employees.

(i) Authorization of appropriations

The Secretary shall allocate from funds made available under section 1087b of this title such funds as are appropriate to the functions assumed by the PBO. In addition, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this part.


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 101b, Pub. L. 89–329, title I, §141, as added Pub. L. 100–576, Nov. 15, 1990, 104 Stat. 2838, set out purpose of former part D of this subchapter as being the development of student literacy corps programs, prior to the general amendment of this subchapter by Pub. L. 103–263.


AMENDMENTS


Subsec. (b)(1)(A). Pub. L. 110–315, §117(2)(A)(i), substituted “the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42” for “the information systems administered by the PBO, and other functions performed by the PBO”.

Subsec. (b)(1)(C). Pub. L. 110–315, §117(2)(A)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows: “assist the Chief Operating Officer in identifying goals for the administration and modernization of the delivery system for student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42”.

Subsec. (b)(2). Pub. L. 110–315, §117(2)(B)(i), in introductory provisions, substituted “the administration of Federal” for “administration of the information and financial systems that support” and “subchapter and this chapter and part C of subchapter I of chapter 34 of title 42” for “this subchapter”.


Subsec. (b)(2)(A)(i), (ii). Pub. L. 110–315, §117(2)(B)(ii)(I), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows: “(i) the collection, processing and transmission of applicant data to students, institutions and authorized third parties, as provided for in section 1990 of this title; “(ii) design and technical specifications for software development and systems supporting the delivery of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42”.


Subsec. (b)(2)(A)(v). Pub. L. 110–315, §117(2)(B)(ii)(V), substituted “the administration of the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42” for “systems that support those programs”.


Subsec. (c)(1)(C)(i). Pub. L. 110–315, §117(3)(B)(i), substituted “under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42” for “this subchapter”.


Subsec. (c)(1)(C)(iv). Pub. L. 110–315, §117(3)(B)(iv), substituted “Developing” for “Developing an”, “systems” for “delivery and information system”, and “under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42” for “this subchapter”.

(b) In general

Except as provided in this section, the PBO shall abide by all applicable Federal procurement laws and regulations when procuring property and services. The PBO shall—

(1) enter into contracts to carry out the functions set forth in section 1018(b)(2) of this title;

(2) obtain the services of experts and consultants without regard to section 3109 of title 5 and set pay in accordance with such section; and

(3) through the Chief Operating Officer—

(A) to the maximum extent practicable, utilize procurement systems that streamline operations, improve internal controls, and enhance management; and

(B) assess the efficiency of such systems and assess such systems’ ability to meet PBO requirements.

(c) Service contracts

(1) Performance-based servicing contracts

The Chief Operating Officer shall, to the extent practicable, maximize the use of performance-based servicing contracts, consistent with guidelines for such contracts published by the Office of Federal Procurement Policy, to achieve cost savings and improve service.

(2) Fee for service arrangements

The Chief Operating Officer shall, when appropriate and consistent with the purposes of the PBO, acquire services related to the functions set forth in section 1018(b)(2) of this title from any entity that has the capability and capacity to meet the requirements set by the PBO. The Chief Operating Officer is authorized to pay fees that are equivalent to those paid by other entities to an organization that provides services that meet the requirements of the PBO, as determined by the Chief Operating Officer.

(d) Two-phase source-selection procedures

(1) In general

The PBO may use a two-phase process for selecting a source for a procurement of property or services.

(2) First phase

The procedures for the first phase of the process for a procurement are as follows:

(A) Publication of notice

The contracting officer for the procurement shall publish a notice of the procurement in accordance with section 1708 of title 41 and subsections (e), (f), and (g) of section 637 of title 15, except that the notice shall include only the following:

(i) A general description of the scope or purpose of the procurement that provides sufficient information on the scope or purpose for sources to make informed business decisions regarding whether to participate in the procurement.

(ii) A description of the basis on which potential sources are to be selected to submit offers in the second phase.

(iii) A description of the information that is to be required under subparagraph (B).

(iv) Any additional information that the contracting officer determines appropriate.

(B) Information submitted by offerors

Each offeror for the procurement shall submit basic information, such as informa-
tion on the offeror’s qualifications, the proposed conceptual approach, costs likely to be associated with the proposed conceptual approach, and past performance of the offeror, together with any additional information that is requested by the contracting officer.

(C) Selection for second phase
The contracting officer shall select the offerors that are to be eligible to participate in the second phase of the process. The contracting officer shall limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal Government.

(3) Second phase

(A) In general
The contracting officer shall conduct the second phase of the source selection process in accordance with sections 3306(a) to (e) and 3308, chapter 37, and section 4702 of title 41.

(B) Eligible participants
Only the sources selected in the first phase of the process shall be eligible to participate in the second phase.

(C) Single or multiple procurements
The second phase may include a single procurement or multiple procurements within the scope, or for the purpose, described in the notice pursuant to paragraph (2)(A).

(4) Procedures considered competitive
The procedures used for selecting a source for a procurement under this subsection shall be considered competitive procedures for all purposes.

(e) Use of simplified procedures for commercial items
Whenever the PBO anticipates that commercial items will be offered for a procurement, the PBO may use (consistent with the special rules for commercial items) the special simplified procedures for the procurement without regard to—

(1) any dollar limitation otherwise applicable to the use of those procedures; and

(2) the expiration of the authority to use special simplified procedures under section 4202(e) of the Clinger-Cohen Act of 1996 (110 Stat. 654; 10 U.S.C. 2304 note).

(f) Flexible wait periods and deadlines for submission of offers of noncommercial items

(1) Authority
In carrying out a procurement, the PBO may—

(A) apply a shorter waiting period for the issuance of a solicitation after the publication of a notice under section 1708 of title 41 than is required under subsection (a)(3)(A) of such section; and

(B) notwithstanding subsection (a)(3) of such section, establish any deadline for the submission of bids or proposals that affords potential offerors a reasonable opportunity to respond to the solicitation.

(2) Inapplicability to commercial items
Paragraph (1) does not apply to a procurement of a commercial item.

(3) Consistency with applicable international agreements
If an international agreement is applicable to the procurement, any exercise of authority under paragraph (1) shall be consistent with the international agreement.

(g) Modular contracting

(1) In general
The PBO may satisfy the requirements of the PBO for a system incrementally by carrying out successive procurements of modules of the system. In doing so, the PBO may use procedures authorized under this subsection to procure any such module after the first module.

(2) Utility requirement
A module may not be procured for a system under this subsection unless the module is useful independently of the other modules or useful in combination with another module previously procured for the system.

(3) Conditions for use of authority
The PBO may use procedures authorized under paragraph (4) for the procurement of an additional module for a system if—

(A) competitive procedures were used for awarding the contract for the procurement of the first module for the system; and

(B) the solicitation for the first module included—

(i) a general description of the entire system that was sufficient to provide potential offerors with reasonable notice of the general scope of future modules;

(ii) other information sufficient for potential offerors to make informed business judgments regarding whether to submit offers for the contract for the first module; and

(iii) a statement that procedures authorized under this subsection could be used for awarding subsequent contracts for the procurement of additional modules for the system.

(4) Procedures
If the procurement of the first module for a system meets the requirements set forth in paragraph (3), the PBO may award a contract for the procurement of an additional module for the system using any of the following procedures:

(A) Single-source basis
Award of the contract on a single-source basis to a contractor who was awarded a contract for a module previously procured for the system under competitive procedures or procedures authorized under subparagraph (B).

(B) Adequate competition
Award of the contract on the basis of offers made by—

(i) a contractor who was awarded a contract for a module previously procured for the system after having been selected for award of the contract under this subparagraph or other competitive procedures; and
(ii) at least one other offeror that submitted an offer for a module previously procured for the system and is expected, on the basis of the offer for the previously procured module, to submit a competitive offer for the additional module.

(C) Other

Award of the contract under any other procedure authorized by law.

(5) Notice requirement

(A) Publication

Not less than 30 days before issuing a solicitation for offers for a contract for a module for a system under procedures authorized under subparagraph (A) or (B) of paragraph (4), the PBO shall publish in the Commerce Business Daily a notice of the intent to use such procedures to enter into the contract.

(B) Exception

Publication of a notice is not required under this paragraph with respect to a use of procedures authorized under paragraph (4) if the contractor referred to in that subparagraph (who is to be solicited to submit an offer) has previously provided a module for the system under a contract that contained cost, schedule, and performance goals and the contractor met those goals.

(C) Content of notice

A notice published under subparagraph (A) with respect to a use of procedures described in paragraph (4) shall contain the information required under section 1706(c) of title 41, other than paragraph (4) of such section, and shall invite the submission of any assertion that the use of the procedures for the procurement involved is not in the best interest of the Federal Government together with information supporting the assertion.

(6) Documentation

The basis for an award of a contract under this subsection shall be documented. However, a justification pursuant to section 3304(e) of title 41 or section 637(h) of title 15 is not required.

(7) Simplified source-selection procedures

The PBO may award a contract under any other simplified procedures prescribed by the PBO for the selection of sources for the procurement of modules for a system, after the first module, that are not to be procured under a contract awarded on a single-source basis.

(h) Use of simplified procedures for small business set-asides for services other than commercial items

(1) Authority

The PBO may use special simplified procedures for a procurement of services that are not commercial items if—

(A) the procurement is in an amount not greater than $1,000,000;

(B) the procurement is conducted as a small business set-aside pursuant to section 644(a) of title 15; and

(C) the price charged for supplies associated with the services procured are items of supply expected to be less than 20 percent of the total contract price.

(2) Inapplicability to certain procurements

The authority set forth in paragraph (1) may not be used for—

(A) an award of a contract on a single-source basis; or

(B) a contract for construction.

(i) Guidance for use of authority

(1) Issuance by PBO

The Chief Operating Officer of the PBO, in consultation with the Administrator for Federal Procurement Policy, shall issue guidance for the use by PBO personnel of the authority provided in this section.

(2) Guidance from OFPP

As part of the consultation required under paragraph (1), the Administrator for Federal Procurement Policy shall provide the PBO with guidance that is designed to ensure, to the maximum extent practicable, that the authority under this section is exercised by the PBO in a manner that is consistent with the exercise of the authority by the heads of the other performance-based organizations.

(3) Compliance with OFPP guidance

The head of the PBO shall ensure that the procurements of the PBO under this section are carried out in a manner that is consistent with the guidance provided for the PBO under paragraph (2).

(j) Limitation on multiagency contracting

No department or agency of the Federal Government may purchase property or services under contracts entered into or administered by a PBO under this section unless the purchase is approved in advance by the senior procurement official of that department or agency who is responsible for purchasing by the department or agency.

(k) Laws not affected

Nothing in this section shall be construed to waive laws for the enforcement of civil rights or for the establishment and enforcement of labor standards that are applicable to contracts of the Federal Government.

(l) Definitions

In this section:

(1) Commercial item

The term “commercial item” has the meaning given in the term in section 103 of title 41.

(2) Competitive procedures

The term “competitive procedures” has the meaning given in the term in section 152 of title 41.

(3) Single-source basis

The term “single-source basis”, with respect to an award of a contract, means that the contract is awarded to a source after soliciting an offer or offers from, and negotiating with, only such source (although such source is not the only source in the marketplace capable of meeting the need) because such source is the most advantageous source for purposes of the award.
(4) Special rules for commercial items
The term ‘‘special rules for commercial items’’ means the regulations set forth in the Federal Acquisition Regulation pursuant to sections 1901 and 3305(a) of title 41.

(5) Special simplified procedures
The term ‘‘special simplified procedures’’ means the procedures applicable to purchases of property and services for amounts not greater than the simplified acquisition threshold that are set forth in the Federal Acquisition Regulation pursuant to sections 1901(a)(1) and 3305(a)(1) of title 41.


REFERENCES IN TEXT
Section 4202(e) of the Clinger-Cohen Act of 1996, referred to in subsec. (e)(2), is section 4202(e) of Pub. L. 104–106, which is set out as a note under section 2904 of Title 10, Armed Forces.

CODIFICATION


In subsec. (g)(5)(C), ‘‘section 1708(c) of title 41’’ substituted for ‘‘section 18(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(b))’’ on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.


Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

AMENDMENTS
2008—Subsec. (b)(1). Pub. L. 110–315, §118(1)(A), struck out ‘‘for information systems supporting the programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 after ‘‘entered into contracts’’’ and ‘‘and’’ after semicolon.

Subsec. (b)(2). Pub. L. 110–315, §118(1)(B), substituted ‘‘; and’’ for period at end of par. (2) and added par. (3).

Subsec. (c)(2). Pub. L. 110–315, §118(2), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ‘‘The Chief Operating Officer shall, when appropriate and consistent with the purposes of the PBO, acquire services related to the subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 delivery system from any entity that has the capability and capacity to meet the requirements for the system. The Chief Operating Officer is authorized to pay fees that are equivalent to those paid by other entities to an organization that provides an information system or service that meets the requirements of the PBO, as determined by the Chief Operating Officer.’’


Subsec. (i)(3). Pub. L. 110–315, §118(6), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: ‘‘The term ‘sole-source basis’, with respect to an award of a contract, means that the contract is awarded to a source after soliciting an offer or offers from, and negotiating with, only that source.’’

§1018b. Administrative simplification of student aid delivery

(a) In general
In order to improve the efficiency and effectiveness of the student aid delivery system, the Secretary and the Chief Operating Officer shall encourage and participate in the establishment of voluntary consensus standards and requirements for the electronic transmission of information necessary for the administration of programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(b) Participation in standard setting organizations
(1) The Chief Operating Officer shall participate in the activities of standard setting organizations in carrying out the provisions of this section.

(2) The Chief Operating Officer shall encourage higher education groups seeking to develop common forms, standards, and procedures in support of the delivery of Federal student financial assistance to conduct these activities within a standard setting organization.

(3) The Chief Operating Officer may pay necessary dues and fees associated with participat-
ing in standard setting organizations pursuant to this subsection.

(c) Adoption of voluntary consensus standards

Except with respect to the common financial reporting form under section 1090(a) of this title, the Secretary shall consider adopting voluntary consensus standards agreed to by the organization described in subsection (b) of this section for transactions required under subchapter IV of this chapter and part C of subchapter I of chapter 42, and common data elements for such transactions, to enable information to be exchanged electronically between systems administered by the Department and among participants in the Federal student aid delivery system.

(d) Use of clearinghouses

Nothing in this section shall restrict the ability of participating institutions and lenders from using a clearinghouse or servicer to comply with the standards for the exchange of information established under this section.

(e) Data security

Any entity that maintains or transmits information under a transaction covered by this section shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

1. to ensure the integrity and confidentiality of the information; and
2. to protect against any reasonably anticipated security threats, or unauthorized uses or disclosures of the information.

(f) Definitions

(1) Clearinghouse

The term “clearinghouse” means a public or private entity that processes or facilitates the processing of nonstandard data elements into data elements conforming to standards adopted under this section.

(2) Standard setting organization

The term “standard setting organization” means an organization that—

(A) is accredited by the American National Standards Institute;

(B) develops standards for information transactions, data elements, or any other standard that is necessary to, or will facilitate, the implementation of this section; and

(C) is open to the participation of the various entities engaged in the delivery of Federal student financial assistance.

(3) Voluntary consensus standard

The term “voluntary consensus standard” means a standard developed or used by a standard setting organization described in paragraph (2).


Prior provisions

Prior sections 1018b to 1018f were omitted in the general amendment of this subchapter by Pub. L. 102–418, title VI, §6201, Aug. 23, 1988, 102 Stat. 1515, related to use of funds.

§ 1019. Definitions

In this part:

(1) Agent

The term “agent” means an officer or employee of a covered institution or an institution-affiliated organization.

(2) Covered institution

The term “covered institution” means any institution of higher education, as such term is defined in section 1002 of this title, that receives any Federal funding or assistance.

(3) Education loan

The term “education loan” (except when used as part of the term “private education loan”) means—

(A) any loan made, insured, or guaranteed under part B of subchapter IV;

(B) any loan made under part C of subchapter IV; or

(C) a private education loan.

(4) Eligible lender

The term “eligible lender” has the meaning given such term in section 1085(d) of this title.

(5) Institution-affiliated organization

The term “institution-affiliated organization” means any organization that—

(A) is directly or indirectly related to a covered institution; and

(i) is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students;

(B) may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(C) notwithstanding subparagraphs (A) and (B), does not include any lender with respect to any education loan secured, made, or extended by such lender.

(6) Lender

The term “lender” (except when used as part of the terms “eligible lender” and “private educational lender”)—
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§ 1019a Responsibilities of covered institutions and institution-affiliated organizations

(a) Responsibilities of covered institutions and institution-affiliated organizations

(1) Disclosures by covered institutions and institution-affiliated organizations

(A) Preferred lender arrangement disclosures

In addition to the disclosures required by subsections (a)(27) and (h) of section 1094 of this title (if applicable), a covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement shall disclose—

(i) on such covered institution’s or institution-affiliated organization’s website and in all informational materials described in subparagraph (C) that describe or discuss education loans—

(I) the maximum amount of Federal grant and loan aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 available to students, in an easy to understand format; and

(II) the information required to be disclosed pursuant to section 1019(b)(2)(A)(ii) of this title, for each type of loan described in section 1019(k)(3)(A) of this title that is offered pursuant to a preferred lender arrangement of the institution or organization to students of the institution or the families of such students; and

(III) a statement that such institution is required to process the documents required to obtain a loan under part B of subchapter IV from any eligible lender the student selects; and

(ii) arrangements or agreements with respect to loans under part C of subchapter IV; or

(iii) arrangements or agreements with respect to loans that originate through the auction pilot program under section 1099d(b) of this title.

(B) Private education loan disclosures

The term “private education loan disclosure” has the meaning given the term in section 1650 of title 15.

(ii) in the case of any loan issued or provided to a student under part C of subchapter IV, the Secretary; and

(iii) in the case of a private education loan, a private educational lender as defined in section 1650 of title 15; and

(B) includes any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

(7) Officer

The term “officer” includes a director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

(8) Preferred lender arrangement

The term “preferred lender arrangement”—

(A) means—

(i) in the case of a loan made, insured, or guaranteed under part B of subchapter IV, an eligible lender;

(ii) in the case of any loan issued or provided to a student under part C of subchapter IV, the Secretary; and

(iii) in the case of a private education loan, a private educational lender as defined in section 1650 of title 15; and

(B) includes any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

(9) Private education loan

The term “private education loan” has the meaning given the term in section 1650 of title 15.


§ 1019a. Responsibilities of covered institutions, institution-affiliated organizations, and lenders

(a) Responsibilities of covered institutions and institution-affiliated organizations

(1) Disclosures by covered institutions and institution-affiliated organizations

(A) Preferred lender arrangement disclosures

In addition to the disclosures required by subsections (a)(27) and (h) of section 1094 of this title (if applicable), a covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement shall disclose—

(i) on such covered institution’s or institution-affiliated organization’s website and in all informational materials described in subparagraph (C) that describe or discuss education loans—

(I) the maximum amount of Federal grant and loan aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 available to students, in an easy to understand format; and

(II) the information required to be disclosed pursuant to section 1019(b)(2)(A)(ii) of this title, for each type of loan described in section 1019(k)(3)(A) of this title that is offered pursuant to a preferred lender arrangement of the institution or organization to students of the institution or the families of such students; and

(III) a statement that such institution is required to process the documents required to obtain a loan under part B of subchapter IV from any eligible lender the student selects; and

(ii) arrangements or agreements with respect to loans under part C of subchapter IV; or

(iii) arrangements or agreements with respect to loans that originate through the auction pilot program under section 1099d(b) of this title.

(B) Private education loan disclosures

The term “private education loan disclosure” has the meaning given the term in section 1650 of title 15.

(ii) in the case of any loan issued or provided to a student under part C of subchapter IV, the Secretary; and

(iii) in the case of a private education loan, a private educational lender as defined in section 1650 of title 15; and

(B) includes any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

(7) Officer

The term “officer” includes a director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

(8) Preferred lender arrangement

The term “preferred lender arrangement”—

(A) means—

(i) in the case of a loan made, insured, or guaranteed under part B of subchapter IV, an eligible lender;

(ii) in the case of any loan issued or provided to a student under part C of subchapter IV, the Secretary; and

(iii) in the case of a private education loan, a private educational lender as defined in section 1650 of title 15; and

(B) includes any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

(9) Private education loan

The term “private education loan” has the meaning given the term in section 1650 of title 15.


§ 1019a. Responsibilities of covered institutions, institution-affiliated organizations, and lenders

(a) Responsibilities of covered institutions and institution-affiliated organizations

(1) Disclosures by covered institutions and institution-affiliated organizations

(A) Preferred lender arrangement disclosures

In addition to the disclosures required by subsections (a)(27) and (h) of section 1094 of this title (if applicable), a covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement shall disclose—

(i) on such covered institution’s or institution-affiliated organization’s website and in all informational materials described in subparagraph (C) that describe or discuss education loans—

(I) the maximum amount of Federal grant and loan aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 available to students, in an easy to understand format; and

(II) the information required to be disclosed pursuant to section 1019(b)(2)(A)(ii) of this title, for each type of loan described in section 1019(k)(3)(A) of this title that is offered pursuant to a preferred lender arrangement of the institution or organization to students of the institution or the families of such students; and

(III) a statement that such institution is required to process the documents required to obtain a loan under part B of subchapter IV from any eligible lender the student selects; and

(ii) arrangements or agreements with respect to loans under part C of subchapter IV; or

(iii) arrangements or agreements with respect to loans that originate through the auction pilot program under section 1099d(b) of this title.

(B) Private education loan disclosures

A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower shall—

(i) provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 1638(e)(11) of title 15, for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(ii) inform the prospective borrower that—

(I) the prospective borrower may qualify for loans or other assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(II) the terms and conditions of loans made, insured, or guaranteed under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 may
be more favorable than the provisions of private education loans; and

(iii) ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding loans that are made, insured, or guaranteed under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(C) Informational materials

The informational materials described in this subparagraph are publications, mailings, or electronic messages or materials that—

(i) are distributed to prospective or current students of a covered institution and families of such students; and

(ii) describe or discuss the financial aid opportunities available to students at an institution of higher education.

(2) Use of institution name

A covered institution, or an institution-affiliated organization of such covered institution, that enters into a preferred lender arrangement with a lender regarding private education loans shall not agree to the lender’s use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender.

(3) Use of lender name

A covered institution, or an institution-affiliated organization of such covered institution, that enters into a preferred lender arrangement with a lender regarding private education loans shall ensure that the name of the lender is displayed in all information and documentation related to such loans.

(b) Lender responsibilities

(1) Disclosures by lenders

(A) Disclosures to borrowers

(i) Federal education loans

For each education loan that is made, insured, or guaranteed under part B or C of subchapter IV (other than a loan made under section 1078–3 of this title or a Federal Direct Consolidation Loan), at or prior to the time the lender disburse such loan, the lender shall provide the prospective borrower or borrower, in writing (including through electronic means), with the disclosures described in subsections (a) and (c) of section 1083 of this title.

(ii) Private education loans

For each of a lender’s private education loans, the lender shall comply with the disclosure requirements under section 1638(e) of title 15.

(B) Disclosures to the Secretary

(i) In general

Each lender of a loan made, insured, or guaranteed under part B of subchapter IV shall, on an annual basis, report to the Secretary—

(I) any reasonable expenses paid or provided under section 1085(d)(5)(D) of this title or paragraph (3)(B) or (7) of section 1084(e) of this title to any agent of a covered institution who—

(aa) is employed in the financial aid office of a covered institution; or

(bb) otherwise has responsibilities with respect to education loans or other financial aid of the institution; and

(ii) any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in the practice of recommending, promoting, or endorsing education loans.

(ii) Contents of reports

Each report described in clause (i) shall include—

(I) the amount for each specific instance in which the lender provided such expenses;

(II) the name of any agent described in clause (i) to whom the expenses were paid or provided;

(III) the dates of the activity for which the expenses were paid or provided; and

(IV) a brief description of the activity for which the expenses were paid or provided.

(iii) Report to Congress

The Secretary shall summarize the information received from the lenders under this subparagraph in a report and transmit such report annually to the authorizing committees.

(2) Certification by lenders

Not later than 18 months after August 14, 2008—

(A) in addition to any other disclosure required under Federal law, each lender of a loan made, insured, or guaranteed under part B of subchapter IV that participates in one or more preferred lender arrangements shall annually certify the lender’s compliance with the requirements of this chapter and part C of subchapter I of chapter 34 of title 42; and

(B) if an audit of a lender is required pursuant to section 1078(b)(1)(U)(iii) of this title, the lender’s compliance with the requirements under this section shall be reported on and attested to annually by the auditor of such lender.

§ 1019b. Loan information to be disclosed and model disclosure form for covered institutions, institution-affiliated organizations, and lenders participating in preferred lender arrangements

(a) Duties of the Secretary

(1) Determination of minimum disclosures

(A) In general

Not later than 18 months after August 14, 2008, the Secretary, in coordination with the
Board of Governors of the Federal Reserve System, shall determine the minimum information that lenders, covered institutions, and institution-affiliated organizations of such covered institutions participating in preferred lender arrangements shall make available regarding education loans described in section 1019(3)(A) of this title that are offered to students and the families of such students.

**(B) Consultation and content of minimum disclosures**

In carrying out subparagraph (A), the Secretary shall—

(i) consult with students, the families of such students, representatives of covered institutions (including financial aid administrators, admission officers, and business officers), representatives of institution-affiliated organizations, secondary school guidance counselors, lenders, loan servicers, and guaranty agencies;

(ii) include, in the minimum information under subparagraph (A) that is required to be made available, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 1638(e)(1) of title 15, modified as necessary to apply to such loans; and

(iii) consider the merits of requiring each covered institution, and each institution-affiliated organization of such covered institution, with a preferred lender arrangement to provide to prospective borrowers and the families of such borrowers the following information for each type of education loan offered pursuant to such preferred lender arrangement:

(I) The interest rate and terms and conditions of the loan for the next award year, including loan forgiveness and deferment.

(II) Information on any charges, such as origination and Federal default fees, that are payable on the loan, and whether those charges will be—

(aa) collected by the lender at or prior to the disbursement of the loan, in including whether the charges will be deducted from the proceeds of the loan or paid separately by the borrower; or

(bb) paid in whole or in part by the lender.

(III) The annual and aggregate maximum amounts that may be borrowed.

(V) The average amount borrowed from the lender by students who graduated from such institution in the preceding year with certificates, undergraduate degrees, graduate degrees, and professional degrees, as applicable, and who obtained loans of such type from the lender for the preceding year.

(V) The amount the borrower may pay in interest, based on a standard repayment plan and the average amount borrowed from the lender by students who graduated from such institution in the preceding year and who obtained loans of such type from the lender for the preceding year, for—

(aa) borrowers of loans made under section 1078 of this title;

(bb) borrowers of loans made under section 1078–2 or 1078–8 of this title, who pay the interest while in school; and

(cc) borrowers of loans made under section 1078–2 or 1078–8 of this title, who do not pay the interest while in school.

(VI) The consequences for the borrower of defaulting on a loan, including limitations on the discharge of an education loan in bankruptcy.

(VII) Contact information for the lender.

(VIII) Other information suggested by the persons and entities with whom the Secretary has consulted under clause (i).

**(2) Required disclosures**

After making the determinations under paragraph (1), the Secretary, in coordination with the Board of Governors of the Federal Reserve System and after consultation with the public, shall—

(A)(i) provide that the information determined under paragraph (1) shall be disclosed by covered institutions, and institution-affiliated organizations of such covered institutions, with preferred lender arrangements to prospective borrowers and the families of such borrowers regarding the education loans described in section 1019(3)(A) of this title that are offered pursuant to such preferred lender arrangements; and

(ii) make clear that such covered institutions and institution-affiliated organizations may provide the required information on a form designed by the institution or organization instead of the model disclosure form described in subparagraph (B);

(B) develop a model disclosure form that may be used by covered institutions, institution-affiliated organizations, and preferred lenders that includes all of the information required under subparagraph (A)(i) in a format that—

(i) is easily usable by students, families, institutions, institution-affiliated organizations, lenders, loan servicers, and guaranty agencies; and

(ii) is similar in format to the form developed by the Board of Governors of the Federal Reserve System under paragraphs (1) and (5)(A) of section 1638(e)1 of title 15, in order to permit students and the families of students to easily compare private education loans and education loans described in section 1019(3)(A) of this title; and

(C) update such model disclosure form periodically, as necessary.

**(b) Duties of lenders**

Each lender that has a preferred lender arrangement with a covered institution, or an institution-affiliated organization of such covered institution, with respect to education loans de-
scribed in section 1019(3)(A) of this title shall annually, by a date determined by the Secretary, provide to such covered institution or such institution-affiliated organization, and to the Secretary, the information the Secretary requires pursuant to subsection (a)(2)(A)(i) for each type of education loan described in section 1019(3)(A) of this title that the lender plans to offer pursuant to such preferred lender arrangement to students attending such covered institution, or to the families of such students, for the next award year.

(c) Duties of covered institutions and institution-affiliated organizations

(1) Providing information to students and families

(A) In general

Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement shall provide the following information to students attending such institution, or the families of such students, as applicable:

(i) The information the Secretary requires pursuant to subsection (a)(2)(A)(i), for each type of education loan described in section 1019(3)(A) of this title offered pursuant to a preferred lender arrangement to students of such institution or the families of such students.

(ii) The information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 1638(e)(11) of title 15, for each type of private education loan offered pursuant to such preferred lender arrangement to students of such institution, or the families of such students.

(B) Comply with the code of conduct requirements of subparagraphs (A) through (C) of section 1094(a)(25) of this title.

(2) Annual report

Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement, shall—

(A) prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender with which such covered institution or organization—

(i) the information described in clauses (i) and (ii) of paragraph (1)(A); and

(ii) a detailed explanation of why such covered institution or institution-affiliated organization entered into a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and

(B) ensure that the report required under subparagraph (A) is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

(3) Code of conduct

(A) In general

Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement, shall comply with the code of conduct requirements of subparagraphs (A) through (C) of section 1094(a)(25) of this title.

(B) Applicable code of conduct

For purposes of subparagraph (A), an institution-affiliated organization of a covered institution shall—

(i) comply with the code of conduct developed and published by such covered institution under subparagraphs (A) and (B) of section 1094(a)(25) of this title;

(ii) if such institution-affiliated organization has a website, publish such code of conduct prominently on the website; and

(iii) administer and enforce such code of conduct by, at a minimum, requiring that all of such organization’s agents with responsibilities with respect to education loans be annually informed of the provisions of such code of conduct.


References in Text

Section 1638(e) of title 15, referred to in subsec. (a)(2)(B)(ii), was in the original “section 128(e)”, and was translated as meaning section 128(e) of Pub. L. 90–321, which is classified to section 1638(e) of title 15, to reflect the probable intent of Congress.

Amendments


Effective Date of 2009 Amendment

§ 1019c. Loan information to be disclosed and model disclosure form for institutions participating in the William D. Ford Direct Loan Program

(a) Provision of disclosures to institutions by the Secretary

Not later than 180 days after the development of the model disclosure form under section 1019b(a)(2)(B) of this title, the Secretary shall provide each institution of higher education participating in the William D. Ford Direct Loan Program under part C of subchapter IV with a completed model disclosure form including the same information for Federal Direct Stafford Loans, Federal Direct Unsubsidized Stafford Loans, and Federal Direct PLUS loans made to, or on behalf of, students attending each such institution as is required on such form for loans described in section 1019(3)(A) of this title.

(b) Duties of institutions

(1) In general

Each institution of higher education participating in the William D. Ford Direct Loan Program under part C of subchapter IV shall—

(A) make the information the Secretary provides to the institution under subsection (a) available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(B) if the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information the Secretary provides to the institution under subsection (a).

(2) Choice of forms

In providing the information required under paragraph (1), an institution of higher education may use a comparable form designed by the institution instead of the model disclosure form developed under section 1019b(a)(2)(B) of this title.

(b) Limit on liability

Nothing in this section shall be construed to create a private right of action against an institution of higher education with respect to the form developed under subsection (a).


AMENDMENTS

2009—Subsec. (a)(4). Pub. L. 111–39 added par. (4) and struck out former par. (4) which read as follows: “include a place to provide information on—

“(A) the applicant’s cost of attendance at the institution of higher education, as determined by the institution under Part E of subchapter IV; 

“(B) the applicant’s expected family contribution, as determined under Part E of subchapter IV, as applicable, for students who have completed the Free Application for Federal Student Aid; and

“(C) the applicant’s estimated financial assistance, as determined by the institution, in accordance with subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as applicable; and

“(D) the difference between the amounts under subparagraphs (A) and (B), as applicable; and

“(E) the sum of the amounts under subparagraphs (B) and (D), as applicable.”.

§ 1019d. Self-certification form for private education loans

(a) In general

The Secretary, in consultation with the Board of Governors of the Federal Reserve System, shall develop the self-certification form for private education loans that shall be used to satisfy the requirements of section 1638(e)(3) of title 15. Such form shall—

(1) be developed in a standardized format;

(2) be made available to the applicant by the relevant institution of higher education, in written or electronic form, upon request of the applicant;

(3) contain only disclosures that—

(A) the applicant may qualify for Federal student financial assistance through a program under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or State or institutional student financial assistance, in place of, or in addition to, a private education loan;

(B) the applicant is encouraged to discuss the availability of Federal, State, and institutional student financial assistance with financial aid officials at the applicant’s institution of higher education;

(C) a private education loan may affect the applicant’s eligibility for free or low-cost Federal, State or institutional student financial assistance; and

(D) the information that the applicant is required to provide on the form is available from officials at the financial aid office of the institution of higher education;

(4) include a place to provide information on—

(A) the applicant’s cost of attendance at the institution of higher education, as determined by the institution under part E of subchapter IV;

(B) the applicant’s estimated financial assistance, including amounts of financial assistance used to replace the expected family contribution, as determined by the institution, in accordance with subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, for students who have completed the Free Application for Federal Student Aid; and

(C) the difference between the amounts under subparagraphs (A) and (B), as applicable; and

(5) include a place for the applicant’s signature, in written or electronic form.

(b) Limit on liability

Nothing in this section shall be construed to create a private right of action against an institution of higher education with respect to the form developed under subsection (a).


AMENDMENTS

2009—Subsec. (a)(4). Pub. L. 111–39 added par. (4) and struck out former par. (4) which read as follows: “include a place to provide information on—

“(A) the applicant’s cost of attendance at the institution of higher education, as determined by the institution under Part E of subchapter IV; 

“(B) the applicant’s expected family contribution, as determined under Part E of subchapter IV, as applicable, for students who have completed the free application for Federal student aid; 

“(C) the applicant’s estimated financial assistance, as determined by the institution, in accordance with subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as applicable; and

“(D) the difference between the amounts under subparagraphs (A) and (C), as applicable; and

“(E) the sum of the amounts under subparagraphs (B) and (D), as applicable.”.

EFFECTIVE DATE OF 2009 AMENDMENT

SUBCHAPTER II—TEACHER QUALITY ENHANCEMENT

CODIFICATION


PRIOR PROVISIONS


§ 1021. Definitions

In this subchapter:

(1) Arts and sciences

The term “arts and sciences” means—

(A) when referring to an organizational unit of an institution of higher education, any academic unit that offers one or more academic majors in disciplines or content areas corresponding to the academic subject matter areas in which teachers provide instruction; and

(B) when referring to a specific academic subject area, the disciplines or content areas in which academic majors are offered by the arts and sciences organizational unit.

(2) Children from low-income families

The term “children from low-income families” means children described in section 6333(c)(1)(A) of this title.

(3) Core academic subjects

The term “core academic subjects” has the meaning given the term in section 7801 of this title.

(4) Early childhood educator

The term “early childhood educator” means an individual with primary responsibility for the education of children in an early childhood education program.

(5) Educational service agency

The term “educational service agency” has the meaning given the term in section 7801 of this title.

(6) Eligible partnership

Except as otherwise provided in section 1034 of this title, the term “eligible partnership” means an entity that—

(A) shall include—

(i) a high-need local educational agency;

(ii) a high-need school or a consortium of high-need schools served by the high-need local educational agency; or

(II) as applicable, a high-need early childhood education program;

(iii) a partner institution;

(iv) a school, department, or program of education within such partner institution, which may include an existing teacher professional development program with proven outcomes within a four-year institution of higher education that provides intensive and sustained collaboration between faculty and local educational agencies consistent with the requirements of this subchapter; and

(v) a school or department of arts and sciences within such partner institution; and

(B) may include any of the following:

(i) The Governor of the State.

(ii) The State educational agency.

(iii) The State board of education.

(iv) The State agency for higher education.

(v) A business.

(vi) A public or private nonprofit educational organization.

(vii) An educational service agency.

(viii) A teacher organization.

(ix) A high-performing local educational agency, or a consortium of such local educational agencies, that can serve as a resource to the partnership.

(x) A charter school (as defined in section 7221i of this title).

(xi) A school or department within the partner institution that focuses on psychology and human development.

(xii) A school or department within the partner institution with comparable expertise in the disciplines of teaching, learning, and child and adolescent development.

(xiii) An entity operating a program that provides alternative routes to State certification of teachers.

(7) Essential components of reading instruction

The term “essential components of reading instruction” has the meaning given the term in section 6368 of this title.

(8) Exemplary teacher

The term “exemplary teacher” has the meaning given the term in section 7801 of this title.

(9) High-need early childhood education program

The term “high-need early childhood education program” means an early childhood education program serving children from low-income families that is located within the geographic area served by a high-need local educational agency.

(10) High-need local educational agency

The term “high-need local educational agency” means a local educational agency—

(A) for which not less than 20 percent of the children served by the agency are children from low-income families;

(ii) that serves not fewer than 10,000 children from low-income families;

(iii) that meets the eligibility requirements for funding under the Small, Rural
§ 1021

(11) High-need school

(A) In general

The term “high-need school” means a school that, based on the most recent data available, meets one or both of the following:

(i) The school is in the highest quartile of schools in a ranking of all schools served by a local educational agency, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the local educational agency based on one of the following measures of poverty:

   (I) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

   (II) The percentage of students eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

   (III) The percentage of students receiving assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

   (IV) The percentage of students eligible to receive medical assistance under the Medicaid program.

   (V) A composite of two or more of the measures described in subclauses (I) through (IV).

(ii) In the case of—

   (I) an elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; or

   (II) any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act.

(B) Special rule

(i) Designation by the Secretary

The Secretary may, upon approval of an application submitted by an eligible partnership seeking a grant under this subchapter, designate a school that does not qualify as a high-need school for the purpose of this subchapter. The Secretary shall base the approval of an application for designation of a school under this clause on a consideration of the information required under clause (ii), and may also take into account other information submitted by the eligible partnership.

(ii) Application requirements

An application for designation of a school under clause (i) shall include—

(I) the number and percentage of students attending such school who are—

   (aa) aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary;

   (bb) eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act;

   (cc) in families receiving assistance under the State program funded under part A of title IV of the Social Security Act; or

   (dd) eligible to receive medical assistance under the Medicaid program;

   (II) information about the student academic achievement of students at such school; and

   (III) for a secondary school, the graduation rate for such school.

(12) Highly competent

The term “highly competent”, when used with respect to an early childhood educator, means an educator—

(A) with specialized education and training in development and education of young children from birth until entry into kindergarten;

(B) Periodic, structured time for collaboration with teachers in the same department or field, including mentor teachers, as well as time for information-sharing among teachers, principals, administrators, other appropriate instructional staff, and participating faculty in the partner institution.

(13) Highly qualified

The term “highly qualified” has the meaning given such term in section 7801 of this title and, with respect to special education teachers, in section 1401 of this title.

(14) Induction program

The term “induction program” means a formalized program for new teachers during not less than the teachers’ first two years of teaching that is designed to provide support for, and improve the professional performance and advance the retention in the teaching field of, beginning teachers. Such program shall promote effective teaching skills and shall include the following components:

(A) High-quality teacher mentoring.

(B) Periodic, structured time for collaboration with teachers in the same department or field, including mentor teachers, as well as time for information-sharing among teachers, principals, administrators, other appropriate instructional staff, and participating faculty in the partner institution.
(C) The application of empirically-based practice and scientifically valid research on instructional practices.

(D) Opportunities for new teachers to draw directly on the expertise of teacher mentors, faculty, and researchers to support the integration of empirically-based practice and scientifically valid research with practice.

(E) The development of skills in instructional and behavioral interventions derived from empirically-based practice and, where applicable, scientifically valid research.

(F) Faculty who—
   (i) model the integration of research and practice in the classroom; and
   (ii) assist new teachers with the effective use and integration of technology in the classroom.

(G) Interdisciplinary collaboration among exemplary teachers, faculty, researchers, and other staff who prepare new teachers with respect to the learning process and the assessment of learning.

(H) Assistance with the understanding of data, particularly student achievement data, and the applicability of such data in classroom instruction.

(I) Regular and structured observation and evaluation of new teachers by multiple evaluators, using valid and reliable measures of teaching skills.

(15) Limited English proficient

The term “limited English proficient” has the meaning given the term in section 7801 of this title.

(16) Parent

The term “parent” has the meaning given the term in section 7801 of this title.

(17) Partner institution

The term “partner institution” means an institution of higher education, which may include a two-year institution of higher education offering a dual program with a four-year institution of higher education, participating in an eligible partnership that has a teacher preparation program—

(A) whose graduates exhibit strong performance on State-determined qualifying assessments for new teachers through—
   (i) demonstrating that 80 percent or more of the graduates of the program who intend to enter the field of teaching have passed all of the applicable State qualification assessments for new teachers, which shall include an assessment of each prospective teacher’s subject matter knowledge in the content area in which the teacher intends to teach; or
   (ii) being ranked among the highest-performing teacher preparation programs in the State as determined by the State—
      (I) using criteria consistent with the requirements for the State report card under section 1022d(b) of this title before the first publication of such report card; and
      (II) using the State report card on teacher preparation required under section 1022d(b) of this title, after the first publication of such report card and for every year thereafter; and

(B) that requires—
   (i) each student in the program to meet high academic standards or demonstrate a record of success, as determined by the institution (including prior to entering and being accepted into a program), and participate in intensive clinical experience:
      (ii) each student in the program preparing to become a teacher to become highly qualified; and
      (iii) each student in the program preparing to become an early childhood educator to meet degree requirements, as established by the State, and become highly competent.

(18) Principles of scientific research

The term “principles of scientific research” means principles of research that—

(A) apply rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to education activities and programs;

(B) present findings and make claims that are appropriate to, and supported by, the methods that have been employed; and

(C) include, appropriate to the research being conducted—
   (i) use of systematic, empirical methods that draw on observation or experiment;
   (ii) use of data analyses that are adequate to support the general findings;
   (iii) reliance on measurements or observational methods that provide reliable and generalizable findings;
   (iv) strong claims of causal relationships, only with research designs that eliminate plausible competing explanations for observed results, such as, but not limited to, random-assignment experiments;
   (v) presentation of studies and methods in sufficient detail and clarity to allow for replication or, at a minimum, to offer the opportunity to build systematically on the findings of the research;
   (vi) acceptance by a peer-reviewed journal or critique by a panel of independent experts through a comparably rigorous, objective, and scientific review; and
   (vii) consistency of findings across multiple studies or sites to support the generalizability of results and conclusions.

(19) Professional development

The term “professional development” has the meaning given the term in section 7801 of this title.

(20) Scientifically valid research

The term “scientifically valid research” includes applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

(21) Teacher mentoring

The term “teacher mentoring” means the mentoring of new or prospective teachers through a program that—
(A) includes clear criteria for the selection of teacher mentors who will provide role model relationships for mentees, which criteria shall be developed by the eligible partnership and based on measures of teacher effectiveness;

(B) provides high-quality training for such mentors, including instructional strategies for literacy instruction and classroom management (including approaches that improve the schoolwide climate for learning, which may include positive behavioral interventions and supports);

(C) provides regular and ongoing opportunities for mentors and mentees to observe each other’s teaching methods in classroom settings during the day in a high-need school in the high-need local educational agency in the eligible partnership;

(D) provides paid release time for mentors, as applicable;

(E) provides mentoring to each mentee by a colleague who teaches in the same field, grade, or subject as the mentee;

(F) promotes empirically-based practice of, and scientifically valid research on, where applicable—

(i) teaching and learning;

(ii) assessment of student learning;

(iii) the development of teaching skills through the use of instructional and behavioral interventions; and

(iv) the improvement of the mentees’ capacity to measurably advance student learning; and

(G) includes—

(i) common planning time or regularly scheduled collaboration for the mentor and mentee; and

(ii) joint professional development opportunities.

(22) Teaching residency program

The term “teaching residency program” means a school-based teacher preparation program in which a prospective teacher—

(A) for one academic year, teaches alongside a mentor teacher, who is the teacher of record;

(B) receives concurrent instruction during the year described in subparagraph (A) from the partner institution, which courses may be taught by local educational agency personnel or residency program faculty, in the teaching of the content area in which the teacher will become certified or licensed;

(C) acquires effective teaching skills; and

(D) prior to completion of the program—

(i) attains full State certification or licensure and becomes highly qualified; and

(ii) acquires a master’s degree not later than 18 months after beginning the program.

(23) Teaching skills

The term “teaching skills” means skills that enable a teacher to—

(A) increase student learning, achievement, and the ability to apply knowledge;

(B) effectively convey and explain academic subject matter;

(C) effectively teach higher-order analytical, evaluation, problem-solving, and communication skills;

(D) employ strategies grounded in the disciplines of teaching and learning that—

(i) are based on empirically-based practice and scientifically valid research, where applicable, related to teaching and learning;

(ii) are specific to academic subject matter; and

(iii) focus on the identification of students’ specific learning needs, particularly students with disabilities, students who are limited English proficient, students who are gifted and talented, and students with low literacy levels, and the tailoring of academic instruction to such needs;

(E) conduct an ongoing assessment of student learning, which may include the use of formative assessments, performance-based assessments, project-based assessments, or portfolio assessments, that measures higher-order thinking skills (including application, analysis, synthesis, and evaluation);

(F) effectively manage a classroom, including the ability to implement positive behavioral interventions and support strategies;

(G) communicate and work with parents, and involve parents in their children’s education; and

(H) use, in the case of an early childhood educator, age-appropriate and developmentally appropriate strategies and practices for children in early childhood education programs.


References in Text


Prior Provisions


PART A—TEACHER QUALITY PARTNERSHIP GRANTS

PRIORITY PROVISIONS


§ 1022. Purposes

The purposes of this part are to—

1. improve student achievement;
2. improve the quality of prospective and new teachers by improving the preparation of prospective teachers and enhancing professional development activities for new teachers;
3. hold teacher preparation programs at institutions of higher education accountable for preparing highly qualified teachers; and
4. recruit highly qualified individuals, including minorities and individuals from other occupations, into the teaching force.


PRIORITY PROVISIONS


A prior section 201 of Pub. L. 89–329 was classified to section 1021 of this title, prior to repeal by Pub. L. 104–208.

Another prior section 201 of Pub. L. 89–329 was classified to section 1021 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

Another prior section 201 of Pub. L. 89–329 was classified to section 1021 of this title, prior to repeal by Pub. L. 92–318.

§ 1022a. Partnership grants

(a) Program authorized

From amounts made available under section 1022h of this title, the Secretary is authorized to award grants, on a competitive basis, to eligible partnerships, to enable the eligible partnerships to carry out the activities described in subsection (c).

(b) Application

Each eligible partnership desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall contain—

1. a needs assessment of the partners in the eligible partnership with respect to the preparation, ongoing training, professional development, and retention of general education and special education teachers, principals, and, as applicable, early childhood educators;
2. a description of the extent to which the program to be carried out with grant funds will prepare prospective and new teachers with strong teaching skills;
3. a description of how such program will prepare prospective and new teachers to understand and use research and data to modify and improve classroom instruction;
4. a description of—
   (A) how the eligible partnership will coordinate strategies and activities assisted under the grant with other teacher preparation or professional development programs, including programs funded under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] and the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], and through the National Science Foundation; and
   (B) how the activities of the partnership will be consistent with State, local, and other education reform activities that promote teacher quality and student academic achievement;
5. an assessment that describes the resources available to the eligible partnership, including—
   (A) the integration of funds from other related sources; and
   (B) the intended use of the grant funds; and

AMENDMENTS

2009—Par. (22)(D), Pub. L. 111–39 added subpar. (D) and struck out former subpar. (D) which read as follows: "prior to completion of the program, earns a master's degree, attains full State teacher certification or license, and becomes highly qualified."

EFFECTIVE DATE OF 2009 AMENDMENT


Another prior section 1021 of Pub. L. 89–329 was classified to section 1021 of this title, prior to repeal by Pub. L. 104–208.

Another prior section 201 of Pub. L. 89–329 was classified to section 1021 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

Another prior section 201 of Pub. L. 89–329 was classified to section 1021 of this title, prior to repeal by Pub. L. 92–318.
§ 1022a

Disabilities Education Act [20 U.S.C. section 614(d)(1)(B) of the Individuals with Disabilities Education Act] to participate as a member of individual education program teams, as defined in federal education law, to teach students with disabilities, including training related to effective teaching methods and strategies for students with disabilities.

(6) a description of—
(A) how the eligible partnership will meet the purposes of this part;
(B) how the partnership will carry out the activities required under subsection (d) or (e), based on the needs identified in paragraph (1), with the goal of improving student academic achievement;
(C) if the partnership chooses to use funds under this section for a project or activities under subsection (f) or (g), how the partnership will carry out such project or required activities based on the needs identified in paragraph (1), with the goal of improving student academic achievement;
(D) the partnership’s evaluation plan under section 1022c(a) of this title;
(E) how the partnership will align the teacher preparation program under subsection (c) with the—
(i) State early learning standards for early childhood education programs, as appropriate, and with the relevant domains of early childhood development;
(ii) student academic achievement standards and academic content standards under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311(b)(1)], established by the State in which the partnership is located;
(F) how the partnership will prepare general education teachers to teach students with disabilities, including training related to participation as a member of individualized education program teams, as defined in section 614(d)(1)(B) of the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)(1)(B)];
(G) how the partnership will prepare general education and special education teachers to teach students who are limited English proficient;
(H) how faculty at the partner institution will work, during the term of the grant, with highly qualified teachers in the classrooms of high-need schools served by the high-need local educational agency in the partnership to—
(i) provide high-quality professional development activities to strengthen the content knowledge and teaching skills of elementary school and secondary school teachers; and
(ii) train other classroom teachers to implement literacy programs that incorporate the essential components of reading instruction;
(I) the partnership will design, implement, or enhance a year-long and rigorous teaching preservice clinical program component;
(J) how the partnership will support in-service professional development strategies and activities; and
(K) how the partnership will collect, analyze, and use data on the retention of all teachers and early childhood educators in schools and early childhood education programs located in the geographic area served by the partnership to evaluate the effectiveness of the partnership's teacher and educator support system; and
(7) with respect to the induction program required as part of the activities carried out under this section—
(A) a demonstration that the schools and departments within the institution of higher education that are part of the induction program will effectively prepare teachers, including providing content expertise and expertise in teaching, as appropriate;
(B) a demonstration of the eligible partnership’s capability and commitment to, and the accessibility to and involvement of faculty in, the use of empirically-based practice and scientifically valid research on teaching and learning;
(C) a description of how the teacher preparation program will design and implement an induction program to support, through not less than the first two years of teaching, all new teachers who are prepared by the teacher preparation program in the partnership and who teach in the high-need local educational agency in the partnership, and, to the extent practicable, all new teachers who teach in such high-need local educational agency, in the further development of the new teachers’ teaching skills, including the use of mentors who are trained and compensated by such program for the mentors’ work with new teachers; and
(D) a description of how faculty involved in the induction program will be able to substantially participate in an early childhood education program or an elementary school or secondary school classroom setting, as applicable, including release time and receiving workload credit for such participation.

(c) Use of grant funds

An eligible partnership that receives a grant under this section—
(1) shall use grant funds to carry out a program for the preparation of teachers under subsection (d), a teaching residency program under subsection (e), or a combination of such programs; and
(2) may use grant funds to carry out a leadership development program under subsection (f).

(d) Partnership grants for the preparation of teachers

An eligible partnership that receives a grant to carry out a program for the preparation of teachers shall carry out an effective pre-baccalaureate teacher preparation program or a 5th year initial licensing program that includes all of the following:

(1) Reforms
(A) In general
Implementing reforms, described in subparagraph (B), within each teacher prepara-
tion program and, as applicable, each preparation program for early childhood education programs, of the eligible partnership that is assisted under this section, to hold each program accountable for—

(i) preparing—

(I) new or prospective teachers to be highly qualified (including teachers in rural school districts who may teach multiple subjects, special educators, and teachers of students who are limited English proficient who may teach multiple subjects);

(II) such teachers and, as applicable, early childhood educators, to understand empirically-based practice and scientifically valid research related to teaching and learning and the applicability of such practice and research, including through the effective use of technology, instructional techniques, and strategies consistent with the principles of universal design for learning, and through positive behavioral interventions and support strategies to improve student achievement; and

(III) as applicable, early childhood educators to be highly competent; and

(ii) promoting strong teaching skills and, as applicable, techniques for early childhood educators to improve children’s cognitive, social, emotional, and physical development.

(B) Required reforms

The reforms described in subparagraph (A) shall include—

(i) implementing teacher preparation program curriculum changes that improve, evaluate, and assess how well all prospective and new teachers develop teaching skills;

(ii) using empirically-based practice and scientifically valid research, where applicable, about teaching and learning so that all prospective teachers and, as applicable, early childhood educators—

(I) understand and can implement research-based teaching practices in classroom instruction;

(II) have knowledge of student learning methods;

(III) possess skills to analyze student academic achievement data and other measures of student learning, and use such data and measures to improve classroom instruction;

(IV) possess teaching skills and an understanding of effective instructional strategies across all applicable content areas that enable general education and special education teachers and early childhood educators to—

(aa) meet the specific learning needs of all students, including students with disabilities, students who are limited English proficient, students who are gifted and talented, students with low literacy levels and, as applicable, children in early childhood education programs; and

(bb) differentiate instruction for such students;

(V) can effectively participate as a member of the individualized education program team, as defined in section 614(d)(1)(B) of the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)(1)(B)]; and

(VI) can successfully employ effective strategies for reading instruction using the essential components of reading instruction;

(iii) ensuring collaboration with departments, programs, or units of a partner institution outside of the teacher preparation program in all academic content areas to ensure that prospective teachers receive training in both teaching and relevant content areas in order to become highly qualified, which may include training in multiple subjects to teach multiple grade levels as may be needed for individuals preparing to teach in rural communities and for individuals preparing to teach students with disabilities as described in section 602(10)(D) of the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)(1)(B)];

(iv) developing and implementing an induction program;

(v) developing admissions goals and priorities aligned with the hiring objectives of the high-need local educational agency in the eligible partnership; and

(vi) implementing program and curriculum changes, as applicable, to ensure that prospective teachers have the requisite content knowledge, preparation, and degree to teach Advanced Placement or International Baccalaureate courses successfully.

(2) Clinical experience and interaction

Developing and improving a sustained and high-quality preservice clinical education program to further develop the teaching skills of all prospective teachers and, as applicable, early childhood educators, involved in the program. Such program shall do the following:

(A) Incorporate year-long opportunities for enrichment, including—

(i) clinical learning in classrooms in high-need schools served by the high-need local educational agency in the eligible partnership, and identified by the eligible partnership; and

(ii) closely supervised interaction between prospective teachers and faculty, experienced teachers, principals, other administrators, and school leaders at early childhood education programs (as applicable), elementary schools, or secondary schools, and providing support for such interaction.

(B) Integrate pedagogy and classroom practice and promote effective teaching skills in academic content areas.

(C) Provide high-quality teacher mentoring.

(D) Be offered over the course of a program of teacher preparation.
(E) Be tightly aligned with course work (and may be developed as a fifth year of a teacher preparation program).

(F) Where feasible, allow prospective teachers to learn to teach in the same local educational agency in which the teachers will work, learning the instructional initiatives and curriculum of that local educational agency.

(G) As applicable, provide training and experience to enhance the teaching skills of prospective teachers to better prepare such teachers to meet the unique needs of teaching in rural or urban communities.

(H) Provide support and training for individuals participating in an activity for prospective or new teachers described in this paragraph or paragraph (1) or (3), and for individuals who serve as mentors for such teachers, based on each individual’s experience. Such support may include—

(i) with respect to a prospective teacher or a mentor, release time for such individual’s participation;

(ii) with respect to a faculty member, receiving course workload credit and compensation for time teaching in the eligible partnership’s activities; and

(iii) with respect to a mentor, a stipend, which may include bonus, differential, incentive, or performance pay, based on the mentor’s extra skills and responsibilities.

(3) Induction programs for new teachers

Creating an induction program for new teachers or, in the case of an early childhood education program, providing mentoring or coaching for new early childhood educators.

(4) Support and training for participants in early childhood education programs

In the case of an eligible partnership focusing on early childhood educator preparation, implementing initiatives that increase compensation for early childhood educators who attain associate or baccalaureate degrees in early childhood education.

(5) Teacher recruitment

Developing and implementing effective mechanisms (which may include alternative routes to State certification of teachers) to ensure that the eligible partnership is able to recruit qualified individuals to become highly qualified teachers through the activities of the eligible partnership, which may include an emphasis on recruiting into the teaching profession—

(A) individuals from underrepresented populations;

(B) individuals to teach in rural communities and teacher shortage areas, including mathematics, science, special education, and the instruction of limited English proficient students; and

(C) mid-career professionals from other occupations, former military personnel, and recent college graduates with a record of academic distinction.

(6) Literacy training

Strengthening the literacy teaching skills of prospective and, as applicable, new elementary school and secondary school teachers—

(A) to implement literacy programs that incorporate the essential components of reading instruction;

(B) to use screening, diagnostic, formative, and summative assessments to determine students’ literacy levels, difficulties, and growth in order to improve classroom instruction and improve student reading and writing skills;

(C) to provide individualized, intensive, and targeted literacy instruction for students with deficiencies in literacy skills; and

(D) to integrate literacy skills in the classroom across subject areas.

(e) Partnership grants for the establishment of teaching residency programs

(1) In general

An eligible partnership receiving a grant to carry out an effective teaching residency program shall carry out a program that includes all of the following activities:

(A) Supporting a teaching residency program described in paragraph (2) for high-need subjects and areas, as determined by the needs of the high-need local educational agency in the partnership;

(B) Placing graduates of the teaching residency program in cohorts that facilitate professional collaboration, both among graduates of the teaching residency program and between such graduates and mentor teachers in the receiving school;

(C) Ensuring that teaching residents who participate in the teaching residency program receive—

(i) effective preservice preparation as described in paragraph (2);

(ii) teacher mentoring;

(iii) support required through the induction program as the teaching residents enter the classroom as new teachers; and

(iv) the preparation described in subparagraphs (A), (B), and (C) of subsection (d)(2).

(2) Teaching residency programs

(A) Establishment and design

A teaching residency program under this paragraph shall be a program based upon models of successful teaching residencies that serves as a mechanism to prepare teachers for success in the high-need schools in the eligible partnership, and shall be designed to include the following characteristics of successful programs:

(i) The integration of pedagogy, classroom practice, and teacher mentoring.

(ii) Engagement of teaching residents in rigorous graduate-level course work leading to a master’s degree while undertaking a guided teaching apprenticeship.

(iii) Experience and learning opportunities alongside a trained and experienced mentor teacher—

(I) whose teaching shall complement the residency program so that classroom

1So in original. Probably should be followed by a hyphen.
clinical practice is tightly aligned with coursework;
(II) who shall have extra responsibilities as a teacher leader of the teaching residency program, as a mentor for residents, and as a teacher coach during the induction program for new teachers, and for establishing, within the program, a learning community in which all individuals are expected to continually improve their capacity to advance student learning; and
(III) who may be relieved from teaching duties as a result of such additional responsibilities.
(iv) The establishment of clear criteria for the selection of mentor teachers based on measures of teacher effectiveness and the appropriate subject area knowledge. Evaluation of teacher effectiveness shall be based on, but not limited to, observations of the following:
(I) Planning and preparation, including demonstrated knowledge of content, pedagogy, and assessment, including the use of formative and diagnostic assessments to improve student learning.
(II) Appropriate instruction that engages students with different learning styles.
(III) Collaboration with colleagues to improve instruction.
(IV) Analysis of gains in student learning, based on multiple measures that are valid and reliable and that, when feasible, may include valid, reliable, and objective measures of the influence of teachers on the rate of student academic progress.
(V) In the case of mentor candidates who will be mentoring new or prospective literacy and mathematics coaches or instructors, appropriate skills in the essential components of reading instruction, teacher training in literacy instructional strategies across core subject areas, and teacher training in mathematics instructional strategies, as appropriate.
(v) Grouping of teaching residents in cohorts to facilitate professional collaboration among such residents.
(vi) The development of admissions goals and priorities—
(I) that are aligned with the hiring objectives of the local educational agency partnering with the program, as well as the instructional initiatives and curriculum of such agency, in exchange for a commitment by such agency to hire qualified graduates from the teaching residency program; and
(II) which may include consideration of applicants who reflect the communities in which they will teach as well as consideration of individuals from underrepresented populations in the teaching profession.
(vii) Support for residents, once the teaching residents are hired as teachers of record, through an induction program, professional development, and networking opportunities to support the residents through not less than the residents' first two years of teaching.

(B) Selection of individuals as teacher residents
(i) Eligible individual
In order to be eligible to be a teacher resident in a teaching residency program under this paragraph, an individual shall—
(I) be a recent graduate of a four-year institution of higher education or a midcareer professional from outside the field of education possessing strong content knowledge or a record of professional accomplishment; and
(II) submit an application to the teaching residency program.
(ii) Selection criteria
An eligible partnership carrying out a teaching residency program under this subsection shall establish criteria for the selection of eligible individuals to participate in the teaching residency program based on the following characteristics:
(I) Strong content knowledge or record of accomplishment in the field or subject area to be taught.
(II) Strong verbal and written communication skills, which may be demonstrated by performance on appropriate tests.
(III) Other attributes linked to effective teaching, which may be determined by interviews or performance assessments, as specified by the eligible partnership.
(C) Stipends or salaries; applications; agreements; repayments
(i) Stipends or salaries
A teaching residency program under this subsection shall provide a one-year living stipend or salary to teaching residents during the teaching residency program.
(ii) Applications for stipends or salaries
Each teacher residency candidate desiring a stipend or salary during the period of residency shall submit an application to the eligible partnership at such time, and containing such information and assurances, as the eligible partnership may require.
(iii) Agreements to serve
Each application submitted under clause (ii) shall contain or be accompanied by an agreement that the applicant will—
(I) serve as a full-time teacher for a total of not less than three academic years immediately after successfully completing the teaching residency program;
(II) fulfill the requirement under subclause (I) by teaching in a high-need school served by the high-need local educational agency in the eligible partnership and teach a subject or area that is

designated as high need by the partnership;

(III) provide to the eligible partnership a certificate, from the chief administrative officer of the local educational agency in which the resident is employed, of the employment required in subclauses (I) and (II) at the beginning of, and upon completion of, each year or partial year of service;

(IV) meet the requirements to be a highly qualified teacher, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801], or section 602 of the Individuals with Disabilities Education Act [20 U.S.C. 1401], when the applicant begins to fulfill the service obligation under this clause; and

(V) comply with the requirements set by the eligible partnership under clause (iv) if the applicant is unable or unwilling to complete the service obligation required by this clause.

(iv) Repayments

(I) In general

A grantee carrying out a teaching residency program under this paragraph shall require a recipient to repay a stipend or salary under clause (i) who does not complete, or who notifies the partnership that the recipient intends not to complete, the service obligation required by clause (iii) to repay such stipend or salary to the eligible partnership, together with interest, at a rate specified by the partnership in the agreement, and in accordance with such other terms and conditions specified by the eligible partnership, as necessary.

(II) Other terms and conditions

Any other terms and conditions specified by the eligible partnership may include reasonable provisions for pro-rata repayment of the stipend or salary described in clause (i) or for deferral of a teaching resident’s service obligation required by clause (iii), on grounds of health, incapacitation, inability to secure employment in a school served by the eligible partnership, being called to active duty in the Armed Forces of the United States, or other extraordinary circumstances.

(III) Use of repayments

An eligible partnership shall use any repayment received under this clause to carry out additional activities that are consistent with the purposes of this subsection.

(f) Partnership grants for the development of leadership programs

(1) In general

An eligible partnership that receives a grant under this section may carry out an effective school leadership program, which may be carried out in partnership with a local educational agency located in a rural area and that shall include all of the following activities:

(A) Preparing individuals enrolled or preparing to enroll in school leadership programs for careers as superintendents, principals, early childhood education program directors, or other school leaders (including individuals preparing to work in local educational agencies located in rural areas who may perform multiple duties in addition to the role of a school leader).

(B) Promoting strong leadership skills and, as applicable, techniques for school leaders to effectively—

   (i) create and maintain a data-driven, professional learning community within the leader’s school;

   (ii) provide a climate conducive to the professional development of teachers, with a focus on improving student academic achievement and the development of effective instructional leadership skills;

   (iii) understand the teaching and assessment skills needed to support successful classroom instruction and to use data to evaluate teacher instruction and drive teacher and student learning;

   (iv) manage resources and school time to improve student academic achievement and ensure the school environment is safe;

   (v) engage and involve parents, community members, the local educational agency, businesses, and other community leaders, to leverage additional resources to improve student academic achievement; and

   (vi) understand how students learn and develop in order to increase academic achievement for all students.

(C) Ensuring that individuals who participate in the school leadership program receive—

   (I) effective preservice preparation as described in subparagraph (D);

   (II) mentoring; and

   (III) if applicable, full State certification or licensure to become a school leader.

(D) Developing and improving a sustained and high-quality preservice clinical education program to further develop the leadership skills of all prospective school leaders involved in the program. Such clinical education program shall do the following:

   (I) Incorporate year-long opportunities for enrichment, including—

      (i) clinical learning in high-need schools served by the high-need local educational agency or a local educational agency located in a rural area in the eligible partnership and identified by the eligible partnership; and

      (II) closely supervised interaction between prospective school leaders and faculty, new and experienced teachers, and new and experienced school leaders, in such high-need schools.

   (II) Integrate pedagogy and practice and promote effective leadership skills, meeting the unique needs of urban, rural, or geographically isolated communities, as applicable.
(iii) Provide for mentoring of new school leaders.

(E) Creating an induction program for new school leaders.

(F) Developing and implementing effective mechanisms to ensure that the eligible partnership is able to recruit qualified individuals to become school leaders through the activities of the eligible partnership, which may include an emphasis on recruiting into school leadership professions—

(i) individuals from underrepresented populations;

(ii) individuals to serve as superintendents, principals, or other school administrators in rural and geographically isolated communities and school leader shortage areas; and

(iii) mid-career professionals from other occupations, former military personnel, and recent college graduates with a record of academic distinction.

(2) Selection of individuals for the leadership program

In order to be eligible for the school leadership program under this subsection, an individual shall be enrolled in or preparing to enroll in an institution of higher education, and shall—

(A) be a—

(i) recent graduate of an institution of higher education;

(ii) mid-career professional from outside the field of education with strong content knowledge or a record of professional accomplishment;

(iii) current teacher who is interested in becoming a school leader; or

(iv) school leader who is interested in becoming a superintendent; and

(B) submit an application to the leadership program.

(g) Partnership with digital education content developer

An eligible partnership that receives a grant under this section may use grant funds provided to carry out the activities described in subsection (d) or (e), or both, to partner with a television public broadcast station, as defined in section 397(6) of title 47, or another entity that develops digital educational content, for the purpose of improving the quality of pre-baccalaureate teacher preparation programs or to enhance the quality of preservice training for prospective teachers.

(h) Evaluation and reporting

The Secretary shall—

(1) evaluate the programs assisted under this section; and

(2) make publicly available a report detailing the Secretary’s evaluation of each such program.

(i) Consultation

(1) In general

Members of an eligible partnership that receives a grant under this section shall engage in regular consultation throughout the development and implementation of programs and activities carried out under this section.

(2) Regular communication

To ensure timely and meaningful consultation as described in paragraph (1), regular communication shall occur among all members of the eligible partnership, including the high-need local educational agency. Such communication shall continue throughout the implementation of the grant and the assessment of programs and activities under this section.

(3) Written consent

The Secretary may approve changes in grant activities of a grant under this section only if the eligible partnership submits to the Secretary a written consent to such changes signed by all members of the eligible partnership.

(j) Construction

Nothing in this section shall be construed to prohibit an eligible partnership from using Federal, State, and local funds that would otherwise be expended to carry out activities under this section.

(k) Supplement, not supplant

Funds made available under this section shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities under this section.

REFERENCES IN TEXT


The Individuals with Disabilities Education Act, referred to in subsec. (b)(4)(A), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

PRIOR PROVISIONS


A prior section 202 of Pub. L. 89–329 was classified to section 1022 of this title, prior to repeal by Pub. L. 104–208.

Another prior section 202 of Pub. L. 89–329 was classified to section 1022 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

AMENDMENTS

heading, added introductory provisions, and struck out former introductory provisions which read as follows: “An eligible partnership that receives a grant to carry out an effective program for the pre-baccalaureate preparation of teachers shall carry out a program that includes all of the following:”.

Subsec. (e)(2), Pub. L. 111–39, § 201(2)(D), in subpar. (A)(i), substituted ‘leading to’ for ‘to earn’ and, in subpar. (C), struck out “one-year” before “teaching residency program” in cls. (i) and (ii)(1).


Effective Date of 2009 Amendment


§ 1022b. Administrative provisions

(a) Duration; number of awards; payments

(1) Duration

A grant awarded under this part shall be awarded for a period of five years.

(2) Number of awards

An eligible partnership may not receive more than one grant during a five-year period. Nothing in this subchapter shall be construed to prohibit an individual member, that can demonstrate need, of an eligible partnership that receives a grant under this subchapter from entering into another eligible partnership consisting of new members and receiving a grant with such other eligible partnership before the five-year period described in the preceding sentence applicable to the eligible partnership with which the individual member had first partnered has expired.

(b) Peer review

(1) Panel

The Secretary shall provide the applications submitted under this part to a peer review panel for evaluation. With respect to each application, the peer review panel shall initially recommend the application for funding or for disapproval.

(2) Priority

The Secretary, in funding applications under this part, shall give priority—

(A) to eligible partnerships that include an institution of higher education whose teacher preparation program has a rigorous selection process to ensure the highest quality of students entering such program; and

(B)(i) to applications from broad-based eligible partnerships that involve businesses and community organizations; or

(ii) to eligible partnerships so that the awards promote an equitable geographic distribution of grants among rural and urban areas.

(3) Secretarial selection

The Secretary shall determine, based on the peer review process, which applications shall receive funding and the amounts of the grants. In determining grant amounts, the Secretary shall take into account the total amount of funds available for all grants under this part and the types of activities proposed to be carried out by the eligible partnership.

(c) Matching requirements

(1) In general

Each eligible partnership receiving a grant under this part shall provide, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, which may be provided in cash or in-kind, to carry out the activities supported by the grant.

(2) Waiver

The Secretary may waive all or part of the matching requirement described in paragraph (1) for any fiscal year for an eligible partnership if the Secretary determines that applying the matching requirement to the eligible partnership would result in serious hardship or an inability to carry out the authorized activities described in this part.

(d) Limitation on administrative expenses

An eligible partnership that receives a grant under this part may use not more than two percent of the funds provided to administer the grant.

§ 1022c. Accountability and evaluation

(a) Eligible partnership evaluation

Each eligible partnership submitting an application for a grant under this part shall establish, and include in such application, an evaluation plan that includes strong and measurable performance objectives. The plan shall include objectives and measures for increasing—

(1) achievement for all prospective and new teachers, as measured by the eligible partnership;

(2) teacher retention in the first three years of a teacher’s career;

(3) improvement in the pass rates and scaled scores for initial State certification or licensure of teachers; and

(4)(A) the percentage of highly qualified teachers hired by the high-need local educational agency participating in the eligible partnership;

(B) the percentage of highly qualified teachers hired by the high-need local educational agency who are members of underrepresented groups;

(C) the percentage of highly qualified teachers hired by the high-need local educational agency who teach high-need academic subject areas (such as reading, mathematics, science, and foreign language, including less commonly taught languages and critical foreign languages);

(D) the percentage of highly qualified teachers hired by the high-need local educational...
agency who teach in high-need areas (including special education, language instruction educational programs for limited English proficient students, and early childhood education).

(E) the percentage of highly qualified teachers hired by the high-need local educational agency who teach in high-need schools, disaggregated by the elementary school and secondary school levels;

(F) as applicable, the percentage of early childhood education program classes in the geographic area served by the eligible partnership taught by early childhood educators who are highly competent; and

(G) as applicable, the percentage of teachers trained—

(i) to integrate technology effectively into curricula and instruction, including technology consistent with the principles of universal design for learning; and

(ii) to use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of improving student academic achievement.

(b) Information

An eligible partnership receiving a grant under this part shall ensure that teachers, principals, school superintendents, faculty, and leadership at institutions of higher education located in the geographic areas served by the eligible partnership are provided information, including through electronic means, about the activities carried out with funds under this part.

(c) Revised application

If the Secretary determines that an eligible partnership receiving a grant under this part is not making substantial progress in meeting the purposes, goals, objectives, and measures of the grant, as appropriate, by the end of the third year of a grant under this part, then the Secretary—

(1) shall cancel the grant; and

(2) may use any funds returned or available because of such cancellation under paragraph (1) to—

(A) increase other grant awards under this part; or

(B) award new grants to other eligible partnerships under this part.

(d) Evaluation and dissemination

The Secretary shall evaluate the activities funded under this part and report the findings regarding the evaluation of such activities to the authorizing committees. The Secretary shall broadly disseminate—

(1) successful practices developed by eligible partnerships under this part; and

(2) information regarding such practices that were found to be ineffective.

§1022d. Accountability for programs that prepare teachers

(a) Institutional and program report cards on the quality of teacher preparation

(1) Report card

Each institution of higher education that conducts a traditional teacher preparation program or alternative routes to State certification or licensure program and that enrolls students receiving Federal assistance under this chapter and part C of subchapter I of chapter 34 of title 42 shall report annually to the State and the general public, in a uniform and comprehensible manner that conforms with the definitions and methods established by the Secretary, the following:

(A) Goals and assurances

(i) For the most recent year for which the information is available for the institution—

(I) whether the goals set under section 1022e of this title have been met; and

(II) a description of the activities the institution implemented to achieve such goals.

(ii) A description of the steps the institution is taking to improve its performance in meeting the annual goals set under section 1022e of this title.

(iii) A description of the activities the institution has implemented to meet the assurances provided under section 1022e of this title.

(B) Pass rates and scaled scores

For the most recent year for which the information is available for those students who took the assessments used for teacher certification or licensure by the State in which the program is located and are enrolled in the traditional teacher preparation program or alternative routes to State certification or licensure program, and for those who have taken such assessments and have completed the traditional teacher preparation program or alternative routes to State certification or licensure program during the two-year period preceding such year, for each of such assessments—

(i) the percentage of students who have completed 100 percent of the nonclinical coursework and taken the assessment who pass such assessment;

(ii) the percentage of all students who passed such assessment;

(iii) the percentage of students who have taken such assessment who enrolled in and completed the traditional teacher preparation program or alternative routes to State certification or licensure program, as applicable;

(iv) the average scaled score for all students who took such assessment;

(v) a comparison of the program’s pass rates with the average pass rates for programs in the State; and

(vi) a comparison of the program’s average scaled scores with the average scaled scores for programs in the State.

(C) Program information

A description of—
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(i) the criteria for admission into the program;
(ii) the number of students in the program (disaggregated by race, ethnicity, and gender);
(iii) the average number of hours of supervised clinical experience required for those in the program;
(iv) the number of full-time equivalent faculty and students in the supervised clinical experience; and
(v) the total number of students who have been certified or licensed as teachers, disaggregated by subject and area of certification or licensure.

(D) Statement

In States that require approval or accreditation of teacher preparation programs, a statement of whether the institution’s program is so approved or accredited, and by whom.

(E) Designation as low-performing

Whether the program has been designated as low-performing by the State under section 1022f(a) of this title.

(F) Use of technology

A description of the activities, including activities consistent with the principles of universal design for learning, that prepare teachers to integrate technology effectively into curricula and instruction, and to use technology effectively to collect, manage, and analyze data in order to improve teaching and learning for the purpose of increasing student academic achievement.

(G) Teacher training

A description of the activities that prepare general education and special education teachers to teach students with disabilities effectively, including training related to participation as a member of individualized education program teams, as defined in section 1414(d)(1)(B) of this title, and to effectively teach students who are limited English proficient.

(2) Report

Each eligible partnership receiving a grant under section 1022a of this title shall report annually on the progress of the eligible partnership toward meeting the purposes of this part and the objectives and measures described in section 1022c(a) of this title.

(3) Fines

The Secretary may impose a fine not to exceed $27,500 on an institution of higher education for failure to provide the information described in this subsection in a timely or accurate manner.

(4) Special rule

In the case of an institution of higher education that conducts a traditional teacher preparation program or alternative routes to State certification or licensure program and has fewer than 10 scores reported on any single initial teacher certification or licensure assessment during an academic year, the institution shall collect and publish information, as required under paragraph (1)(B), with respect to an average pass rate and scaled score on each State certification or licensure assessment taken over a three-year period.

(b) State report card on the quality of teacher preparation

(1) In general

Each State that receives funds under this chapter and part C of subchapter I of chapter 34 of title 42 shall provide to the Secretary, and make widely available to the general public, in a uniform and comprehensible manner that conforms with the definitions and methods established by the Secretary, an annual State report card on the quality of teacher preparation in the State, both for traditional teacher preparation programs and for alternative routes to State certification or licensure programs, which shall include not less than the following:

(A) A description of the reliability and validity of the teacher certification and licensure assessments, and any other certification and licensure requirements, used by the State.

(B) The standards and criteria that prospective teachers must meet to attain initial teacher certification or licensure and to be certified or licensed to teach particular academic subjects, areas, or grades within the State.

(C) A description of how the assessments and requirements described in subparagraph (A) are aligned with the State’s challenging academic content standards required under section 6311(b)(1) of this title and, as applicable, State early learning standards for early childhood education programs.

(D) For each of the assessments used by the State for teacher certification or licensure—

(i) for each institution of higher education located in the State and each entity located in the State, including those that offer an alternative route for teacher certification or licensure, the percentage of students at such institution or entity who have completed 100 percent of the nonclinical coursework and taken the assessment who pass such assessment;

(ii) the percentage of all such students at all such institutions and entities who have taken the assessment who pass such assessment;

(iii) the percentage of students who have taken the assessment who enrolled in and completed a teacher preparation program; and

(iv) the average scaled score of individuals participating in such a program, or who have completed such a program during the two-year period preceding the first year for which the annual State report card is provided, who took each such assessment.

(E) A description of alternative routes to teacher certification or licensure in the State (including any such routes operated by entities that are not institutions of higher
education), if any, including, for each of the assessments used by the State for teacher certification or licensure—

(i) the percentage of individuals participating in such routes, or who have completed such routes during the two-year period preceding the date for which the determination is made, who passed each such assessment; and

(ii) the average scaled score of individuals participating in such routes, or who have completed such routes during the two-year period preceding the first year for which the annual State report card is provided, who took each such assessment.

(F) A description of the State’s criteria for assessing the performance of teacher preparation programs within institutions of higher education in the State. Such criteria shall include indicators of the academic content knowledge and teaching skills of students enrolled in such programs.

(G) For each teacher preparation program in the State—

(i) the criteria for admission into the program;

(ii) the number of students in the program, disaggregated by race, ethnicity, and gender (except that such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student);

(iii) the average number of hours of supervised clinical experience required for those in the program; and

(iv) the number of full-time equivalent faculty, adjunct faculty, and students in supervised clinical experience.

(H) For the State as a whole, and for each teacher preparation program in the State, the number of teachers prepared, in the aggregate and reported separately by—

(i) area of certification or licensure;

(ii) academic major; and

(iii) subject area for which the teacher has been prepared to teach.

(I) A description of the extent to which teacher preparation programs are addressing shortages of highly qualified teachers, by area of certification or licensure, subject, and specialty, in the State’s public schools.

(J) The extent to which teacher preparation programs prepare teachers, including general education and special education teachers, to teach students with disabilities effectively, including training related to participation as a member of individualized education program teams, as defined in section 1414(d)(1)(B) of this title.

(K) A description of the activities that prepare teachers to—

(i) integrate technology effectively into curricula and instruction, including activities consistent with the principles of universal design for learning; and

(ii) use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of increasing student academic achievement.

(L) The extent to which teacher preparation programs prepare teachers, including general education and special education teachers, to effectively teach students who are limited English proficient.

(2) Prohibition against creating a national list

The Secretary shall not create a national list or ranking of States, institutions, or schools using the scaled scores provided under this subsection.

(c) Data quality

The Secretary shall prescribe regulations to ensure the reliability, validity, integrity, and accuracy of the data submitted pursuant to this section.

(d) Report of the Secretary on the quality of teacher preparation

(1) Report card

The Secretary shall annually provide to the authorizing committees, and publish and make widely available, a report card on teacher qualifications and preparation in the United States, including all the information reported in subparagraphs (A) through (L) of subsection (b)(1). Such report shall identify States for which eligible partnerships received a grant under this part.

(2) Report to Congress

The Secretary shall prepare and submit a report to the authorizing committees that contains the following:

(A) A comparison of States' efforts to improve the quality of the current and future teaching force.

(B) A comparison of eligible partnerships' efforts to improve the quality of the current and future teaching force.

(C) The national mean and median scaled scores and pass rate on any standardized test that is used in more than one State for teacher certification or licensure.

(3) Special rule

In the case of a teacher preparation program with fewer than ten scores reported on any single initial teacher certification or licensure assessment during an academic year, the Secretary shall collect and publish, and make publicly available, information with respect to an average pass rate and scaled score on each State certification or licensure assessment taken over a three-year period.

(e) Coordination

The Secretary, to the extent practicable, shall coordinate the information collected and published under this part among States for individuals who took State teacher certification or licensure assessments in a State other than the State in which the individual received the individual's most recent degree.


Prior Provisions

A prior section 265 of Pub. L. 89–329 was classified to section 1025 of this title, prior to repeal by Pub. L. 110–315.
§ 1022e. Teacher development

(a) Annual goals

Each institution of higher education that conducts a traditional teacher preparation program (including programs that offer any ongoing professional development programs) or alternative routes to State certification or licensure program, and that enrolls students receiving Federal assistance under this chapter and part C of subchapter I of chapter 34 of title 42, shall set annual quantifiable goals for increasing the number of prospective teachers trained in teacher shortage areas designated by the Secretary or by the State educational agency, including mathematics, science, special education, and instruction of limited English proficient students.

(b) Assurances

Each institution described in subsection (a) shall provide assurances to the Secretary that—

(1) training provided to prospective teachers responds to the identified needs of the local educational agencies or States where the institution’s graduates are likely to teach, based on past hiring and recruitment trends;

(2) training provided to prospective teachers is closely linked with the needs of schools and the instructional decisions new teachers face in the classroom;

(3) prospective special education teachers receive course work in core academic subjects and receive training in providing instruction in those subjects;

(4) general education teachers receive training in providing instruction to diverse populations, including children with disabilities, limited English proficient students, and children from low-income families; and

(5) prospective teachers receive training on how to effectively teach in urban and rural schools, as applicable.

(c) Rule of construction

Nothing in this section shall be construed to require an institution to create a new teacher preparation area of concentration or degree program or adopt a specific curriculum in complying with this section.


Prior Provisions

A prior section 206 of Pub. L. 89–329 was classified to section 1026 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

§ 1022f. State functions

(a) State assessment

In order to receive funds under this chapter and part C of subchapter I of chapter 34 of title 42, a State shall conduct an assessment to identify low-performing teacher preparation programs in the State and to assist such programs through the provision of technical assistance. Each such State shall provide the Secretary with an annual list of low-performing teacher preparation programs and an identification of those programs at risk of being placed on such list, as applicable. Such assessment shall be described in the report under section 1022d(b) of this title. Levels of performance shall be determined solely by the State and may include criteria based on information collected pursuant to this part, including progress in meeting the goals of—

(1) increasing the percentage of highly qualified teachers in the State, including increasing professional development opportunities;

(2) improving student academic achievement for elementary and secondary students; and

(3) raising the standards for entry into the teaching profession.

(b) Termination of eligibility

Any teacher preparation program from which the State has withdrawn the State’s approval, or terminated the State’s financial support, due to the low performance of the program based upon the State assessment described in subsection (a)—

(1) shall be ineligible for any funding for professional development activities awarded by the Department;

(2) may not be permitted to accept or enroll any student who receives aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 in the institution’s teacher preparation program;

(3) shall provide transitional support, including remedial services if necessary, for students enrolled at the institution at the time of termination of financial support or withdrawal of approval; and

(4) shall be reinstated upon demonstration of improved performance, as determined by the State.

(c) Negotiated rulemaking

If the Secretary develops any regulations implementing subsection (b)(2), the Secretary shall submit such proposed regulations to a negotiated rulemaking process, which shall include representatives of States, institutions of higher education, and educational and student organizations.

(d) Application of the requirements

The requirements of this section shall apply to both traditional teacher preparation programs and alternative routes to State certification and licensure programs.


Prior Provisions

A prior section 207 of Pub. L. 89–329 was classified to section 1027 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

§ 1022g. General provisions

(a) Methods

In complying with sections 1022d and 1022e of this title, the Secretary shall ensure that States
and institutions of higher education use fair and equitable methods in reporting and that the reporting methods do not reveal personally identifiable information.

(b) Special rule

For each State that does not use content assessments as a means of ensuring that all teachers teaching in core academic subjects within the State are highly qualified, as required under section 6319 of this title, in accordance with the State plan submitted or revised under section 6311 of this title, and that each person employed as a special education teacher in the State who teaches elementary school or secondary school is highly qualified by the deadline, as required under section 1412(a)(14)(C) of this title, the Secretary shall—

(1) to the extent practicable, collect data comparable to the data required under this part from States, local educational agencies, institutions of higher education, or other entities that administer such assessments to teachers or prospective teachers; and

(2) notwithstanding any other provision of this part, use such data to carry out requirements of this part related to assessments, pass rates, and scaled scores.

(c) Release of information to teacher preparation programs

(1) In general

For the purpose of improving teacher preparation programs, a State that receives funds under this chapter and part C of subchapter I of chapter 34 of title 42, or that participates as a member of a partnership, consortium, or other entity that receives such funds, shall provide to a teacher preparation program, upon the request of the teacher preparation program, any and all pertinent education-related information that—

(A) may enable the teacher preparation program to evaluate the effectiveness of the program's graduates or the program itself; and

(B) is possessed, controlled, or accessible by the State.

(2) Content of information

The information described in paragraph (1)—

(A) shall include an identification of specific individuals who graduated from the teacher preparation program to enable the teacher preparation program to evaluate the information provided to the program from the State with the program's own data about the specific courses taken by, and field experiences of, the individual graduates; and

(B) may include—

(i) kindergarten through grade 12 academic achievement and demographic data, without revealing personally identifiable information about an individual student, for students who have been taught by graduates of the teacher preparation program; and

(ii) teacher effectiveness evaluations for teachers who graduated from the teacher preparation program.


Another prior section 1023, Pub. L. 89–329, title II, §1022h.
§ 1031. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PRIOR PROVISIONS


§ 1032. Program authorized

(a) Program authority

The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, eligible consortia to pay the Federal share of the costs of projects to—

(1) assist in the graduation of teacher candidates who are prepared to use modern information, communication, and learning tools to—

(A) improve student learning, assessment, and learning management; and

(B) help students develop learning skills to succeed in higher education and to enter the workforce;

(2) strengthen and develop partnerships among the stakeholders in teacher preparation to transform teacher education and ensure technology-rich teaching and learning environments throughout a teacher candidate’s preservice education, including clinical experiences; and

(3) assess the effectiveness of departments, schools, and colleges of education at institutions of higher education in preparing teacher candidates for successful implementation of technology-rich teaching and learning environments, including environments consistent with the principles of universal design for learning, that enable kindergarten through grade 12 students to develop learning skills to succeed in higher education and to enter the workforce.

(b) Amount and duration

A grant, contract, or cooperative agreement under this subpart—

(1) shall be for not more than $2,000,000;

(2) shall be for a three-year period; and

(3) may be renewed for one additional year.

(c) Non-Federal share requirement

The Federal share of the cost of any project funded under this subpart shall not exceed 75 percent. The non-Federal share of the cost of such project may be provided in cash or in kind, fairly evaluated, including services.

(d) Definition of eligible consortium

In this subpart, the term “eligible consortium” means a consortium of members that includes the following:

(1) Not less than one institution of higher education that awards baccalaureate or master’s degrees and prepares teachers for initial entry into teaching;

(2) Not less than one State educational agency or local educational agency.

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(3) A department, school, or college of education at an institution of higher education.

(4) A department, school, or college of arts and sciences at an institution of higher education.

(5) Not less than one entity with the capacity to contribute to the technology-related reform of teacher preparation programs, which may be a professional association, foundation, museum, library, for-profit business, public or private nonprofit organization, community-based organization, or other entity.


PRIOR PROVISIONS


A prior section 231 of Pub. L. 89–329 was classified to section 1041 of this title, prior to repeal by Pub. L. 104–208.

Another prior section 231 of Pub. L. 89–329 was classified to section 1041 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

Another prior section 231 of Pub. L. 89–329 was classified to section 1041 of this title, prior to the general amendment of former part C of this subchapter by Pub. L. 94–482.

AMENDMENTS


EFFECTIVE DATE OF 2009 AMENDMENT


§ 1032a. Uses of funds

(a) In general

An eligible consortium that receives a grant or enters into a contract or cooperative agreement under this subpart shall use funds made available under this subpart to carry out a project that—

(1) develops long-term partnerships among members of the consortium that are focused on effective teaching with modern digital tools and content that substantially connect preservice preparation of teacher candidates with high-need schools; or

(2) transforms the way departments, schools, and colleges of education teach classroom technology integration, including the principles of universal design, to teacher candidates.

(b) Uses of funds for partnership grants

In carrying out a project under subsection (a)(1), an eligible consortium shall—

(1) provide teacher candidates, early in their preparation, with field experiences with technology in educational settings;

(2) build the skills of teacher candidates to support technology-rich instruction, assessment and learning management in content areas, technology literacy, an understanding of the principles of universal design, and the development of other skills for entering the workforce;

(3) provide professional development in the use of technology for teachers, administrators, and content specialists who participate in field placement;

(4) provide professional development of technology pedagogical skills for faculty of departments, schools, and colleges of education and arts and sciences;

(5) implement strategies for the mentoring of teacher candidates by members of the consortium with respect to technology implementation;

(6) evaluate teacher candidates during the first years of teaching to fully assess outcomes of the project;

(7) build collaborative learning communities for technology integration within the consortium to sustain meaningful applications of technology in the classroom during teacher preparation and early career practice; and

(8) evaluate the effectiveness of the project.

(c) Uses of funds for transformation grants

In carrying out a project under subsection (a)(2), an eligible consortium shall—

(1) redesign curriculum to require collaboration between the department, school, or college of education faculty and the department, school, or college of arts and sciences faculty who teach content or methods courses for training teacher candidates;

(2) collaborate between the department, school, or college of education faculty and the department, school, or college of arts and science faculty and academic content specialists at the local educational agency to educate preservice teachers who can integrate technology and pedagogical skills in content areas;

(3) collaborate between the department, school, or college of education faculty and the department, school, or college of arts and sciences faculty who teach courses to preservice teachers to—

(A) develop and implement a plan for preservice teachers and continuing educators that demonstrates effective instructional strategies and application of such strategies in the use of digital tools to transform the teaching and learning process; and

(B) better reach underrepresented preservice teacher populations with programs that connect such preservice teacher populations with applications of technology;

(4) collaborate among faculty and students to create and disseminate case studies of technology applications in classroom settings with a goal of improving student academic achievement in high-need schools;

(5) provide additional technology resources for preservice teachers to plan and implement technology applications in classroom settings that provide evidence of student learning; and
(6) bring together expertise from departments, schools, or colleges of education, arts and science faculty, and academic content specialists at the local educational agency to share and disseminate technology applications in the classroom through teacher preparation and into early career practice.


PRIOR PROVISIONS


Another prior section 232 of Pub. L. 89–329 was classified to section 1042 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

Another prior section 232 of Pub. L. 89–329 was classified to section 1042 of this title, prior to the general amendment of former part C of this subchapter by Pub. L. 94–482.

§ 1032b. Application requirements

To be eligible to receive a grant or enter into a contract or cooperative agreement under this subpart, an eligible consortium shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application shall include the following:

(1) A description of the project to be carried out with the grant, including how the project will—
   (A) develop a long-term partnership focused on effective teaching with modern digital tools and content that substantially connects preservice preparation of teacher candidates with high-need schools; or
   (B) transform the way departments, schools, and colleges of education teach classroom technology integration, including the principles of universal design, to teacher candidates.

(2) A demonstration of—
   (A) the commitment, including the financial commitment, of each of the members of the consortium for the proposed project; and
   (B) the support of the leadership of each organization that is a member of the consortium for the proposed project.

(3) A description of how each member of the consortium will participate in the project.

(4) A description of how the State educational agency or local educational agency will incorporate the project into the agency’s technology plan, if such a plan already exists.

(5) A description of how the project will be continued after Federal funds are no longer available under this subpart for the project.

(6) A description of how the project will incorporate—
   (A) State teacher technology standards; and
   (B) State student technology standards.

(7) A plan for the evaluation of the project, which shall include benchmarks to monitor progress toward specific project objectives.


PRIOR PROVISIONS


§ 1033. Definitions

In this subpart:

(1) Eligible institution

The term “eligible institution” means—
   (A) an institution of higher education that has a teacher preparation program that is a qualified teacher preparation program and that is—
      (i) a part B institution (as defined in section 1061 of this title);
      (ii) a Hispanic-serving institution (as defined in section 1101a of this title);
      (iii) a Tribal College or University (as defined in section 1059e of this title);
      (iv) an Alaska Native-serving institution (as defined in section 1059d(b) of this title);
      (v) a Native Hawaiian-serving institution (as defined in section 1059d(b) of this title);
      (vi) a Predominantly Black Institution (as defined in section 1059c of this title);
      (vii) an Asian American and Native American Pacific Islander-serving institution (as defined in section 1059f of this title); or
      (viii) a Native American-serving, non-tribal institution (as defined in section 1059f of this title);
   (B) a consortium of institutions described in subparagraph (A); or
   (C) an institution described in subparagraph (A), or a consortium described in subparagraph (B), in partnership with any other institution of higher education, but only if the center of excellence established under section 1033a of this title is located at an institution described in subparagraph (A).

(2) Scientifically based reading research

The term “scientifically based reading research” has the meaning given such term in section 6368 of this title.

§ 1033a. Augustus F. Hawkins centers of excellence

(a) Program authorized

From the amounts appropriated to carry out this part, the Secretary is authorized to award competitive grants to eligible institutions to establish centers of excellence.

(b) Use of funds

Grants provided by the Secretary under this subpart shall be used to ensure that current and future teachers are highly qualified by carrying out one or more of the following activities:

(1) Implementing reforms within teacher preparation programs to ensure that such programs are preparing teachers who are highly qualified, are able to understand scientifically valid research, and are able to use advanced technology effectively in the classroom, including use of instructional techniques to improve student academic achievement, by—

(A) retraining or recruiting faculty; and

(B) designing (or redesigning) teacher preparation programs—

(i) prepare teachers to serve in low-performing schools and close student achievement gaps, and that are based on rigorous academic content, scientifically valid research (including scientifically based reading research and mathematics research, as it becomes available), and challenging State academic content standards and student academic achievement standards; and

(ii) promote strong teaching skills.

(2) Providing sustained and high-quality preservice clinical experience, including the mentoring of prospective teachers by exemplary teachers, substantially increasing interaction between faculty at institutions of higher education and new and experienced teachers, principals, and other administrators at elementary schools or secondary schools, and providing support, including preparation time, for such interaction.

(3) Developing and implementing initiatives to promote retention of highly qualified teachers and principals, including minority teachers and principals, including programs that provide—

(A) teacher or principal mentoring from exemplary teachers or principals, respectively; or

(B) induction and support for teachers and principals during their first three years of employment as teachers or principals, respectively.

(4) Awarding scholarships based on financial need to help students pay the costs of tuition, room, board, and other expenses of completing a teacher preparation program, not to exceed the cost of attendance.

(5) Disseminating information on effective practices for teacher preparation and successful teacher certification and licensure assessment preparation strategies.

(6) Activities authorized under section 1022a of this title.

(c) Application

Any eligible institution desiring a grant under this subpart shall submit an application to the Secretary at such a time, in such a manner, and accompanied by such information as the Secretary may require.

(d) Minimum grant amount

The minimum amount of each grant under this subpart shall be $500,000.

(e) Limitation on administrative expenses

An eligible institution that receives a grant under this subpart may use not more than two percent of the funds provided to administer the grant.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this subpart.

SUBPART 3—PREPARING GENERAL EDUCATION TEACHERS TO MORE EFFECTIVELY EDUCATE STUDENTS WITH DISABILITIES

§ 1034. Teach to reach grants

(a) Authorization of program

(1) In general

The Secretary is authorized to award grants, on a competitive basis, to eligible partnerships to improve the preparation of general education teacher candidates to ensure that such teacher candidates possess the knowledge and skills necessary to effectively instruct students with disabilities in general education classrooms.

(2) Duration of grants

A grant under this section shall be awarded for a period of not more than five years.

(3) Non-Federal share

An eligible partnership that receives a grant under this section shall provide not less than 25 percent of the cost of the activities carried out with such grant from non-Federal sources, which may be provided in cash or in kind.
(b) Definition of eligible partnership

In this section, the term "eligible partnership" means a partnership that—

(1) shall include—

(A) one or more departments or programs at an institution of higher education—

(i) that prepare elementary or secondary general education teachers;

(ii) that have a program of study that leads to an undergraduate degree, a master's degree, or completion of a postbaccalaureate program required for teacher certification; and

(iii) the graduates of which are highly qualified;

(B) a department or program of special education at an institution of higher education;

(C) a department or program at an institution of higher education that provides degrees in core academic subjects; and

(D) a high-need local educational agency; and

(2) may include a department or program of mathematics, earth or physical science, foreign language, or another department at the institution that has a role in preparing teachers.

c) Activities

An eligible partnership that receives a grant under this section—

(1) shall use the grant funds to—

(A) develop or strengthen an undergraduate, postbaccalaureate, or master's teacher preparation program by integrating special education strategies into the general education curriculum and academic content;

(B) provide teacher candidates participating in the program under subparagraph (A) with skills related to—

(i) response to intervention, positive behavioral interventions and supports, differentiated instruction, and data driven instruction;

(ii) universal design for learning;

(iii) determining and utilizing accommodations for instruction and assessments;

(iv) collaborating with special educators, related services providers, and parents, including participation in individualized education program development and implementation; and

(v) appropriately utilizing technology and assistive technology for students with disabilities; and

(C) provide extensive clinical experience for participants described in subparagraph (B) with mentoring and induction support throughout the program that continues during the first two years of full-time teaching; and

(2) may use grant funds to develop and administer alternate assessments of students with disabilities.

d) Application

An eligible partnership seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application shall include—

(1) a self-assessment by the eligible partnership of the existing teacher preparation program at the institution of higher education and needs related to preparing general education teacher candidates to instruct students with disabilities; and

(2) an assessment of the existing personnel needs for general education teachers who instruct students with disabilities, performed by the local educational agency in which most graduates of the teacher preparation program are likely to teach after completion of the program under subsection (c)(1).

e) Peer review

The Secretary shall convene a peer review committee to review applications for grants under this section and to make recommendations to the Secretary regarding the selection of grantees. Members of the peer review committee shall be recognized experts in the fields of special education, teacher preparation, and general education and shall not be in a position to benefit financially from any grants awarded under this section.

f) Evaluations

(1) By the partnership

(A) In general

An eligible partnership receiving a grant under this section shall conduct an evaluation at the end of the grant period to determine—

(i) the effectiveness of the general education teachers who completed a program under subsection (c)(1) with respect to instruction of students with disabilities in general education classrooms; and

(ii) the systemic impact of the activities carried out by such grant on how each institution of higher education that is a member of the partnership prepares teachers for instruction in elementary schools and secondary schools.

(B) Report to the Secretary

Each eligible partnership performing an evaluation under subparagraph (A) shall report the findings of such evaluation to the Secretary.

(2) Report by the Secretary

Not later than 180 days after the last day of the grant period under this section, the Secretary shall make available to Congress and the public the findings of the evaluations submitted under paragraph (1), and information on best practices related to effective instruction of students with disabilities in general education classrooms.


A prior section 251 of Pub. L. 89–329 was classified to section 1047 of this title, prior to the general amendment of former part D of this subchapter by Pub. L. 99–498.

SUBPART 4—ADJUNCT TEACHER CORPS

§ 1035. Adjunct teacher corps

(a) Purpose

The purpose of this section is to create opportunities for professionals and other individuals with subject matter expertise in mathematics, science, or critical foreign languages to provide such subject matter expertise to secondary school students on an adjunct basis.

(b) Program authorized

The Secretary is authorized to award grants on a competitive basis to eligible entities to identify, recruit, and train qualified individuals with subject matter expertise in mathematics, science, or critical foreign languages to serve as adjunct content specialists.

(c) Duration of grants

The Secretary may award grants under this section for a period of not more than five years.

(d) Eligible entity

In this section, the term "eligible entity" means—

(1) a local educational agency; or

(2) a partnership consisting of a local educational agency, serving as a fiscal agent, and a public or private educational organization or business.

(e) Uses of funds

An eligible entity that receives a grant under this section is authorized to use such grant to carry out one or both of the following activities:

(1) To develop the capacity of the eligible entity to identify, recruit, and train individuals with subject matter expertise in mathematics, science, or critical foreign languages who are not employed in the elementary and secondary education system (including individuals in business and government, and individuals who would participate through distance-learning arrangements) to become adjunct content specialists.

(2) To provide preservice training and ongoing professional development to adjunct content specialists.

(f) Applications

(1) Application required

An eligible entity that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Contents

An application submitted under paragraph (1) shall include—

(A) a description of—

(i) the need for, and expected benefits of using, adjunct content specialists in the schools served by the local educational agency, which may include information on the difficulty the local educational agency faces in recruiting qualified faculty in mathematics, science, and critical foreign language courses;

(ii) measurable objectives for the activities supported by the grant;

(B) an assurance that the use of adjunct content specialists to ensure that such specialists have the capacity to serve effectively;

(iv) how the eligible entity will provide preservice training and ongoing professional development to adjunct content specialists to ensure that such specialists have the capacity to serve effectively;

(v) how the eligible entity will use funds received under this section, including how such entity will seek support from other sources, such as State and local government and the private sector; and

(B) an assurance that the use of adjunct content specialists will not result in the displacement or transfer of currently employed teachers nor a reduction in the number of overall teachers in the district.

(g) Priorities

In awarding grants under this section, the Secretary shall give priority to eligible entities that demonstrate in the application for such a grant a plan to—

(1) serve the schools served by the local educational agency that have a large number or percentage of students performing below grade level in mathematics, science, or critical foreign language courses;

(2) serve local educational agencies that have a large number or percentage of students from low-income families; and

(3) recruit and train individuals to serve as adjunct content specialists in schools that have an insufficient number of teachers in mathematics, science, or critical foreign languages.

(h) Matching requirement

Each eligible entity that receives a grant under this section shall provide, from non-Fed-
eral sources, an amount equal to 100 percent of the amount of such grant (in cash or in kind) to carry out the activities supported by such grant.

(i) Performance report

Each eligible entity receiving a grant under this section shall prepare and submit to the Secretary a final report on the results of the activities supported by such grant, which shall contain such information as the Secretary may require, including any improvements in student academic achievement as a result of the use of adjunct content specialists.

(j) Evaluation

The Secretary shall evaluate the activities supported by grants under this section, including the impact of such activities on student academic achievement, and shall report the results of such evaluation to the authorizing committees.

(k) Definition

In this section, the term “adjunct content specialist” means an individual who—

(1) meets the requirements of section 7801(23)(B)(ii) of this title;

(2) has demonstrated expertise in mathematics, science, or a critical foreign language, as determined by the local educational agency; and

(3) is not the primary provider of instructional services to a student, unless the adjunct content specialist is under the direct supervision of a teacher who meets the requirements of section 7801(23) of this title.


SUBPART 5—GRADUATE FELLOWSHIPS TO PREPARE FACULTY IN HIGH-NEED AREAS AT COLLEGES OF EDUCATION

§ 1036. Graduate fellowships to prepare faculty in high-need areas at colleges of education

(a) Grants by Secretary

The Secretary shall make grants to eligible institutions to enable such institutions to make graduate fellowship awards to qualified individuals in accordance with the provisions of this section.

(b) Eligible institutions

In this section, the term “eligible institution” means an institution of higher education, or a consortium of such institutions, that offers a program of postbaccalaureate study leading to a doctoral degree.

(c) Applications

An eligible institution that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(d) Types of fellowships supported

(1) In general

An eligible institution that receives a grant under this section shall use the grant funds to provide graduate fellowships to individuals who are preparing for the professorate in order to prepare individuals to become highly qualified elementary school and secondary school mathematics and science teachers, special education teachers, and teachers who provide instruction for limited English proficient students.

(2) Types of study

A graduate fellowship provided under this section shall support an individual in pursuing postbaccalaureate study, which leads to a doctoral degree and may include a master’s degree as part of such study, related to teacher preparation and pedagogy in one of the following areas:

(A) Science, technology, engineering, or mathematics, if the individual has completed a master’s degree in mathematics or science and is pursuing a doctoral degree in mathematics, science, or education.

(B) Special education

(C) The instruction of limited English proficient students, including postbaccalaureate study in language instruction educational programs.

(e) Fellowship terms and conditions

(1) Selection of fellows

The Secretary shall ensure that an eligible institution that receives a grant under this section—

(A) shall provide graduate fellowship awards to individuals who plan to pursue a career in instruction at an institution of higher education that has a teacher preparation program; and

(B) may not provide a graduate fellowship to an otherwise eligible individual—

(i) during periods in which such individual is enrolled at an institution of higher education unless such individual is maintaining satisfactory academic progress in, and devoting full-time study or research to, the pursuit of the degree for which the fellowship support was provided; or

(ii) if the individual is engaged in gainful employment, other than part-time employment related to teaching, research, or a similar activity determined by the institution to be consistent with and supportive of the individual’s progress toward the degree for which the fellowship support was provided.

(2) Amount of fellowship awards

(A) In general

An eligible institution that receives a grant under this section shall award stipends to individuals who are provided graduate fellowships under this section.

(B) Awards based on need

A stipend provided under this section shall be in an amount equal to the level of support provided by the National Science Foundation graduate fellowships, except that such stipend shall be adjusted as necessary so as not to exceed the fellowship recipient’s demonstrated need, as determined by the insti-

1So in original. Probably should be “individual’s”.

ed academic achievement, and shall report the results of such evaluation to the authorizing committees.

(k) Definition

In this section, the term “adjunct content specialist” means an individual who—

(1) meets the requirements of section 7801(23)(B)(ii) of this title;

(2) has demonstrated expertise in mathematics, science, or a critical foreign language, as determined by the local educational agency; and

(3) is not the primary provider of instructional services to a student, unless the adjunct content specialist is under the direct supervision of a teacher who meets the requirements of section 7801(23) of this title.


SUBPART 5—GRADUATE FELLOWSHIPS TO PREPARE FACULTY IN HIGH-NEED AREAS AT COLLEGES OF EDUCATION

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(a) Grants by Secretary

The Secretary shall make grants to eligible institutions to enable such institutions to make graduate fellowship awards to qualified individuals in accordance with the provisions of this section.

(b) Eligible institutions

In this section, the term “eligible institution” means an institution of higher education, or a consortium of such institutions, that offers a program of postbaccalaureate study leading to a doctoral degree.

(c) Applications

An eligible institution that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(d) Types of fellowships supported

(1) In general

An eligible institution that receives a grant under this section shall use the grant funds to provide graduate fellowships to individuals who are preparing for the professorate in order to prepare individuals to become highly qualified elementary school and secondary school mathematics and science teachers, special education teachers, and teachers who provide instruction for limited English proficient students.

(2) Types of study

A graduate fellowship provided under this section shall support an individual in pursuing postbaccalaureate study, which leads to a doctoral degree and may include a master’s degree as part of such study, related to teacher preparation and pedagogy in one of the following areas:

(A) Science, technology, engineering, or mathematics, if the individual has completed a master’s degree in mathematics or science and is pursuing a doctoral degree in mathematics, science, or education.

(B) Special education

(C) The instruction of limited English proficient students, including postbaccalaureate study in language instruction educational programs.

(e) Fellowship terms and conditions

(1) Selection of fellows

The Secretary shall ensure that an eligible institution that receives a grant under this section—

(A) shall provide graduate fellowship awards to individuals who plan to pursue a career in instruction at an institution of higher education that has a teacher preparation program; and

(B) may not provide a graduate fellowship to an otherwise eligible individual—

(i) during periods in which such individual is enrolled at an institution of higher education unless such individual is maintaining satisfactory academic progress in, and devoting full-time study or research to, the pursuit of the degree for which the fellowship support was provided; or

(ii) if the individual is engaged in gainful employment, other than part-time employment related to teaching, research, or a similar activity determined by the institution to be consistent with and supportive of the individual’s progress toward the degree for which the fellowship support was provided.

(2) Amount of fellowship awards

(A) In general

An eligible institution that receives a grant under this section shall award stipends to individuals who are provided graduate fellowships under this section.

(B) Awards based on need

A stipend provided under this section shall be in an amount equal to the level of support provided by the National Science Foundation graduate fellowships, except that such stipend shall be adjusted as necessary so as not to exceed the fellowship recipient’s demonstrated need, as determined by the insti-
An eligible institution that receives a grant under this section shall provide an assurance to the Secretary that the institution of higher education where the fellowship recipient is enrolled.

(3) Service requirement

(A) Teaching required

Each individual who receives a graduate fellowship under this section and earns a doctoral degree shall teach for one year at an institution of higher education that has a teacher preparation program for each year of fellowship support received under this section.

(B) Institutional obligation

Each eligible institution that receives a grant under this section shall provide an assurance to the Secretary that the institution of higher education where the fellowship recipient is enrolled.

(C) Agreement required

Prior to receiving an initial graduate fellowship award, and upon the annual renewal of the graduate fellowship award, an individual selected to receive a graduate fellowship under this section shall sign an agreement with the Secretary agreeing to pursue a career in instruction at an institution of higher education that has a teacher preparation program, as required by this section.

(D) Failure to comply

If an individual who receives a graduate fellowship award under this section fails to comply with the agreement signed pursuant to subparagraph (C), the sum of the amount of any graduate fellowship award received by such recipient shall, upon a determination of such a failure, be treated as a Federal Direct Unsubsidized Stafford Loan under part C of subchapter IV, and shall be subject to repayment, together with interest thereon accruing from the date of the fellowship award, in accordance with terms and conditions specified by the Secretary in regulations under this subpart.

(E) Modified service requirement

The Secretary may waive or modify the service requirement of this paragraph in accordance with regulations promulgated by the Secretary with respect to the criteria to determine the circumstances under which compliance with such service requirement is substantially inequitable or represents a substantial hardship. The Secretary may waive the service requirement if compliance by the fellowship recipient is determined to be inequitable or represent a substantial hardship—

(i) because the individual is permanently and totally disabled at the time of the waiver request; or

(ii) based on documentation presented to the Secretary of substantial economic or personal hardship.

(f) Institutional support for fellows

An eligible institution that receives a grant under this section may reserve not more than ten percent of the grant amount for academic and career transition support for graduate fellowship recipients and for meeting the institutional obligation described in subsection (e)(3)(B).

(g) Restriction on use of funds

An eligible institution that receives a grant under this section may not use grant funds for general operational overhead of the institution.


PART C—GENERAL PROVISIONS

§1041. Limitations

(a) Federal control prohibited

Nothing in this subchapter shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to prohibit private, religious, or home schools from participation in programs or services under this subchapter.

(b) No change in State control encouraged or required

Nothing in this subchapter shall be construed to encourage or require any change in a State’s treatment of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law.

(c) National system of teacher certification or licensure prohibited

Nothing in this subchapter shall be construed to permit, allow, encourage, or authorize the Secretary to establish or support any national system of teacher certification or licensure.

(d) Rule of construction

Nothing in this subchapter shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded to the employees of local educational agencies under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.


Prior Provisions


§ 1051

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SUBCHAPTER III—INSTITUTIONAL AID

CODIFICATION


§ 1051. Findings and purpose

(a) Findings

The Congress finds that—

(i) there are a significant number of institutions of higher education serving large percentages of minority students and students from low-income backgrounds, that face problems that threaten their ability to survive;
(2) the problems relate to the management and fiscal operations of certain institutions of higher education, as well as to an inability to engage in long-range planning and development activities, including endowment building;

(3) in order to be competitive and provide a high-quality education for all, institutions of higher education should improve their technological capacity and make effective use of technology;

(4) the subchapter III program prior to 1985 did not always meet the specific development needs of historically Black colleges and universities and other institutions with large concentrations of minority, low-income students;

(5) the solution of the problems of these institutions would enable them to become viable, fiscally stable and independent, thriving institutions of higher education;

(6) providing assistance to eligible institutions will enhance the role of such institutions in providing access and quality education to low-income and minority students;

(7) these institutions play an important role in the American system of higher education, and there is a strong national interest in assisting them in solving their problems and in stabilizing their management and fiscal operations, and in becoming financially independent; and

(8) there is a particular national interest in aiding those institutions of higher education that have historically served students who have been denied access to postsecondary education because of race or national origin and whose participation in the American system of higher education is in the Nation’s interest so that equality of access and quality of postsecondary education opportunities may be enhanced for all students.

(b) Purpose

It is the purpose of this subchapter to assist such institutions in equalizing educational opportunity through a program of Federal assistance.


PRIOR PROVISIONS


AMENDMENTS

1998—Pars. (3) to (8). Pub. L. 105–244 added par. (3) and redesignated former pars. (3) to (7) as (4) to (8), respectively.

1993—Subsec. (a)(2). Pub. L. 103–208 struck out the comma after “planning”.

1992—Subsec. (a)(1). Pub. L. 102–325, §301(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “many institutions of higher education in this era of declining enrollments and scarce resources face problems which threaten their ability to survive.”.

Subsec. (a)(2). Pub. L. 102–325, §301(2), struck out “recruitment activities,” after “long-range planning.”

Subsec. (a)(5). Pub. L. 102–325, §301(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “providing a minimum level of assistance to all categories of eligible institutions will assure the continued participation of the institutions in the program established in this subchapter and enhance their role in providing access and quality education to low-income and minority students.”.

Effective Date of 1998 Amendment


Effective Date of 1993 Amendment

Section 5 of Pub. L. 103–208 provided that: “(a) IN GENERAL.—Except as otherwise provided therein or in subsection (b) of this section, the amendments made by section 2 of this Act [see Tables for Classification] shall be effective as if such amendments were included in the Higher Education Amendments of 1992 (Public Law 102–325), except that section 492 of the Act [section 1098a of this title] shall not apply to the amendments made by this Act [see Tables for Classification].

“(b) EXCEPTIONS.—

“(1) EFFECTIVE ON OCTOBER 1, 1993.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after October 1, 1993: (b)(29), (j)(28), (j)(36), and (j)(40) [amending sections 1070d–34, 1134e, 1134f, and 1134g of this title].

“(2) EFFECTIVE ON DATE OF ENACTMENT.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after the date of enactment of this Act [Dec. 20, 1993]: (b)(2), (b)(7), (b)(28), (c)(3), (c)(5), (c)(13)(B), (c)(13)(C), (c)(18), (c)(30), (c)(62) [amending sections 1070a, 1070a–11, 1070d–33, 1075, 1077a, 1078, 1078–1, and 1085 of this title].
§ 1057. Program purpose

(a) General authorization

The Secretary shall carry out a program, in accordance with this part, to improve the academic quality, institutional management, and fiscal stability of eligible institutions, in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

(b) Grants awarded; special consideration

(1) From the sums available for this part under section 1068h(a)(1) of this title, the Secretary may award grants to any eligible institution with an application approved under section 1068 of this title in order to assist such an institution to plan, develop, or implement activities that promise to strengthen the institution.

(2) Special consideration shall be given to any eligible institution—

   (A) which has endowment funds (other than any endowment fund built under section 1065 of this title as in effect on September 30, 1986, and under part B of this subchapter) at similar institutions;

   (B) which has expenditures per full-time equivalent student for library materials which is less than the average of the expenditures for library materials per full-time equivalent student by other similarly situated institutions.

(3) Special consideration shall be given to applications which propose, pursuant to the institution’s plan, to engage in—

   (A) faculty development;

   (B) funds and administrative management;

   (C) development and improvement of academic programs;

   (D) acquisition of equipment for use in strengthening funds management and academic programs;

   (E) joint use of facilities such as libraries and laboratories; and

   (F) student services, including services that will assist in the education of special populations.

(c) Authorized activities

Grants awarded under this section shall be used for 1 or more of the following activities:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including the integration of computer technology into institutional facilities to create smart buildings.

(3) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the field of instruction of the faculty.

(4) Development and improvement of academic programs.

(5) Purchase of library books, periodicals, and other educational materials, including telecommunications program material.

(6) Tutoring, counseling, and student service programs designed to improve academic success, including innovative, customized, instruction courses designed to help retain students and move the students rapidly into core courses and through program completion, which may include remedial education and English language instruction.

(7) Education or counseling services designed to improve the financial literacy and economic literacy of students or the students' families.

(8) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management.

(9) Joint use of facilities, such as laboratories and libraries.

(10) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(11) Establishing or improving an endowment fund.

(12) Creating or improving facilities for Internet or other distance education technologies, including purchase or rental of tele
communications technology equipment or services.

(13) Other activities proposed in the application submitted pursuant to subsection (b) and section 1068 of this title that—

(A) contribute to carrying out the purposes of the program assisted under this part; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

(d) Endowment fund

(1) In general

An eligible institution may use not more than 20 percent of the grant funds provided under this part to establish or increase an endowment fund at such institution.

(2) Matching requirement

In order to be eligible to use grant funds in accordance with paragraph (1), the eligible institution shall provide matching funds from non-Federal sources, in an amount equal to or greater than the Federal funds used in accordance with paragraph (1), for the establishment or increase of the endowment fund.

(3) Comparability

The provisions of part C of this subchapter, regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this subsection, shall apply to funds used under paragraph (1).

1987—Subsec. (b)(1). Pub. L. 100–50 substituted “section 1069f(a)(1) of this title” for “section 1069d(a)(1) of this title”.

EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1987 AMENDMENT


§ 1058. Definitions; eligibility

(a) Educational and general expenditures

For the purpose of this part, the term “educational and general expenditures” means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

(b) Eligible institution

For the purpose of this part, the term “eligible institution” means—

(1) an institution of higher education—

(A) which has an enrollment of needy students as required by subsection (d);

(B) except as provided in section 1068a(b) of this title, the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(C) which is—

(i) legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor’s degree;

(ii) a junior or community college; or

(iii) the College of the Marshall Islands, the College of Micronesia/Federated States of Micronesia, and Palau Community College;

(D) which is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable and authority as to the quality of training offered or which is, according to such an agency or association, making reasonable progress toward accreditation;

(E) which meets such other requirements as the Secretary may prescribe; and

(F) located in a State; and

(2) any branch of any institution of higher education described under paragraph (1) which by itself satisfies the requirements contained in subparagraphs (A) and (B) of such paragraph.

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under para-

1 So in original. Probably should be “subsection.”
ment fund'' means a fund that—
(1) is established by State law, by an institution of higher education, or by a foundation that is exempt from Federal income taxation;
(2) is maintained for the purpose of generating income for the support of the institution; and
(3) does not include real estate.

(d) Enrollment of needy students

Except as provided in section 1059e(b) of this title, for the purpose of this part, the term “enrollment of needy students” means an enrollment at an institution of higher education or a junior or community college which includes—
(1) at least 50 percent of the degree students so enrolled who are receiving need-based assistance under subchapter IV of this chapter and part C of chapter 34 of title 42 in the second fiscal year preceding the fiscal year for which the determination is being made (other than loans for which an interest subsidy is paid pursuant to section 1078 of this title), or
(2) a substantial percentage of students receiving Pell Grants in the second fiscal year preceding the fiscal year for which determination is being made, in comparison with the percentage of students receiving Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made, unless the requirement of this paragraph is waived under section 1068a(a) of this title.

(e) Full-time equivalent students

For the purpose of this part, the term “full-time equivalent students” means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

(f) Junior or community college

For the purpose of this part, the term “junior or community college” means an institution of higher education—
(1) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;
(2) that does not provide an educational program for which it awards a bachelor’s degree (or an equivalent degree); and
(3) that—
   (A) provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or
   (B) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

(g) Low-income individual

For the purpose of this part, the term “low-income individual” means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(h) Historically black college or university

For the purposes of this section, no historically black college or university which is eligible for and receives funds under part B of this subchapter is eligible for or may receive funds under this part.


2008—Subsec. (b)(1)(A). Pub. L. 110–315, §302(1), substituted “subsection (d)” for “subsection (c) of this section”.

Subsec. (d). Pub. L. 110–315, §302(3), (4), added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (b)(1)(B). Pub. L. 105–244, §301(c)(2)(A), substituted “section 1068a(b)” for “section 1067(b)”.


1993—Subsec. (c)(2). Pub. L. 103–208 inserted “the” after “such institutions in”.

1992—Subsec. (b)(1), (2). Pub. L. 102–325, §302(a)(1), (2), inserted “and” at end of subpar. (D), struck out subpar. (B), redesignated subpar. (F) as (E) and inserted “and” at end, and substituted period for semicolon at end of subpar. (C).

Prior Provisions


Amendments

2008—Subsec. (b)(1)(A). Pub. L. 110–315, §302(1), substituted “subsection (d)” for “subsection (c) of this section”.

Subsec. (d). Pub. L. 110–315, §302(3), (4), added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (b)(1)(B). Pub. L. 105–244, §301(c)(2)(A), substituted “section 1068a(b)” for “section 1067(b)”.

Subsecs. (d) to (g). Pub. L. 105–244, §303(b)(2), added subsec. (c).

1993—Subsec. (c)(2). Pub. L. 103–208 inserted “the” after “such institutions in”.

1992—Subsec. (b)(1), (2). Pub. L. 102–325, §302(a)(1), (2), inserted “and” at end of subpar. (D), struck out subpar. (B), redesignated subpar. (F) as (E) and inserted “and” at end, and substituted period for semicolon at end of subpar. (C).
§ 1059. Duration of grant

(a) Award period

The Secretary may award a grant to an eligible institution under this part for 5 years.

(b) Limitations

In awarding grants under this part the Secretary shall give priority to applicants who are not already receiving a grant under this part, except that for the purpose of this subsection a grant under subsection (c) of this section and a grant under section 1069c(a)(1) of this title shall not be considered a grant under this part.

(c) Planning grants

Notwithstanding subsection (a) of this section, the Secretary may award a grant to an eligible institution under this part for a period of one year for the purpose of preparation of plans and applications for a grant under this part.

(d) Wait-out-period

Each eligible institution that received a grant under this part for a 5-year period shall not be eligible to receive an additional grant under this part until 2 years after the date on which the 5-year grant period terminates.

§ 1059a. Applications

Each eligible institution desiring to receive assistance under this part shall submit an application to the Secretary for the purpose of preparation of plans and applications for a grant under this part.
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cation in accordance with the requirements of section 1068 of this title.


PRIOR PROVISIONS


EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1059b. Goals for financial management and academic program

(a) Goals

Any application for a grant under this part shall describe measurable goals for the institution’s financial management and academic programs, and include a plan of how the applicant intends to achieve those goals.

(b) Continuation requirements

Any continuation application shall demonstrate the progress made toward achievement of the goals described pursuant to subsection (a) of this section.


EFFECTIVE DATE


§ 1059c. American Indian tribally controlled colleges and universities

(a) Program authorized

The Secretary shall provide grants and related assistance to Tribal Colleges and Universities to enable such institutions to improve and expand their capacity to serve Indian students.

(b) Definitions

In this section:

(1) Indian

The term “Indian” has the meaning given the term in section 2 of the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801].

(2) Indian tribe

The term “Indian tribe” has the meaning given the term in section 2 of the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801].

(3) Tribal College or University

The term “Tribal College or University” means an institution that—

(A) qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community College Act (25 U.S.C. 640a note); or

1 See References in Text note below.

(B) is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

(4) Institution of higher education

The term “institution of higher education” means an institution of higher education as defined in section 1001(a) of this title, except that paragraph (2) of such section shall not apply.

(c) Authorized activities

(1) In general

Grants awarded under this section shall be used by Tribal Colleges or Universities to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions’ capacity to serve Indian students.

(2) Examples of authorized activities

The activities described in paragraph (1) may include—

(A) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services, and the acquisition of real property adjacent to the campus of the institution on which to construct such facilities;

(C) support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the faculty’s field of instruction or in tribal governance or tribal public policy;

(D) academic instruction in disciplines in which Indians are underrepresented and instruction in tribal governance or tribal public policy;

(E) purchase of library books, periodicals, and other educational materials, including telecommunications program material;

(F) tutoring, counseling, and student service programs designed to improve academic success;

(G) education or counseling services designed to improve the financial literacy and economic literacy of students or the students’ families;

(H) funds management, administrative management, and acquisition of equipment for use in strengthening funds management;

(I) joint use of facilities, such as laboratories and libraries;

(J) establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(K) establishing or enhancing a program of teacher education designed to qualify students to teach in elementary schools or secondary schools, with a particular emphasis on teaching Indian children and youth, that shall include, as part of such program, preparation for teacher certification;

(L) establishing community outreach programs that encourage Indian elementary
school and secondary school students to develop the academic skills and the interest to pursue postsecondary education; (M) developing or improving facilities for Internet use or other distance education technologies; and (N) other activities proposed in the application submitted pursuant to subsection (d) of this section that—

(i) contribute to carrying out the activities described in subparagraphs (A) through (M); and

(ii) are approved by the Secretary as part of the review and acceptance of such application.

(3) Endowment fund

(A) In general

A Tribal College or University may use not more than 20 percent of the grant funds provided under this section to establish or increase an endowment fund at the institution.

(B) Matching requirement

In order to be eligible to use grant funds in accordance with subparagraph (A), the Tribal College or University shall provide matching funds, in an amount equal to the Federal funds used in accordance with subparagraph (A), for the establishment or increase of the endowment fund.

(C) Comparability

The provisions of part C of this subchapter regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this paragraph, shall apply to funds used under subparagraph (A).

(d) Application, plan, and allocation

(1) Institutional eligibility

To be eligible to receive assistance under this section, a Tribal College or University shall be an eligible institution under section 1058(b) of this title.

(2) Application

(A) In general

A Tribal College or University desiring to receive assistance under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(B) Streamlined process

The Secretary shall establish application requirements in such a manner as to simplify and streamline the process for applying for grants under this section.

(3) Awards and allocations to institutions

(A) Construction grants

(i) In general

Of the amount appropriated to carry out this section for any fiscal year, the Secretary may reserve 30 percent for the purpose of awarding one-year grants of not less than $1,000,000 to address construction, maintenance, and renovation needs at eligible institutions.

(ii) Preference

In providing grants under clause (i) for any fiscal year, the Secretary shall give preference to eligible institutions that have not received an award under this section for a previous fiscal year.

(B) Allotment of remaining funds

(i) In general

Except as provided in clause (ii), the Secretary shall distribute the remaining funds appropriated for any fiscal year to each eligible institution as follows:

(I) 60 percent of the remaining appropriated funds shall be distributed among the eligible Tribal Colleges and Universities on a pro rata basis, based on the respective Indian student counts (as defined in section 2(a) of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801(a)) of the Tribal Colleges and Universities.

(ii) The remaining 40 percent shall be distributed in equal shares to the eligible Tribal Colleges and Universities.

(ii) Minimum grant

The amount distributed to a Tribal College or University under clause (i) shall not be less than $500,000.

(4) Special rules

(A) Concurrent funding

No Tribal College or University that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or part A of subchapter V.

(B) Exemption

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

References in Text


Section 532 of the Equity in Educational Land-Grant Status Act of 1994, referred to in subsec. (b)(3)(B), is section 532 of Pub. L. 103–382, which is set out in a note under section 301 of Title 7, Agriculture.

So in original. Probably should be followed by a third closing parenthesis.
§1059d. Alaska Native and Native Hawaiian-serving institutions

(a) Program authorized

The Secretary shall provide grants and related assistance to Alaska Native-serving institutions and Native Hawaiian-serving institutions to enable such institutions to improve and expand their capacity to serve Alaska Natives and Native Hawaiians.

(b) Definitions

For the purpose of this section—

(1) the term ‘‘Alaska Native’’ has the meaning given the term in section 7546 of this title;

(2) the term ‘‘Alaska Native-serving institution’’ means an institution of higher education that—

(A) is an eligible institution under section 1058(b) of this title; and

(B) at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students;

(3) the term ‘‘Native Hawaiian’’ has the meaning given the term in section 7517 of this title; and

(4) the term ‘‘Native Hawaiian-serving institution’’ means an institution of higher education which—

(A) is an eligible institution under section 1058(b) of this title; and

(B) at the time of application, has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students.

(c) Authorized activities

(1) Types of activities authorized

Grants awarded under this section shall be used by Alaska Native-serving institutions and Native Hawaiian-serving institutions to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions’ capacity to serve Alaska Natives or Native Hawaiians.

(2) Examples of authorized activities

Such programs may include—

(A) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(C) support of faculty exchanges, and faculty development and faculty fellowships to assist in attaining advanced degrees in the faculty’s field of instruction;

(D) curriculum development and academic instruction;
(E) purchase of library books, periodicals, microfilm, and other educational materials;
(F) funds and administrative management, and acquisition of equipment for use in strengthening funds management;
(G) joint use of facilities such as laboratories and libraries;
(H) academic tutoring and counseling programs and student support services; and
(I) education or counseling services designed to improve the financial literacy and economic literacy of students or the students' families.

(d) Application process

(1) Institutional eligibility

Each Alaska Native-serving institution and Native Hawaiian-serving institution desiring to receive assistance under this section shall submit to the Secretary such enrollment data as may be necessary to demonstrate that the institution is an Alaska Native-serving institution or a Native Hawaiian-serving institution as defined in subsection (b) of this section, along with such other information and data as the Secretary may by regulation require.

(2) Applications

Any institution which is determined by the Secretary to be an Alaska Native-serving institution or a Native Hawaiian-serving institution may submit an application for assistance under this section to the Secretary. The Secretary shall, to the extent possible, prescribe a simplified and streamlined format for such applications that takes into account the limited number of institutions that are eligible for assistance under this section.

(3) Special rules

(A) Eligibility

No Alaskan Native-serving institution or Native Hawaiian-serving institution that—

(1) Eligible institution

(B) Exemption

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

(C) Distribution

In awarding grants under this section, the Secretary shall, to the extent possible and consistent with the competitive process under which such grants are awarded, ensure maximum and equitable distribution among all eligible institutions.

(Ezbek) Predominantly Black Institutions

(a) Purpose

It is the purpose of this section to assist Predominantly Black Institutions in expanding educational opportunity through a program of Federal assistance.

(b) Definitions

In this section:

(1) Eligible institution

The term "eligible institution" means an institution of higher education that—

(A) has an enrollment of needy undergraduate students;
(B) has an average educational and general expenditure per full-time equivalent undergraduate student, in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions that offer similar instruction, except that the Secretary may apply the waiver requirements described in section 1068a(b) of this title to this subparagraph in the same manner as the Secretary applies the waiver requirements to section 1058(b)(1)(B) of this title;
(C) has an enrollment of undergraduate students that is not less than 40 percent Black American students;
(D) is legally authorized to provide, and provides, within the State an educational program for which the institution of higher education awards a baccalaureate degree or, in the case of a junior or community college, an associate's degree;
(E) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation; and

(F) is not receiving assistance under—

(i) part B;

(ii) part A of subchapter V; or


(2) Enrollment of needy students

The term “enrollment of needy students” means the enrollment at an eligible institution with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(A) in the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(B) come from families that receive benefits under a means-tested Federal benefit program;

(C) attended a public or nonprofit private secondary school that—

(i) is in the school district of a local educational agency that was eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.] for any year during which the student attended such secondary school; and

(ii) for the purpose of this paragraph and for such year of attendance, was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children meeting a measure of poverty under section 1113(a)(5) of such Act [20 U.S.C. 6313(a)(5)] exceeds 30 percent of the total enrollment of such school; or

(D) are first-generation college students and a majority of such first-generation college students are low-income individuals.

(3) First-generation college student

The term “first-generation college student” has the meaning given the term in section 1070a–11(h) of this title.

(4) Low-income individual

The term “low-income individual” has the meaning given such term in section 1070a–11(h) of this title.

(5) Means-tested Federal benefit program

The term “means-tested Federal benefit program” means a program of the Federal Government, other than a program under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, in which eligibility for the program’s benefits, or the amount of such benefits, are determined on the basis of income or resources of the individual or family seeking the benefit.

(6) Predominantly Black Institution

The term “Predominantly Black Institution” means an institution of higher education, as defined in section 1001(a) of this title—

(A) that is an eligible institution with not less than 1,000 undergraduate students;

(B) at which not less than 50 percent of the undergraduate students enrolled at the eligible institution are low-income individuals or first-generation college students; and

(C) at which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor’s or associate’s degree that the eligible institution is licensed to award by the State in which the eligible institution is located.

(7) State

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

(c) Grant authority

(1) In general

The Secretary is authorized to award grants, from allotments under subsection (e), to Predominantly Black Institutions to enable the Predominantly Black Institutions to carry out the authorized activities described in subsection (d).

(2) Priority

In awarding grants under this section the Secretary shall give priority to Predominantly Black Institutions with large numbers or percentages of students described in subsections 1(b)(1)(A) or (b)(1)(C). The level of priority given to Predominantly Black Institutions with large numbers or percentages of students described in subsection (b)(1)(A) shall be twice the level of priority given to Predominantly Black Institutions with large numbers or percentages of students described in subsection (b)(1)(C).

(d) Authorized activities

(1) Required activities

Grant funds provided under this section shall be used—

(A) to assist the Predominantly Black Institution to plan, develop, undertake, and implement programs to enhance the institution’s capacity to serve more low- and middle-income Black American students;

(B) to expand higher education opportunities for students eligible to participate in programs under subchapter IV of this chapter and part C of subchapter I of chapter 3 of title 42 by encouraging college preparation and student persistence in secondary school and postsecondary education; and

(C) to strengthen the financial ability of the Predominantly Black Institution to serve the academic needs of the students described in subparagraphs (A) and (B).

(2) Additional activities

Grant funds provided under this section shall be used for one or more of the following activities:

(A) The activities described in paragraphs (1) through (12) of section 1057(c) of this title.

1So in original. Probably should be “subsection”.
(B) Academic instruction in disciplines in which Black Americans are underrepresented.

(C) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary school or secondary school in the State that shall include, as part of such program, preparation for teacher certification or licensure.

(D) Establishing community outreach programs that will encourage elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(E) Other activities proposed in the application submitted pursuant to subsection (f) that—

(i) contribute to carrying out the purpose of this section; and

(ii) are approved by the Secretary as part of the review and approval of an application submitted under subsection (f).

(3) Endowment fund

(A) In general

A Predominantly Black Institution may use not more than 20 percent of the grant funds provided under this section to establish or increase an endowment fund at the institution.

(B) Matching requirement

In order to be eligible to use grant funds in accordance with subparagraph (A), a Predominantly Black Institution shall provide matching funds from non-Federal sources, in an amount equal to or greater than the Federal funds used in accordance with subparagraph (A), for the establishment or increase of the endowment fund.

(C) Comparability

The provisions of part C, regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this subsection, shall apply to funds used under subparagraph (A).

(4) Limitation

Not more than 50 percent of the grant funds provided to a Predominantly Black Institution under this section may be available for the purpose of constructing or maintaining a classroom, library, laboratory, or other instructional facility.

(e) Allotments to Predominantly Black Institutions

(1) Federal Pell Grant basis

From the amounts appropriated to carry out this section for any fiscal year, the Secretary shall allot to each Predominantly Black Institution having an application approved under subsection (f) a sum that bears the same ratio to one-half of that amount as the number of Federal Pell Grant recipients in attendance at such institution at the end of the academic year preceding the beginning of that fiscal year, bears to the total number of Federal Pell Grant recipients at all such institutions at the end of such academic year.

(2) Graduates basis

From the amounts appropriated to carry out this section for any fiscal year, the Secretary shall allot to each Predominantly Black Institution having an application approved under subsection (f) a sum that bears the same ratio to one-fourth of that amount as the number of graduates for such academic year at such institution, bears to the total number of graduates for such academic year at all such institutions.

(3) Graduates seeking a higher degree basis

From the amounts appropriated to carry out this section for any fiscal year, the Secretary shall allot to each Predominantly Black Institution having an application approved under subsection (f) a sum that bears the same ratio to one-fourth of that amount as the percentage of graduates from such institution who are admitted to and in attendance at, not later than two years after graduation with an associate's degree or a baccalaureate degree, a baccalaureate degree-granting institution or a graduate or professional school in a degree program in disciplines in which Black American students are underrepresented, bears to the percentage of such graduates for all such institutions.

(4) Minimum allotment

(A) In general

Notwithstanding paragraphs (1), (2), and (3), the amount allotted to each Predominantly Black Institution under this section may not be less than $250,000.

(B) Insufficient amount

If the amounts appropriated to carry out this section for a fiscal year are not sufficient to pay the minimum allotment provided under subparagraph (A) for the fiscal year, then the amount of such minimum allotment shall be ratably reduced. If additional sums become available for such fiscal year, such reduced allotment shall be increased on the same basis as the allotment was reduced until the amount allotted equals the minimum allotment required under subparagraph (A).

(5) Reallotment

The amount of a Predominantly Black Institution's allotment under paragraph (1), (2), (3), or (4) for any fiscal year that the Secretary determines will not be needed for such institution for the period for which such allotment is available, shall be available for reallocation to other Predominantly Black Institutions in proportion to the original allotments to such other institutions under this section for such fiscal year. The Secretary shall reallocate such amounts from time to time, on such date and during such period as the Secretary determines appropriate.

(f) Applications

Each Predominantly Black Institution desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(g) Application review process

Section 1068b of this title shall not apply to applications under this section.
(h) Duration and carryover

Any grant funds paid to a Predominantly Black Institution under this section that are not expended or used for the purposes for which the funds were paid within ten years following the date on which the grant was awarded, shall be repaid to the Treasury.

(i) Special rule on eligibility

No Predominantly Black Institution that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or part A of subchapter V.

(2) Examples of authorized activities

Such programs may include—

(A) the purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(C) support of faculty exchanges, and faculty development and faculty fellowships to assist faculty in attaining advanced degrees in the faculty’s field of instruction;

(D) curriculum development and academic instruction;

(E) the purchase of library books, periodicals, microfilm, and other educational materials;

(F) funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(G) the joint use of facilities such as laboratories and libraries;

(H) academic tutoring and counseling programs and student support services; and

(I) education or counseling services designed to improve the financial and economic literacy of students or the students’ families.

(d) Application process

(1) Institutional eligibility

A Native American-serving, nontribal institution desiring to receive assistance under this section shall submit to the Secretary such enrollment data as may be necessary to demonstrate that the institution is a Native American-serving, nontribal institution, along with such other information and data as the Secretary may reasonably require.

(2) Applications

(A) Authority to submit applications

Any institution that is determined by the Secretary to be a Native American-serving, nontribal institution may submit an application for assistance under this section to the Secretary.

(B) Simplified and streamlined format

The Secretary shall, to the extent possible, continue to prescribe a simplified and streamlined format for applications under this section that takes into account the limited number of institutions that are eligible for assistance under this section.

(C) Content

An application submitted under subparagraph (A) shall include—
(i) a five-year plan for improving the assistance provided by the Native American-serving, nontribal institution to Native Americans and low-income individuals; and
(ii) such other information and assurances as the Secretary may reasonably require.

(3) Special rules

(A) Eligibility

No Native American-serving, nontribal institution that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or part A of subchapter V.

(B) Exemption

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

(C) Distribution

In awarding grants under this section, the Secretary shall, to the extent possible and consistent with the competitive process under which such grants are awarded, ensure maximum and equitable distribution among all eligible institutions.

(D) Minimum grant amount

The minimum amount of a grant under this section shall be $200,000.

(3) Native American Pacific Islander

The term “Native American Pacific Islander” means any descendant of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

(c) Authorized activities

(1) Types of activities authorized

Grants awarded under this section shall be used by Asian American and Native American Pacific Islander-serving institutions to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions’ capacity to serve Asian Americans and Native American Pacific Islanders and low-income individuals.

(2) Examples of authorized activities

Such programs may include—

(A) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(C) support of faculty exchanges, and faculty development and faculty fellowships to assist in attaining advanced degrees in the faculty’s field of instruction;

(D) curriculum development and academic instruction;

(E) purchase of library books, periodicals, microfilm, and other educational materials; and

(F) purchase of library books, periodicals, microfilm, and other educational materials.

§ 1059g. Asian American and Native American Pacific Islander-serving institutions

(a) Program authorized

The Secretary shall provide grants and related assistance to Asian American and Native American Pacific Islander-serving institutions to enable such institutions to improve and expand their capacity to serve Asian Americans and Native American Pacific Islanders and low-income individuals.

(b) Definitions

In this section:

(1) Asian American


(2) Asian American and Native American Pacific Islander-serving institution

The term “Asian American and Native American Pacific Islander-serving institution” means an institution of higher education that—

(A) is an eligible institution under section 1058(b) of this title; and

(B) at the time of application, has an enrollment of undergraduate students that is not less than 10 percent students who are Asian American or Native American Pacific Islander.

(d) Application process

(1) Institutional eligibility

Each Asian American and Native American Pacific Islander-serving institution desiring to receive assistance under this section shall submit to the Secretary such enrollment data as
may be necessary to demonstrate that the institution is an Asian American and Native American Pacific Islander-serving institution as defined in subsection (b), along with such other information and data as the Secretary may reasonably require.

(2) Applications

Any institution that is determined by the Secretary to be an Asian American and Native American Pacific Islander-serving institution may submit an application for assistance under this section to the Secretary. Such application shall include—

(A) a five-year plan for improving the assistance provided by the Asian American and Native American Pacific Islander-serving institution to Asian American and Native American Pacific Islander students and low-income individuals; and

(B) such other information and assurances as the Secretary may reasonably require.

(3) Special rules

(A) Eligibility

No Asian American and Native American Pacific Islander-serving institution that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or subchapter V.

(B) Exemption

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

(C) Distribution

In awarding grants under this section, the Secretary shall—

(i) to the extent possible and consistent with the competitive process under which such grants are awarded, ensure maximum and equitable distribution among all eligible institutions; and

(ii) give priority consideration to institutions for which not less than 10 percent of such institution’s Asian American and Native American Pacific Islander students are low-income individuals.


REFERENCES IN TEXT

The Morrill Act of 1862, referred to in par. (2), is act July 2, 1862, ch. 330, 12 Stat. 503, also known as the First Morrill Act, which is classified generally to subchapter I (§301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

PRIOR PROVISIONS


Another prior section 1060, Pub. L. 90–575, title V, §304, Oct. 16, 1968, 82 Stat. 1062, related to eligibility for student assistance because of conviction of crimes involving force, disruption, or seizure of property of educational institution; refusal to obey regulations or orders of persons and disruption of administration of institution; other misconduct, disciplinary proceedings, and freedom of expression; and description of programs covered by such disqualification, prior to repeal by Pub. L. 92–318, title I, §103(b), June 23, 1972, 86 Stat. 292.

EXECUTIVE ORDER NO. 12320

Ex. Ord. No. 12320, Sept. 15, 1981, 46 F.R. 46107, which provided for the development of a Federal program to achieve a significant increase in the participation by historically Black colleges and universities in Federally sponsored programs, was revoked by Ex. Ord. No. 12677, Apr. 28, 1989, 54 F.R. 18889, formerly set out below.

EXECUTIVE ORDER NO. 12677

Ex. Ord. No. 12677, Apr. 28, 1989, 54 F.R. 18889, which provided for the development of a Federal program to achieve a significant increase in the participation by historically Black colleges and universities in Federally sponsored programs, was revoked by Ex. Ord. No. 12676, §13, Nov. 1, 1993, 58 F.R. 58735, formerly set out below.

EXECUTIVE ORDER NO. 12676

Ex. Ord. No. 12676, Nov. 1, 1993, 58 F.R. 58735, which established in the Department of Education the President's Board of Advisors on Historically Black Colleges and Universities, a Presidential advisory committee,
was revoked by Ex. Ord. No. 13256, § 11, Feb. 12, 2002, 67 F.R. 6825, formerly set out below.

EXECUTIVE ORDER NO. 13256
Ex. Ord. No. 13256, Feb. 12, 2002, 67 F.R. 6823, which established in the Office of the Secretary of Education the President’s Board of Advisors on Historically Black Colleges and Universities, a Presidential advisory committee, was revoked by Ex. Ord. No. 13532, § 4(g), Feb. 26, 2010, 75 F.R. 9752, set out below.

EX. ORD. NO. 13532. PROMOTING EXCELLENCE, INNOVATION, AND SUSTAINABILITY AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to advance the development of the Nation’s full human potential and to advance equal opportunity in higher education, strengthen the capacity of historically black colleges and universities to provide the highest quality education, increase opportunities for these institutions to participate in and benefit from Federal programs, and ensure that our Nation has the highest proportion of college graduates in the world by the year 2020, it is hereby ordered as follows:

SECTION 1. Policy. Historically black colleges and universities (HBCUs) have made historic and ongoing contributions to the general welfare and prosperity of our country. Established by visionary leaders, America’s HBCUs, for over 150 years, have produced many of the Nation’s leaders in business, government, academia, and the military and have provided generations of American men and women with hope and educational opportunity. The Nation’s 105 HBCUs are located in 20 States, the District of Columbia, and the U.S. Virgin Islands and serve more than 300,000 undergraduate and graduate students. These institutions continue to be important engines of economic growth and community service, and they are proven ladders of intergenerational advancement for men and women of all ethnic, racial, and economic backgrounds, especially African Americans. These institutions also produce a high number of baccalaureate recipients who go on to assume leadership and service roles in their communities and who successfully complete graduate and professional degree programs.

SEC. 2. White House Initiative on HBCUs.
(a) Establishment. There is established the White House Initiative on Historically Black Colleges and Universities (Initiative), to be housed in the Department of Education (Department).
(b) Mission and Functions. The Initiative shall work with executive departments, agencies, and offices, the private sector, educational associations, philanthropic organizations, and other partners to increase the capacity of HBCUs to provide the highest-quality education to a greater number of students, and to take advantage of these institutions’ capabilities in serving the Nation’s needs through five core tasks:

(i) strengthening the capacity of HBCUs to participate in Federal programs;
(ii) fostering enduring private-sector initiatives and public-private partnerships while promoting specific areas and centers of academic research and programmatic excellence throughout all HBCUs;
(iii) improving the availability, dissemination, and quality of information concerning HBCUs to inform public policy and practice;
(iv) sharing administrative and programmatic practices within the HBCU community for the benefit of all; and
(v) exploring new ways of improving the relationship between the Federal Government and HBCUs.

(b) Administration. The Initiative shall be administered by the Executive Director of the Initiative. The Department shall provide the staff, resources, and assistance for the Initiative, and shall assist the Initiative in fulfilling its mission and responsibilities under this order.

(d) Federal Agency Plans. (1) Each executive department and agency designated by the Secretary of Education (Secretary) shall prepare an annual plan (agency plan) of its efforts to strengthen the capacity of HBCUs through increased participation in appropriate Federal programs and initiatives. Where appropriate, each agency plan shall address, among other things, the agency’s proposed efforts to:

(i) establish how the department or agency intends to increase the capacity of HBCUs to compete effectively for grants, contracts, or cooperative agreements and to encourage HBCUs to participate in Federal programs;
(ii) identify Federal programs and initiatives in which HBCUs may be either underserved or underused as national resources, and improve HBCUs’ participation therein; and
(iii) encourage public-sector, private-sector, and community involvement in improving the overall capacity of HBCUs.

(2) Each department and agency, in its agency plan, shall provide appropriate measurable objectives and, after the first year, shall annually assess that department’s or agency’s performance on the goals set in the previous year’s agency plan.

(3) The Secretary shall establish a date by which agency plans shall be submitted to the Secretary. The Secretary and the Executive Director shall review the agency plans in consultation with the President’s Board of Advisors on HBCUs, established in section 3 of this order, and shall submit to the President an annual plan to strengthen the overall capacity of HBCUs.

(4) To help fulfill the objectives of these plans, the head of each department and agency identified by the Secretary shall provide, as appropriate, technical assistance and information to the Executive Director for purposes of communicating with HBCUs concerning program activities of the department or agency and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

(5) To help fulfill the goals of this order, each executive department and agency identified by the Secretary shall appoint a senior official to serve as Chair, who shall coordinate with the Executive Director to convene meetings and help direct the work of the Board. The Board shall include representatives of a variety of sectors, including philanthropy, education, business, finance, entrepreneurship, innovation, and private foundations, as well as sitting HBCU presidents.

(b) Mission and Functions. Through the Initiative, the Board shall advise the President and the Secretary on all matters pertaining to strengthening the educational capacity of HBCUs. In particular, the Board shall advise the President and the Secretary in the following areas:

(i) improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs;
(ii) engaging the philanthropic, business, government, military, homeland security, and other communities in a national dialogue regarding new HBCU programs and initiatives;

SIC. 3. President’s Board of Advisors on HBCUs.
(a) Establishment. There is established in the Department the President’s Board of Advisors on Historically Black Colleges and Universities (the Board). The Board shall consist of not more than 25 members appointed by the President. The President shall designate one member of the Board to serve as Chair, who shall coordinate with the Executive Director to convene meetings and help direct the work of the Board. The Board shall include representatives of a variety of sectors, including philanthropy, education, business, finance, entrepreneurship, innovation, and private foundations, as well as sitting HBCU presidents.
(iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the Nation in reaching its goal of having the highest proportion of college graduates by 2020;
(iv) elevating the public awareness of HBCUs; and
(v) encouraging public-private investments in HBCUs.
(c) Administration. The Executive Director of the Initiative shall also serve as the Executive Director of the Board. The Department shall provide funding and administrative support for the Board to the extent permitted by law and within existing appropriations. Members of the Board shall serve without compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law. Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Board, any functions of the President under that Act, except for those of reporting to the Congress, shall be performed by the Secretary, in accordance with guidelines issued by the Administrator of General Services.
(d) Report. As part of the annual report of the Initiative, the Board shall report to the President and the Secretary on their progress in carrying out its duties under this section.

SCC. 4. General Provisions. (a) For the purposes of this order, “historically black colleges and universities” shall mean those institutions listed in 34 C.F.R. 90.3.
(b) This order shall apply to executive departments and agencies designated by the Secretary. Those departments and agencies shall provide timely reports and such information as is required to effectively carry out the objectives of this order.
(c) The heads of executive departments and agencies shall assist and provide information through the White House Initiative to the Board, consistent with applicable law, as may be necessary to carry out the functions of the Board. Each executive department and agency shall bear its own expenses of participating in the Initiative.
(d) Nothing in this order shall be construed to impair or otherwise affect:
(i) the authority granted by law to an executive department, agency, or the head thereof; or
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
(g) Executive Order 13256 of February 12, 2002, is hereby revoked.

BARACK OBAMA.

EXTENSION OF TERM OF PRESIDENT’S BOARD OF ADVISORS ON HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 1999, by Ex. Ord. No. 13082, §1(e), Sept. 29, 1997, 62 F.R. 53175, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50929, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57089, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 29, 2007, 72 F.R. 56175, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2011, by Ex. Ord. No. 13511, Sept. 29, 2009, 74 F.R. 59099, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2013, by Ex. Ord. No. 13591, Nov. 23, 2011, 76 F.R. 74623, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

DETERMINATIONS REGARDING PRESIDENT’S BOARD OF ADVISORS

Memorandum of the President of the United States, Aug. 17, 1990, 55 F.R. 46941, provided:
Memorandum for the Secretary of Education
By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 208 of title 18 of the United States Code and section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Education my authority to make determinations under subsection (b) of section 208 of title 18, United States Code, for the members of the President’s Board of Advisors on Historically Black Colleges and Universities, established pursuant to Executive Order 12977 of April 28, 1989 (formerly set out above).
This memorandum shall be published in the Federal Register.

GEORGE W. BUSH.

§ 1061. Definitions

For the purpose of this part:
(1) The term “graduate” means an individual who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than 5 consecutive school years.
(2) The term “part B institution” means any historically Black college or university that was established prior to 1964, whose principal mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation, except that any branch campus of a southern institution of higher education that prior to September 30, 1986, received a grant as an institution with special

1So in original.
needs under section 1060 of this title and was formally recognized by the National Center for Education Statistics as a Historically Black College or University but was determined not to be a part B institution on or after October 17, 1986, shall, from July 18, 1988, be considered a part B institution.

(3) The term “Pell Grant recipient” means a recipient of financial aid under subpart 1 of part A of subchapter IV of this chapter.

(4) The term “professional and academic areas in which Blacks are underrepresented” shall be determined by the Secretary, in consultation with the Commissioner for Education Statistics and the Commissioner of the Bureau of Labor Statistics, on the basis of the most recent available satisfactory data, as professional and academic areas in which the percentage of Black Americans who have been educated, trained, and employed is less than the percentage of Blacks in the general population.

(5) The term “school year” means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.


PRIOR PROVISIONS


AMENDMENTS

1988—Par. (2). Pub. L. 100–369 inserted “, except that any branch campus of a southern institution of higher education that prior to September 30, 1986, received a grant as an institution with special needs under section 1060 of this title and was formally recognized by the National Center for Education Statistics as a Historically Black College or University but was determined not to be a part B institution on or after October 17, 1986, shall, from July 18, 1988, be considered a part B institution” after “accreditation”.

§ 1062. Grants to institutions
(a) General authorization; uses of funds
From amounts available under section 1068(a)(2) of this title for any fiscal year, the Secretary shall make grants (under section 1063 of this title) to institutions which have applications approved by the Secretary (under section 1063a of this title) for any of the following uses:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services.

(3) Support of faculty exchanges, and faculty development and faculty fellowships to assist in attaining advanced degrees in their field of instruction.

(4) Academic instruction in disciplines in which Black Americans are underrepresented.

(5) Purchase of library books, periodicals, microfilm, and other educational materials, including telecommunications program materials.

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(7) Funds and administrative management, and acquisition of equipment for use in strengthening funds management.

(8) Joint use of facilities, such as laboratories and libraries.

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(10) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary or secondary school in the State that shall include, as part of such program, preparation for teacher certification.

(11) Establishing community outreach programs which will encourage elementary and secondary students to develop the academic skills and the interest to pursue postsecondary education.

(12) Acquisition of real property in connection with the construction, renovation, or addition to or improvement of campus facilities.

(13) Education or financial information designed to improve the financial literacy and economic literacy of students or the students’ families, especially with regard to student indebtedness, and student assistance programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(14) Services necessary for the implementation of projects or activities that are described in the grant application and that are approved, in advance, by the Secretary, except that not more than two percent of the grant amount may be used for this purpose.

(15) Other activities proposed in the application submitted pursuant to section 1063a of this title that—

(A) contribute to carrying out the purposes of this part; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

(b) Endowment fund
(1) In general
An institution may use not more than 20 percent of the grant funds provided under this part to establish or increase an endowment fund at the institution.

(2) Matching requirement
In order to be eligible to use grant funds in accordance with paragraph (1), the eligible in-
stitution shall provide matching funds from non-Federal sources, in an amount equal to or greater than the Federal funds used in accordance with paragraph (1), for the establishment or increase of the endowment fund.

(3) Comparability

The provisions of part C of this subchapter regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this subsection, shall apply to funds used under paragraph (1).

(c) Limitations

(1) No grant may be made under this chapter and part C of subchapter I of chapter 34 of title 42 for any educational program, activity, or service related to sectarian instruction or religious worship, or provided by a school or department of divinity. For the purpose of this subsection, the term "school or department of divinity" means an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(2) Not more than 50 percent of the allotment of any institution may be available for the purpose of constructing or maintaining a classroom, library, laboratory, or other instructional facility.


Subsec. (a)(5). Pub. L. 102–325, § 303(a)(2), inserted "including purchase or rental of telecommunications technology equipment or services" after "facilities".

Subsec. (a)(6). Pub. L. 102–325, § 303(a)(2), inserted "including telecommunications program materials" after "materials".


Subsec. (b)(3). Pub. L. 102–325, § 303(b), added par. (3).

1988—Subsec. (a)(3). Pub. L. 100–369, § 10(b)(1), added "and faculty development" after "exchanges".

Subsec. (a)(7), (8). Pub. L. 100–369, § 10(b)(2), added pars. (7) and (8).

1987—Subsec. (a). Pub. L. 100–50 substituted "section 1069(a)(2) of this title" for "section 1069(a)(2) of this title".

PRIORITY DATE OF 2009 AMENDMENT


PRIORITY DATE OF 1998 AMENDMENT


PRIORITY DATE OF 1993 AMENDMENT


PRIORITY DATE OF 1992 AMENDMENT


PRIORITY DATE OF 1987 AMENDMENT


§ 1063. Allotments to institutions

(a) Allotment; Pell Grant basis

From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-half that amount as the number of Pell Grant recipients in attendance at such institution at the end of the school year preceding the beginning of that fiscal year bears to the total number of Pell Grant recipients at all part B institutions.

(b) Allotment; graduates basis

From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth that amount as the number of graduates for such school year at such institution bears to the total number of graduates for such school year at all part B institutions.

(c) Allotment; graduate and professional student basis

From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall...
allot to each part B institution a sum which bears the same ratio to one-fourth of that amount as the percentage of graduates per institution, who are admitted to and in attendance at, within 5 years of graduation with a baccalaureate degree, a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented, bears to the percentage of such graduates per institution for all part B institutions.

(d) Minimum allotment

(1) Notwithstanding subsections (a) through (c), and subject to subsection (h), if the amount of an award under this section for a part B institution, based on the data provided by the part B institution and the formula under subsections (a) through (c), would be—

(A) an amount that is greater than $250,000 but less than $500,000, the Secretary shall award the part B institution an allotment in the amount of $500,000; and

(B) an amount that is equal to or less than $250,000, the Secretary shall award the part B institution an allotment in the amount of $250,000.

(2) If the amount appropriated pursuant to section 1068h(a)(2)(A) of this title for any fiscal year is not sufficient to pay the minimum allotment required by paragraph (1) to all part B institutions, the amount of such minimum allotments shall be ratably reduced. If additional sums become available for such fiscal year, such reduced allocations shall be increased on the same basis as the basis on which they were reduced (until the amount allotted equals the minimum allotment required by paragraph (1)).

(e) Reallocation

The amount of any part B institution’s allotment under subsection (a), (b), (c), or (d) of this section for any fiscal year which the Secretary determines will not be required for such institution for the period such allotment is available shall be available for reallocation from time to time on such date during such period as the Secretary may determine to other part B institutions in proportion to the original allotment to such other institutions under this section for such fiscal year.

(f) Special merger rule

(1) The Secretary shall permit any eligible institution for a grant under part B in any fiscal year prior to the fiscal year 1986 to apply for a grant under this part if the eligible institution has merged with another institution of higher education which is not so eligible or has merged with an eligible institution.

(2) The Secretary may establish such regulations as may be necessary to carry out the requirement of paragraph (1) of this subsection.

(g) Special rule for certain District of Columbia eligible institutions

In any fiscal year that the Secretary determines that Howard University or the University of the District of Columbia will receive an allotment under subsections (b) and (c) of this section which is not in excess of amounts received by Howard University under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123), relating to annual authorization of appropriations for Howard University, or by the University of the District of Columbia under the District of Columbia Home Rule Act (87 Stat. 774) for such fiscal year, then Howard University and the University of the District of Columbia, as the case may be, shall be ineligible to receive an allotment under this section.

(h) Conditions for allotments

(1) Student requirements for allotment

Notwithstanding any other provision of this section, a part B institution that would otherwise be eligible for funds under this part shall not receive an allotment under this part for a fiscal year, including the minimum allotment under subsection (d), if the part B institution, in the academic year preceding such fiscal year—

(A) did not have any enrolled students who were Pell Grant recipients;

(B) did not graduate any students; or

(C) where appropriate, did not have any students who, within 5 years of graduation from the part B institution, were admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented.

(2) Data requirements for allotments

Notwithstanding any other provision of this section, a part B institution shall not receive an allotment under this part for a fiscal year, including the minimum allotment under subsection (d), unless the institution provides the Secretary with the data required by the Secretary and for purposes of the formula described in subsections (a) through (c), including—

(A) the number of Pell Grant recipients enrolled in the part B institution in the academic year preceding such fiscal year;

(B) the number of students who earned an associate or baccalaureate degree from the part B institution in the academic year preceding such fiscal year; and

(C) where appropriate, the percentage of students who, within 5 years of graduation from the part B institution, were admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented in the academic year preceding such fiscal year.


References in Text

The Act of March 2, 1867, referred to in subsec. (g), is act Mar. 2, 1867, ch. 162, 14 Stat. 438. Provisions relating to authorization of appropriations are contained in section 8 of the Act, which is classified to section 122 of this title. For complete classification of this Act to the Code, see Tables.
§ 1063a. Applications

(a) Contents

No part B institution shall be entitled to its allotment of Federal funds for any grant under section 1063 of this title for any period unless that institution meets the requirements of subparagraphs (C), (D), and (E) of section 1058(b)(1) of this title and submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that the payments under this chapter and part C of subchapter I of chapter 34 of title 42 will be used for the purposes set forth in section 1062 of this title; and

(2) provide for making an annual report to the Secretary and provide for—

(A) conducting, except as provided in subparagraph (B), a financial and compliance audit of an eligible institution, with regard to any funds obtained by it under this subchapter at least once every 2 years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(B) with regard to an eligible institution which is audited under chapter 75 of title 31, deeming such audit to satisfy the requirements of subparagraph (A) for the period covered by such audit.

(b) Approval

The Secretary shall approve any application which meets the requirements of subsection (a) of this section and shall not disapprove any application submitted under this part, or any modification thereof, without first affording such institution reasonable notice and opportunity for a hearing.

(c) Goals for financial management and academic programs

Any application for a grant under this part shall describe measurable goals for the institution’s financial management and academic programs and include a plan of how the applicant intends to achieve those goals.

REFERENCES IN TEXT


Amendments


1992—Subsec. (c). Pub. L. 102–325, §303(c), inserted “within 5 years of graduation with a baccalaureate degree,” after “in attendance at”. 

1986—Subsec. (c). Pub. L. 99–509, §7007(4), substituted “subparagraph (E)” for “‘number of such graduates’”.

1987—Subsec. (c). Pub. L. 100–50 substituted “section 1061 of this title” for “section 1062 of this title”.

1 See References in Text note below.
§ 1063b. Professional or graduate institutions

(a) General authorization

(1) Subject to the availability of funds appropriated to carry out this section, the Secretary shall award program grants to each of the postgraduate institutions listed in subsection (e) of this section that is determined by the Secretary to be making a substantial contribution to the education opportunities in mathematics, engineering, or the physical or natural sciences for Black Americans.

(2) No grant in excess of $1,000,000 may be made under this section unless the postgraduate institution provides assurances that 50 percent of the cost of the purposes for which the grant is made will be paid from non-Federal sources, except that no institution shall be required to match any portion of the first $1,000,000 of the institution’s award from the Secretary. After funds are made available to each eligible institution under the funding rules described in subsection (f) of this section, the Secretary shall distribute, on a pro rata basis, any amounts which were not so made available (by reason of the failure of an institution to comply with the matching requirements of this paragraph) among the institutions that have complied with such matching requirement.

(b) Duration

Grants shall be made for a period not to exceed 5 years. Any funds awarded for such five-year grant period that are obligated during such five-year period beginning on the first day of such five-year period.

(c) Uses of funds

A grant under this section may be used for—

(1) purchase, rental or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) purchase of library books, periodicals, technical and other scientific journals, microfilm, microfiche, and other educational materials, including telecommunications program materials;

(4) scholarships, fellowships, and other financial assistance for needy graduate and professional students to permit the enrollment of the students in and completion of the doctoral degree in medicine, dentistry, pharmacy, veterinary medicine, law, and the doctorate degree in the physical or natural sciences, engineering, mathematics, or other scientific disciplines in which African Americans are underrepresented;

(5) establishing or improving a development office to strengthen and increase contributions from alumni and the private sector;

(6) assisting in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 1065 of this title;

(7) funds and administrative management, and the acquisition of equipment, including software, for use in strengthening funds management and information systems;

(8) acquisition of real property that is adjacent to the campus in connection with the construction, renovation, or addition to or improvement of campus facilities;

(9) education or financial information designed to improve the financial literacy and economic literacy of students or the students’ families, especially with regard to student indebtedness and student assistance programs under subchapter IV of this chapter and part C of subchapter I of chapter 42;

(10) services necessary for the implementation of projects or activities that are described in the grant application and that are approved, in advance, by the Secretary, except that not more than two percent of the grant amount may be used for this purpose;

(11) tutoring, counseling, and student service programs designed to improve academic success; and

(12) other activities proposed in the application submitted under subsection (d) that—

(A) contribute to carrying out the purposes of this part; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

(d) Application

Any institution eligible for a grant under this section shall submit an application which—

(1) demonstrates how the grant funds will be used to improve graduate educational opportunities for Black and low-income students, and lead to greater financial independence; and

(2) provides, in the case of applications for grants in excess of $1,000,000, the assurances required by subsection (a)(2) of this section that not more than two percent of the grant amount may be used for this purpose;

(3) construction, maintenance, renovation, or addition to or improvement of campus facilities;

(4) establishing or improving a development office to strengthen and increase contributions from alumni and the private sector;

(5) providing, in the case of applications for grants in excess of $1,000,000, the assurances required by subsection (a)(2) of this section that not more than two percent of the grant amount may be used for this purpose;

(6) providing, in the case of applications for grants in excess of $1,000,000, the assurances required by subsection (a)(2) of this section that not more than two percent of the grant amount may be used for this purpose.

(e) Eligibility

(1) In general

Independent professional or graduate institutions and programs eligible for grants under subsection (a) of this section are the following:

(A) Morehouse School of Medicine;

(B) Meharry Medical School;

(C) Charles R. Drew Postgraduate Medical School;

(D) Clark-Atlanta University;

(E) Tuskegee University School of Veterinary Medicine and other qualified graduate programs;
(F) Xavier University School of Pharmacy and other qualified graduate programs;
(G) Southern University School of Law and other qualified graduate programs;
(H) Texas Southern University School of Law and School of Pharmacy and other qualified graduate programs;
(I) Florida A&M University School of Pharmaceutical Sciences and other qualified graduate programs;
(J) North Carolina Central University School of Law and other qualified graduate programs;
(K) Morgan State University qualified graduate program;
(L) Hampton University qualified graduate program;
(M) Alabama A&M qualified graduate program;
(N) North Carolina A&T State University qualified graduate program;
(O) University of Maryland Eastern Shore qualified graduate program;
(P) Jackson State University qualified graduate program;
(Q) Norfolk State University qualified graduate programs;
(R) Tennessee State University qualified graduate programs;
(S) Alabama State University qualified graduate programs;
(T) Prairie View A&M University qualified graduate programs;
(U) Delaware State University qualified graduate programs;
(V) Langston University qualified graduate programs;
(W) Bowie State University qualified graduate programs; and
(X) University of the District of Columbia David A. Clarke School of Law.

(2) Qualified graduate program

(A) For the purposes of this section, the term “qualified graduate program” means a graduate or professional program that provides a program of instruction in law or in the physical or natural sciences, engineering, mathematics, psychometrics, or other scientific discipline in which African Americans are underrepresented and has students enrolled in such program at the time of application for a grant under this section.

(B) Notwithstanding the enrollment requirement contained in subparagraph (A), an institution may use an amount equal to not more than 10 percent of the institution’s grant under this section for the development of a new qualified graduate program.

(3) Special rule

Institutions that were awarded grants under this section prior to October 1, 2008, shall continue to receive such grants, subject to the availability of appropriated funds, regardless of the eligibility of the institutions described in subparagraphs (S) through (X) of paragraph (1).

(4) One grant per institution

The Secretary shall not award more than 1 grant under this section in any fiscal year to any institution of higher education.

(5) Institutional choice

The president or chancellor of the institution may decide which graduate or professional school or qualified graduate program will receive funds under the grant in any 1 fiscal year, if the allocation of funds among the schools or programs is delineated in the application for funds submitted to the Secretary under this section.

(f) Funding rule

Subject to subsection (g) of this section, of the amount appropriated to carry out this section for any fiscal year—

(1) the first $56,900,000 (or any lesser amount appropriated) shall be available only for the purposes of making grants to institutions or programs described in subparagraphs (A) through (R) of subsection (e)(1) of this section;

(2) any amount in excess of $56,900,000, but not in excess of $62,900,000, shall be available for the purpose of making grants to institutions or programs described in subparagraphs (S) through (X) of subsection (e)(1) of this section; and

(3) any amount in excess of $62,900,000, shall be made available to each of the institutions or programs identified in subparagraphs (A) through (X) pursuant to a formula developed by the Secretary that uses the following elements:

(A) The ability of the institution to match Federal funds with non-Federal funds.

(B) The number of students enrolled in the programs for which the eligible institution received funding under this section in the previous year.

(C) The average cost of education per student, for all full-time graduate or professional students (or the equivalent) enrolled in the eligible professional or graduate school, or for doctoral students enrolled in the qualified graduate programs.

(D) The number of students in the previous year who received their first professional or doctoral degree from the programs for which the eligible institution received funding under this section in the previous year.

(E) The contribution, on a percent basis, of the programs for which the institution is eligible to receive funds under this section to the total number of African Americans receiving graduate or professional degrees in the professions or disciplines related to the programs for the previous year.

(g) Hold harmless rule

Notwithstanding paragraphs (2) and (3) of subsection (f) of this section, no institution or qualified program identified in subsection (e)(1) of this section that received a grant for fiscal year 2008 and that is eligible to receive a grant in a subsequent fiscal year shall receive a grant amount in any such subsequent fiscal year that is less than the grant amount received for fiscal year 2008, unless the amount appropriated is not sufficient to provide such grant amounts to all such institutions and programs, or the institu-
tion cannot provide sufficient matching funds to meet the requirements of this section.

(b) Interaction with other grant programs

No institution that is eligible for and receives an award under section 1102a, 1136a, or 1136b of this title for a fiscal year shall be eligible to apply for a grant, or receive grant funds, under this section for the same fiscal year.


AMENDMENTS

2008—Subsec. (b). Pub. L. 110–315, § 311(a), inserted at end “Any funds awarded for such five-year grant period that are obligated during such five-year period may be expended during the 10-year period beginning on the first day of such five-year period.”

Subsec. (c)(5). Pub. L. 110–315, § 311(b)(1), substituted “‘establishing or improving’ for ‘‘establish or improve’”.


Subsec. (e)(1)(B) to (X). Pub. L. 110–315, § 311(c)(1)(B) to (D), added subpars. (8) to (X).

Subsec. (e)(2)(A). Pub. L. 110–315, § 311(c)(3), inserted “in law or” after “‘instruction’ and substituted “mathematics, psychometrics, or” for “mathematics, or”.

Subsec. (e)(3). Pub. L. 110–315, § 311(c)(2), substituted “2008” for “1998” and “subparagraphs (S) through (X)” for “subparagraphs (Q) and (R)”.

Subsec. (e)(4). Pub. L. 110–315, § 311(c)(4), struck out “‘or university system’ after ‘‘higher education’”.

Subsec. (f)(1). Pub. L. 110–315, § 311(d)(1), substituted “‘$56,900,000’ for ‘‘$26,600,000’ and ‘‘through (R)’” for “‘$28,600,000’ through (X)”.

Subsec. (f)(2). Pub. L. 110–315, § 311(d)(2), substituted “‘$56,900,000, but not in excess of $62,900,000’ for ‘‘$28,600,000, but not in excess of $33,000,000’ and ‘‘through (S)’ through (X)’” for “‘$26,600,000, but not in excess of $30,000,000’ and ‘‘through (S)’ through (X)’”.


Subsec. (a)(2). Pub. L. 105–244, § 304(b)(1)(A)(ii), substituted “‘$1,000,000’ for ‘‘$500,000’’ and ‘‘, except that no institution shall be required to match any portion of the first $1,000,000 of the institution’s award from the Secretary. After funds are made available to each eligible institution under the funding rules described in subsection (f) of this section, the Secretary shall disburse, on a pro rata basis, any amounts which were not so made available (by reason of the failure of an institution to comply with the matching requirements of this paragraph) among the institutions that had complied with such requirements” for “‘except that the Morehouse School of Medicine shall receive at least $3,000,000’.”

Subsec. (c). Pub. L. 105–244, § 304(b)(2), added pars. (1) to (7) and struck out former pars. (1) to (3) which read as follows:

“(1) any of the purposes enumerated under section 1062 of this title;

“(2) to establish or improve a development office to strengthen and increase contributions from alumni and the private sector; and

“(3) to assist in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 1085 of this title.”

Subsec. (d)(2). Pub. L. 105–244, § 304(b)(1)(B), substituted “‘$1,000,000’ for ‘‘$500,000’”.

Subsec. (e)(1). Pub. L. 105–244, § 304(b)(3)(A)(i), substituted “‘are the following’ for “‘include—’” in introductory provisions.

Subsec. (e)(1)(E) to (J). Pub. L. 105–244, § 304(b)(3)(A)(II), inserted “‘University’ after ‘“State’”.


Subsec. (e)(2). Pub. L. 105–244, § 304(b)(3)(B), added par. (2) and struck out heading and text of former par. (2).

Text read as follows: “For the purposes of this section, the term ‘qualified graduate program’ means a graduate or professional program—

(A) provides a program of instruction in the physical or natural sciences, engineering, mathematics, or other scientific discipline in which African Americans are underrepresented; and

(B) has students enrolled in such program at the time of application for a grant under this section.”


Subsec. (f). Pub. L. 105–244, § 304(b)(4)(A), substituted “‘Subject to subsection (g), of the amount appropriated’ for “‘Of the amount appropriated’” in introductory provisions.

Subsec. (f)(1). Pub. L. 105–244, § 304(b)(4)(B), substituted “‘$26,600,000, and ‘‘(A) through (P)’’ for “‘$12,000,000, and (A) through (E)’”.

Subsec. (f)(2), (3). Pub. L. 105–244, § 304(b)(4)(C), added pars. (2) and (3) and struck out former par. (2) which read as follows: “any amount appropriated in excess of $12,000,000 shall be available—

(A) for the purposes of making grants in equal amounts not to exceed $500,000, to institutions or programs described in subparagraphs (F) through (P) of subsection (e) of this section; and

(B) secondly for the purposes of making grants to institutions or programs described in subparagraphs (A) through (P) of subsection (e)(1) of this section.”

Subsec. (g). Pub. L. 105–244, § 304(b)(5), added subsec. (g).

1996—Subsec. (b). Pub. L. 104–141 struck out at end “No more than two 5-year grants (for a period of not more than 10 years) may be made to any one undergraduate or postgraduate institution.”

1992—Subsec. (e). Pub. L. 102–325, § 303(f)(1), substituted “Eligibility” for “Eligible professional or graduate institutions” in heading and amended text generally. Prior to amendment, text read as follows: “Independent professional or graduate institutions eli-
gible for grants under subsection (a) of this section include—
"(1) Morehouse School of Medicine;
"(2) Meharry Medical School;
"(3) Charles R. Drew Postgraduate Medical School;
"(4) Atlanta University; and
"(5) Tuskegee Institute School of Veterinary Medicine.
1987—Subsec. (a)(2), Pub. L. 100–50, §2(a)(9), inserted "except that the Morehouse School of Medicine shall receive at least $3,000,000".
Subsec. (c)(3), Pub. L. 100–50, §2(a)(10), made technical amendment to reference to section 1065 of this title to correct reference to corresponding section of original act.

Section 1 of Pub. L. 104–141 provided that: "The Congress finds the following:
"(1) The Historically Black Graduate Professional Schools identified under section 326 of the Higher Education Act [20 U.S.C. 1063b] may receive grant funds if the Secretary of Education determines that such institutions make a substantial contribution to the legal, medical, dental, veterinary, or other graduate opportunity for African Americans.
"(2) The health professions schools which participate under section 326 train 50 percent of the Nation’s African American physicians, 50 percent of the Nation’s African American dentists, 50 percent of the Nation’s African American pharmacists, and 75 percent of the Nation’s African American veterinarians.
"(3) A majority of the graduates of these schools practice in poor urban and rural areas of the country providing care to many disadvantaged Americans.
"(4) The survival of these schools will contribute to the improved health status of disadvantaged persons, and of all Americans."

§ 1063c. Reporting and audit requirements
(a) Recordkeeping
Each recipient of a grant under this part shall keep such records as the Secretary shall prescribe, including records which fully disclose—
(1) the amount and disposition by such recipient of the proceeds of such assistance;
(2) the cost of the project or undertaking in connection with which such assistance is given or used;
(3) the amount of that portion of the cost of the project or undertaking supplied by other sources; and
(4) such other records as will facilitate an effective audit.
(b) Use of unexpended funds
Any funds paid to an institution and not expended or used for the purposes for which the funds were paid during the five-year period following the date of the initial grant award, may be carried over and expended during the succeeding five-year period, if such funds were obligated for a purpose for which the funds were paid during the five-year period following the date of the initial grant award.


AMENDMENTS
2008—Subsec. (b). Pub. L. 110–315 amended subsec. (b) generally. Prior to amendment, text read as follows: "Any funds paid to an institution and not expended or used for the purposes for which the funds were paid within 10 years following the date of the initial grant awarded to an institution under part B of this subchapter shall be repaid to the Treasury of the United States."


Effective Date of 1987 Amendment

Effective Date of 1987 Amendments

Congressional Findings
Section 1 of Pub. L. 104–141 provided that: "The Congress finds the following:
"(1) The Historically Black Graduate Professional Schools identified under section 326 of the Higher Education Act [20 U.S.C. 1063b] may receive grant funds if the Secretary of Education determines that such institutions make a substantial contribution to the legal, medical, dental, veterinary, or other graduate opportunity for African Americans.
"(2) The health professions schools which participate under section 326 train 50 percent of the Nation’s African American physicians, 50 percent of the Nation’s African American dentists, 50 percent of the Nation’s African American pharmacists, and 75 percent of the Nation’s African American veterinarians.
"(3) A majority of the graduates of these schools practice in poor urban and rural areas of the country providing care to many disadvantaged Americans.
"(4) The survival of these schools will contribute to the improved health status of disadvantaged persons, and of all Americans."


Effective Date of Repeal

§ 1065. Endowment challenge grants
(a) Purpose; definitions
(1) The purpose of this section is to establish a program to provide matching grants to eligible institutions in order to establish or increase endowment funds at such institutions, to provide additional incentives to promote fund raising activities by such institutions, and to foster increased independence and self-sufficiency at such institutions.
(2) For the purpose of this section:
   (A) The term “endowment fund” means a fund established by State law, by an institution of higher education, or by a foundation which is exempt from taxation and is maintained for the purpose of generating income for the support of the institution, but which shall not include real estate.
   (B) The term “endowment fund corpus” means an amount equal to the grant or grants awarded under this section plus an amount equal to such grant or grants provided by the institution.
   (C) The term “endowment fund income” means an amount equal to the total value of the endowment fund established under this section minus the endowment fund corpus.
   (D)(i) The term “eligible institution” means an institution that is an—
      (I) eligible institution under part A of this subchapter or would be considered to be such an institution if section 1063 of this title referred to a postgraduate degree rather than a bachelor’s degree;
      (II) institution eligible for assistance under part B of this subchapter or would be considered to be such an institution if section 1063 of this title referred to a postgraduate degree rather than a baccalaureate degree; or
      (III) institution of higher education that makes a substantial contribution to postgraduate medical educational opportunities for minorities and the economically disadvantaged.
   (ii) The Secretary may waive the requirements of subclauses (I) and (II) of clause (i) with respect to a postgraduate degree in the case of any institution otherwise eligible under clause (i) for an endowment challenge grant upon determining that the institution makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged.
   (b) Grants authorized
   (1) From sums available for this section under section 1068h of this title, the Secretary is authorized to award endowment challenge grants to eligible institutions to establish or increase an endowment fund at such institution. Such grants shall be made only to eligible institutions described in paragraph (4) whose applications have been approved pursuant to subsection (g) of this section.
   (2)(A) Except as provided in subparagraph (B), no institution shall receive a grant under this section, unless such institution has deposited in its endowment fund established under this section an amount equal to the amount of such grant. The source of funds for this institutional match shall not include Federal funds or funds from an existing endowment fund.
   (B) The Secretary may make a grant under this part to an eligible institution in any fiscal year if the institution—
      (i) applies for a grant in an amount not exceeding $1,000,000; and
      (ii) has deposited in the eligible institution’s endowment fund established under this section an amount which is equal to 1⁄2 of the amount of such grant.
   (C) An eligible institution of higher education that is awarded a grant under subparagraph (B) shall not be eligible to receive an additional grant under subparagraph (B) until 10 years after the date on which the grant period terminates.
   (3) The period of a grant under this section shall be not more than 20 years. During the grant period, an institution may not withdraw or expend any of the endowment fund corpus. After the termination of the grant period, an institution may use the endowment fund corpus plus any endowment fund income for any educational purpose.
   (4)(A) An institution of higher education is eligible to receive a grant under this section if it is an eligible institution as described in subsection (a)(2)(D) of this section.
   (B) No institution shall be ineligible for an endowment challenge grant under this section for a fiscal year by reason of the previous receipt of such a grant but no institution shall be eligible to receive such a grant for more than 2 fiscal years out of any period of 5 consecutive fiscal years.
   (5) An endowment challenge grant awarded under this section to an eligible institution shall be in an amount which is not less than $100,000 in any fiscal year.
   (6)(A) An eligible institution may designate a foundation, which was established for the purpose of raising money for the institution, as the recipient of the grant awarded under this section.
   (B) The Secretary shall not award a grant to a foundation on behalf of an institution unless—
      (i) the institution assures the Secretary that the foundation is legally authorized to receive the endowment fund corpus and is legally authorized to administer the fund in accordance with this section and any implementing regulation;
      (ii) the foundation agrees to administer the fund in accordance with the requirements of this section and any implementing regulation; and
      (iii) the institution agrees to be liable for any violation by the foundation of the provisions of this section and any implementing regulation, including any monetary liability that may arise as a result of such violation.
   (c) Grant agreement; endowment fund provisions
   (1) An institution awarded a grant under this section shall enter into an agreement with the Secretary containing satisfactory assurances that it will (A) immediately comply with the matching requirements of subsection (b)(2) of this section, (B) establish an endowment fund independent of any other such fund of the institution, (C) invest the endowment fund corpus, and (D) meet the other requirements of this section.
   (2)(A) An institution shall invest the endowment fund corpus and endowment fund income in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located such as a federally insured bank savings account or comparable interest-bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.
(B) The institution, in investing the endowment fund established under this section, shall exercise the judgment and care, under the circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of such person’s own affairs.

(3)(A) An institution may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of such college, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, and technical assistance.

(B)(i) Except as provided in clause (ii), an institution may not spend more than 50 percent of the total aggregate endowment fund income earned prior to the time of expenditure.

(ii) The Secretary may permit an institution to spend more than 50 percent of the endowment fund income notwithstanding clause (i) if the institution demonstrates such an expenditure is necessary because of (I) a financial emergency, such as a pending insolvency or temporary liquidity problem; (II) a life-threatening situation occasioned by a natural disaster or arson; or (III) any other unusual occurrence or exigent circumstance.

(c) Repayment provisions

(1) If at any time an institution withdraws part of the endowment fund corpus, the institution shall repay to the Secretary an amount equal to 50 percent of the withdrawn amount, which represents the Federal share, plus income earned thereon. The Secretary may use such repaid funds to make additional challenge grants, or to increase existing endowment grants, to other eligible institutions.

(2) If an institution spends more of the endowment fund income than is permitted under subsection (c) of this section, the institution shall repay the Secretary an amount equal to 50 percent of the amount improperly expended (representing the Federal share thereof). The Secretary may use such repaid funds to make additional challenge grants, or to increase existing endowment grants, to other eligible institutions.

(3) If an institution withdraws or improperly expends portions of the endowment fund corpus or spends more than the permissible amount of the endowment funds income as prescribed in subsection (c)(3) of this section; or

(B) fails to invest the endowment fund in accordance with the investment standards set forth in subsection (c)(2) of this section; or

(C) fails to properly account to the Secretary concerning the investment and expenditures of the endowment funds.

(2) If the Secretary terminates a grant under paragraph (1), the grantee shall return to the Secretary an amount equal to the sum of each original grant under this section plus income earned thereon. The Secretary may use such repaid funds to make additional endowment grants, or to increase existing challenge grants, to other eligible institutions under this part.

(i) Technical assistance

The Secretary, directly or by grant or contract, may provide technical assistance to eligible institutions to prepare the institutions to qualify, apply for, and maintain a grant, under this section.

(g) Application

Any institution which is eligible for assistance under this section may submit to the Secretary a grant application at such time, in such form, and containing such information as the Secretary may prescribe, including a description of the long- and short-term plans for raising and using the funds under this part. Subject to the availability of appropriations to carry out this section and consistent with the requirement of subsection (f) of this section, the Secretary may approve an application for a grant if an institution, in its application, provides adequate assurances that it will comply with the requirements of this section.

(h) Termination and recovery provisions

(1) After notice and an opportunity for a hearing, the Secretary may terminate and recover a grant awarded under this section if the grantee institution—

(A) spends portions of the endowment fund corpus or expenses more than the permissible amount of the endowment funds income as prescribed in subsection (c)(3) of this section; or

(B) fails to invest the endowment fund income earned prior to the time of expenditure.

(2) If the Secretary terminates a grant under paragraph (1), the grantee shall return to the Secretary an amount equal to the sum of each original grant under this section plus income earned thereon. The Secretary may use such repaid funds to make additional endowment grants, or to increase existing challenge grants, to other eligible institutions under this part.


PRIOR PROVISIONS

The Congress finds that—

(1) a significant part of the Federal mission in education has been to attain equal opportunity in higher education for low-income, educationally disadvantaged Americans and African Americans;

(2) the Nation’s historically Black colleges and universities have played a prominent role in American history and have an unparalleled record of fostering the development of African American youth by recognizing their potential, enhancing their academic and technical skills, and honing their social and political skills through higher education;

(3) the academic and residential facilities on the campuses of all historically Black colleges and universities have suffered from neglect, deferred maintenance and are in need of capital improvements in order to provide appropriate settings for learning and social development through higher education;

(4) due to their small enrollments, limited endowments and other financial factors nor-
mally considered by lenders in construction financing, historically Black colleges and universities often lack access to the sources of funding necessary to undertake the necessary capital improvements through borrowing and bond financing;

(5) despite their track record of long-standing and remarkable institutional longevity and viability, historically Black colleges and universities often lack the financial resources necessary to gain access to traditional sources of capital financing such as bank loans and bond financing; and

(6) Federal assistance to facilitate low-cost capital basis for historically Black colleges and universities will enable such colleges and universities to continue and expand their educational mission and enhance their significant role in American higher education.


CODIFICATION

Section was formerly classified to section 1132c of this title prior to renumbering by Pub. L. 105–244.

PRIOR PROVISIONS


EFFECTIVE DATE


§ 1066a. Definitions

For the purposes of this part:

(1) The term "eligible institution" means a "part B institution" as that term is defined in section 1061(b)(2) of this title.

(2) The term "loan" means a loan made to an eligible institution under the provisions of this part and pursuant to an agreement with the Secretary.

(3) The term "qualified bond" means any obligation issued by the designated bonding authority at the direction of the Secretary, the net proceeds of which are loaned to an eligible institution for the purposes described in section 1066(b)(2) of this title.

(4) The term "funding" means any payment under this part from the Secretary to the eligible institution or its assignee in fulfillment of the insurance obligations of the Secretary pursuant to an agreement under section 1066b of this title.

(5) The term "capital project" means, subject to section 1066c(b) of this title, the repair, renovation, or, in exceptional circumstances, the construction or acquisition, of—

(A) any classroom facility, library, laboratory facility, dormitory (including dining facilities) or other facility customarily used by colleges and universities for instructional or research purposes or for housing students, faculty, and staff;

(B) a facility for the administration of an educational program, or a student center or student union, except that not more than 5 percent of the loan proceeds provided under this part may be used for the facility, center or union if the facility, center or union is owned, leased, managed, or operated by a private business, that, in return for such use, makes a payment to the eligible institution;

(C) instructional equipment, technology, research instrumentation, and any capital equipment or fixture related to facilities described in subparagraph (A);

(D) a maintenance, storage, or utility facility that is essential to the operation of a facility, a library, a dormitory, equipment, instrumentation, a fixture, real property or an interest therein, described in this paragraph;

(E) a facility designed to provide primarily outpatient health care for students or faculty;

(F) physical infrastructure essential to support the projects authorized under this paragraph, including roads, sewer and drainage systems, and water, power, lighting, telecommunications, and other utilities;

(G) any other facility, equipment or fixture which is essential to the maintaining of accreditation of the member institution by an accrediting agency or association recognized by the Secretary under subpart 2 of part G of subchapter IV; and

(H) any real property or interest therein underlying facilities described in subparagraph (A) or (G).

(6) The term "interest" includes accredited value or any other payment constituting interest on an obligation.

(7) The term "outstanding", when used with respect to bonds, shall not include bonds the payment of which shall have been provided for by the irrevocable deposit in trust of obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make payments on such bonds.

(8) The term "designated bonding authority" means the private, for-profit corporation selected by the Secretary pursuant to section 1066d(1) of this title for the purpose of issuing taxable capital project construction bonds in furtherance of the purposes of this part.

(9) The term "Advisory Board" means the Advisory Board established by section 1066f of this title.
§ 1066b. Federal insurance for bonds

(a) General rule

Subject to the limitations in section 1066c of this title, the Secretary is authorized to enter into insurance agreements to provide financial insurance to guarantee the full payment of principal and interest on qualified bonds upon the conditions set forth in subsections (b), (c) and (d) of this section.

(b) Responsibilities of designated bonding authority

The Secretary may not enter into an insurance agreement described in subsection (a) of this section unless the Secretary designates a qualified bonding authority in accordance with sections 1066d(1) and 1066e of this title and the designated bonding authority agrees in such agreement to—

(1) use the proceeds of the qualified bonds, less costs of issuance not to exceed 2 percent of the principal amount thereof, to make loans to eligible institutions or for deposit into an escrow account for repayment of the bonds;

(2) provide in each loan agreement with respect to a loan that not less than 95 percent of the proceeds of the loan will be used—

(A) to finance the repair, renovation, and, in exceptional cases, construction or acquisition, of a capital project; or

(B) to refinance an obligation the proceeds of which were used to finance the repair, renovation, and, in exceptional cases, construction or acquisition, of a capital project;

(3) (A) charge such interest on loans, and provide for such a schedule of repayments of loans, as will, upon the timely repayment of the loans, provide adequate and timely funds for the payment of principal and interest on the bonds; and

(B) require that any payment on a loan expected to be necessary to make a payment of principal and interest on the bonds be due not less than 60 days prior to the date of the payment on the bonds for which such loan payment is expected to be needed;

(4) prior to the making of any loan, provide for a credit review of the institution receiving the loan and assure the Secretary that, on the basis of such credit review, it is reasonable to anticipate that the institution receiving the loan will be able to repay the loan in a timely manner pursuant to the terms thereof;

(5) provide in each loan agreement with respect to a loan that, if a delinquency on such loan results in a funding under the insurance agreement, the institution obligated on such loan shall repay the Secretary, upon terms to be determined by the Secretary, for such funding;

(6) assign any loans to the Secretary, upon the demand of the Secretary, if a delinquency on such loan has required a funding under the insurance agreement;

(7) in the event of a delinquency on a loan, engage in such collection efforts as the Secretary shall require for a period of not less than 45 days prior to requesting a funding under the insurance agreement;

(8) establish an escrow account—

(A) into which each eligible institution shall deposit 5 percent of the proceeds of any loan made under this part, with each eligible institution required to maintain in the escrow account an amount equal to 5 percent of the outstanding principal of all loans made to such institution under this part; and

(B) the balance of which—

(1) shall be available to the Secretary to pay principal and interest on the bonds in the event of delinquency in loan repayment; and

1 See References in Text note below.
§ 1066b

(11) make loans only to eligible institutions under this part in accordance with conditions prescribed by the Secretary to ensure that loans are fairly allocated among as many eligible institutions as possible, consistent with making loans of amounts that will permit capital projects of sufficient size and scope to significantly contribute to the educational program of the eligible institutions; and

(12) limit loan collateralization, with respect to any loan made under this part, to 100 percent of the loan amount, except as otherwise required by the Secretary.

c) Additional agreement provisions

Any insurance agreement described in subsection (a) of this section shall provide as follows:

(1) The payment of principal and interest on bonds shall be insured by the Secretary until such time as such bonds have been retired or canceled.

(2) The Federal liability for delinquencies and default for bonds guaranteed under this part shall only become effective upon the exhaustion of all the funds held in the escrow account described in subsection (b)(8) of this section.

(3) The Secretary shall create a letter of credit authorizing the Department of the Treasury to disburse funds to the designated bonding authority or its assignee.

(4) The letter of credit shall be drawn upon in the amount determined by paragraph (5) of this subsection upon the certification of the designated bonding authority to the Secretary or the Secretary's designee that there is a delinquency on 1 or more loans and there are insufficient funds available from loan repayments and the escrow account to make a scheduled payment of principal and interest on the bonds.

(5) Upon receipt by the Secretary or the Secretary's designee of the certification described in paragraph (4) of this subsection, the designated bonding authority may draw a funding under the letter of credit in an amount equal to—

(A) the amount required to make the next scheduled payment of principal and interest on the bonds, less

(B) the amount available to the designated bonding authority from loan repayments and the escrow account.

(6) All funds provided under the letter of credit shall be paid to the designated bonding authority within 2 business days following receipt of the certification described in paragraph (4).

d) Full faith and credit provisions

Subject to subsection (c)(1) of this section the full faith and credit of the United States is pledged to the payment of all funds which may be required to be paid under the provisions of this section.

e) Sale of qualified bonds

Notwithstanding any other provision of law, a qualified bond guaranteed under this part may be sold to any party that offers terms that the Secretary determines are in the best interest of the eligible institution.
institutions making deposits into such account on the basis of the amount of each such institution's deposit;''.

Subsec. (b)(11). Pub. L. 103-382, § 360C(2), substituted "conditions" for "regulations".

EFFECTIVE DATE OF 1998 AMENDMENT
Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1061 of this title.

§ 1066c. Limitations on Federal insurance for bonds issued by designated bonding authority

(a) Limit on amount
At no time shall the aggregate principal amount of outstanding bonds insured under this part together with any accrued unpaid interest thereon exceed $1,100,000,000, of which—

(1) not more than $733,333,333 shall be used for loans to eligible institutions that are private historically Black colleges and universities; and

(2) not more than $366,666,667 shall be used for loans to eligible institutions which are historically Black public colleges and universities.

For purposes of paragraphs (1) and (2), Lincoln University of Pennsylvania is an historically Black public institution. No institution of higher education that has received assistance under section 123 of this title shall be eligible to receive assistance under this part.

(b) Limitation on credit authority
The authority of the Secretary to issue letters of credit and insurance under this part is effective only to the extent provided in advance by appropriations Acts.

(c) Religious activity prohibition
No loan may be made under this part for any educational program, activity or service related to sectarian instruction or religious worship or provided by a school or department of divinity or to an institution in which a substantial portion of its functions is subsumed in a religious mission.

(d) Discrimination prohibition
No loan may be made under this part to an institution under this part if the institution discriminates on account of race, color, religion, national origin, sex (to the extent provided in title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]), or disabling condition; except that the prohibition with respect to religion shall not apply to an institution which is controlled by or closely identified with the tenets of a particular religious organization if the application of this section would not be consistent with the religious tenets of such organization.


REFERENCES IN TEXT
The Education Amendments of 1972, referred to in subsec. (d), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of this title. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

CODIFICATION
Section was formerly classified to section 1132e-3 of this title prior to renumbering by Pub. L. 105-244.

PRIOR PROVISIONS
A prior section 344 of Pub. L. 89-329 was classified to section 1069 of this title prior to the general amendment of this subchapter by Pub. L. 99-498.

AMENDMENTS
2008—Subsec. (a). Pub. L. 110-315, § 314(c)(1), substituted "$1,100,000,000" for "$375,000,000" in introductory provisions.

Subsec. (a)(1). Pub. L. 110-315, § 314(c)(2), substituted "$733,333,333" for "$250,000,000".

Subsec. (a)(2). Pub. L. 110-315, § 314(c)(3), substituted "$366,666,667" for "$123,000,000".

§ 1066d. Authority of Secretary
In the performance of, and with respect to, the functions vested in the Secretary by this part, the Secretary—

(1) shall, within 120 days of August 14, 2008, publish in the Federal Register a notice and request for proposals for any private for-profit organization or entity wishing to serve as the designated bonding authority under this part, which notice shall—

(A) specify the time and manner for submission of proposals; and

(B) specify any information, qualifications, criteria, or standards the Secretary determines to be necessary to evaluate the financial capacity and administrative capability of any applicant to carry out the responsibilities of the designated bonding authority under this part;

(2) shall ensure that—

(A) the selection process for the designated bonding authority is conducted on a competitive basis; and

(B) the evaluation and selection process is transparent;

(3) shall—

(A) review the performance of the designated bonding authority after the third year of the insurance agreement; and

(B) following the review described in subparagraph (A), implement a revised competitive selection process, if determined necessary by the Secretary in consultation with the Advisory Board established pursuant to section 1066f of this title;

(4) shall require that the first loans for capital projects authorized under section 1066b of this title be made no later than March 31, 1994; and

(5) may sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and any action instituted under this part without regard to the amount in controversy, and any
action instituted under this section by or against the Secretary shall survive notwithstanding any change in the person occupying the office of the Secretary or any vacancy in such office;

(6)(A) may foreclose on any property and bid for and purchase at any foreclosure, or any other sale, any property in connection with which the Secretary has been assigned a loan pursuant to this part; and

(B) in the event of such an acquisition, notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property, except that—

(i) such action shall not preclude any other action by the Secretary to recover any deficiency in the amount of a loan assigned to the Secretary; and

(ii) any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

(7) may sell, exchange, or lease real or personal property and securities or obligations;

(8) may include in any contract such other covenants, conditions, or provisions necessary to ensure that the purposes of this part will be achieved;

(9) may, directly or by grant or contract, provide technical assistance to eligible institutions to prepare the institutions to qualify, apply for, and maintain a capital improvement loan, including a loan under this part; and

(10) not later than 120 days after August 14, 2008, shall submit to the authorizing committees a report on the progress of the Department in implementing the recommendations made by the Government Accountability Office in October 2006 for improving the Historically Black College and Universities Capital Financing Program.


Codification

Section was formerly classified to section 1132c–5 of this title prior to renumbering by Pub. L. 105–244.

Effective Date of Repeal


There is established within the Department of Education, the Historically Black College and Universities Capital Financing Advisory Board (hereinafter in this part referred to as the “Advisory Board”) which shall provide advice and counsel to the Secretary and the designated bonding authority as to the most effective and efficient means of implementing construction financing on African American college campuses, and advise the Congress of the United States regarding the progress made in implementing this part. The Advisory Board shall meet with the Secretary at least twice each year to advise him as to the capital needs of historically Black colleges and universities, how those needs can be met through the program authorized by this part, and what additional steps might be taken to improve the operation and implementation of the construction financing program.

(b) Board membership

(1) Composition

The Advisory Board shall be appointed by the Secretary and shall be composed of 11 members as follows:

(A) The Secretary or the Secretary’s designee.

(B) Three members who are presidents of private historically Black colleges or universities.
(C) Three members who are presidents of public historically Black colleges or universities.
(D) The president of the United Negro College Fund, Inc., or the president’s designee.
(E) The president of the Thurgood Marshall College Fund, or the designee of the president.

(2) Terms

The term of office of each member appointed under paragraphs (1)(B) and (1)(C) shall be 3 years, except that—
(A) of the members first appointed pursuant to paragraphs (1)(B) and (1)(C), 2 shall be appointed for terms of 1 year, and 3 shall be appointed for terms of 2 years; and
(B) members appointed to fill a vacancy occurring before the expiration of a term of a member shall be appointed to serve the remainder of that term; and
(C) a member may continue to serve after the expiration of a term until a successor is appointed.

(e) Additional recommendations from Advisory Board

(1) In general

In addition to the responsibilities of the Advisory Board described in subsection (a), the Advisory Board shall advise the Secretary and the authorizing committees regarding—
(A) the fiscal status and strategic financial condition of not less than ten historically Black colleges and universities that have—
(i) obtained construction financing through the program under this part and seek additional financing or refinancing under such program; or
(ii) applied for construction financing through the program under this part but have not received financing under such program; and
(B) the feasibility of reducing borrowing costs associated with the program under this part, including reducing interest rates.

(2) Report

Not later than six months after August 14, 2008, the Advisory Board shall prepare and submit a report to the authorizing committees regarding the historically Black colleges and universities described in paragraph (1)(A) that includes administrative and legislative recommendations for addressing the issues related to construction financing facing such historically Black colleges and universities.

§ 301(a)(3), (4), (c)(7), Oct. 7, 1998, 112 Stat. 1636, 1637; Pub. L. 110–244, title III, § 306(e)(2), struck out heading and text of subsec. (c). Text read as follows: “There are authorized to be appropriated $50,000 for fiscal years 1993 and each of the 4 succeeding fiscal years to carry out this section.”

Effective Date of 1998 Amendment

Termination of Advisory Boards
Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1066g. Minority business enterprise utilization

In the performance of and with respect to the Secretary’s effectuation of his responsibilities under section 1066d(1) of this title and to the maximum extent feasible in the implementation of the purposes of this part, minority business persons, including bond underwriters and credit enhancers, bond counsel, marketers, accountants, advisors, construction contractors, and managers should be utilized.


Codification

Section was formerly classified to section 1132c–6 of this title prior to renumbering by Pub. L. 105–244.

Prior Provisions

A prior section 347 of Pub. L. 89–329 was classified to section 1066b of this title prior to the general amendment of this subchapter by Pub. L. 99–498.

Amendments

Subsec. (b)(1)(E). Pub. L. 105–244, § 306(e)(1)(B), inserted “, or the designee of the Association” before the period.
Subsec. (c). Pub. L. 105–244, § 306(e)(2), struck out heading and text of subsec. (c). Text read as follows: “There are authorized to be appropriated $50,000 for fiscal years 1993 and each of the 4 succeeding fiscal years to carry out this section.”

Effective Date of 1998 Amendment
§ 1067. Findings

Congress makes the following findings:

(1) It is incumbent on the Federal Government to support the technological and economic competitiveness of the United States by improving and expanding the scientific and technological capacity of the United States. More and better prepared scientists, engineers, and technical experts are needed to improve and expand such capacity.

(2) As the Nation’s population becomes more diverse, it is important that the educational and training needs of all Americans are met. Underrepresentation of minorities in science and technological fields diminishes our Nation’s competitiveness by impairing the quantity and quality of well prepared scientists, engineers, and technical experts in these fields.

(3) Despite significant limitations in resources, minority institutions provide an important educational opportunity for minority students, particularly in science and engineering fields. Aid to minority institutions is a good way to address the underrepresentation of minorities in science and technological fields.

(4) There is a strong Federal interest in improving science and engineering programs at minority institutions as such programs lag behind in program offerings and in student enrollment compared to such programs at other institutions of higher education.


PRIORITY PROVISIONS


COMPARISON

Section was formerly classified to section 1135b of this title prior to renumbering by Pub. L. 105–244.

PRIORITY PROVISIONS

A prior section 351 of Pub. L. 89–329 was renumbered section 391 and is classified to section 1068 of this title.

AMENDMENTS


EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 1992 AMENDMENT


§ 1067a. Grant recipient selection (a) Establishment of criteria

Grants under this subpart shall be awarded on the basis of criteria established by the Secretary by regulations.

(b) Priorities to be given in criteria

In establishing criteria under subsection (a) of this section, the Secretary shall give priority to applicants which have not previously received funding from the Minority Institutions Science
Improvement Program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among projects with respect to geographic region, academic discipline, and project type.

(c) Required criteria

In establishing criteria under subsection (a) of this section, the Secretary may consider the following selection criteria in making grants:

(1) plan of operation;
(2) quality of key personnel;
(3) budget and cost effectiveness;
(4) evaluation plan;
(5) adequacy of resources;
(6) identification of need for the project;
(7) potential institutional impact of the project;
(8) institutional commitment to the project;
(9) expected outcomes; and
(10) scientific and educational value of the proposed project.

(§ 1067d, as added Pub. L. 99–498, title X, § 1001 of this title prior to renumbering by Pub. L. 105–244.)

§ 1067e. Use of funds

(a) Types of grants

Funds appropriated to carry out this subpart may be made available as—

(1) institutional grants (as defined in section 1067k(6) of this title);
(2) cooperative grants (as defined in section 1067k(7) of this title);
(3) design projects (as defined in section 1067k(8) of this title); or
(4) special projects (as defined in section 1067k(9) of this title).

(b) Authorized uses for each type of grant

(1) The authorized uses of funds made available as institutional grants include (but are not limited to)—

(A) faculty development programs; or
(B) development of curriculum materials.

(2) The authorized uses of funds made available as cooperative grants include (but are not limited to)—

(A) assisting institutions in sharing facilities and personnel;
(B) disseminating information about established programs in science and engineering;
(C) supporting cooperative efforts to strengthen the institutions’ science and engineering programs; or
(D) carrying out a combination of any of the activities in subparagraphs (A) through (C).

(3) The authorized uses of funds made available as design projects include (but are not limited to)—

(A) developing planning, management, and evaluation systems; or
(B) developing plans for initiating scientific research and for improving institutions’ capabilities for such activities.

Funds used for design project grants may not be used to pay more than 50 percent of the salaries during any academic year of faculty members involved in the project.

(4) The authorized uses of funds made available as special projects include (but are not limited to)—

(A) advanced science seminars;
(B) science faculty workshops and conferences;
(C) faculty training to develop specific science research or education skills;
(D) research in science education;
(E) programs for visiting scientists;
(F) preparation of films or audio-visual materials in science;
(G) development of learning experiences in science beyond those normally available to minority undergraduate students;
(H) development of pre-college enrichment activities in science; or
(I) any other activities designed to address specific barriers to the entry of minorities into science.

(§ 1067e, as added Pub. L. 99–498, title X, § 1002 of this title prior to renumbering by Pub. L. 105–244.)


§ 1067e—YES partnerships grant program

(a) Grant program authorized

Subject to the availability of appropriations to carry out this subpart, the Secretary shall make grants to eligible partnerships (as described in subsection (f)) to support the engagement of underrepresented minority youth and youth who are low-income individuals (as such term is defined in section 1058 of this title) in science, technology, engineering, and mathematics through outreach and hands-on, experiential-based learning projects that encourage students in kindergarten through grade 12 who are underrepresented minority youth or low-income individuals to pursue careers in science, technology, engineering, and mathematics.

(b) Minimum grant amount

A grant awarded to a partnership under this subpart shall be for an amount that is not less than $500,000.

(c) Duration

A grant awarded under this subpart shall be for a period of five years.

(d) Non-Federal matching share required

A partnership receiving a grant under this subpart shall provide, from non-Federal sources, in cash or in-kind, an amount equal to 50 percent of the costs of the project supported by such grant.

(e) Distribution of grants

In awarding grants under this subpart, the Secretary shall ensure that, to the maximum extent practicable, the projects funded under this subpart are located in diverse geographic regions of the United States.

(f) Eligible partnerships

Notwithstanding the general eligibility provisions in section 1067g of this title, eligibility to receive grants under this subpart is limited to partnerships described in paragraph (5) of such section.

PRIOR PROVISIONS

A prior subpart 2, consisting of sections 1067g to 1067l, was redesignated subpart 3 of this part by Pub. L. 110–315, title III, §315(a)(1), Aug. 14, 2008, 122 Stat. 3182.

§ 1067e–1. Promotion of entry into STEM fields

(a) Authority to contract, subject to appropriations

The Secretary is authorized to enter into a contract with a firm with a demonstrated record of success in advertising to implement a campaign to expand the population of qualified individuals in science, technology, engineering, and mathematics fields (referred to in this section as "STEM fields") by encouraging young Americans to enter such fields.

(b) Design of campaign

The campaign under this section shall be designed to enhance the image of education and professions in the STEM fields and promote participation in the STEM fields, and may include—

(1) monitoring trends in youths' attitudes toward pursuing education and professions in the STEM fields and their propensity toward entering the STEM fields;
(2) determining what factors contribute to encouraging and discouraging Americans from pursuing study in STEM fields and entering the STEM fields professionally;
(3) determining what specific factors limit the participation of groups currently underrepresented in STEM fields, including Latinos, African-Americans, and women; and
(4) drawing from the market research performed under this section and implementing an advertising campaign to encourage young Americans to take up studies in STEM fields, beginning at an early age.

(c) Required components

The campaign under this section shall—

(1) include components that focus tailored messages on appropriate age groups, starting with elementary school students; and
(2) link participation in the STEM fields to the concept of service to one's country, so that young people will be encouraged to enter the STEM fields in order fulfill the obligation to be of service to their country.

(d) Priority

The campaign under this section shall hold as a high priority making specific appeals to Hispanic Americans, African Americans, Native Americans, students with disabilities, and women, who are currently underrepresented in the STEM fields, in order to increase their numbers in the STEM fields, and shall tailor recruitment efforts to each specific group.

(e) Use of variety of media

The campaign under this section shall make use of a variety of media, with an emphasis on television advertising, to reach its intended audience.

(f) Teaching

The campaign under this section shall include a narrowly focused effort to attract current professionals in the STEM fields, through advertising in mediums likely to reach that specific group, into teaching in a STEM field in elementary schools and secondary schools.
§ 1067g. Eligibility for grants

Eligibility to receive grants under this part is limited to—

(1) public and private nonprofit institutions of higher education that—
   (A) award baccalaureate degrees; and
   (B) are minority institutions;

(2) public or private nonprofit institutions of higher education that—
   (A) award associate degrees; and
   (B) are minority institutions that—
      (i) have a curriculum that includes science or engineering subjects; and
      (ii) enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(3) nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees in science and engineering;

(4) consortia of organizations, that provide needed services to one or more minority institutions, the membership of which may include—
   (A) public and private nonprofit institutions of higher education which have a curriculum in science or engineering;
   (B) institutions of higher education that have a graduate or professional program in science or engineering;
   (C) research laboratories of, or under contract with, the Department of Energy, the Department of Defense, or the National Institutes of Health;
   (D) relevant offices of the National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Science Foundation, and National Institute of Standards and Technology;
   (E) quasi-governmental entities that have a significant scientific or engineering mission; or
   (F) institutions of higher education that have State-sponsored centers for research in science, technology, engineering, and mathematics; or

(5) only with respect to grants under subpart 2, partnerships of organizations, the membership of which shall include—
   (A) at least one institution of higher education eligible for assistance under this subchapter or subchapter V;
   (B) at least one high-need local educational agency (as defined in section 1021 of this title); and
   (C) at least two community organizations or entities, such as businesses, professional associations, community-based organizations, philanthropic organizations, or State agencies.

Prior Provisions

A prior section 357 of Pub. L. 89–929 was renumbered section 395 and is classified to section 1068d of this title.

$ 1067g–2. Evaluation and accountability plan

The Secretary shall develop an evaluation and accountability plan for projects funded under this subpart. Such plan shall include, if the Secretary determines that it is practical, an objective measure of the impact of such projects, such as a measure of whether underrepresented minority student enrollment in courses related to science, technology, engineering, and mathematics increases at the secondary and post-secondary levels.

Prior Provisions

A prior section 357 of Pub. L. 89–929 was renumbered section 396 and is classified to section 1068e of this title.

SUBPART 3—ADMINISTRATIVE AND GENERAL PROVISIONS

Codification


Prior Provisions

A prior section 357 of Pub. L. 89–929 was renumbered section 395 and is classified to section 1068d of this title.

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   (A) award associate degrees; and
   (B) are minority institutions that—
      (i) have a curriculum that includes science or engineering subjects; and
      (ii) enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(3) nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees in science and engineering;

(4) consortia of organizations, that provide needed services to one or more minority institutions, the membership of which may include—
   (A) public and private nonprofit institutions of higher education which have a curriculum in science or engineering;
   (B) institutions of higher education that have a graduate or professional program in science or engineering;
   (C) research laboratories of, or under contract with, the Department of Energy, the Department of Defense, or the National Institutes of Health;
   (D) relevant offices of the National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Science Foundation, and National Institute of Standards and Technology;
   (E) quasi-governmental entities that have a significant scientific or engineering mission; or
   (F) institutions of higher education that have State-sponsored centers for research in science, technology, engineering, and mathematics; or

(5) only with respect to grants under subpart 2, partnerships of organizations, the membership of which shall include—
   (A) at least one institution of higher education eligible for assistance under this subchapter or subchapter V;
   (B) at least one high-need local educational agency (as defined in section 1021 of this title); and
   (C) at least two community organizations or entities, such as businesses, professional associations, community-based organizations, philanthropic organizations, or State agencies.

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SUBPART 3—ADMINISTRATIVE AND GENERAL PROVISIONS

Codification


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Eligibility to receive grants under this part is limited to—

(1) public and private nonprofit institutions of higher education that—
   (A) award baccalaureate degrees; and
   (B) are minority institutions;

(2) public or private nonprofit institutions of higher education that—
   (A) award associate degrees; and
   (B) are minority institutions that—
      (i) have a curriculum that includes science or engineering subjects; and
      (ii) enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(3) nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees in science and engineering;

(4) consortia of organizations, that provide needed services to one or more minority institutions, the membership of which may include—
   (A) public and private nonprofit institutions of higher education which have a curriculum in science or engineering;
   (B) institutions of higher education that have a graduate or professional program in science or engineering;
   (C) research laboratories of, or under contract with, the Department of Energy, the Department of Defense, or the National Institutes of Health;
   (D) relevant offices of the National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Science Foundation, and National Institute of Standards and Technology;
   (E) quasi-governmental entities that have a significant scientific or engineering mission; or
   (F) institutions of higher education that have State-sponsored centers for research in science, technology, engineering, and mathematics; or

(5) only with respect to grants under subpart 2, partnerships of organizations, the membership of which shall include—
   (A) at least one institution of higher education eligible for assistance under this subchapter or subchapter V;
   (B) at least one high-need local educational agency (as defined in section 1021 of this title); and
   (C) at least two community organizations or entities, such as businesses, professional associations, community-based organizations, philanthropic organizations, or State agencies.

Prior Provisions

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$ 1067g–2. Evaluation and accountability plan

The Secretary shall develop an evaluation and accountability plan for projects funded under this subpart. Such plan shall include, if the Secretary determines that it is practical, an objective measure of the impact of such projects, such as a measure of whether underrepresented minority student enrollment in courses related to science, technology, engineering, and mathematics increases at the secondary and post-secondary levels.

Prior Provisions

A prior section 357 of Pub. L. 89–929 was renumbered section 395 and is classified to section 1068d of this title.

SUBPART 3—ADMINISTRATIVE AND GENERAL PROVISIONS

Codification


Prior Provisions

A prior section 357 of Pub. L. 89–929 was renumbered section 395 and is classified to section 1068d of this title.
§ 1067b. Grant application

(a) Submission and contents of applications

An eligible applicant (as determined under section 1067g of this title) that desires to receive a grant under this part shall submit to the Secretary an application therefor at such time or times, in such manner, and containing such information as the Secretary may prescribe by regulation. Such application shall set forth—

(1) a program of activities for carrying out one or more of the purposes described in section 1067a(b) of this title in such detail as will enable the Secretary to determine the degree to which such program will accomplish such purpose or purposes; and

(2) such other policies, procedures, and assurances as the Secretary may require by regulation.

(b) Approval based on likelihood of progress

The Secretary shall approve an application only if the Secretary determines that the application sets forth a program of activities which are likely to make substantial progress toward achieving the purposes of this part.

§ 1067j. Administrative provisions

(a) Technical staff

The Secretary shall establish procedures for reviewing and evaluating grants and contracts made or entered into under such programs. Procedures for reviewing grant applications, based on the peer review system, or contracts for financial assistance under this subchapter may not be subject to any review outside of officials which carry out programs to improve the quality of science, mathematics, and engineering education.

(b) Procedures for grant review

The Secretary shall establish procedures for reviewing and evaluating grants and contracts made or entered into under such programs. Procedures for reviewing grant applications, based on the peer review system, or contracts for financial assistance under this subchapter may not be subject to any review outside of officials which carry out programs to improve the quality of science, mathematics, and engineering education.

§ 1067k. Definitions

For the purpose of this part—

(1) The term “accredited” means currently certified by a nationally recognized accrediting agency or making satisfactory progress toward achieving accreditation.

(2) The term “minority” means American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.
(3) The term "minority institution" means an institution of higher education whose enrollment of a single minority or a combination of minorities (as defined in paragraph (2)) exceeds 50 percent of the total enrollment. The Secretary shall verify this information from the data on enrollments in the higher education general information surveys (HEGIS) furnished by the institution to the Office for Civil Rights, Department of Education.

(4) The term "science" means, for the purpose of this program, the biological, engineering, mathematical, physical, behavioral, and social sciences, and history and philosophy of science; also included are interdisciplinary fields which are comprised of overlapping areas among two or more sciences.

(5) The term "underrepresented in science and engineering" means a minority group whose number of scientists and engineers per 10,000 population of that group is substantially below the comparable figure for scientists and engineers who are white and not of Hispanic origin.

(6) The term "institutional grant" means a grant that supports the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students for careers in science.

(7) The term "cooperative grant" means a grant that assists groups of nonprofit accredited colleges and universities to work together to conduct a science improvement program.

(8) The term "design projects" means projects that assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs.

(9) The term "special projects" means—

(A) a special project grant to a minority institution which supports activities that—

(i) improve the quality of training in science and engineering at minority institutions; or

(ii) enhance the minority institutions' general scientific research capabilities; or

(B) a special project grant to any eligible applicant which supports activities that—

(i) provide a needed service to a group of eligible minority institutions; or

(ii) provide in-service training for project directors, scientists, and engineers from eligible minority institutions.


Codification

Section was formerly classified to section 1135d–6 of this title prior to renumbering by Pub. L. 105–244.

Effective Date of 1998 Amendment


Codification

Section was formerly classified to section 1135d–6 of this title prior to renumbering by Pub. L. 105–244.

Effective Date of Repeal


PART F—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY-SERVING INSTITUTIONS

Codification


Prior Provisions


§ 1067g. Investment in historically Black colleges and universities and other minority-serving institutions

(a) Eligible institution

An institution of higher education is eligible to receive funds from the amounts made available under this section if such institution is—

(1) a part B institution (as defined in section 1061 of this title); or

(2) a Hispanic-serving institution (as defined in section 1101a of this title); or

(3) a Tribal College or University (as defined in section 1059c of this title); or

(4) an Alaska Native-serving institution or a Native Hawaiian-serving institution (as defined in section 1059g(b) of this title); or

(5) a Predominantly Black Institution (as defined in subsection (c)); or

(6) an Asian American and Native American Pacific Islander-serving institution (as defined in subsection (c)); or

(7) a Native American-serving nontribal institution (as defined in subsection (c)).

(b) New investment of funds

(1) In general

(A) Provision of funds

There shall be available to the Secretary to carry out this section, from funds in the
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Treasury not otherwise appropriated, $255,000,000 for each of the fiscal years 2008 through 2019. The authority to award grants under this section shall expire at the end of fiscal year 2019.

(B) Availability

Funds made available under subparagraph (A) for a fiscal year shall remain available for the next succeeding fiscal year.

(2) Allocation and allotment

(A) In general

Of the amounts made available under paragraph (1) for each fiscal year—

(i) $100,000,000 shall be available for allocation under subparagraph (B);

(ii) $100,000,000 shall be available for allocation under subparagraph (C); and

(iii) $55,000,000 shall be available for allocation under subparagraph (D).

(B) HSI STEM and articulation programs

The amount made available for allocation under this subparagraph by subparagraph (A)(i) for any fiscal year shall be available for Hispanic-serving Institutions 1 for activities described in section 1101b of this title, with a priority given to applications that propose—

(i) 85 percent shall be available to eligible institutions described in subsection (a)(3) and shall be made available as grants under section 1059c of this title, treating such $30,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section, and using such $30,000,000 for purposes described in subsection (c) of such section;

(ii) 15 percent shall be available to eligible institutions described in subsection (a)(4) and shall be made available as grants under section 1059d of this title, treating such $15,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section and using such $15,000,000 for purposes described in subsection (c) of such section;

(iii) $5,000,000 for such fiscal year shall be available to eligible institutions described in subsection (a)(6) for activities described in section 1057(c) of this title; and

(iv) $5,000,000 for such fiscal year shall be available to eligible institutions described in subsection (a)(7)—

(I) to plan, develop, undertake, and carry out activities to improve and expand such institutions’ capacity to serve Native Americans, which may include—

(aa) the purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(bb) renovation and improvement in classrooms, libraries, laboratory, and other instructional facilities;

(cc) support of faculty exchanges, faculty development, and faculty fellowships to assist faculty in attaining advanced degrees in the faculty’s field of instruction;

(dd) curriculum development and academic instruction;

(ee) the purchase of library books, periodicals, microfilm, and other educational materials;

1 So in original. Probably should not be capitalized.
(ff) funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(gg) the joint use of facilities such as laboratories and libraries; and

(hh) academic tutoring and counseling programs and student support services; and

(ii) to which the Secretary, to the extent possible and consistent with a competitive process under which such grants are awarded, allocates funds under this clause to ensure maximum and equitable distribution among all such eligible institutions.

(c) Definitions

(1) Asian American

(2) Asian American and Native American Pacific Islander-serving institution
The term “Asian American and Native American Pacific Islander-serving institution” means an institution of higher education that—

(A) is an eligible institution under section 1058(b) of this title; and

(B) at the time of application, has an enrollment of undergraduate students that is at least 10 percent Asian American and Native American Pacific Islander students.

(3) Enrollment of needy students
The term “enrollment of needy students” means the enrollment at an institution of higher education that—

(A) in the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(B) come from families that receive benefits under a means-tested Federal benefit program (as defined in paragraph (5));

(C) attended a public or nonprofit private secondary school—

(i) that is in the school district of a local educational agency that was eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for any year during which the student attended such secondary school; and

(ii) which for the purpose of this paragraph and for that year was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of such Act [20 U.S.C. 6313(a)(5)]

exceeds 30 percent of the total enrollment of such school; or

(D) are first-generation college students (as that term is defined in section 1070a–11(h) of this title), and a majority of such first-generation college students are low-income individuals.

(4) Low-income individual
The term “low-income individual” has the meaning given such term in section 1070a–11(h) of this title.

(5) Means-tested Federal benefit program
The term “means-tested Federal benefit program” means a program of the Federal Government, other than a program under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, in which eligibility for the programs’ benefits or the amount of such benefits are determined on the basis of income or resources of the individual or family seeking the benefit.

(6) Native American
The term “Native American” means an individual who is of a tribe, people, or culture that is indigenous to the United States.

(7) Native American Pacific Islander
The term “Native American Pacific Islander” means any descendant of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

(8) Native American-serving nontribal institution
The term “Native American-serving nontribal institution” means an institution of higher education that—

(A) at the time of application—

(i) has an enrollment of undergraduate students that is not less than 10 percent Native American students; and

(ii) is not a Tribal College or University (as defined in section 1058c of this title); and

(B) submits to the Secretary such enrollment data as may be necessary to demonstrate that the institution is described in subparagraph (A), along with such other information and data as the Secretary may by regulation require.

(9) Predominantly Black institution
The term “Predominantly Black institution” means an institution of higher education that—

(A) has an enrollment of needy students as defined by paragraph (3);

(B) has an average educational and general expenditure which is low, per full-time equivalent undergraduate student in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions of higher education that offer similar instruction, except that the Secretary may apply the waiver requirements described in section 1068a(b) of this title to this subparagraph in the same manner as the Secretary applies
the waiver requirements to section 1058(b)(1)(B) of this title;
(C) has an enrollment of undergraduate students—
   (i) that is at least 40 percent Black American students;
   (ii) that is at least 1,000 undergraduate students;
   (iii) of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals or first-generation college students (as that term is defined in section 1070a–11(h) of this title); and
   (iv) of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor’s or associate’s degree that the institution is licensed to award by the State in which the institution is located;
(D) is legally authorized to provide, and provides, within the State, an educational program for which the institution of higher education awards a bachelor’s degree, or in the case of a junior or community college, an associate’s degree;
(E) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or is, according to such an agency or association, making reasonable progress toward accreditation; and
(F) is not receiving assistance under—
   (i) part B;
   (ii) part A of subchapter V; or

REFERENCES IN TEXT

The Act of March 2, 1867, referred to in subsec. (c)(9)(F)(iii), is act Mar. 2, 1867, ch. 162, 14 Stat. 436. Provisions relating to authorization of appropriations are contained in section 8 of the Act, which is classified to section 6301 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION
Section was formerly classified to section 1099e of this title prior to renumbering by Pub. L. 111–315.

AMENDMENTS
Subsec. (c)(9)(F). Pub. L. 111–39, § 3017(c)(ii), amended par. (F) generally. Prior to amendment, subpar. (F) read as follows: “is not receiving assistance under part B of this subchapter;”
2008—Subsec. (b)(1). Pub. L. 110–315, § 316(c), amended par. (1) generally. Prior to amendment, text read as follows: “There shall be available to the Secretary to carry out this section, from funds not otherwise appropriated, $255,000,000 for each of the fiscal years 2008 and 2009. The authority to award grants under this section shall expire at the end of fiscal year 2009.”

EFFECTIVE DATE OF 2009 AMENDMENT

EFFECTIVE DATE
Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

PART G—GENERAL PROVISIONS

CODIFICATION

§ 1068. Applications for assistance

(a) Applications

(1) Applications required

Any institution which is eligible for assistance under this subchapter shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to determine whether the institution is eligible for the assistance. Subject to the availability of appropriations to carry out this subchapter, the Secretary may approve an application for assistance under this subchapter only if the Secretary determines that—
(A) the application meets the requirements of subsection (b) of this section;
(B) the applicant is eligible for assistance in accordance with the part of this subchapter under which the assistance is sought; and
(C) the applicant’s performance goals are sufficiently rigorous as to meet the purposes of this subchapter and the performance objectives and indicators for this subchapter established by the Secretary pursuant to the Government Performance and Results Act of 1993 and the amendments made by such Act.

(2) Preliminary applications

In carrying out paragraph (1), the Secretary may develop a preliminary application for use by eligible institutions applying under part A of this subchapter prior to the submission of the principal application.

(b) Contents

An institution, in its application for a grant, shall—
(1) set forth, or describe how the institution (other than an institution applying under part C, D or E of this subchapter) will develop, a comprehensive development plan to strengthen the institution’s academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this subchapter);

(2) set forth policies and procedures to ensure that Federal funds made available under this subchapter for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 1057(b) or 1062 of this title, and in no case supplant those funds;

(3) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this subchapter;

(4) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this subchapter;

(5) provide (A) for making such reports, in such form and containing such information, as the Secretary may require to carry out the functions under this subchapter, including not less than one report annually setting forth the institution’s progress toward achieving the objectives for which the funds were awarded, and (B) for keeping such records and affording such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports;

(6) provide that the institution will comply with the limitations set forth in section 1068e of this title, except that for purposes of section 1059c of this title, paragraphs (2) and (3) of section 1068e of this title shall not apply;

(7) describe in a comprehensive manner any proposed project for which funds are sought under the application and include—

(A) a description of the various components of the proposed project, including the estimated time required to complete each such component;

(B) in the case of any development project which consists of several components (as described by the applicant pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this subchapter in conjunction with other parts of the development project (as specified by the applicant);

(C) an evaluation by the applicant of the priority given any proposed project for which funds are sought in relation to any other projects for which funds are sought by the applicant under this subchapter, and a similar evaluation regarding priorities among the components of any single proposed project (as described by the applicant pursuant to subparagraph (A));

(D) a detailed budget showing the manner in which funds for any proposed project would be spent by the applicant; and

(E) a detailed description of any activity which involves the expenditure of more than $25,000, as identified in the budget referred to in subparagraph (D); and

(8) include such other information as the Secretary may prescribe.

(c) Priority criteria publication required

The Secretary shall publish in the Federal Register, pursuant to chapter 5 of title 5, all policies and procedures required to exercise the authority set forth in subsection (a) of this section. No other criteria, policies, or procedures shall apply.

(d) Eligibility data

The Secretary shall use the most recent and relevant data concerning the number and percentage of students receiving need-based assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 in making eligibility determinations under section 1058 of this title and shall advance the base-year forward following each annual grant cycle.

(e) Technical assistance

The Secretary, directly or by grant or contract, may provide technical assistance to eligible institutions to prepare the institutions to qualify, apply for, and maintain a grant, under this subchapter.


REFERENCES IN TEXT


Section was formerly classified to section 1066 of this title prior to renumbering by Pub. L. 105–244.

PRIORITY PROVISIONS


Another prior section 1068, Pub. L. 89–329, title III, § 393, as added Pub. L. 89–374, title III, § 301, Oct. 3, 1980, 94 Stat. 1398, related to application review process and provided for reader panels, recommendation of such panels, and notification to institutions, prior to the
The proposed project will assist the applicant to prepare for higher education will face during the subsequent decade; and struck former subpar. (D) which read as follows: "information explaining the manner in which the title shall not apply" before semicolon.

This title, paragraphs (2) and (3) of section 1068e of this title, have been determined to be eligible institutions which, although not satisfying the criterion contained in section 1058(b)(1)(B) of this title, have been determined to be eligible institutions under part A which enroll significant numbers of Black Americans, Hispanic Americans, Native Americans, Asian Americans, or Pacific Islanders, including Native Hawaiians.

The Secretary may waive the requirements set forth in section 1058(b)(1)(A) of this title in the case of an institution—

1. which is extensively subsidized by the State in which it is located and charges low or no tuition;
2. which serves a substantial number of low-income students as a percentage of its total student population;
3. which is contributing substantially to increasing higher education opportunities for educationally disadvantaged, underrepresented, or minority students, who are low-income individuals;
4. which is substantially increasing higher educational opportunities for individuals in rural or other isolated areas which are unserved by postsecondary institutions;
5. located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians;
6. that is a tribally controlled college or university as defined in section 1801 of title 25; or
7. wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Black Americans, Hispanic Americans, or Pacific Islanders, including Native Hawaiians.

(b) Waiver determinations; expenditures

1. The Secretary may waive the requirements set forth in section 1058(b)(1)(B) of this title if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A of this subchapter is otherwise consistent with the purposes of such parts.1
2. The Secretary shall submit to the Congress every other year a report concerning the institutions which, although not satisfying the criterion contained in section 1058(b)(1)(B) of this title, have been determined to be eligible institutions under part A which enroll significant numbers of Black American, Hispanic, Native American, Asian American, or Native Hawaiian students under part A, as the case may be. Such report shall—

(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with subparagraphs (A) and (B) of section 1058(b)(1) of this title; and

(B) contain a list of each institution determined to be an eligible institution under part

1 So in original. Probably should be “part.”
A including a statement of the reasons for each such determination.

(3) The Secretary may waive the requirement set forth in section 1068(b)(1)(E) of this title in the case of an institution located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians.

(c) Waiver authority with respect to institutions located in an area affected by a Gulf hurricane disaster

(1) Waiver authority

Notwithstanding any other provision of law, unless enacted with specific reference to this section, for any affected institution that was receiving assistance under this subchapter at the time of a Gulf hurricane disaster, the Secretary shall, for each of the fiscal years 2009 through 2011 (and may, for each of the fiscal years 2012 and 2013)—

(A) waive—

(i) the eligibility data requirements set forth in section 1068(d) of this title;
(ii) the wait-out period set forth in section 1059(d) of this title;
(iii) the allotment requirements under section 1063 of this title; and
(iv) the use of the funding formula developed pursuant to section 1063(b)(3) of this title;

(B) waive or modify any statutory or regulatory provision to ensure that affected institutions that were receiving assistance under this subchapter at the time of a Gulf hurricane disaster are not adversely affected by any formula calculation for fiscal year 2009 or for any of the four succeeding fiscal years, as necessary; and

(C) make available to each affected institution an amount that is not less than the amount made available to such institution—

(i) under this subchapter for fiscal year 2006, the amount made available to such institution under this subchapter for fiscal year 2006, except that for any fiscal year for which the funds appropriated for payments under this subchapter are less than the appropriated level for fiscal year 2006, the amount made available to such institutions shall be ratably reduced among the institutions receiving funds under this subchapter.

(2) Definitions

In this subsection:

(A) Affected institution

The term “affected institution” means an institution of higher education that—

(i) is—

(I) a part A institution (which term shall have the meaning given the term “eligible institution” under section 1059(b) of this title); or
(II) a part B institution, as such term is defined in section 1061(2) of this title, or as identified in section 1063(b)(e) of this title;

(ii) is located in an area affected by a Gulf hurricane disaster; and

(iii) is able to demonstrate that, as a result of the impact of a Gulf hurricane disaster, the institution—

(I) incurred physical damage;
(II) has pursued collateral source compensation from insurance, the Federal Emergency Management Agency, and the Small Business Administration, as appropriate; and
(III) was not able to fully reopen in existing facilities or to fully reopen to the pre-hurricane enrollment levels during the 30-day period beginning on August 29, 2005.

(B) Area affected by a Gulf hurricane disaster; Gulf hurricane disaster

The terms “area affected by a Gulf hurricane disaster” and “Gulf hurricane disaster” have the meanings given such terms in section 209 of the Higher Education Hurricane Relief Act of 2005 (Public Law 109–148, 119 Stat. 2809).

References in Text


Mendments


1998—Subsec. (a)(5) to (7). Pub. L. 105–244 struck out “or” at end of par. (5), added par. (6), and redesignated former par. (6) as (7).

1992—Subsec. (a). Pub. L. 102–325 substituted “Secretary may waive” for “Secretary shall waive”.


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tion 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

Effective Date of 1992 Amendment

Effective Date of 1987 Amendment

Termination of Reporting Requirements
For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the last item on page 79 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b)(2) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 1068b. Application review process

(a) Review panel

(1) All applications submitted under this subchapter by institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary. The Secretary shall assure that no individual assigned under this section to review any application has any conflict of interest with regard to the application which might impair the impartiality with which the individual conducts the review under this section.

(2) The Secretary shall take care to assure that representatives of historically and predominantly Black colleges, Hispanic institutions, Tribal Colleges and Universities, and institutions with substantial numbers of Hispanics, Native Americans, Asian Americans, and Native American Pacific Islanders (including Native Hawaiians) are included as readers.

(3) All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this subchapter and consistent with the provisions of this subchapter, including—

(A) explanations and examples of the types of activities referred to in section 1057(b) of this title that should receive special consideration for grants awarded under part A of this subchapter and of the types of activities referred to in section 1062 of this title that should receive special consideration for grants awarded under part B of this subchapter;

(B) an enumeration of the factors to be used to determine the quality of applications submitted under this subchapter; and

(C) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this subchapter, the amount of any such grant, and the duration of any such grant.

(b) Recommendations of panel

In awarding grants under this subchapter, the Secretary shall take into consideration the recommendations of the panel made under subsection (a) of this section.

(c) Notification

Not later than June 30 of each year, the Secretary shall notify each institution of higher education making an application under this subchapter of—

(1) the scores given the applicant by the panel pursuant to this section;

(2) the recommendations of the panel with respect to such application; and

(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this subchapter, and any modifications, if any, in the recommendations of the panel made by the Secretary.

(d) Exclusion

The provisions of this section shall not apply to applications submitted under part D of this subchapter.

CODIFICATION
Section was formerly classified to section 1608b of this title prior to renumbering by Pub. L. 105-244.

Amendments
1998—Subsec. (a)(2). Pub. L. 105-244, § 308(e)(1), substituted “Tribal Colleges and Universities” for “Native American colleges and universities”.

Subsec. (d). Pub. L. 105-244, § 308(e)(2), added subsec. (d).

Effective Date of 1998 Amendment
Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

§ 1068c. Cooperative arrangements

(a) General authority

The Secretary may make grants to encourage cooperative arrangements—

(1) with funds available to carry out part A of this subchapter, between institutions eligible for assistance under part A of this subchapter and between such institutions and institutions not receiving assistance under this subchapter; or

(2) with funds available to carry out part B of this subchapter, between institutions eligible for assistance under part B of this subchapter and institutions not receiving assistance under this subchapter;

for the activities described in section 1057(b) of this title or section 1062 of this title, as the case may be, so that the resources of the cooperating institutions might be combined and shared to achieve the purposes of such parts and avoid costly duplicative efforts and to enhance the development of part A and part B eligible institutions.

(b) Priority

The Secretary shall give priority to grants for the purposes described under subsection (a) of this section whenever the Secretary determines that the cooperative arrangement is geograph-
(c) Duration

Grants to institutions having a cooperative arrangement may be made under this section for a period as determined under section 1059 of this title or section 1062 of this title.


CODIFICATION

Section was formerly classified to section 1069 of this title prior to renumbering by Pub. L. 105-244.

§ 1068d. Assistance to institutions under other programs

(a) Assistance eligibility

Each institution which the Secretary determines to be an institution eligible under part A of this subchapter or an institution eligible under part B of this subchapter may be eligible for waivers in accordance with subsection (b) of this section.

(b) Waiver applicability

(1) Subject to, and in accordance with, regulations promulgated for the purpose of this section, in the case of any application by an institution referred to in subsection (a) of this section for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.

(2) The provisions of this section shall apply to any program authorized by part D of this subchapter or subchapter IV of this chapter or part C of subchapter I of chapter 34 of title 42.

(c) Limitation

The Secretary shall not waive, under subsection (b) of this section, the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 percent of the appropriations for the program for any fiscal year.


AMENDMENTS


§ 1068e. Limitations

The funds appropriated under section 1068h of this title may not be used—

(1) for a school or department of divinity or any religious worship or sectarian activity;

(2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution;

(3) for an activity that is inconsistent with a State plan of higher education applicable to such institution; or

(4) for purposes other than the purposes set forth in the approved application under which the funds were made available to the institution.


AMENDMENTS


1992—Subsec. (a). Pub. L. 102-325 substituted “may be eligible” for “shall be eligible”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT


§ 1068f. Penalties

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of Federal financial assistance or grant pursuant to this subchapter embezzles, willfully misapplies, steals, or obtains by fraud any of the funds which are the subject of such appropriations, shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both.


CODIFICATION

Section was formerly classified to section 1069d of this title prior to renumbering by Pub. L. 105-244.

§ 1068g. Continuation awards

The Secretary shall make continuation awards under this subchapter for the second and succeeding years of a grant only after determining that the recipient is making satisfactory progress in carrying out the grant.


CODIFICATION

Section was formerly classified to section 1069h of this title prior to renumbering by Pub. L. 105-244.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 104-208 substituted “part D of this subchapter or subchapter IV of this chapter” for “subchapter IV, VII, or VIII of this chapter”.

1992—Subsec. (a). Pub. L. 102-325 substituted “may be eligible” for “shall be eligible”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

§ 1068h

TITLE 20—EDUCATION

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(a) Authorization of appropriations

(1) Part A

(A) There are authorized to be appropriated to carry out part A (other than sections 1059c through 1059g of this title), $135,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(B) There are authorized to be appropriated to carry out section 1059c of this title, $30,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(C) There are authorized to be appropriated to carry out section 1059d of this title, $15,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(D) There are authorized to be appropriated to carry out section 1059e of this title, $30,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(E) There are authorized to be appropriated to carry out section 1059f of this title, $25,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(F) There are authorized to be appropriated to carry out section 1059g of this title, $375,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(b) Use of multiple year awards

In the event of a multiple year award to any institution under this subchapter, the Secretary shall make funds available for such award from funds appropriated for this subchapter for the fiscal year in which such funds are to be used by the recipient.


CODIFICATION

Section was formerly classified to section 1069 of this title prior to renumbering by Pub. L. 105–244.

PRIOR PROVISIONS


§ 1068h

Effective Date


AMENDMENTS
2008—Subsec. (a), Pub. L. 110–315 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to authorizations for parts A to E for fiscal year 1999 and each of the 4 succeeding fiscal years.


Subsec. (a)(1)(B). Pub. L. 105–244, §308(h)(1)(B), redesignated cl. (i) as entire cl., substituted “$10,000,000 for fiscal year 1999” for “$45,000,000 for fiscal year 1993”, and struck out cl. (i) which read as follows: “No funds are authorized to be appropriated pursuant to clause (i) for any fiscal year unless the amount appropriated pursuant to paragraph (1)(A) for such fiscal year equals or exceeds $80,000,000.”


Subsec. (a)(2)(B). Pub. L. 105–244, §308(h)(2)(B), substituted “$35,000,000 for financial year 1999” for “$20,000,000 for fiscal year 1993”.

Subsec. (a)(3). Pub. L. 105–244, §308(h)(3), substituted “$10,000,000 for fiscal year 1999” for “$50,000,000 for fiscal year 1993”.

Subsec. (a)(4), (5). Pub. L. 105–244, §308(h)(4), added pars. (4) and (5).

Subsec. (c). Pub. L. 105–244, §308(h)(5), struck out heading and text of subsec. (c). Text read as follows: “If the amount appropriated under subsection (a)(1) of this section for part A of this subchapter for any fiscal year beginning after September 30, 1996, equals or exceeds the amount appropriated for such part for fiscal year 1966, the Secretary shall, for such fiscal year—

“(1) allocate 25 percent of the excess (above the amount appropriated for part A of this subchapter for fiscal year 1966) among eligible institutions at which at least 60 percent of the students are African Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof; and

“(2) allocate 75 percent of such excess among other eligible institutions.”

Subsec. (d). Pub. L. 105–244, §308(h)(5), struck out heading and text of subsec. (d). Text read as follows: “In any fiscal year beginning after September 30, 1996, the Secretary shall award at least 25 percent of the amount appropriated pursuant to the authority of paragraph (3) of subsection (a) of this section in each fiscal year to historically black colleges and universities that meet the requirements of part C of this subchapter, unless there are an insufficient number of quality applications or an insufficient number of applications due to the provisions in subsection (b)(2)(C) or subsection (b)(3)(B) of section 1065 of this title.”


Subsec. (c). Pub. L. 102–325, §305(f), substituted “1986, the Secretary shall, for such fiscal year—” for “1967—” in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

“(1) the Secretary shall, for such fiscal year, make available for use for the purposes of part A of this subchapter to institutions that are junior or community colleges not less than $51,400,000; and

“(2) the Secretary shall, for such fiscal year—

“(A) allocate 25 percent of the excess (above the amount appropriated for part A of this subchapter for fiscal year 1966) among eligible institutions with the highest percentages of students who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof; and

“(B) allocate 75 percent of such excess among other eligible institutions.”

Subsec. (e). Pub. L. 102–325, §305(g), added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

EFFECTIVE DATE OF 1992 AMENDMENT

SUBCHAPTER IV—STUDENT ASSISTANCE
PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

CODIFICATION

§1070. Statement of purpose; program authorization
(a) Purpose
It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students, as defined in accordance with section 1091 of this title, in institutions of higher education by—

(1) providing Federal Pell Grants to all eligible students;
(2) providing supplemental educational opportunity grants to those students who demonstrate financial need;
(3) providing for payments to the States to assist them in making financial aid available to such students;
(4) providing for special programs and projects designed (A) to identify and encourage qualified youths with financial or cultural need with a potential for postsecondary education, (B) to prepare students from low-income families for postsecondary education, and (C) to provide remedial (including remedial language study) and other services to students; and
(5) providing assistance to institutions of higher education.

(b) Secretary required to carry out purposes

The Secretary shall, in accordance with subparts 1 through 9 of this part, carry out programs to achieve the purposes of this part.


AMENDMENTS

2009—Subsec. (b). Pub. L. 111–39 substituted “1 through 9” for “1 through 8”.


EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 1998 AMENDMENT


HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS


“(a) SCHOLARSHIPS AUTHORIZED.—

“(1) IN GENERAL.—The Secretary of Education is authorized to provide financial assistance to the United States Olympic Education Center or the United States Olympic Training Center to enable such centers to provide financial assistance to athletes who are training at such centers and are pursuing postsecondary education at institutions of higher education (as such term is defined in section 1070) as determined under section 1070 of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

“(2) AWARD DETERMINATION.—The amount of the financial assistance provided to an athlete described in paragraph (1) shall be determined in accordance with criteria, and in amounts, specified in the application of the center under subsection (c). Such assistance shall not exceed the athlete’s cost of attendance as determined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087(a)).

“(3) INFORMATION ON DISTRIBUTION OF ASSISTANCE.—Each center providing such assistance shall annually report to the Secretary such information as the Secretary may reasonably require on the distribution of such assistance among athletes and institutions of higher education. The Secretary shall compile such reports and submit them to the Committee on Education and the Workforce and Appropriations of the House of Representatives and the Committees on Health, Education, Labor, and Pensions and Appropriations of the Senate.

“(b) ELIGIBILITY.—The Secretary of Education shall ensure that financial assistance provided under this section is applicable to the student financial aid programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.) as deemed necessary because of a national emergency, provided sense of Congress as to tuition refunds from institutions of postsecondary education, and provided that the Act ceased to be effective Sept. 30, 2003.

COMMUNITY SCHOLARSHIP MOBILIZATION


COMMUNITY SCHOOL PARTNERSHIPS


STUDY OF FEDERAL BENEFIT COORDINATION

Section 1405 of Pub. L. 102–325 directed Secretary of Education to conduct a study to evaluate the coordination of Federal student financial assistance programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) with other programs funded in whole or in part with Federal funds, with Secretary to prepare and submit to appropriate committees of Congress a report on the study not later than 3 years after July 23, 1992, together with such recommendations as the Secretary deemed appropriate, prior to repeal by Pub. L. 105–322, § 6(b)(2), Oct. 31, 1998, 112 Stat. 3128.

OLYMPIC SCHOLARSHIPS


“(a) SCHOLARSHIPS AUTHORIZED.—

“(1) IN GENERAL.—The Secretary of Education shall authorize to provide financial assistance to the United States Olympic Education Center or the United States Olympic Training Center to enable such centers to provide financial assistance to athletes who are training at such centers and are pursuing postsecondary education at institutions of higher education (as such term is defined in section 1070) as determined under section 1070 of the Higher Education Act of 1965 (20 U.S.C. 1070) as determined under section 1070 of the Higher Education Act of 1965 (20 U.S.C. 1070) as determined under section 1070 of the Higher Education Act of 1965 (20 U.S.C. 1070).

“(1) IN GENERAL.—The Secretary of Education shall authorize to provide financial assistance to the United States Olympic Education Center or the United States Olympic Training Center to enable such centers to provide financial assistance to athletes who are training at such centers and are pursuing postsecondary education at institutions of higher education (as such term is defined in section 1070) as determined under section 1070 of the Higher Education Act of 1965 (20 U.S.C. 1070).

“(2) AWARD DETERMINATION.—The amount of the financial assistance provided to an athlete described in paragraph (1) shall be determined in accordance with criteria, and in amounts, specified in the application of the center under subsection (c). Such assistance shall not exceed the athlete’s cost of attendance as determined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087).

“(3) INFORMATION ON DISTRIBUTION OF ASSISTANCE.—Each center providing such assistance shall annually report to the Secretary such information as the Secretary may reasonably require on the distribution of such assistance among athletes and institutions of higher education. The Secretary shall compile such reports and submit them to the Committee on Education and the Workforce and Appropriations of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and Appropriations of the Senate.

“(b) ELIGIBILITY.—The Secretary of Education shall ensure that financial assistance provided under this section is applicable to the student financial aid programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.) as deemed necessary because of a national emergency, provided sense of Congress as to tuition refunds from institutions of postsecondary education, and provided that the Act ceased to be effective Sept. 30, 2003.
part, amendment ($1543) of Pub. L. 102–325 is available to both full-time and part-time students who are athletes at centers described in subsection (a).

"(c) EFFECTIVE DATE.—Each center desiring financial assistance under this section shall submit an application to the Secretary of Education at such time, in such manner and accompanied by such information as the Secretary may reasonably require.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years to carry out this section.

"(e) DESIGNATION.—Scholarships awarded under this section shall be known as 'B.J. Stupak Olympic Scholarships'."

"(Pub. L. 107–116, title III, § 305(b), Jan. 10, 2002, 115 Stat. 2208, provided that: 'The amendments made by subsection (a) [amending section 1543 of Pub. L. 102–325, set out above] shall apply with respect to any funds appropriated pursuant to section 1543(d) of the Higher Education Amendments of 1992 [section 1543(d) of Pub. L. 102–325, set out above], including funds appropriated in fiscal years 2000 and 2001, that are available for fiscal years 2002 and 2003, if otherwise available for fiscal assistance; and that under section 1543 on or after the date of enactment of this Act [Jan. 10, 2002].'"

"(b) WAIVER REQUIREMENT.—Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education shall waive or modify any statutory or regulatory provision applied in lieu of such statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section. Such notice shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions. The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

"(d) DEFINITIONS.—For purposes of this Act [probably should be "section"]—

"(1) Individuals ‘serving on active duty in connection with Operation Desert Shield or Operation Desert Storm’ shall include—

"(A) any Reserve of an Armed Force called to active duty under section 672(a) [now 12301(a)], 672(g) [now 12301(g)], 673 [now 12302], 673b [now 12304], 674 [now 12306], or 688 of title 10, United States Code, for service in connection with Operation Desert Shield or Operation Desert Storm, regardless of the location at which such active duty service is performed; and

"(B) for purposes of waivers of administrative requirements under subsection (b)(2) only, any other member of an Armed Force on active duty in connection with Operation Desert Shield or Operation Desert Storm, who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

"(2) The term ‘active duty’ has the meaning given such term in section 101(22) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

"SEC. 5. TUITION REFUNDS OR CREDITS.

"(a) SENSE OF CONGRESS.—It is the sense of the Congress that all institutions offering postsecondary education should provide a full refund to any member or Reserve of an Armed Force on active duty in connection with Operation Desert Shield or Operation Desert Storm for that portion of a period of instruction such individual was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for such service. For purposes of this section, a full refund includes a refund of the amount against future tuition and fees, or a credit in a comparable amount against future tuition and fees.

"(b) ENTHUSIAST AND REPORT.—The Secretary of Education shall encourage institutions to provide such refunds or credits, and shall report to the appropriate
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Program authority and method of distribution

(1) For each fiscal year through fiscal year 2017, the Secretary shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (defined in accordance with section 1091 of this title) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a Federal Pell Grant in the amount for which that student is eligible, as determined pursuant to subsection (b) of this section. Not later than October 7, 1998, the Secretary shall publish in the Federal Register a schedule of reductions to be used by institutions to reduce the amount of Federal Pell Grant assistance paid for any academic year to any student in accordance with this section.

(2)(A) The amount of the Federal Pell Grant for a student eligible under this part shall be—

(i) the maximum Federal Pell Grant, as specified in the last enacted appropriation Act applicable to that award year, plus

(ii) the amount of the increase calculated under paragraph (7)(B) for that year, less

(iii) an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.

(B) In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the Federal Pell Grant to which that student is entitled shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this division, computed in accordance with this subpart. Such a schedule of reductions shall be established by regulation and published in the Federal Register in accordance with section 1089 of this title.

(3) No Federal Pell Grant under this subpart shall exceed the difference between the expected family contribution for a student and the cost of attendance (as defined in section 1087l of this title) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a Federal Pell Grant plus the amount of the expected family contribution for that student exceeds the cost of attendance for that year, the amount of the Federal Pell Grant shall be reduced until the combination of expected family contribution and the amount of the Federal Pell Grant does not exceed the cost of attendance at such institution.

(4) No Federal Pell Grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this subpart for any academic year is less than ten percent of the maximum amount of a Federal Pell Grant award determined under paragraph (2)(A) for such academic year.

(5) Notwithstanding any other provision of this subpart, the Secretary shall allow the amount of the Federal Pell Grant to be exceeded for students participating in a program of study abroad approved for credit by the institution at which the student is enrolled when the reasonable costs of such program are greater than the cost of attendance at the student’s home institution, except that the amount of such Federal Pell Grant in any fiscal year shall not exceed the maximum amount of a Federal Pell Grant award determined under paragraph (2)(A) for such academic year. If the preceding sentence applies, the financial aid administrator at the home institution may use the cost of the study abroad program, rather than the home institution’s cost,
to determine the cost of attendance of the student.

(6) No Federal Pell Grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense (as determined in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program).

(7) ADDITIONAL FUNDS.—

(A) IN GENERAL.—There are authorized to be appropriated, and there are appropriated (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated) the following amounts—

(i) $2,030,000,000 for fiscal year 2008;
(ii) $2,733,000,000 for fiscal year 2009;
(iii) to carry out subparagraph (B) of this paragraph, such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year to provide the amount of increase of the maximum Federal Pell Grant required by clauses (ii) and (iii) of subparagraph (B); and
(iv) to carry out this section—

(I) $13,500,000,000 for fiscal year 2011;
(II) $13,795,000,000 for fiscal year 2012;
(III) $7,387,000,000 for fiscal year 2013;
(IV) $588,000,000 for fiscal year 2014;
(V) $0 for fiscal year 2015;
(VI) $0 for fiscal year 2016;
(VII) $1,574,000,000 for fiscal year 2017;
(VIII) $1,382,000,000 for fiscal year 2018;
(IX) $1,409,000,000 for fiscal year 2019;
(X) $1,574,000,000 for fiscal year 2020; and
(XI) $1,430,000,000 for fiscal year 2021 and each succeeding fiscal year.

(B) INCREASE IN FEDERAL PELL GRANTS.—The amounts made available pursuant to clauses (i) through (iii) of subparagraph (A) of this paragraph shall be used to increase the amount of the maximum Federal Pell Grant for which a student shall be eligible during an award year, as specified in the last enacted appropriation Act applicable to that award year, by—

(i) $490 for each of the award years 2008–2009 and 2009–2010;
(ii) $690 for each of the award years 2010–2011, 2011–2012, and 2012–2013; and
(iii) the amount determined under subparagraph (C) for each succeeding award year.

(C) ADJUSTMENT AMOUNTS.—

(I) AWARD YEAR 2013–2014.—For award year 2013–2014, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

(I) $5,550 or the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), whichever is greater, increased by a percentage equal to the annual adjustment percentage for the award year for which the amount under this subparagraph is being determined, reduced by

(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

(III) rounded to the nearest $5.

(ii) AWARD YEARS 2014–2015 THROUGH 2017–2018.—For each of the award years 2014–2015 through 2017–2018, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

(I) the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), increased by a percentage equal to the annual adjustment percentage for the award year for which the amount under this subparagraph is being determined, reduced by

(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

(III) rounded to the nearest $5.

(iii) SUBSEQUENT AWARD YEARS.—For award year 2018–2019 and each subsequent award year, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to the amount determined under clause (ii) for award year 2017–2018.

(iv) DEFINITIONS.—For purposes of this subparagraph—

(I) the term “annual adjustment percentage” as applied to an award year, is equal to the estimated percentage change in the Consumer Price Index (as determined by the Secretary, using the definition in section 1087rr(r) of this title) for the most recent calendar year ending prior to the beginning of that award year; and

(II) the term “total maximum Federal Pell Grant” as applied to a preceding award year, is equal to the sum of—

(aa) the maximum Federal Pell Grant for which a student is eligible during an award year, as specified in the last enacted appropriation Act applicable to that preceding award year; and

(bb) the amount of the increase in the maximum Federal Pell Grant required by this paragraph for that preceding award year.

(D) PROGRAM REQUIREMENTS AND OPERATIONS OTHERWISE UNAFFECTED.—Except as provided in subparagraphs (B) and (C), nothing in this paragraph shall be construed to alter the requirements and operations of the Federal Pell Grant Program as authorized under this section, or authorize the imposition of additional requirements or operations for the determination and allocation of Federal Pell Grants under this section.

(E) RATABLE INCREASES AND DECREASES.—The amounts specified in subparagraph (B) shall be ratably increased or decreased to the extent that funds available under subparagraph (A) exceed or are less than (respectively) the amount required to provide the amounts specified in subparagraph (B).

(F) AVAILABILITY OF FUNDS.—The amounts made available by subparagraph (A) for any...
fiscal year shall be available beginning on October 1 of that fiscal year, and shall remain available through September 30 of the succeeding fiscal year.

(c) Period of eligibility for grants

(1) The period during which a student may receive Federal Pell Grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance except that any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of this paragraph.

(2) Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language instruction) which are determined by the institution to be necessary to help the student to utilize already existing knowledge, training, or skills. Nothing in this section shall exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

(3) No student is entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(4) Notwithstanding paragraph (1), the Secretary may, on a case-by-case basis, a student to receive a Federal Pell Grant if the student—

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution of higher education; and

(B) is enrolled or accepted for enrollment in a postbaccalaureate program that does not lead to a graduate degree, and in courses required by a State in order for the student to receive a professional certification or license required by a State in order for the student to lead to a graduate degree, and in courses required by the institution of higher education which a student awarded a Federal Pell Grant under this subpart is attending, as a part of its regular output document, the expected family contribution for each such student. Each such student financial aid administrator shall—

(A) examine and assess the data used to calculate the expected family contribution of the student furnished pursuant to this subsection;

(B) recalculate the expected family contribution of the student if there has been a change in circumstances of the student or in the data submitted;

(C) make the award to the student in the correct amount; and

(D) after making such award report the corrected data to such contractor and to a central processor (if any) designated by the Secretary for a confirmation of the correct computation of amount of the expected family contribution for each such student.

(2) Whenever a student receives an award under this subpart that, due to recalculation errors by the institution of higher education, is in excess of the amount which the student is entitled to receive under this subpart, such institution of higher education shall pay to the Secretary the amount of such excess unless such excess can be resolved in a subsequent disbursement to the institution.

(3) Each contractor processing applications for awards under this subpart shall for each academic year after academic year 1986-1987 prepare and submit a report to the Secretary on the correctness of the computations of amount of the expected family contribution, and on the accuracy of the questions on the application form under this subpart for the previous academic year for which the contractor is responsible. The Secretary shall transmit the report, together with the comments and recommendations of the Secretary, to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and the authorizing committees.

(g) Insufficient appropriations

If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the functions and responsibilities of this subpart.

(e) Distribution of grants to students

Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student’s account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student’s account.

(f) Calculation of eligibility

(1) Each contractor processing applications for awards under this subpart (including a central processor, if any, designated by the Secretary) shall, in a timely manner, furnish to the student financial aid administrator (at each institution of higher education which a student awarded a Federal Pell Grant under this subpart is attending), as a part of its regular output document, the expected family contribution for each such student. Each such student financial aid administrator shall—

(A) examine and assess the data used to calculate the expected family contribution of the student furnished pursuant to this subsection;

(B) recalculate the expected family contribution of the student if there has been a change in circumstances of the student or in the data submitted;

(C) make the award to the student in the correct amount; and

(D) after making such award report the corrected data to such contractor and to a central processor (if any) designated by the Secretary for a confirmation of the correct computation of amount of the expected family contribution for each such student.

(2) Whenever a student receives an award under this subpart that, due to recalculation errors by the institution of higher education, is in excess of the amount which the student is entitled to receive under this subpart, such institution of higher education shall pay to the Secretary the amount of such excess unless such excess can be resolved in a subsequent disbursement to the institution.

(3) Each contractor processing applications for awards under this subpart shall for each academic year after academic year 1986-1987 prepare and submit a report to the Secretary on the correctness of the computations of amount of the expected family contribution, and on the accuracy of the questions on the application form under this subpart for the previous academic year for which the contractor is responsible. The Secretary shall transmit the report, together with the comments and recommendations of the Secretary, to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and the authorizing committees.
to satisfy fully all entitlements, as calculated under subsection (b) of this section (but at the maximum grant level specified in such appropriation), the Secretary shall promptly transmit a notice of such insufficiency to each House of the Congress, and identify in such notice the additional amount that would be required to be appropriated to satisfy fully all entitlements (as so calculated at such maximum grant level).

(h) Use of excess funds

(1) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by more than 15 percent, then all of the excess funds shall remain available for making payments under this subpart during the next succeeding fiscal year.

(2) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by more than 15 percent, then all of such funds shall remain available for making such payments but payments may be made under this paragraph only with respect to entitlements for that fiscal year.

(i) Treatment of institutions and students under June laws

Any institution of higher education which enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall be considered to be individual grantees for purposes of chapter 81 of title 41.

(j) Institutional ineligibility based on default rates

(1) In general

No institution of higher education shall be an eligible institution for purposes of this subpart if such institution of higher education is ineligible to participate in a loan program under part B or C of this subchapter as a result of a final default rate determination made by the Secretary under part B or C of this subchapter after the final publication of cohort default rates for fiscal year 1996 or a succeeding fiscal year.

(2) Sanctions subject to appeal opportunity

No institution may be subject to the terms of this subsection unless the institution has had the opportunity to appeal the institution's default rate determination under regulations issued by the Secretary for the loan program authorized under part B or C of this subchapter, as applicable. This subsection shall not apply to an institution that was not participating in the loan program authorized under part B or C of this subchapter on October 7, 1998, unless the institution subsequently participates in the loan programs.
mesters or an equivalent period of time, during a single award year; and

(ii) in a program of instruction at an institution of higher education for which the institution awards an associate or baccalaureate degree or a certificate.

“(B) In the case of a student receiving more than one Federal Pell Grant in a single award year under paragraph (A), the total amount of Federal Pell Grants awarded to such student for the award year may exceed the maximum basic grant level specified in the appropriate Appropriations Act for such award year.”


Subsec. (b)(8)(A)(iv). Pub. L. 112–10, §1860(a)(3)(A), substituted “$7,000,000,000” for “$30,000,000,000”.


Subsec. (c)(5). Pub. L. 112–74, §309(a)(2), substituted “‘12’ for ‘18’ in two places and struck out at end “The provisions of this paragraph shall apply only to a student who receives a Federal Pell Grant for the first time or after July 1, 2008.”

2010—Subsec. (b)(2)(A). Pub. L. 111–152, §2101(a)(1), amended subpar. (A) generally, substituting “the maximum amount of a Federal Pell Grant in the amount of ten percent of such level” for “ten percent of the maximum basic grant level” wherever appearing.

Subsec. (b)(4). Pub. L. 111–152, §2101(a)(1)(D), added par. (4) which read as follows: “(4) In fiscal years 2010 to 2014—

(1) the student is enrolled full-time in an associate or baccalaureate degree program of study that is 2 years or longer at an eligible institution that is certified to participate in the Federal Pell Grant Program; and

(2) the student is enrolled in that program for at least half the academic year.”

Subsec. (b)(5). Pub. L. 111–152, §2101(a)(1)(E), inserted before period at end “who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense as determined in accordance with Federal Bureau of Investigation’s Uniform Crime Reporting Program”.

Subsec. (b)(6). Pub. L. 111–152, §2101(a)(1)(F), inserted before period at end “who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense as determined in accordance with Federal Bureau of Investigation’s Uniform Crime Reporting Program”.

Subsec. (b)(7). Pub. L. 111–152, §2101(a)(1)(G), inserted before period at end “who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense as determined in accordance with Federal Bureau of Investigation’s Uniform Crime Reporting Program”.

Subsec. (b)(8)(A)(iv)(II). Pub. L. 111–152, §2101(a)(1)(H), inserted before period at end “who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense as determined in accordance with Federal Bureau of Investigation’s Uniform Crime Reporting Program”.

Subsec. (c). Pub. L. 111–152, §2101(a)(2), added subpar. (C). Former subpar. (C) redesignated (D). Former par. (5) which read as follows: “(D) The Secretary shall promulgate regulations implementing this paragraph.”


Subsec. (b)(1). Pub. L. 111–39, §401(a)(2)(B), made technical amendment to reference in original act which appears in text as reference to this section.

Subsec. (b)(8)(A). Pub. L. 111–5, §2101(a)(1)(F), inserted before period at end “who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense as determined in accordance with Federal Bureau of Investigation’s Uniform Crime Reporting Program”.

Subsec. (b)(8)(A)(i)(vi). Pub. L. 111–39, §401(a)(2)(C), which directed amendment of par. (9)(A) by substituting “$256,000,000” for “$155,000,000” in cl. (vi) and “$4,452,000,000” for “$4,400,000,000” in cl. (viii) effective Aug. 14, 2008, was executed by making the substitutions in par. (8)(A).

Subsec. (b)(8)(B)(i). Subsec. (b)(8)(B)(i) which read as follows: “(i) The Secretary shall—

(I) set the maximum level of a Federal Pell Grant in such fiscal year, and

(II) determine the maximum amount of a Federal Pell Grant that an eligible student is eligible to receive during such fiscal year, and

(III) determine the maximum amount of a Federal Pell Grant under this Act for such fiscal year.”

Subsec. (b)(8)(B)(ii). Pub. L. 111–39, §401(a)(2)(D), which directed amendment of par. (9)(A) by substituting “$256,000,000” for “$155,000,000” in cl. (vi) and “$4,452,000,000” for “$4,400,000,000” in cl. (viii) effective Aug. 14, 2008, was executed by making the substitutions in par. (8)(A).

Subsec. (b)(8)(B)(iii). Subsec. (b)(8)(B)(iii) which read as follows: “(iii) The Secretary shall—

(I) set the maximum amount of a Federal Pell Grant that is payable to an eligible student during such fiscal year; and

(II) determine the maximum amount of a Federal Pell Grant that is payable to such student for such fiscal year.”

Subsec. (b)(8)(B)(iv). Pub. L. 111–39, §401(a)(2)(E), which directed amendment of par. (9)(A) by substituting “$256,000,000” for “$155,000,000” in cl. (vi) and “$4,452,000,000” for “$4,400,000,000” in cl. (viii) effective Aug. 14, 2008, was executed by making the substitutions in par. (8)(A).

Subsec. (b)(8)(B)(v). Subsec. (b)(8)(B)(v) which read as follows: “(v) The Secretary shall—

(I) set the maximum amount of a Federal Pell Grant that is payable to an eligible student during such fiscal year; and

(II) determine the maximum amount of a Federal Pell Grant that is payable to such student for such fiscal year.”

Subsec. (b)(8)(B)(vi). Pub. L. 111–39, §401(a)(2)(F), which directed amendment of par. (9)(A) by substituting “$256,000,000” for “$155,000,000” in cl. (vi) and “$4,452,000,000” for “$4,400,000,000” in cl. (viii) effective Aug. 14, 2008, was executed by making the substitutions in par. (8)(A).

Subsec. (b)(8)(B)(vii). Subsec. (b)(8)(B)(vii) which read as follows: “(vii) The Secretary shall—

(I) set the maximum amount of a Federal Pell Grant that is payable to an eligible student during such fiscal year; and

(II) determine the maximum amount of a Federal Pell Grant that is payable to such student for such fiscal year.”

Subsec. (b)(8)(B)(viii). Pub. L. 111–39, §401(a)(2)(G), which directed amendment of par. (9)(A) by substituting “$256,000,000” for “$155,000,000” in cl. (vi) and “$4,452,000,000” for “$4,400,000,000” in cl. (viii) effective Aug. 14, 2008, was executed by making the substitutions in par. (8)(A).
any fiscal year shall be available and remain available See below. Former par. (8) redesignated (7).
redesignating the par. (9) enacted by Pub. L. 110–84, "to the Committee on Appropriations of the Senate, the Committee on Appropriations and the Committee on Appropriations of the House of Representatives, and the authorizing committees" for "to the Committee on Appropriations and the Committee on Labor and Human Resources of the Senate and the Committee on Appropriations and the Committee on Education and the Workforce of the House of Representatives".

Subsec. (b)(3) to (7). Pub. L. 110–84, § 101(a), redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out former par. (3) which related to the amount of a student's basic grant for any academic year for which an appropriation Act provided a maximum basic grant of more than $2,700.
Subsec. (b)(8). Pub. L. 110–84, § 101(a)(2), which directed redesignation of par. (9) as (8), was executed by redesignating the par. (9) enacted by Pub. L. 110–84, § 102(b), as (8) to reflect the probable intent of Congress. See below. Former par. (8) redesignated (7).

Subsec. (a)(1). Pub. L. 105–244, § 401(g)(3)(C), substituted "Federal Pell Grant" for "basic grant".
Sub. (b)(6). Pub. L. 103–322, amended par. (6) generally. Prior to amendment, par. (6) read as follows: "(B) A no basic grant shall be awarded to an incarcerated student under this subpart that exceeds the sum of the amount of tuition and fees normally assessed by the institution of higher education for the course of study such student is pursuing plus an allowance (determined in accordance with regulations issued by the Secretary) for books and supplies associated with such course of study, except that no basic grant shall be awarded to any incarcerated student serving under sentence of death or any life sentence without eligibility for parole or release.

(B) Basic grants under this subpart shall only be awarded to incarcerated individuals in a State if such grants are used to supplement and not supplant the level of postsecondary education assistance provided by such State to incarcerated individuals in fiscal year 1988." 1993—Subsec. (a)(1). Pub. L. 103–208, § 2(b)(1), inserted before period at end of second sentence "-, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

Subsec. (b)(6). Pub. L. 103–328, § 2(b)(2)–(4), substituted "single award year" for "single academic year" for "12-month period" in introductory provisions, "an associate or baccalaureate" for "a baccalaureate" in subpar. (A), and "an associate or baccalaureate" for "a bachelor’s" in subpar. (B).
Subsec. (i). Pub. L. 103–208, § 2(b)(5), substituted "subsection (b) of this section" for "paragraph (2)".
Subsec. (b)(1). Pub. L. 102–325, § 401(c), struck out "(A) as determined under paragraph (2), will meet 60 percent of a student's cost of attendance (as defined in section 1070a–6 of this title); and (B)" after "basic grant that and substituted "title D of title V" for "part D of title V".

"(I) the remaining one-half of such excess; or
"(II) the sum of the student's tuition and the student's allowance determined under subparagraph (B), if applicable.

(B) For purposes of subparagraph (A)(ii)(II), a student's allowance is $750 if the student has dependent family and student expenses (as defined in section 1087(f)(9) of this title) or disability related expenses (as defined in section 1087(f)(9) of this title)."
ing a student who attends an institution of higher education on less than a half-time basis’’) in first sentence after ‘‘full-time basis’’ the first time appearing.

Pub. L. 102–325, § 401(d), inserted ‘‘, computed in accordance with this subpart’’ before period at end of first sentence.

Subsec. (b)(3). Pub. L. 102–325, § 401(d)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ‘‘The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed 60 percent of the cost of attendance (as defined in section 1070a–6 of this title) at the institution at which the student is in attendance for that year.’’

Subsec. (b)(4). Pub. L. 102–325, § 401(d)(4), substituted ‘‘section 1089’’ for ‘‘section 1070a’’.

Subsec. (b)(5). Pub. L. 102–325, § 401(d)(5), substituted ‘‘$400, except that a student who is eligible for a basic grant that is equal to or greater than $200 but less than $400 shall be awarded a basic grant of $400’’ for ‘‘$200’’.

Subsec. (b)(6). Pub. L. 102–325, § 401(d)(6), added pars. (6) to (8) and struck out former pars. (6) and (7) which limited or prohibited basic grants from funds appropriated for fiscal years prior to 1992 to students attending on less than a half-time basis.

Subsec. (c)(1). Pub. L. 102–325, § 401(e)(1), substituted ‘‘any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of this paragraph’’ for ‘‘—’’.

(A) such period may not exceed the full-time equivalent of—

(1) 5 academic years in the case of an undergraduate degree or certificate program normally requiring 4 years or less;

(2) 6 academic years in the case of an undergraduate degree or certificate program normally requiring more than 4 years;

(B) any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of this subparagraph;

(C) an institution of higher education at which the student is in attendance may waive subparagraph (A) for

(i) the death of a relative of the student;

(ii) the personal injury or illness of the student;

(iii) special circumstances as determined by the institution.’’

Subsec. (c)(2). Pub. L. 102–325, § 401(e)(2), inserted at end of paragraph:

‘‘Nothing in this section shall exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.’’

Subsec. (c)(1). Pub. L. 102–325, § 401(f)(1), substituted ‘‘, as a part of its regular output document, the expected family contribution’’ for ‘‘an estimate of the enlistment decreases, and shall provide that if an entitlement is reduced to less than $100, no payment shall be made.’’

Subsec. (i). Pub. L. 102–325, § 401(h), substituted ‘‘Treatment of institutions and students under other laws’’ for ‘‘Noncontractor status of institutions’’ in heading and inserted at end of text ‘‘—Recipients of Pell Grants shall not be considered to be individual grantees for purposes of part D of title V of Public Law 100–690.’’

Subsec. (g)(2). Pub. L. 102–50 substituted ‘‘paragraph (1)(B)’’ for ‘‘paragraph (1)’’.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 309(a) of Pub. L. 112–74 effective July 1, 2012, see section 309(g) of Pub. L. 112–74, set out as a note under section 1001 of this title.

Pub. L. 112–10, div. B, title VIII, § 1860(b), Apr. 15, 2011, 125 Stat. 170, provided that: ‘‘The amendment made by subsection (a)(2) [amending this section] shall be effective with respect to the 2011–2012 award year and succeeding award years.’’

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title II, § 2101(c), Mar. 30, 2010, 124 Stat. 1073, provided that: ‘‘The amendments made by subsections (a) and (b) [amending this section and sections 1070a–14, 1085, 1089, 1092f, and 1161y of this title] shall take effect on July 1, 2010.’’

EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT


(A) In general.—Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section] shall take effect on July 1, 2009.

(B) Special rule.—The amendments made by subparagraph (F) of paragraph (1) [amending this section] shall take effect on the date of enactment of this Act [Aug. 14, 2008].’’


EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–84, § 1(c), Sept. 27, 2007, 121 Stat. 784, provided that: ‘‘Except as otherwise expressly provided, the amendments made by this Act [enacting subpart 9 of this part and sections 1096e, 1096f, 1099d, 1099e, and 1414 of this title, amending this section and sections 1070a–13, 1077a, 1078, 1078–3, 1085, 1087–1, 1067e, 1067f, 1087g, 1087h, 1087j, 1087m, and 1087v of this title, repealing section 1078–9 of this title, and amending provisions set out as a note under section 1078 of this title] shall be effective on October 1, 2007.’’

Pub. L. 110–84, title I, § 101(b), Sept. 27, 2007, 121 Stat. 784, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall be effective with respect to determinations of Federal Pell Grant amounts for award years beginning on or after July 1, 2008.’’

EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENT

Section 2401(b) of Pub. L. 103–322 provided that: ‘‘The amendment made by this section [amending this sec-
tion) shall apply with respect to periods of enrollment beginning on or after the date of enactment of this Act [Sept. 13, 1994].”

**Effective Date of 1993 Amendment**


**Effective Date of 1992 Amendment**


“(1) as otherwise provided in such part A; and

“(2) that the changes made in section 411 of this section, relating to Pell Grants, shall apply to the awarding of Pell Grants for periods of enrollment beginning on or after July 1, 1993; and

“(3) that the changes in section 413C(a)(2) [20 U.S.C. 1070b–2(a)(2)], relating to the Federal share for the supplemental educational opportunity grant program, shall apply to funds provided for such program for the award years beginning on or after July 1, 1993.”

**Effective Date of 1987 Amendment**


**Effective Date**

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Section 411(c) of the Act [20 U.S.C. 1070a(c)] as amended by this section shall apply with respect to periods of enrollment beginning on or after July 1, 1987.

**Study of Pell Grant Eligibility for Less Than Half-Time Students**

Section 1306 of Pub. L. 99–498 directed Secretary to conduct a study and report to Congress not later than Sept. 30, 1988, on the number of less than half-time students who would be eligible for Pell grants by reason of having an expected family contribution of $0 and of $0–$200 for the appropriate academic years, prior to repeal by Pub. L. 105–78, title III, Nov. 13, 1995, 111 Stat. 1535, 1501A–231.

**Maximum Pell Grants**

Provisions limiting the maximum Pell grant that a student may receive were contained in the following appropriation acts:


§ 1070a–1. Academic competitiveness grants

(a) Academic competitiveness grant program authorized

The Secretary shall award grants, in the amounts specified in subsection (d)(1), to eligible students to assist the eligible students in paying their college education expenses.

(b) Designation

A grant under this section—

(1) for the first or second year of a program of undergraduate education shall be known as an “Academic Competitiveness Grant”;

(2) for the third, fourth, or fifth year of a program of undergraduate education shall be known as a “National Science and Mathematics Access to Retain Talent Grant” or a “National SMART Grant”.

(c) Definition of eligible student

In this section the term “eligible student” means a student who, for the award year for which the determination of eligibility is made for a grant under this section—

(1) is eligible for a Federal Pell Grant;

(2) is enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis; and

(3) in the case of a student enrolled or accepted for enrollment in—

(A) the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education (including a program of not less than
one year for which the institution awards a certificate)—

(i) has successfully completed, after January 1, 2006, a rigorous secondary school program of study that prepares students for college and is recognized as such by the State official designated for such recognition, or with respect to any private or home school, the school official designated for such recognition for such school, consistent with State law, which recognized program shall be reported to the Secretary; and

(ii) has not been previously enrolled in a program of undergraduate education, except as part of a secondary school program of study;

(B) the second year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education (including a program of not less than two years for which the institution awards a certificate)—

(i)(I) successfully completes, after January 1, 2006, but before July 1, 2009, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; or

(II) successfully completes, on or after July 1, 2009, a rigorous secondary school program of study that prepares students for college—

(aa)(AA) that is recognized as such by the official designated for such recognition consistent with State law; and

(bb) that is recognized as such by the Secretary in regulations promulgated to carry out this section, as such regulations were in effect on May 6, 2008; and

(ii) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the relevant coursework; or

(II) is required, as part of the student’s degree program, to undertake a rigorous course of study in mathematics, biology, chemistry, and physics, which consists of at least—

(aa) 4 years of study in mathematics; and

(bb) 3 years of study in the sciences, with a laboratory component in each of those years; and

(ii) offered such curriculum prior to February 8, 2006; or

(E) the fifth year of a program of undergraduate education that requires 5 full years of coursework, as certified by the appropriate official of the degree-granting institution of higher education, for which a baccalaureate degree is awarded by a degree-granting institution of higher education—

(i) is certified by the institution of higher education to be pursuing a major in—

(I) the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or

(II) a critical foreign language; and

(ii) has obtained a cumulative grade point average of at least 3.0 (or the equivalent, as determined under regulations prescribed by the Secretary) in the coursework required for the major described in clause (i).

(d) Grant award

(1) Amounts

(A) In general

The Secretary shall award a grant under this section in the amount of—

(i) $750 for an eligible student under subsection (c)(3)(A); and

(ii) $1,300 for an eligible student under subsection (c)(3)(B);

(iii) $4,000 for an eligible student under subparagraph (C) or (D) of subsection (c)(3), for each of the two years described in such subparagraphs; or
(iv) $4,000 for an eligible student under subsection (c)(3)(E).

(B) Limitation; ratable reduction
Notwithstanding subparagraph (A)—
(i) in any case in which a student attends an institution of higher education on less than a full-time basis, the amount of the grant that such student may receive shall be reduced in the same manner as a Federal Pell Grant is reduced under section 1070a(b)(2)(B) of this title;
(ii) the amount of such grant, in combination with the Federal Pell Grant assistance and other student financial assistance available to such student, shall not exceed the student’s cost of attendance;
(iii) if the amount made available under subsection (e) for any fiscal year is less than the amount required to be provided grants to all eligible students in the amounts determined under subparagraph (A) and clause (i) of this subparagraph, then the amount of the grant to each eligible student shall be ratably reduced; and
(iv) if additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced.

(2) Limitations
(A) No grants for previous credit
The Secretary may not award a grant under this section to any student for any year of a program of undergraduate education for which the student received credit before February 8, 2006.

(B) Number of grants
The Secretary may not award more than one grant to a student described in subsection (c)(3) for each year of study described in such subsection.

(3) Calculation of grant payments
An institution of higher education shall make payments of a grant awarded under this section in the same manner, using the same payment periods, as such institution makes payments for Federal Pell Grants under section 1070a of this title.

(e) Funding
(1) Authorization and appropriation of funds
There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Education to carry out this section—
(A) $790,000,000 for fiscal year 2006;
(B) $850,000,000 for fiscal year 2007;
(C) $920,000,000 for fiscal year 2008;
(D) $960,000,000 for fiscal year 2009; and
(E) $1,010,000,000 for fiscal year 2010.

(2) Availability of funds
Funds made available under paragraph (1) for a fiscal year shall remain available for the succeeding fiscal year.

(f) Recognition of programs of study
The Secretary shall recognize not less than one rigorous secondary school program of study in each State under subparagraphs (A) and (B) of subsection (c)(3) for the purpose of determining student eligibility under such subsection.

(g) Sunset provision
The authority to make grants under this section shall expire at the end of award year 2010–2011.


PRIOR PROVISIONS

AMENDMENTS
2008—Subsec. (a). Pub. L. 110–227, § 10(a)(1), added subsec. (a) and struck out former subsec. (a) which established Academic Competitiveness Grants and Academic Competitiveness Council and required report to Congress.
Subsec. (b)(2). Pub. L. 110–227, § 10(a)(2), substituted “third, fourth, or fifth” for “third or fourth” and “year” for “academic year”.
Subsec. (c). Pub. L. 110–227, § 10(a)(3)(A), in introductory provisions, struck out “full-time” before “student who, for the” and substituted “award” for “academic and “is made for a grant under this section” for “is made”.
Subsec. (c)(1), (2). Pub. L. 110–227, § 10(a)(3)(B), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:
“(1) is a citizen of the United States;
“(2) is eligible for a Federal Pell Grant; and
”
Subsec. (c)(3)(A). Pub. L. 110–227, § 10(a)(3)(C)(ii)(I), substituted, in introductory provisions, “the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education (including a program of not less than one year for which the institution awards a certificate)” for “the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education—”.
Subsec. (c)(3)(A)(I). Pub. L. 110–315, § 402(a)(1)(AA), added cl. (i) and struck out former cl. (i) which read as follows: “has successfully completed, after January 1, 2006, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; and”. See Effective Date of 2008 Amendment notes below.
Pub. L. 110–227, § 10(a)(3)(C)(ii)(II), added cl. (i) and struck out former cl. (i), as amended by Pub. L. 110–315, § 402(a)(1)(AA), which read as follows:
“(I) successfully completes, after January 1, 2006, but before July 1, 2009, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; or
“(II) successfully completes, on or after July 1, 2009, a rigorous secondary school program of study that prepares students for college—
“(aa) that is recognized as such by the official designated for such recognition consistent with State law; and
“(BB) about which the designated official has reported to the Secretary, at such time as the Sec-
Subsec. (g). Pub. L. 110–227, §10(a)(7), substituted “award” for “academic”.

**Effective Date of 2008 Amendment**


**Effective Date**
Section effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as an Effective Date of 2006 Amendment note under section 1002 of this title.


SUBPART 2—FEDERAL EARLY OUTREACH AND STUDENT SERVICES PROGRAMS

**Classification**

**Division 1—Federal TRIO Programs**

§§ 1070a–11. Program authority; authorization of appropriations

(a) Grants and contracts authorized

The Secretary shall, in accordance with the provisions of this division, carry out a program of making grants and contracts designed to identify qualified individuals from disadvantaged backgrounds, to prepare them for a program of postsecondary education, to provide...
support services for such students who are pursuing programs of postsecondary education, to motivate and prepare students for doctoral programs, and to train individuals serving or preparing for service in programs and projects so designed.

(b) Recipients, duration, and size

(1) Recipients
For the purposes described in subsection (a) of this section, the Secretary is authorized, without regard to section 6101 of title 41, to make grants to, and contracts with, institutions of higher education, public and private agencies and organizations, including community-based organizations with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and, as appropriate to the purposes of the program, secondary schools, for planning, developing, or carrying out one or more of the services assisted under this division.

(2) Duration
Grants or contracts made under this division shall be awarded for a period of 5 years, except that—

(A) in order to synchronize the awarding of grants for programs under this division, the Secretary may, under such terms as are consistent with the purposes of this division, provide a one-time, limited extension of the length of such an award;

(B) grants made under section 1070a–17 of this title shall be awarded for a period of 2 years; and

(C) grants under section 1070a–18 of this title shall be awarded for a period determined by the Secretary.

(3) Minimum grants
Unless the institution or agency requests a smaller amount, an individual grant authorized under this division shall be awarded in an amount that is not less than $200,000, except that an individual grant authorized under section 1070a–17 of this title shall be awarded in an amount that is not less than $170,000.

(c) Procedures for awarding grants and contracts

(1) Application requirements
An eligible entity that desires to receive a grant or contract under this division shall submit an application to the Secretary in such manner and form, and containing such information and assurances, as the Secretary may reasonably require.

(2) Considerations

(A) Prior experience
In making grants under this division, the Secretary shall consider each applicant’s prior experience of high quality service delivery, as determined under subsection (f), under the particular program for which funds are sought. The level of consideration given the factor of prior experience shall not vary from the level of consideration given such factor during fiscal years 1994 through 1997, except that grants made under section 1070a–18 of this title shall not be given prior experience consideration.

(B) Participant need
In making grants under this division, the Secretary shall consider the number, percentages, and needs of eligible participants in the area, institution of higher education, or secondary school to be served to aid such participants in preparing for, enrolling in, or succeeding in postsecondary education, as appropriate to the particular program for which the eligible entity is applying.

(3) Order of awards; program fraud

(A) Except with respect to grants made under sections 1070a–17 and 1070a–18 of this title and as provided in subparagraph (B), the Secretary shall award grants and contracts under this division in the order of the scores received by the application for such grant or contract in the peer review process required under paragraph (4) and adjusted for prior experience in accordance with paragraph (2) of this subsection.

(B) The Secretary shall not provide assistance to a program otherwise eligible for assistance under this division, if the Secretary has determined that such program has involved the fraudulent use of funds under this division.

(4) Peer review process

(A) The Secretary shall ensure that, to the extent practicable, members of groups under-represented in higher education, including African Americans, Hispanics, Native Americans, Alaska Natives, Asian Americans, and Native American Pacific Islanders (including Native Hawaiians), are represented as readers of applications.

(B) The Secretary shall ensure that each application submitted under this division is read by at least three readers who are not employees of the Federal Government (other than as readers of applications).

(5) Number of applications for grants and contracts
The Secretary shall not limit the number of applications submitted by an entity under any program authorized under this division if the additional applications describe programs serving different populations or different campuses.

(6) Coordination with other programs for disadvantaged students
The Secretary shall encourage coordination of programs assisted under this division with other programs for disadvantaged students operated by the sponsoring institution or agency, regardless of the funding source of such programs. The Secretary shall not limit an entity’s eligibility to receive funds under this division because such entity sponsors a program similar to the program to be assisted under this division, regardless of the funding source of such program. The Secretary shall permit the Director of a program receiving funds under this division to administer one or more additional programs for disadvantaged stu-
dents operated by the sponsoring institution or agency, regardless of the funding sources of such programs. The Secretary shall, as appropriate, require each applicant for funds under the programs authorized by this division to identify and make available services under such program, including mentoring, tutoring, and other services provided by such program, to foster care youth (including youth in foster care and youth who have left foster care after reaching age 13) or to homeless children and youths as defined in section 11434a of title 42.

(7) Application status

The Secretary shall inform each entity operating programs under this division regarding the status of their application for continued funding at least 8 months prior to the expiration of the grant or contract. The Secretary, in the case of an entity that is continuing to operate a successful program under this division, shall ensure that the start-up date for a new grant or contract for such program immediately follows the termination of the preceding grant or contract so that no interruption of funding occurs for such successful re-applicants. The Secretary shall inform each entity requesting assistance under this division for a new program regarding the status of their application at least 8 months prior to the proposed startup date of such program.

(8) Review and notification by the Secretary

(A) Guidance

Not later than 180 days after August 14, 2008, the Secretary shall issue nonregulatory guidance regarding the rights and responsibilities of applicants with respect to the application and evaluation process for programs and projects assisted under this division, including applicant access to peer review comments. The guidance shall describe the procedures for the submission, processing, and scoring of applications for grants under this division, including—

(i) the responsibility of applicants to submit materials in a timely manner and in accordance with the processes established by the Secretary under the authority of the General Education Provisions Act [20 U.S.C. 1221 et seq.];

(ii) steps the Secretary will take to ensure that the materials submitted by applicants are processed in a proper and timely manner;

(iii) steps the Secretary will take to ensure that prior experience points for high quality service delivery are awarded in an accurate and transparent manner;

(iv) steps the Secretary will take to ensure the quality and integrity of the peer review process, including assurances that peer reviewers will consider applications for grants under this division in a thorough and complete manner consistent with applicable Federal law; and

(B) Updated guidance

Not later than 45 days before the date of the commencement of each competition for a grant under this division that is held after the expiration of the 180-day period described in subparagraph (A), the Secretary shall update and publish the guidance described in such subparagraph.

(C) Review

(i) In general

With respect to any competition for a grant under this division, an applicant may request a review by the Secretary if the applicant—

(I) has evidence of a specific technical, administrative, or scoring error made by the Department, an agent of the Department, or a peer reviewer, with respect to the scoring or processing of a submitted application; and

(II) has otherwise met all of the requirements for submission of the application.

(ii) Technical or administrative error

In the case of evidence of a technical or administrative error listed in clause (i)(I), the Secretary shall review such evidence and provide a timely response to the applicant. If the Secretary determines that a technical or administrative error was made by the Department or an agent of the Department, the application of the applicant shall be reconsidered in the peer review process for the applicable grant competition.

(iii) Scoring error

In the case of evidence of a scoring error listed in clause (i)(I), when the error relates to either prior experience points for high quality service delivery or to the final score of an application, the Secretary shall—

(I) review such evidence and provide a timely response to the applicant; and

(II) if the Secretary determines that a scoring error was made by the Department or a peer reviewer, adjust the prior experience points or final score of the application appropriately and quickly, so as not to interfere with the timely awarding of grants for the applicable grant competition.

(iv) Error in peer review process

(I) Referral to secondary review

In the case of a peer review process error listed in clause (i)(I), if the Secretary determines that points were withheld for criteria not required in Federal statute, regulation, or guidance governing a program assisted under this division or the application for a grant for such program, or determines that information pertaining to selection criteria was wrongly determined to be missing from an application by a peer reviewer,
then the Secretary shall refer the application to a secondary review panel.

(II) Timely review; replacement score

The secondary review panel described in subclause (I) shall conduct a secondary review in a timely fashion, and the score resulting from the secondary review shall replace the score from the initial peer review.

(III) Composition of secondary review panel

The secondary review panel shall be composed of reviewers each of whom—

(aa) did not review the application in the original peer review;

(bb) is a member of the cohort of peer reviewers for the grant program that is the subject of such secondary review; and

(cc) to extent practicable, has conducted peer reviews in not less than two previous competitions for the grant program that is the subject of such secondary review.

(IV) Final score

The final peer review score of an application subject to a secondary review under this clause shall be adjusted appropriately and quickly using the score awarded by the secondary review panel, so as not to interfere with the timely awarding of grants for the applicable grant competition.

(V) Qualification for secondary review

To qualify for a secondary review under this clause, an applicant shall have evidence of a scoring error and demonstrate that—

(aa) points were withheld for criteria not required in statute, regulation, or guidance governing the Federal TRIO programs or the application for a grant for such programs; or

(bb) information pertaining to selection criteria was wrongly determined to be missing from the application.

(v) Finality

(I) In general

A determination by the Secretary under clause (i), (ii), or (iii) shall not be reviewable by any officer or employee of the Department.

(II) Scoring

The score awarded by a secondary review panel under clause (iv) shall not be reviewable by any officer or employee of the Department other than the Secretary.

(vi) Funding of applications with certain adjusted scores

To the extent feasible based on the availability of appropriations, the Secretary shall fund applications with scores that are adjusted upward under clauses (ii), (iii), and (iv) to equal or exceed the minimum cut-off score for the applicable grant competition.

(d) Outreach

(1) In general

The Secretary shall conduct outreach activities to ensure that entities eligible for assistance under this division submit applications proposing programs that serve geographic areas and eligible populations which have been underserved by the programs assisted under this division.

(2) Notice

In carrying out the provisions of paragraph (1), the Secretary shall notify the entities described in subsection (b) of this section of the availability of assistance under this subsection not less than 120 days prior to the deadline for submission of applications under this division and shall consult national, State, and regional organizations about candidates for notification.

(3) Technical assistance

The Secretary shall provide technical training to applicants for projects and programs authorized under this division. The Secretary shall give priority to serving programs and projects that serve geographic areas and eligible populations which have been underserved by the programs assisted under this division. Technical training activities shall include the provision of information on authorizing legislation, goals and objectives of the program, required activities, eligibility requirements, the application process and application deadlines, and assistance in the development of program proposals and the completion of program applications. Such training shall be furnished at conferences, seminars, and workshops to be conducted at not less than 10 sites throughout the United States to ensure that all areas of the United States with large concentrations of eligible participants are served.

(4) Special rule

The Secretary may contract with eligible entities to conduct the outreach activities described in this subsection.

(e) Documentation of status as a low-income individual

(1) Except in the case of an independent student, as defined in section 1075v(d) of this title, documentation of an individual’s status pursuant to subsection (h)(4) shall be made by providing the Secretary with—

(A) a signed statement from the individual’s parent or legal guardian;

(B) verification from another governmental source;

(C) a signed financial aid application; or

(D) a signed United States or Puerto Rico income tax return.

(2) In the case of an independent student, as defined in section 1075v(d) of this title, documentation of an individual’s status pursuant to subsection (h)(4) shall be made by providing the Secretary with—

(A) a signed statement from the individual;

(B) verification from another governmental source;

(C) a signed financial aid application; or
(D) a signed United States or Puerto Rico income tax return.

(3) Notwithstanding this subsection and subsection (h)(4), individuals who are foster care youth (including youth in foster care and youth who have left foster care after reaching age 13), or homeless children and youths as defined in section 11434a of title 42, shall be eligible to participate in programs under sections 1070a–12, 1070a–13, 1070a–14, and 1070a–16 of this title.

(f) Outcome criteria

(1) Use for prior experience determination

For competitions for grants under this division that begin on or after January 1, 2009, the Secretary shall determine an eligible entity’s prior experience of high quality service delivery, as required under subsection (c)(2), based on the outcome criteria described in paragraphs (2) and (3).

(2) Disaggregation of relevant data

The outcome criteria under this subsection shall be disaggregated by low-income students, first generation college students, and individuals with disabilities, in the schools and institutions of higher education served by the program to be evaluated.

(3) Contents of outcome criteria

The outcome criteria under this subsection shall measure, annually and for longer periods, the quality and effectiveness of programs authorized under this division and shall include the following:

(A) For programs authorized under section 1070a–12 of this title, the extent to which the eligible entity met or exceeded the entity’s objectives established in the entity’s application for such program regarding—

(i) the delivery of service to a total number of students served by the program;

(ii) the continued secondary school enrollment of such students;

(iii) the graduation of such students from secondary school with a regular secondary school diploma in the standard number of years;

(iv) the completion by such students of a rigorous secondary school program of study that will make such students eligible for programs such as the Academic Competitiveness Grants Program;

(v) the enrollment of such students in an institution of higher education offering a baccalaureate degree, the extent to which the entity met or exceeded the entity’s objectives regarding the percentage of such students’ completion of the degree programs in which such students were enrolled; or

(II) in the case of an entity that is an institution of higher education offering a baccalaureate degree, the extent to which such students met or exceeded the entity’s objectives regarding—

(aa) the completion of a degree or certificate by such students; and

(bb) the transfer of such students to institutions of higher education that offer baccalaureate degrees;

(iii) the extent to which the entity met or exceeded the entity’s objectives regarding—

(aa) the completion of a degree or certificate by such students; and

(bb) the transfer of such students to institutions of higher education that offer baccalaureate degrees;

(iv) the extent to which the entity met or exceeded the entity’s objectives regarding—

(aa) the completion of a degree or certificate by such students; and

(bb) the transfer of such students to institutions of higher education that offer baccalaureate degrees;

(vi) to the extent practicable, the post-secondary education completion of such students.

(B) For programs authorized under section 1070a–13 of this title, the extent to which the eligible entity met or exceeded the entity’s objectives for such program regarding—

(i) the delivery of service to a total number of students served by the program, as agreed upon by the entity and the Secretary for the period;

(ii) such students’ school performance, as measured by the grade point average, or its equivalent;

(iii) such students’ academic performance, as measured by standardized tests, including tests required by the students’ State;

(iv) the retention in, and graduation from, secondary school of such students;

(v) the completion by such students of a rigorous secondary school program of study that will make such students eligible for programs such as the Academic Competitiveness Grants Program;

(vi) the enrollment of such students in an institution of higher education; and

(vii) to the extent practicable, the post-secondary education completion of such students.

(C) For programs authorized under section 1070a–14 of this title—

(i) the extent to which the eligible entity met or exceeded the entity’s objectives regarding the retention in postsecondary education of the students served by the program;

(ii) the completion of a degree or certificate by such students; and

(iii) to the extent practicable, the post-secondary education completion of such students.

(D) For programs authorized under section 1070a–15 of this title, the extent to which the entity met or exceeded the entity’s objectives for such program regarding—

(i) the delivery of service to a total number of students served by the program, as agreed upon by the entity and the Secretary for the period;

(ii) the provision of appropriate scholarly and research activities for the students served by the program;

(iii) the acceptance and enrollment of such students in graduate programs; and

(iv) the continued enrollment of such students in graduate study and the attainment of doctoral degrees by former program participants.

(E) For programs authorized under section 1070a–16 of this title, the extent to which the entity met or exceeded the entity’s objectives for such program regarding—
(i) the enrollment of students without a secondary school diploma or its recognized equivalent, who were served by the program, in programs leading to such diploma or equivalent;
(ii) the enrollment of secondary school graduates who were served by the program in programs of postsecondary education;
(iii) the delivery of service to a total number of students served by the program, as agreed upon by the entity and the Secretary for the period; and
(iv) the provision of assistance to students served by the program in completing financial aid applications and college admission applications.

(4) Measurement of progress
In order to determine the extent to which each outcome criterion described in paragraph (2) or (3) is met or exceeded, the Secretary shall compare the agreed upon target for the criterion, as established in the eligible entity’s application approved by the Secretary, with the results for the criterion, measured as of the last day of the applicable time period for the determination for the outcome criterion.

(g) Authorization of appropriations
For the purpose of making grants and contracts under this division, there are authorized to be appropriated $900,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years. Of the amount appropriated under this division, the Secretary may use no more than 1/2 of 1 percent of such amount to obtain additional qualified readers and additional staff to review applications, to increase the level of oversight monitoring, to support impact studies, program assessments and reviews, and to provide technical assistance to potential applicants and current grantees. In expending these funds, the Secretary shall give priority to the additional administrative requirements provided in the Higher Education Amendments of 1992, to outreach activities, and to obtaining additional readers.

(h) Definitions
For the purpose of this division:

(1) Different campus
The term “different campus” means a site of an institution of higher education that—
(A) is geographically apart from the main campus of the institution;
(B) is permanent in nature; and
(C) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

(2) Different population
The term “different population” means a group of individuals that an eligible entity desires to serve through an application for a grant under this division, and that—
(A) is separate and distinct from any other population that the entity has applied for a grant under this division to serve; or
(B) while sharing some of the same needs as another population that the eligible entity has applied for a grant under this division to serve, has distinct needs for specialized services.

(3) First generation college student
The term “first generation college student” means—
(A) an individual both of whose parents did not complete a baccalaureate degree; or
(B) in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree.

(4) Low-income individual
The term “low-income individual” means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(5) Veteran eligibility
No veteran shall be deemed ineligible to participate in any program under this division by reason of such individual’s age who—
(A) served on active duty for a period of more than 180 days and was discharged or released therefrom under conditions other than dishonorable;
(B) served on active duty and was discharged or released therefrom because of a service connected disability;
(C) was a member of a reserve component of the Armed Forces called to active duty for a period of more than 30 days; or
(D) was a member of a reserve component of the Armed Forces who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) on or after September 11, 2001.

(6) Waiver
The Secretary may waive the service requirements in subparagraph (A), (B), or (C) of paragraph (5) if the Secretary determines the application of the service requirements to a veteran will defeat the purpose of a program under this division.

REFERENCES IN TEXT


REFERENCES TO SUPPART 2, 3, OR 4 OF THIS PART DEEMED TO REFER TO SUPPART 3, 4, OR 2 OF THIS PART
Section 402(b) of Pub. L. 102–325 provided that: “Reference in any provision of law (other than the Act [20
U.S.C. 1001 et seq.) to subpart 2, 3, or 4 of part A of title IV of the Act shall, after the date of enactment of this Act [July 23, 1992], be deemed to refer to subpart 3 [20 U.S.C. 1070b et seq.], 4 [20 U.S.C. 1070c et seq.], or 2 [20 U.S.C. 1070a–11 et seq.] of such part, respectively.

**CODIFICATION**


**AMENDMENTS**

2009—Subsec. (b)(1). Pub. L. 111–39, §401(a)(4)(A), substituted “organizations, including” for “organizations including”.


Subsec. (b)(2)(A). Pub. L. 110–315, §403(a)(1)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the Secretary shall award such grants or contracts for 5 years to applicants whose prior review scores were in the highest 10 percent of scores of all applicants receiving grants or contracts in each program competition for the same award year.”.

Subsec. (b)(3). Pub. L. 110–315, §403(a)(1)(C), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “Unless the institution or agency requests a smaller amount, individual grants under this division shall be no less than—

(A) $170,000 for programs authorized by sections 1070a–14 and 1070a–17 of this title;

(B) $180,000 for programs authorized by sections 1070a–12 and 1070a–16 of this title; and

(C) $190,000 for programs authorized by sections 1070a–13 and 1070a–15 of this title.”.


Subsec. (c)(6). Pub. L. 110–315, §403(a)(2)(D), inserted at end “The Secretary shall, as appropriate, require each applicant for funds under the programs authorized by this division to identify and make available services given to prior experience shall be the same as the level of consideration given in the other programs appropriated above the current services level to bring each award up to the minimum grant level or the amount requested by the institution or agency, whichever is less.”

The minimum grant level (A) for programs authorized under section 1070a–14 or 1070a–17 of this title, shall not be less than $170,000 for fiscal year 1993; (B) for programs authorized under section 1070a–12 or 1070a–16 of this title shall not be less than $180,000 for fiscal year 1994; and (C) for programs authorized under section 1070a–13 or 1070a–15 of this title shall not be less than $190,000 for fiscal year 1995.”.

Subsec. (c). Pub. L. 105–244, §402(a)(3), amended subsec. (c) generally, revising and restating former pars. (1) to (6), relating to procedures for awarding grants and contracts, as parts (1) to (7).

Subsec. (c)(2). Pub. L. 110–244, §102(b), substituted “section 111g” for “section 1145d–1”. Subsec. (f). Pub. L. 105–244, §402(a)(4), substituted “700,000,000 for fiscal year 1999” for “650,000,000 for fiscal year 1999”.


1998—Subsec. (b). Pub. L. 105–244, §402(a)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “In any year in which the appropriations authorized under this division exceed the prior year appropriation as adjusted for inflation, the Secretary shall use 80 percent of the amount appropriated above the current services level to bring each award up to the minimum grant level or the amount requested by the institution or agency, whichever is less.”


Subsec. (b)(3). Pub. L. 105–244, §402(a)(2), added par. (2) and struck out former par. (2) which read as follows: “Grants or contracts made under this division shall be awarded for a period of 4 years, except that the Secretary shall award such grants or contracts for 5 years to applicants whose peer review scores were in the highest 10 percent of scores of all applicants receiving grants or contracts in each program competition for the same award year.”.

Subsec. (b)(5). Pub. L. 105–244, §402(a)(4), substituted “700,000,000 for fiscal year 1999” for “650,000,000 for fiscal year 1999”.


1993—Subsec. (b)(2). Pub. L. 103–208, §2(b)(6), added par. (2) and struck out former par. (2) which read as follows: “Grants or contracts made under this division shall be awarded for a period of 4 years, except that the Secretary shall award such grants or contracts for 5 years to applicants whose peer review scores were in the highest 10 percent of scores of all applicants receiving grants or contracts in each program competition for the same award year.”.

Subsec. (c)(1). Pub. L. 103–208, §2(b)(7), inserted before period at end of second sentence “, except that in the case of the programs authorized in sections 1070a–15 and 1070a–17 of this title, the level of consideration given to prior experience shall be the same as the level of consideration given this factor in the other programs authorized in this division.”.

Subsec. (c)(2)(A). Pub. L. 103–208, §2(b)(8), inserted “respect to grants made under section 1070a–17 of this title,” and “after” “Except”.

Subsec. (e). Pub. L. 103–208, §2(b)(9), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Documentation of an individual’s status pursuant to subsection (g)(2) of this section shall be made—

(1) in the case of an individual who is eighteen years of age or younger or a dependent student by providing the Secretary with a signed statement from
the parent or legal guardian, verification from another governmental source, a signed financial aid application, or a signed United States or Puerto Rican income tax return; and

“(2) in the case of an individual who is age 18 or older or who is an independent student, by providing the Secretary with a signed statement from the individual, verification from another governmental source, a signed financial aid form, or a signed United States or Puerto Rican income tax return.”

EFFECTIVE DATE OF 2009 AMENDMENT

EFFECTIVE DATE OF 1998 AMENDMENT

EFFECTIVE DATE OF 1993 AMENDMENT
Amendment by section 2(b)(6), (8), (9) of Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, and amendment by section 2(b)(7) of Pub. L. 103–208 effective on and after Dec. 20, 1993, see section 5(a), (b)(2) of Pub. L. 103–208 set out as a note under section 1051 of this title.

ADVANCED PLACEMENT FEE PAYMENT PROGRAM

Similar provisions were contained in Pub. L. 102–325, title VIII, §810, Oct. 7, 1998, 112 Stat. 1868, which authorized grants to States to enable States to reimburse low-income individuals to cover part or all of the cost of advanced placement test fees, required dissemination of information regarding availability of payments, set forth requirements for approval of applications and funding rules, authorized regulations, required annual report, defined terms, and authorized appropriations, was repealed by Pub. L. 107–110, title X, §1011(1), Jan. 8, 2002, 115 Stat. 1866.

§1070a–12. Talent search
(a) Program authority
The Secretary shall carry out a program to be known as talent search which shall be designed—

(1) to identify qualified youths with potential for education at the postsecondary level and to encourage such youths to complete secondary school and to undertake a program of postsecondary education;

(2) to publicize the availability of, and facilitate the application for, student financial assistance available to persons who pursue a program of postsecondary education; and

(3) to encourage persons who have not completed programs of education at the secondary or postsecondary level to enter or reenter, and complete such programs.

(b) Required services
Any project assisted under this section shall provide—

(1) connections to high quality academic tutoring services, to enable students to complete secondary or postsecondary courses;

(2) advice and assistance in secondary course selection and, if applicable, initial postsecondary course selection;

(3) assistance in preparing for college entrance examinations and completing college admission applications;

(4) (A) information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(B) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 1090(a) of this title;

(5) guidance on and assistance in—

(A) secondary school reentry;

(B) alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(C) entry into general educational development (GED) programs; or

(D) postsecondary education; and

(6) connections to education or counseling services designed to improve the financial literacy and economic literacy of students or the students’ parents, including financial planning for postsecondary education.

(c) Permissible services
Any project assisted under this section may provide services such as—

(1) academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) personal and career counseling or activities;

(3) information and activities designed to acquaint youth with the range of career options available to the youth;

(4) exposure to the campuses of institutions of higher education, as well as cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth;

(5) workshops and counseling for families of students served;

(6) mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of such persons; and

(7) programs and activities as described in subsection (b) or paragraphs (1) through (6) of this subsection that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(d) Requirements for approval of applications
In approving applications for projects under this section for any fiscal year the Secretary shall—

(1) require an assurance that not less than two-thirds of the individuals participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;
(2) require that such participants be persons who either have completed 5 years of elementary education or are at least 11 years of age but not more than 27 years of age, unless the imposition of any such limitation with respect to any person would defeat the purposes of this section or the purposes of section 1070a–16 of this title;

(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 1070a–16 of this title; and

(4) require an assurance that the project will be located in a setting accessible to the persons proposed to be served by the project.


AMENDMENTS

Subsec. (a)(3). Pub. L. 110–315, § 403(b)(1)(B), substituted “to enter or reenter, and complete” for “, but who have the ability to complete such programs, to reenter”.

Subsecs. (b), (c). Pub. L. 110–315, § 403(b)(3), added subsec. (c) (as designated (d)).

Subsec. (d). Pub. L. 110–315, § 403(b)(2), (4), redesignated subsec. (c) as (d) as substituted “projects under this section” for “talent search projects under this division” in introductory provisions.

1998—Subsec. (b)(4). Pub. L. 105–244, § 402(b)(1), added par. (4) and struck out former par. (4) which read as follows: “guidance on secondary school reentry or entry to general educational development (GED) programs or other alternative education programs for secondary school dropouts”.

Subsec. (b)(5). Pub. L. 105–244, § 402(b)(2), inserted before semicolon “, or activities designed to acquaint individuals from disadvantaged backgrounds with careers in which the individuals are particularly underrepresented”.

Subsec. (b)(3). Pub. L. 105–244, § 402(b)(3), substituted “families” for “parents”.

Subsec. (b)(9). Pub. L. 105–244, § 402(b)(4), inserted “or counselors” after “teachers”.

EFFECTIVE DATE OF 1998 AMENDMENT

§ 1070a–13. Upward bound
(a) Program authority
The Secretary shall carry out a program to be known as upward bound which shall be designed to generate skills and motivation necessary for success in education beyond secondary school.

(b) Required services
Any project assisted under this section shall provide—

(1) academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) advice and assistance in secondary and postsecondary course selection;

(3) assistance in preparing for college entrance examinations and completing college admission applications;

(4)(A) information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(B) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 1090(a) of this title;

(5) guidance on and assistance in—

(A) secondary school reentry;

(B) alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(C) entry into general educational development (GED) programs; or

(D) postsecondary education; and

(6) education or counseling services designed to improve the financial literacy and economic literacy of students or the students’ parents, including financial planning for post-secondary education.

(c) Additional required services for multiple-year grant recipients
Any project assisted under this section which has received funding for two or more years shall include, as part of the core curriculum in the next and succeeding years, instruction in mathematics through precalculus, laboratory science, foreign language, composition, and literature.

(d) Permissible services
Any project assisted under this section may provide such services as—

(1) exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(2) information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(3) on-campus residential programs;

(4) mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of such persons;

(5) work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;

(6) special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education; and

(7) programs and activities as described in subsection (b), subsection (c), or paragraphs (1) through (6) of this subsection that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in post-secondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students;
(e) Requirements for approval of applications

In approving applications for projects under this section for any fiscal year, the Secretary shall—

(1) require an assurance that not less than two thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

(2) require an assurance that the remaining youths participating in the project proposed to be carried out under any application be low-income individuals, first generation college students, or students who have a high risk for academic failure;

(3) require that there be a determination by the institution, with respect to each participant in such project that the participant has a need for academic support in order to pursue successfully a program of education beyond secondary school;

(4) require that such participants be persons who have completed 8 years of elementary education and are at least 13 years of age but not more than 19 years of age, unless the imposition of any such limitation would defeat the purposes of this section; and

(5) require an assurance that no student will be denied participation in a project assisted under this section because the student will enter the project after the 9th grade.

(f) Maximum stipends

Youths participating in a project proposed to be carried out under any application may be paid stipends not in excess of $40 per month during the remaining period of the year.

(g) Additional funds

(1) Authorization and appropriation

There are authorized to be appropriated, and there are appropriated to the Secretary, from funds not otherwise appropriated, $57,000,000 for each of the fiscal years 2008 through 2011 to carry out paragraph (2), except that any amounts that remain unexpended for such purpose for each of such fiscal years may be available for technical assistance and administration costs for the Upward Bound program. The authority to award grants under this subsection shall expire at the end of fiscal year 2011.

(2) Use of funds

The amounts made available by paragraph (1) shall be available to provide assistance to all Upward Bound projects that did not receive assistance in fiscal year 2007 and that have a grant score above 70. Such assistance shall be made available in the form of 4-year grants.

(h) Absolute priority prohibited in Upward Bound Program

Upon enactment of this subsection and except as otherwise expressly provided by amendment to this section, the Secretary shall not continue, implement, or enforce the absolute priority for the Upward Bound Program published by the Department of Education in the Federal Register on September 22, 2006 (71 Fed. Reg. 55447 et seq.). This subsection shall not be applied retroactively. In implementing this subsection, the Department shall allow the programs and participants chosen in the grant cycle to which the priority applies to continue their grants and participation without a further recompetition. The entities shall not be required to apply the absolute priority conditions or restrictions to future participants.

Amendments

2008—Subsec. (c). Pub. L. 110–315, § 403(c)(1), added subsec. (c) and struck out former subsec. (b) which related to permissible services.


Subsec. (e). Pub. L. 110–315, § 403(c)(3), (5)(A), redesignated subsec. (d) as (e) and substituted “projects under this section” for “upward bound projects under this division” in introductory provisions. Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 110–315, § 403(c)(5)(B), substituted “low-income individuals, first generation college students, or students who have a high risk for academic failure” for “either low-income individuals or first generation college students”.


Subsec. (f). Pub. L. 110–315, § 403(c)(3), (6), redesignated subsec. (e) as (f) and substituted “during the summer school recess, for a period not to exceed three months” for “during June, July, and August” in two places, and “subsection (d)(5)” for “subsection (b)(10)”.

Subsec. (g). Pub. L. 110–315, § 403(c)(3), redesignated subsec. (f) as (g).


Subsec. (b)(9). Pub. L. 105–244, § 402(c)(1)(B), inserted “or counselors” after “teachers” and struck out “and” after semicolon.

Subsec. (b)(10), (11). Pub. L. 105–244, § 402(c)(1)(D), added pars. (10) and (11). Former par. (10) redesignated (12).


Pub. L. 105–244, § 402(c)(1)(C), redesignated par. (10) as (12).

Subsec. (e). Pub. L. 105–244, § 402(c)(2), substituted “except that youth participating in a work-study position under subsection (b)(10) of this section may be paid a stipend of $40 per month during June, July, and August. Youths participating in a project proposed to be carried out under any application may be paid stipends
§ 1070a–14. Student support services

(a) Program authority
The Secretary shall carry out a program to be known as student support services which shall be designed—
(1) to increase college retention and graduation rates for eligible students;
(2) to increase the transfer rates of eligible students from 2-year to 4-year institutions;
(3) to foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42) or were formerly homeless children and youths; and
(4) to improve the financial literacy and economic literacy of students, including—
(A) basic personal income, household money management, and financial planning skills; and
(B) basic economic decisionmaking skills.

(b) Required services
A project assisted under this section shall provide—
(1) academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;
(2) advice and assistance in postsecondary course selection;
(3)(A) information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and
(B) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 1090(a) of this title;
(4) education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education;
(5) activities designed to assist students participating in the project in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs; and
(6) activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(c) Permissible services
A project assisted under this section may provide services such as—
(1) individualized counseling for personal, career, and academic matters provided by assigned counselors;
(2) information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students;
(3) exposure to cultural events and academic programs not usually available to disadvantaged students;
(4) mentoring programs involving faculty or upper class students, or a combination thereof;
(5) securing temporary housing during breaks in the academic year for—
(A) students who are homeless children and youths (as such term is defined in section 11434a of title 42) or were formerly homeless children and youths; and
(B) students who are in foster care or are aging out of the foster care system; and
(6) programs and activities as described in subsection (b) or paragraphs (1) through (4) of this subsection that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(d) Special rule
(1) Use for student aid
A recipient of a grant that undertakes any of the permissible services identified in subsection (c) may, in addition, use such funds to provide grant aid to students. A grant provided under this paragraph shall not exceed the Federal Pell Grant amount, determined under section 1070a(b)(2) of this title, for which a student is eligible, or be less than the minimum Federal Pell Grant amount described in section 1070a(b)(4) of this title, for the current academic year. In making grants to students under this subsection, an institution shall ensure that adequate consultation takes place between the student support service program office and the institution’s financial aid office.

(2) Eligible students
For purposes of receiving grant aid under this subsection, eligible students shall be cur-
rent participants in the student support services program offered by the institution and be—

(A) students who are in their first 2 years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of this subchapter; or

(B) students who have completed their first 2 years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of this subchapter if the institution demonstrates to the satisfaction of the Secretary that—

(i) these students are at high risk of dropping out; and

(ii) it will first meet the needs of all of its eligible first- and second-year students for services under this paragraph.

(3) Determination of need

A grant provided to a student under paragraph (1) shall not be considered in determining that student’s need for grant or work assistance under this subchapter and part C of chapter 34 of title 42, except that in no case shall the total amount of student financial assistance awarded to a student under this subchapter exceed that student’s cost of attendance, as defined in section 1087ll of this title.

(4) Matching required

A recipient of a grant who uses such funds for the purpose described in paragraph (1) shall match the funds used for such purpose, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of funds used for that purpose. This paragraph shall not apply to any grant recipient that is an institution of higher education eligible to receive funds under part A or B of subchapter III or subchapter V of this chapter.

(5) Reservation

In no event may a recipient use more than 20 percent of the funds received under this section for any fiscal year, the Secretary shall—

(A) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application—

(a) be individuals with disabilities; or

(b) be low-income individuals who are first generation college students;

(2) require an assurance that the remaining students participating in the project proposed to be carried out under any application be low-income individuals, first generation college students, or individuals with disabilities;

(3) require an assurance that not less than one-third of the individuals with disabilities participating in the project be low-income individuals;

(4) require that there be a determination by the institution, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond secondary school;

(5) require that such participants be enrolled or accepted for enrollment at the institution which is the recipient of the grant or contract; and

(6) consider, in addition to such other criteria as the Secretary may prescribe, the institution’s effort, and where applicable past history, in—

(A) providing sufficient financial assistance to meet the full financial need of each student in the project; and

(B) maintaining the loan burden of each such student at a manageable level.

(6) Supplement, not supplant

Funds received by a grant recipient that are used under this subchapter shall be used to supplement, and not supplant, non-Federal funds expended for student support services programs.

(e) Requirements for approval of applications

In approving applications for projects under this section for any fiscal year, the Secretary shall—

(A) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application—

(a) be individuals with disabilities; or

(b) be low-income individuals who are first generation college students;

(2) require an assurance that the remaining students participating in the project proposed to be carried out under any application be low-income individuals, first generation college students, or individuals with disabilities;

(3) require an assurance that not less than one-third of the individuals with disabilities participating in the project be low-income individuals;
§ 1070a–15. Postbaccalaureate achievement program authority

(a) Program authority

The Secretary shall carry out a program to be known as the ‘‘Ronald E. McNair Postbaccalaureate Achievement Program’’ that shall be designed to provide disadvantaged college students with effective preparation for doctoral study.

(b) Required services

A project assisted under this section shall provide—

(1) opportunities for research or other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study;

(2) summer internships;

(3) seminars and other educational activities designed to prepare students for doctoral study;

(4) tutoring;

(5) academic counseling; and

(6) activities designed to assist students participating in the project in securing admission to and financial assistance for enrollment in graduate programs.

(c) Permissible services

A project assisted under this section may provide services such as—

(1) education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education;

(2) mentoring programs involving faculty members at institutions of higher education, students, or any combination of such persons; and

(3) exposure to cultural events and academic programs not usually available to disadvantaged students.

(d) Requirements

In approving applications for projects assisted under this section for any fiscal year, the Secretary shall require—

(1) an assurance that not less than two-thirds of the individuals participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

(2) an assurance that the remaining persons participating in the project proposed to be carried out be from a group that is underrepresented in graduate education, including—

(A) Alaska Natives, as defined in section 7546 of this title;

(B) Native Hawaiians, as defined in section 7517 of this title;

(C) Native American Pacific Islanders, as defined in section 1659g of this title;

(3) an assurance that participants be enrolled in a degree program at an eligible institution having an agreement with the Secretary in accordance with the provisions of section 1084 of this title; and

(4) an assurance that participants in summer research internships have completed their sophomore year in postsecondary education.

(e) Award considerations

In addition to such other selection criteria as may be prescribed by regulations, the Secretary shall consider in making awards to institutions under this section—

(1) the quality of research and other scholarly activities in which students will be involved;

(2) the level of faculty involvement in the project and the description of the research in which students will be involved; and

(3) the institution’s plan for identifying and recruiting participants including students enrolled in projects authorized under this section.

(f) Maximum stipends

Students participating in research under a project under this section may receive an award that—

(1) shall include a stipend not to exceed $2,800 per annum; and

(2) may include, in addition, the costs of summer tuition, summer room and board, and transportation to summer programs.

(g) Funding

From amounts appropriated pursuant to the authority of section 1070a–11(g) of this title, the Secretary shall, to the extent practicable, allocate funds for projects authorized by this section in an amount which is not less than $31,000,000 for each of the fiscal years 2009 through 2014.

Amendments


2008—Subsec. (b), Pub. L. 110–118, § 403(e)(1)(A), inserted “Required” before “services” in heading and, in introductory provisions, substituted “A project assisted under this section shall provide—” for “A postbaccalaureate achievement project assisted under this section may provide services such as—”. Subsec. (b)(5) to (8). Pub. L. 110–315, § 403(e)(1)(C)–(E), inserted “and” after the semicolon in par. (5), sub-
stituted a period for the semicolon in par. (6), and
struck out pars. (7) and (8) which read as follows:

“(7) mentoring programs involving faculty members
at institutions of higher education, students, or any
combination of such persons; and

“(8) exposure to cultural events and academic pro-
grams not usually available to disadvantaged stu-
dents.”

(c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–315, § 403(e)(2), (4)(A), redesign-
ated subsec. (c) as (d) and struck out “postbac-
calaureate achievement” after “applications for” in
introductory provisions. Former subsec. (d) redesignated
(e).

“including——” and added subpars. (A) to (C) before
semicolon.

Subsec. (e). Pub. L. 110–315, § 403(e)(2), redesignated
subsec. (d) as (e). Former subsec. (e) redesignated (f).

subsec. (e) as (f) and substituted “project under this
section” for “postbaccalaureate achievement project”
in introductory provisions. Former subsec. (f) redesign-
ated (g).

Subsec. (g). Pub. L. 110–315, § 403(e)(2), (6), redesign-
ated subsec. (f) as (g) and substituted section 1070a–11(g)
for “section 1070a–11(f)” and “2009 through 2014” for
“1993 through 1997”.

“$2,800” for “$2,400”.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted
on the date of enactment of Pub. L. 110–315 (Aug. 14,
2008), see section 3 of Pub. L. 111–39, set out as a note
under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998,
except as otherwise provided in Pub. L. 105–244, see sec-
tion 3 of Pub. L. 105–244, set out as a note under section
1001 of this title.

§ 1070a–16. Educational opportunity centers

(a) Program authority; services provided

The Secretary shall carry out a program to be
known as educational opportunity centers which
shall be designed—

(1) to provide information with respect to fi-
nancial and academic assistance available for
individuals desiring to pursue a program of
postsecondary education;

(2) to provide assistance to such persons in
applying for admission to institutions at
which a program of postsecondary education is
offered, including preparing necessary applica-
tions for use by admissions and financial aid
officers; and

(3) to improve the financial literacy and eco-
nomic literacy of students, including—

(A) basic personal income, household
money management, and financial planning
skills; and

(B) basic economic decisionmaking skills.

(b) Permissible services

An educational opportunity center assisted
under this section may provide services such as—

(1) public information campaigns designed to
inform the community regarding opportunities
for postsecondary education and training;

(2) academic advice and assistance in course
selection;

(3) assistance in completing college admis-
sion and financial aid applications;

(4) assistance in preparing for college en-
trance examinations;

(5) education or counseling services designed
to improve the financial literacy and eco-
nomic literacy of students;

(6) guidance on secondary school reentry or
entry to a general educational development
(GED) program or other alternative education
programs for secondary school dropouts;

(7) individualized personal, career, and aca-
demic counseling;

(8) tutorial services;

(9) career workshops and counseling;

(10) mentoring programs involving ele-
mentary or secondary school teachers, faculty
members at institutions of higher education,
students, or any combination of such persons; and

(11) programs and activities as described in
paragraphs (1) through (10) that are specially
designed for students who are limited English
proficient, students from groups that are tra-
ditionally underrepresented in postsecondary
education, students with disabilities, students
who are homeless children and youths (as such
term is defined in section 11434A of title 42),
students who are in foster care or are aging
out of the foster care system, or other discon-
nected students.

(c) Requirements for approval of applications

In approving applications for educational op-
portunity centers under this section for any fis-
cal year the Secretary shall—

(1) require an assurance that not less than
two-thirds of the persons participating in the
project proposed to be carried out under any
application be low-income individuals who are
first generation college students;

(2) require that such participants be persons
who are at least nineteen years of age, unless
the imposition of such limitation with respect
to any person would defeat the purposes of
this section or the purposes of section 1070a–12
of this title; and

(3) require an assurance that individuals par-
ticipating in the project proposed in the appli-
cation do not have access to services from an-
other project funded under this section or
under section 1070a–12 of this title.

(Pub. L. 89–329, title IV, § 402F, as added Pub. L.
490; amended Pub. L. 110–315, title IV, § 403(f),

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par. (3).

added par. (3) and redesignated former par. (5) as (6).

par. (7) and struck out former par. (7) which read as fol-
loows: “personal counseling:”.

(6) as (7). Former par. (7) redesignated (8).

designated pars. (7) to (9) as (8) to (10), respectively.

Former par. (10) redesignated (11).

par. (11) and struck out former par. (11) which read as
§ 1070a–17. Staff development activities

(a) Secretary’s authority

For the purpose of improving the operation of the programs and projects authorized by this division, the Secretary is authorized to make grants to institutions of higher education and other public and private nonprofit institutions and organizations to provide training for staff and leadership personnel employed in, participating in, or preparing for employment in, such programs and projects.

(b) Contents of training programs

Such training shall include conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operation of such programs and projects and shall be carried out in the various regions of the Nation in order to ensure that the training opportunities are appropriate to meet the needs in the local areas being served by such programs and projects. Such training shall be offered annually for new directors of projects funded under this division as well as annually on the following topics and other topics chosen by the Secretary:

(1) Legislative and regulatory requirements for the operation of programs funded under this division.

(2) Assisting students in receiving adequate financial aid from programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 42 and other programs.

(3) The design and operation of model programs for projects funded under this division.

(4) The use of appropriate educational technology in the operation of projects assisted under this division.

(5) Strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as such term is defined in section 11434a of title 42), students who are in foster care or are aging out of the foster care system, or other disconnected students.

(c) Consultation

Grants for the purposes of this section shall be made only after consultation with regional and State professional associations of persons having special knowledge with respect to the needs and problems of such programs and projects.

§ 1070a–18. Reports, evaluations, and grants for project improvement and dissemination

(a) Reports to the authorizing committees

(1) In general

The Secretary shall submit annually, to the authorizing committees, a report that documents the performance of all programs funded under this division. Such report shall—

(A) be submitted not later than 12 months after the eligible entities receiving funds under this division are required to report their performance to the Secretary;

(B) focus on the programs’ performance on the relevant outcome criteria determined under section 1070a–11(f)(4) of this title;

(C) aggregate individual project performance data on the outcome criteria in order to provide national performance data for each program;

(D) include, when appropriate, descriptive data, multi-year data, and multi-cohort data; and

(E) include comparable data on the performance nationally of low-income students, first-generation students, and students with disabilities.

(2) Information

The Secretary shall provide, with each report submitted under paragraph (1), information on the impact of the secondary review process described in section 1070a–11(c)(8)(C)(iv) of this title, including the number and type of secondary reviews, the disposition of the secondary reviews, the effect on timing of awards, and any other information the Secretary determines is necessary.

(b) Evaluations

(1) In general

(A) Authorization of grants and contracts

For the purpose of improving the effectiveness of the programs and projects assisted under this division, the Secretary shall make grants to, or enter into contracts with, institutions of higher education and other public and private institutions and organizations to rigorously evaluate the effectiveness of the programs and projects assisted under this division, including a rigorous evaluation of the programs and projects assisted under section 1070a–13 of this title. The evaluation of the programs and projects assisted under section 1070a–13 of this title shall be implemented not later than June 30, 2010.

(B) Content of upward bound evaluation

The evaluation of the programs and projects assisted under section 1070a–13 of this title that is described in subparagraph (A) shall examine the characteristics of the students who benefit most from the Upward Bound program under section 1070a–13 of this title.

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title and the characteristics of the programs and projects that most benefit students.

(C) Implementation

Each evaluation described in this paragraph shall be implemented in accordance with the requirements of this section.

(2) Practices

(A) In general

The evaluations described in paragraph (1) shall identify institutional, community, and program or project practices that are effective in—

(i) enhancing the access of low-income individuals and first-generation college students to postsecondary education;

(ii) the preparation of such individuals and students for postsecondary education; and

(iii) fostering the success of the individuals and students in postsecondary education.

(B) Primary purpose

Any evaluation conducted under this division shall have as the evaluation’s primary purpose the identification of particular practices that further the achievement of the outcome criteria determined under section 1070a–11(i)(4) of this title.

(C) Dissemination and use of evaluation findings

The Secretary shall disseminate to eligible entities and make available to the public the practices identified under subparagraph (B). The practices may be used by eligible entities that receive assistance under this division after the dissemination.

(3) Special rule related to evaluation participation

The Secretary shall not require an eligible entity, as a condition for receiving, or that receives, assistance under any program or project under this division to participate in an evaluation under this section that—

(A) requires the eligible entity to recruit additional students beyond those the program or project would normally recruit; or

(B) results in the denial of services for an eligible student under the program or project.

(4) Consideration

When designing an evaluation under this subsection, the Secretary shall continue to consider—

(A) the burden placed on the program participants or the eligible entity; and

(B) whether the evaluation meets generally accepted standards of institutional review boards.

(c) Grants

The Secretary may award grants to institutions of higher education or other private and public institutions and organizations, that are carrying out a program or project assisted under this division prior to October 7, 1998, to enable the institutions and organizations to expand and leverage the success of such programs or projects by working in partnership with other institutions, community-based organizations, or combinations of such institutions and organizations, that are not receiving assistance under this division and are serving low-income students and first generation college students, in order to—

(1) disseminate and replicate best practices of programs or projects assisted under this division; and

(2) provide technical assistance regarding programs and projects assisted under this division.

(d) Results

In order to improve overall program or project effectiveness, the results of evaluations and grants described in this section shall be disseminated by the Secretary to similar programs or projects assisted under this subpart, as well as other individuals concerned with postsecondary access for and retention of low-income individuals and first-generation college students.

(2) Practices.—The evaluations described in paragraph (1) shall identify institutional, community, and program or project practices that are particularly effective in enhancing the access of low-income individuals and first-generation college students to postsecondary education, the preparation of the individuals and students for postsecondary education, and the success of the individuals and students in postsecondary education. Such evaluations shall also investigate the effectiveness of alternative and innovative methods within Federal TRIO programs of increasing access to, and retention of, students in postsecondary education.

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2008—Pub. L. 110–315, § 403(h), substituted “Reports, evaluations, and grants for project improvement and dissemination” for “Evaluations and grants for project improvement and dissemination partnership projects” in section catchline.


Subsec. (b). Pub. L. 110–315, § 403(h)(2), (4), redesignated subsec. (a) as (b), added pars. (1) to (4), and struck out former pars. (1) and (2) which read as follows:

“(1) IN GENERAL.—For the purpose of improving the effectiveness of the programs and projects assisted under this division, the Secretary may make grants to or enter into contracts with institutions of higher education and other public and private institutions and organizations to evaluate the effectiveness of the programs and projects assisted under this division.

“(2) PRACTICES.—The evaluations described in paragraph (1) shall identify institutional, community, and program or project practices that are particularly effective in enhancing the access of low-income individuals and first-generation college students to postsecondary education, the preparation of the individuals and students for postsecondary education, and the success of the individuals and students in postsecondary education. Such evaluations shall also investigate the effectiveness of alternative and innovative methods within Federal TRIO programs of increasing access to, and retention of, students in postsecondary education.”

Former subsec. (b) redesignated (c).

Subsecs. (c), (d), Pub. L. 110–315, § 403(h)(2), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

1998—Pub. L. 105–244 amended section generally, revising and restating former subsecs. (a) to (c) relating to evaluation for project improvement.

\section{EFFECTIVE DATE OF 1998 AMENDMENT}


\section{Division 2—Gaining Early Awareness and Readiness for Undergraduate Programs}

\section{CODIFICATION}

Chapter 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965, comprising this division,
§ 1070a–21

Early intervention and college awareness program authorized

(a) Program authorized

The Secretary is authorized, in accordance with the requirements of this division, to establish a program that encourages eligible entities to provide support, and maintain a commitment, to eligible low-income students, including students with disabilities, to assist the students in obtaining a secondary school diploma (or its recognized equivalent) and to prepare for and succeed in postsecondary education, by providing—

(1) financial assistance, academic support, additional counseling, mentoring, outreach, and supportive services to secondary school students, including students with disabilities, to reduce—

(A) the risk of such students dropping out of school; or

(B) the need for remedial education for such students at the postsecondary level; and

(2) information to students and their families about the advantages of obtaining a postsecondary education and, college financing options for the students and their families.

(b) Awards

(1) In general

From funds appropriated under section 1070a–28 of this title for each fiscal year, the Secretary shall make awards to eligible entities described in paragraphs (1) and (2) of subsection (c) of this section to enable the entities to carry out the program authorized under subsection (a) of this section.

(2) Award period

The Secretary may award a grant under this division to an eligible entity described in paragraphs (1) and (2) of subsection (c) for—

(A) six years; or

(B) in the case of an eligible entity that applies for a grant under this division for seven years to enable the eligible entity to provide services to a student through the student’s first year of attendance at an institution of higher education, seven years.

(3) Priority

In making awards to eligible entities described in subsection (c)(1), the Secretary shall—

(A) give priority to eligible entities that—

(i) on the day before August 14, 2008, carried out successful educational opportunity programs under this division (as this division was in effect on such day); and

(ii) have a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies; and

(B) ensure that students served under this division on the day before August 14, 2008, continue to receive assistance through the completion of secondary school.

(c) “Eligible entity” defined

For the purposes of this division, the term “eligible entity” means—

(1) a State; or

(2) a partnership—

(A) consisting of—

(i) one or more local educational agencies; and

(ii) one or more degree granting institutions of higher education; and

(B) which may include not less than two other community organizations or entities, such as businesses, professional organizations, State agencies, institutions or agencies sponsoring programs authorized under subpart 4, or other public or private agencies or organizations.


Prior Provisions


Amendments

2008—Subsec. (a). Pub. L. 110–315 , § 404(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The Secretary is authorized, in accordance with the requirements of this division, to establish a program that—

(1) encourages eligible entities to provide or maintain a guarantee to eligible low-income students who obtain a secondary school diploma (or its recognized equivalent), of the financial assistance necessary to permit the students to attend an institution of higher education; and

(2) supports eligible entities in providing—

(A) additional counseling, mentoring, academic support, outreach, and supportive services to elementary school, middle school, and secondary school students who are at risk of dropping out of school; and

(B) information to students and their parents about the advantages of obtaining a postsecondary education and the college financing options for the students and their parents.

Subsec. (b)(2), (3). Pub. L. 110–315 , § 404(a)(2), added pars. (2) and (3) and struck out former par. (2) which related to priority in making awards to eligible entities. Subsec. (c)(2). Pub. L. 110–315 , § 404(a)(3), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “a partnership consisting of—

(A) one or more local educational agencies acting on behalf of—

(i) one or more elementary schools or secondary schools; and

(ii) the secondary schools that students from the schools described in clause (i) would normally attend;

(B) one or more degree granting institutions of higher education; and

(C) at least two community organizations or entities, such as businesses, professional associations,
community-based organizations, philanthropic organizations, State agencies, institutions or agencies sponsoring programs authorized under subpart 4 of this part, or other public or private agencies or organizations.”

**EFFECTIVE DATE**

**EVALUATION OF TUITION GUARANTY PROGRAMS**

§ 1070a–22. Requirements

(a) Funding rules

In awarding grants from the amount appropriated under section 1070a–28 of this title for a fiscal year, the Secretary shall make available—

1. to eligible entities described in section 1070a–21(c)(1) of this title, not less than 33 percent of such amount;
2. to eligible entities described in section 1070a–21(c)(2) of this title, not less than 33 percent of such amount; and
3. to eligible entities described in paragraph (1) or (2) of section 1070a–21(c) of this title, the remainder of such amount taking into consideration the number, quality, and promise of the applications for the grants, and, to the extent practicable—

A. the geographic distribution of such grant awards; and
B. the distribution of such grant awards between urban and rural applicants.

(b) Coordination

Each eligible entity shall ensure that the activities assisted under this division are, to the extent practicable, coordinated with, and complement and enhance—

1. services already provided to a school or community.
2. related services under other Federal or non-Federal programs.

(c) Designation of fiscal agent

An eligible entity described in section 1070a–21(c)(2) of this title shall designate an institution of higher education or a local educational agency as the fiscal agent for the eligible entity.

(d) Cohort approach

(1) In general

The Secretary shall require that eligible entities described in section 1070a–21(c)(2) of this title—

A. provide services under this division to at least one grade level of students, beginning not later than 7th grade, in a participating school that has a 7th grade and in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) (or, if an eligible entity determines that it would promote the effectiveness of a program, an entire grade level of students, beginning not later than the 7th grade, who reside in public housing as defined in section 1437a(b)(1) of title 42);

B. ensure that the services are provided through the 12th grade to students in the participating grade level and provide the option of continued services through the student’s first year of attendance at an institution of higher education to the extent the provision of such services was described in the eligible entity’s application for assistance under this division; and

C. provide services under this division to students who have received services under a previous GEAR UP grant award but have not yet completed the 12th grade.

(2) Coordination requirement

In order for the Secretary to require the cohort approach described in paragraph (1), the Secretary shall, where applicable, ensure that the cohort approach is done in coordination and collaboration with existing early intervention programs and does not duplicate the services already provided to a school or community.

(e) Supplement, not supplant

Grant funds awarded under this division shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this division.


**REFERENCES IN TEXT**

The Richard B. Russell National School Lunch Act, referred to in subsec. (d)(1)(A), is act June 1, 1946, ch. 281, 42 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

**PRIOR PROVISIONS**


**AMENDMENTS**

2008—Subsec. (a). Pub. L. 110–315, §404(b)(1), added subsec. (a) and struck out former subsec. (a) which related to funding rules.

Subsecs. (b), (c). Pub. L. 110–315, §404(b)(2), (3), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b). Text read as follows:

“Each eligible entity described in section 1070a–21(c)(1) of this title, and each eligible entity described in section 1070a–21(c)(2) of this title that conducts a scholarship component under section 1070a–25 of this title,
shall use not less than 25 percent and not more than 50 percent of grant funds received under this division for the early intervention component of an eligible entity's program under this division, except that the Secretary may waive the 50 percent limitation if the eligible entity demonstrates that the eligible entity has another means of providing the students with financial assistance that is described in the plan submitted under section 1070a–23 of this title.’’


Subsec. (d)(1)(B), (C). Pub. L. 110–315, § 404(b)(4), inserted ‘‘and provide the option of continued services through the student’s first year of attendance at an institution of higher education to the extent the provision of such services was described in the eligible entity’s application for assistance under this division’’ after ‘‘grade level’’ in par. (B) and added par. (C).

Subsec. (e). Pub. L. 110–315, § 404(b)(3), struck out former subsec. (e). Prior to amendment, text read as follows: ‘‘An eligible entity described in section 1070a–21(c)(2) of this title shall have a full-time program coordinator or a part-time program coordinator, whose primary responsibility is a project under section 1070a–23 of this title.’’

Subsec. (f). Pub. L. 110–315, § 404(b)(2), struck out subsec. (f). Text read as follows: ‘‘An eligible entity described in 1070a–21(c)(2) of this title shall ensure that the activities assisted under this division will not displace an employee or eliminate a position at a school assisted under this division, including a partial displacement such as a reduction in hours, wages or employment benefits.’’

Subsec. (g). Pub. L. 110–315, § 404(b)(3), redesignated subsec. (g) as (d).


§ 1070a–23. Applications
(a) Application required for eligibility
(1) In general
In order for an eligible entity to qualify for a grant under this division, the eligible entity shall submit to the Secretary an application for carrying out the program under this division.

(2) Contents
Each application submitted pursuant to paragraph (1) shall be in such form, contain or be accompanied by such information or assurances, and be submitted at such time as the Secretary may reasonably require. Each such application shall, at a minimum—

(A) describe the activities for which assistance under this division is sought, including how the eligible entity will carry out the required activities described in section 1070a–24(a) of this title;

(B) describe, in the case of an eligible entity described in section 1070a–21(c)(2) of this title that chooses to provide scholarships, or an eligible entity described in section 1070a–21(c)(1) of this title, how the eligible entity will meet the requirements of section 1070a–25 of this title;

(C) describe, in the case of an eligible entity described in section 1070a–21(c)(2) of this title that requests a reduced match percentage under subsection (b)(2), how such reduction will assist the entity to provide the scholarships described in subsection (b)(2)(A)(ii);

(D) provide assurances that adequate administrative and support staff will be responsible for coordinating the activities described in section 1070a–24 of this title;

(E) provide assurances that activities assisted under this division will not displace an employee or eliminate a position at a school assisted under this division, including a partial displacement such as a reduction in hours, wages, or employment benefits;

(F) describe, in the case of an eligible entity described in section 1070a–21(c)(1) of this title that chooses to use a cohort approach, or an eligible entity described in section 1070a–21(c)(2) of this title, how the eligible entity will define the cohorts of the students served by the eligible entity pursuant to section 1070a–22(d) of this title, and how the eligible entity will serve the cohorts through grade 12, including—

(i) how vacancies in the program under this division will be filled; and

(ii) how the eligible entity will serve students attending different secondary schools;

(G) describe how the eligible entity will coordinate programs under this division with other existing Federal, State, or local programs to avoid duplication and maximize the number of students served;

(H) provide such additional assurances as the Secretary determines necessary to ensure compliance with the requirements of this division:

(I) provide information about the activities that will be carried out by the eligible entity to support systemic changes from which future cohorts of students will benefit; and

(J) describe the sources of matching funds that will enable the eligible entity to meet the matching requirement described in subsection (b).

(b) Matching requirement
(1) In general
The Secretary shall not approve an application submitted under subsection (a) unless such application—

(A) provides that the eligible entity will provide, from State, local, institutional, or private funds, not less than 50 percent of the cost of the program, which matching funds may be provided in cash or in kind and may be accrued over the full duration of the grant award period, except that the eligible entity shall make substantial progress towards meeting the matching requirement in each year of the grant award period;

(B) specifies the methods by which matching funds will be paid; and

(C) includes provisions designed to ensure that funds provided under this division shall supplement and not supplant funds expended for existing programs.

(2) Special rule
Notwithstanding the matching requirement described in paragraph (1)(A), the Secretary may by regulation modify the percentage requirement described in paragraph (1)(A) for eligible entities described in section 1070a–21(c)(2) of this title. The Secretary may
approve an eligible entity’s request for a reduced match percentage—

(A) at the time of application—

(i) if the eligible entity demonstrates significant economic hardship that precludes the eligible entity from meeting the matching requirement; or

(ii) if the eligible entity is described in section 1070a–21(c)(2) of this title and requests that contributions to the eligible entity’s scholarship fund established under section 1070a–25 of this title be matched on a two to one basis; or

(B) in response to a petition by an eligible entity subsequent to a grant award under this section if the eligible entity demonstrates that the matching funds described in its application are no longer available and the eligible entity has exhausted all revenues for replacing such matching funds.

d) Methods for complying with matching requirement

An eligible entity may count toward the matching requirement described in subsection (b)(1)(A)—

(1) the amount of the financial assistance obligated to students from State, local, institutional, or private funds under this division, including pre-existing non-Federal financial assistance programs, including—

(A) the amount contributed to a student scholarship fund established under section 1070a–25 of this title; and

(B) the amount of the costs of administering the scholarship program under section 1070a–25 of this title;

(2) the amount of tuition, fees, room or board waived or reduced for recipients of financial assistance under this division;

(3) the amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of non-school organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, non-profit and philanthropic organizations, and other organizations; and

(4) other resources recognized by the Secretary, including equipment and supplies, cash contributions from non-Federal sources, transportation expenses, in-kind or discounted program services, indirect costs, and facility usage.

d) Peer review panels

The Secretary shall convene peer review panels to assist in making determinations regarding the awarding of grants under this division.


§ 1070a–24. Activities

(a) Required activities

Each eligible entity receiving a grant under this division shall provide comprehensive mentoring, outreach, and supportive services to students participating in the programs under this division. Such activities shall include the following:

(1) Providing information regarding financial aid for postsecondary education to participating students in the cohort described in section 1070a–22(d)(1)(A) of this title or to priority students described in subsection (d).

(2) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(3) Improving the number of participating students who—

(A) obtain a secondary school diploma; and

(B) complete applications for and enroll in a program of postsecondary education.

(4) In the case of an eligible entity described in section 1070a–21(c)(1) of this title, providing
for the scholarships described in section 1070a–25 of this title.

(b) Permissible activities for States and partnerships

An eligible entity that receives a grant under this division may use grant funds to carry out one or more of the following activities:

(1) Providing tutors and mentors, who may include adults or former participants of a program under this division, for eligible students.

(2) Conducting outreach activities to recruit priority students described in subsection (d) to participate in program activities.

(3) Providing supportive services to eligible students.

(4) Supporting the development or implementation of rigorous academic curricula, which may include college preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(5) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of an eligible entity described in section 1070a–21(c)(2) of this title, and other activities that support participating students in—

(A) meeting challenging State academic standards;

(B) successfully applying for postsecondary education;

(C) successfully applying for student financial aid; and

(D) developing graduation and career plans.

(6) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(7) In the case of an eligible entity described in section 1070a–21(c)(2) of this title, providing support for scholarships described in section 1070a–23 of this title.

(8) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(9) Providing an intensive extended school day, school year, or summer program that offers—

(A) additional academic classes; or

(B) assistance with college admission applications.

(10) Providing other activities designed to ensure secondary school completion and postsecondary education enrollment of at-risk children, such as—

(A) the identification of at-risk children;

(B) after-school and summer tutoring;

(C) assistance to at-risk children in obtaining summer jobs;

(D) academic counseling;

(E) financial literacy and economic literacy education or counseling;

(F) volunteer and parent involvement;

(G) encouraging former or current participants of a program under this division to serve as peer counselors;

(H) skills assessments;

(I) personal and family counseling, and home visits;

(J) staff development; and

(K) programs and activities described in this subsection that are specially designed for students who are limited English proficient.

(11) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(12) Providing services to eligible students in the participating cohort described in section 1070a–22(d)(1)(A) of this title, through the first year of attendance at an institution of higher education.

(13) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(14) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(15) In the event that matching funds described in the application are no longer available, engaging entities described in section 1070a–21(c)(2) of this title in a collaborative manner to provide matching resources and participate in other activities authorized under this section.

(c) Additional permissible activities for States

In addition to the required activities described in subsection (a) and the permissible activities described in subsection (b), an eligible entity described in section 1070a–21(c)(1) of this title receiving funds under this division may use grant funds to carry out one or more of the following activities:

(1) Providing technical assistance to—

(A) secondary schools that are located within the State; or

(B) partnerships described in section 1070a–21(c)(2) of this title that are located within the State.

(2) Providing professional development opportunities to individuals working with eligible cohorts of students described in section 1070a–22(d)(1)(A) of this title.

(3) Providing administrative support to help build the capacity of eligible entities described in section 1070a–21(c)(2) of this title to compete for and manage grants awarded under this division.

(4) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(5) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(6)(A) Disseminating information on effective coursework and support services that as-
sists students in obtaining the goals described in subparagraph (B)(ii).

(B) Identifying and disseminating information on best practices with respect to—

(i) increasing parental involvement; and

(ii) preparing students, including students with disabilities and students who are limited English proficient, to succeed academically, and prepare financially for, post-secondary education.

(7) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(8) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate’s or a bachelor’s degree), including school designs that give students early exposure to college-level courses and experiences and allow students to earn transferable college credits or an associate’s degree at the same time as a secondary school diploma.

(9) Creating community college programs for drop-outs that are personalized drop-out recovery programs that allow drop-outs to complete a regular secondary school diploma and begin college-level work.

(d) Priority students

For eligible entities not using a cohort approach, the eligible entity shall treat as a priority student any student in secondary school who is—

(1) eligible to be counted under section 6333(c) of this title;

(2) eligible for assistance under a State program funded under part A or E of title IV of the Social Security Act (42 U.S.C. 601 et seq., 670 et seq.);

(3) eligible for assistance under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.); or

(4) otherwise considered by the eligible entity to be a disconnected student.

(e) Allowable providers

In the case of eligible entities described in section 1070a–21(c)(1) of this title, the activities required by this section may be provided by service providers, such as community-based organizations, schools, institutions of higher education, public and private agencies, nonprofit and philanthropic organizations, businesses, institutions and agencies sponsoring programs authorized under subpart 4, and other organizations the State determines appropriate.


REFERENCES IN TEXT


For complete classification of this Act to the Code, see section 1303 of Title 42 and Tables.
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(c) Notification of eligibility

Each eligible entity providing scholarships under this section shall provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the programs assisted under this division.

(d) Grant amounts

The maximum amount of a scholarship that an eligible student shall be eligible to receive under this section shall be established by the eligible entity. The minimum amount of the scholarship for each fiscal year shall not be less than the minimum Federal Pell Grant award under section 1070a of this title for such award year.

(e) Portability of assistance

(1) In general

Each eligible entity described in section 1070a–21(c)(1) of this title that receives a grant under this division shall hold in reserve, for the students served by such grant as described in section 1070a–22(d)(1)(A) or 1070a–24(d) of this title, an amount that is not less than the minimum scholarship amount described in subsection (d), multiplied by the number of students the eligible entity estimates will meet the requirements of paragraph (2).

(2) Requirement for portability

Funds held in reserve under paragraph (1) shall be made available to an eligible student when the eligible student has—

(A) completed a secondary school diploma, its recognized equivalent, or another recognized alternative standard for individuals with disabilities; and

(B) enrolled in an institution of higher education.

(3) Qualified educational expenses

Funds available to an eligible student under this subsection may be used for—

(A) tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the eligible student at an institution of higher education; and

(B) in the case of an eligible student with special needs, expenses for special needs services that are incurred in connection with such enrollment or attendance.

(4) Return of funds

(A) Redistribution

(i) In general

Funds held in reserve under paragraph (1) that are not used by an eligible student within six years of the student’s scheduled completion of secondary school may be redistributed by the eligible entity to other eligible students.

(ii) Return of excess to the Secretary

If, after meeting the requirements of paragraph (1) and, if applicable, redistributing excess funds in accordance with clause (i) of this subparagraph, an eligible entity has funds held in reserve under paragraph (1) that remain available, the eligible entity shall return such remaining reserved funds to the Secretary for distribution to other grantees under this division in accordance with the funding rules described in section 1070a–22(a) of this title.

(B) Nonparticipating entity

Notwithstanding subparagraph (A), in the case of an eligible entity that does not receive assistance under this subpart for six fiscal years, the eligible entity shall return any funds held in reserve under paragraph (1) that are not awarded or obligated to eligible students to the Secretary for distribution to other grantees under this division.

(f) Relation to other assistance

Scholarships provided under this section shall not be considered for the purpose of awarding Federal grant assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, except that in no case shall the total amount of student financial assistance awarded to a student under this subchapter and part C of subchapter I of chapter 34 of title 42 exceed such student’s total cost of attendance.

(g) Eligible students

A student eligible for assistance under this section is a student who—

(1) is less than 22 years old at time of first scholarship award under this section;

(2) receives a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State’s boundaries, except that, at the State’s option, an eligible entity may offer scholarship program portability for recipients who attend institutions of higher education outside such State; and

(4) who participated in the activities required under section 1070a–24(a) of this title.


Prior Provisions


Amendments

2008—Subsecs. (b), (c). Pub. L. 110–315, §404(e)(3), added subsecs. (b) and (c). Former subsec. (b) redesignated (d) and (f), respectively.

Subsec. (d). Pub. L. 110–315, §404(e)(4), substituted "the minimum Federal Pell Grant award under section 1070a of this title for such award year" for "the lesser of—"

"(1) 75 percent of the average cost of attendance for an in-State student, in a 4-year program of instruction, at public institutions of higher education in such State, as determined in accordance with regulations prescribed by the Secretary; or"

"(2) the maximum Federal Pell Grant funded under section 1070a of this title for such fiscal year;"

Pub. L. 110–315, §404(e)(2), redesignated subsec. (d) as (e). Former subsec. (d) redesignated (g).
Subsec. (e), Pub. L. 110–315, §404(e)(1), (5), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “The Secretary shall ensure that each eligible entity places a priority on awarding scholarships to students who will receive a Federal Pell Grant for the academic year for which the scholarship is awarded under this section.”

Subsec. (f), Pub. L. 110–315, §404(e)(1), (2), redesignated subsec. (c) as (f) and struck out former subsec. (f). Text read as follows: “An eligible entity may consider students who have successfully participated in programs funded under division 1 of this subpart to have met the requirements of subsection (d)(4) of this section.”

Subsec. (g), Pub. L. 110–315, §404(e)(2), redesignated subsec. (d) as (g).

Subsec. (h)(4), Pub. L. 110–315, §404(e)(6), substituted “activities required under section 1070a–24(a) of this title” for “early intervention component required under section 1070a–24 of this title.”

Effective Date of 2008 Amendment
Pub. L. 110–315, title IV, §404(i), as added by Pub. L. 111–39, title IV, §401(c), July 1, 2009, 123 Stat. 1940, provided that:

“(1) In general.—The amendments made by subsection (e) [amending this section] shall apply to grants made under chapter 2 of part A of division 1 of this subpart to have met the requirements of subsection (d)(4) of this section.”


Subsec. (g)(4). Pub. L. 110–315, §404(e)(6), substituted “activities required under section 1070a–24(a) of this title” for “early intervention component required under section 1070a–24 of this title”.

§1070a–26. 21st Century Scholar Certificates

(a) In general

An eligible entity that receives a grant under this division shall provide certificates to be known as 21st Century Scholar Certificates , to all students served by the eligible entity who are participating in a program under this division.

(b) Information required

A 21st Century Scholar Certificate shall be personalized for each student and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 1070a–25 of this title, if applicable, that a student may be eligible to receive.


Prior Provisions


Amendments

2008—Pub. L. 110–315 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which related to the provision of 21st Century Scholar Certificates and required that such Certificates be personalized for each student.


§1070a–27. Evaluation and report

(a) Evaluation

Each eligible entity receiving a grant under this division shall biennially evaluate the activities assisted under this division in accordance with the standards described in subsection (b) of this section and shall submit to the Secretary a copy of such evaluation. The evaluation shall permit service providers to track eligible student progress during the period such students are participating in the activities and shall be consistent with the standards developed by the Secretary pursuant to subsection (b) of this section.

(b) Evaluation standards

The Secretary shall prescribe standards for the evaluation described in subsection (a) of this section. Such standards shall—

(1) provide for input from eligible entities and service providers; and
(2) ensure that data protocols and procedures are consistent and uniform.

(c) Federal evaluation

In order to evaluate and improve the impact of the activities assisted under this division, the Secretary shall, from not more than 0.75 percent of the funds appropriated under section 1070a–28 of this title for a fiscal year, award one or more grants, contracts, or cooperative agreements to or with public and private institutions and organizations, to enable the institutions and organizations to evaluate the effectiveness of the program and, as appropriate, disseminate the results of the evaluation. Such evaluation shall include a separate analysis of—

(1) the implementation of the scholarship component described in section 1070a–25 of this title; and
(2) the use of methods for complying with matching requirements described in paragraphs (1) and (2) of section 1070a–22(c) of this title.

(d) Report

The Secretary shall biennially report to Congress regarding the activities assisted under this division and the evaluations conducted pursuant to this section.


Prior Provisions

§ 1070a–28. Authorization of appropriations

There are authorized to be appropriated to carry out this division $400,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.


AMENDMENTS
2008—Pub. L. 110–315 substituted ‘‘$400,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years’’ for ‘‘$200,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years’’.

Division 3—[Repealed]

Codification


Division 4—Model Program Community Partnership and Counseling Grants


Effective Date of Repeal


Division 5—Public Information


Effective Date of Repeal


Division 6—National Student Savings Demonstration Program


Effective Date of Repeal

Division 7—Preeligibility Form


Effective Date of Repeal

Division 8—Technical Assistance for Teachers and Counselors


Effective Date of Repeal

SUBPART 3—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

Codification

§ 1070b. Purpose; appropriations authorized
(a) Purpose of subpart
It is the purpose of this subpart to provide, through institutions of higher education, supplemental grants to assist in making available the benefits of postsecondary education to qualified students who demonstrate financial need in accordance with the provisions of part E of this subchapter.

(b) Authorization of appropriations
(1) For the purpose of enabling the Secretary to make payments to institutions of higher education which have made agreements with the Secretary in accordance with section 1070b–2(a) of this title, for use by such institutions for payments to undergraduate students of supplemental grants awarded to them under this subpart, there are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(2) For students participating in study abroad programs, the institution shall consider all reasonable costs associated with such study abroad when determining student eligibility. The amount of grant to be awarded in such cases may exceed the maximum amount of $4,000 by as much as $400 if reasonable study abroad costs exceed the cost of attendance at the home institution.

Prior Provisions

Amendments
2008—Subsec. (b)(1). Pub. L. 110–315 substituted “such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years” for “$755,000,000 for fiscal year 1999 and such sums as may be necessary for the 4 succeeding fiscal years”.


Effective Date of 1998 Amendment

§ 1070b–1. Amount and duration of grants
(a) Amount of grant
(1) Except as provided in paragraph (3), from the funds received by it for such purpose under this subpart, an institution which awards a supplemental grant to a student for an academic year under this subpart shall, for each year, pay to that student an amount not to exceed the lesser of (A) the amount determined by the institution, in accordance with the provisions of part E of this subchapter, to be needed by that student to pursue a course of study at the institution or in a program of study abroad that is approved for credit by the institution at which the student is enrolled, or (B) $4,000.

(2) If the amount determined under paragraph (1) with respect to a student for any academic year is less than $100, no payment shall be made to that student for that year. For a student enrolled for less than a full academic year, the minimum payment required shall be reduced proportionately.

(3) For students participating in study abroad programs, the institution shall consider all reasonable costs associated with such study abroad when determining student eligibility. The amount of grant to be awarded in such cases may exceed the maximum amount of $4,000 by as much as $400 if reasonable study abroad costs exceed the cost of attendance at the home institution.

(b) Period for receipt of grants; continuing eligibility
(1) The period during which a student may receive supplemental grants shall be the period re-
required for the completion of the first undergraduate baccalaureate course of study being pursued by that student.

(2) A supplemental grant awarded under this subpart shall entitle the student (to whom it is awarded) to payments pursuant to such grants only if the student meets the requirements of section 1091 of this title, except as provided in section 1070b–2(c) of this title.

(c) Distribution of grant during academic year

Nothing in this section shall be construed to prohibit an institution from making payments of varying amounts from a supplemental grant to a student during an academic year to cover costs for a period which are not applicable to other periods of such academic year.


PRIOR PROVISIONS


AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–325, § 403(c)(1), substituted “Except as provided in paragraph (3), from” for “From” in introductory provisions and inserted “or in a program of study abroad that is approved for credit by the institution at which the student is enrolled” after “course of study at the institution” in subpar. (A).


§ 1070b–2. Agreements with institutions; selection of recipients

(a) Institutional eligibility

Assistance may be made available under this subpart only to an institution which—

(1) has, in accordance with section 1094 of this title, an agreement with the Secretary applicable to this subpart;

(2) agrees that the Federal share of awards under this subpart will not exceed 75 percent of such awards, except that the Federal share may be exceeded if the Secretary determines, pursuant to regulations establishing objective criteria for such determinations, that a larger Federal share is required to further the purpose of this subpart; and

(3) agrees that the non-Federal share of awards made under this subpart shall be made from the institution’s own resources, including—

(A) institutional grants and scholarships;

(B) tuition or fee waivers;

(C) State scholarships; and

(D) foundation or other charitable organization funds.

(b) Eligibility for selection

Awards may be made under this subpart only to a student who—

(1) is an eligible student under section 1091 of this title; and

(2) makes application at a time and in a manner consistent with the requirements of the Secretary and that institution.

(c) Selection of individuals and determination of amount of awards

(1) From among individuals who are eligible for supplemental grants for each fiscal year, the institution shall, in accordance with the agreement entered into pursuant to this subpart to meet administrative expenses in accordance with section 1095 of this title, the amount allocated to the institution for that purpose for that year under section 1070b–3 of this title, select individuals who are to be awarded such grants and determine, in accordance with section 1070b–1 of this title, the amounts to be paid to them.

(2)(A) In carrying out paragraph (1) of this subsection, each institution of higher education shall, in the agreement made under section 1094 of this title, assure that the selection procedures—

(i) will be designed to award supplemental grants under this subpart, first, to students with exceptional need, and

(ii) will give a priority for supplemental grants under this subpart to students who receive Pell Grants and meet the requirements of section 1091 of this title.

(B) For the purpose of subparagraph (A), the term “students with exceptional need” means students with the lowest expected family contributions at the institution.

(d) Use of funds for less-than-full-time students

If the institution’s allocation under this subpart is directly or indirectly based in part on the financial need demonstrated by students who are independent students or attending the institution on less than a full-time basis, then a reasonable proportion of the allocation shall be made available to such students.

(e) Use and transfer of funds for administrative expenses

An agreement entered into pursuant to this section shall provide that funds granted to an institution of higher education may be used only to make payments to students participating in a grant program authorized under this subpart, except that an institution may use a portion of the sums allocated to it under this subpart to meet administrative expenses in accordance with section 1096 of this title.


PRIOR PROVISIONS


AMENDMENTS

1998—Subsec. (d). Pub. L. 105–244 amended heading and text of subsec. (d) generally. Prior to amendment,
text read as follows: “If the institution’s allocation under this subpart is directly or indirectly based on the financial need demonstrated by students who are independent students or attending the institution less than full time and if the total financial need of all such students attending the institution exceeds 5 percent of the total financial need of all students attending such institution, then at least 5 percent of such allotment shall be made available to such students.”

1993—Subsec. (d). Pub. L. 102–325, § 403(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “agrees that the Federal share of awards under this subpart will not exceed—

‘‘(A) 95 percent of such awards in fiscal year 1989,

‘‘(B) 90 percent of such awards in fiscal year 1990, and

‘‘(C) 85 percent of such awards in fiscal year 1991, except that the Federal share may be exceeded if the Secretary determines, pursuant to regulations establishing objective criteria for such determinations, that a larger Federal share is required to further the purpose of this subpart; and’’.”

Subsec. (e). Pub. L. 102–325, § 403(e), inserted “who are independent students or” after “demonstrated by students” and inserted before period at end “, except that if the total financial need of all such students attending the institution exceeds 5 percent of the need of all students attending such institution, then at least 5 percent of such allotment shall be made available to such students”.

1992—Subsec. (a)(2). Pub. L. 102–325, § 403(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “(A) 95 percent of such awards in fiscal year 1989, (B) 90 percent of such awards in fiscal year 1990, and (C) 85 percent of such awards in fiscal year 1991, except that the Federal share may be exceeded if the Secretary determines, pursuant to regulations establishing objective criteria for such determinations, that a larger Federal share is required to further the purpose of this subpart; and”.

Subsec. (d). Pub. L. 102–325, § 403(f), struck out before period at end “, except that if the total financial need of all such students attending the institution exceeds 5 percent of the need of all students attending such institution, then at least 5 percent of such allotment shall be made available to such students”.

§ 1070b–3. Allocation of funds

(a) Allocation based on previous allocation

(1) From the amount appropriated pursuant to section 1070b(b) of this title for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to 100 percent of the amount such institution received under sub-sections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year).

(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1999 but is not a first or second time participant, an amount equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the amount received and used under this subpart for the first year it participated in the program.

(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1999 and is a first or second time participant, an amount equal to the greatest of—

(i) $5,000;

(ii) an amount equal to (I) 90 percent of the amount received and used under this subpart in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

(iii) 90 percent of the institution’s allocation under this part for the preceding fiscal year.

(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

(i) was a first-time participant in the program in fiscal year 2000 or any subsequent fiscal year, and

(ii) received a larger amount under this subsection in the second year of participation, an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

(4)(A) Notwithstanding any other provision of this section, the Secretary may allocate an amount equal to not more than 10 percent of the
amount by which the amount appropriated in any fiscal year to carry out this part exceeds $700,000,000 among eligible institutions described in subparagraph (B).

§ 1070b–3

(b) Allocation of excess based on fair share

(1) From the remainder of the amount appropriated pursuant to section 1070b(b) of this title for each year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

(A)(i) the amount of that institution’s need (as determined under subsection (c) of this section), divided by (ii) the sum of the need of all institutions (as so determined), multiplied by (iii) the amount appropriated pursuant to section 1070b(b) of this title of the fiscal year; exceeds

(B) the amount required to be allocated to that institution under subsection (a) of this section.

c) Determination of institution’s need

(1) The amount of an institution’s need is equal to—

(A) the sum of the need of the institution’s eligible undergraduate students; minus

(B) the sum of grant aid received by students under subparts 1 and 3 of this part.

(2) To determine the need of an institution’s eligible undergraduate students, the Secretary shall—

(A) establish various income categories for dependent and independent undergraduate students;

(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected family contribution (computed in accordance with part E of this subchapter) of a representative sample within each income category for the second preceding fiscal year;

(C) compute 75 percent of the average cost of attendance for all undergraduate students;

(D) multiply the number of eligible dependent students in each income category by 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C), minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

(E) add the amounts determined under subparagraph (D) for each income category of dependent students;

(F) multiply the number of eligible independent students in each income category by 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C), minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

(H) add the amounts determined under subparagraphs (E) and (G).

(3)(A) For purposes of paragraph (2), the term “average cost of attendance” means the average of the attendance costs for undergraduate students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

(B) The average undergraduate tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution’s enrollment for such second preceding year.

(C) The standard living expense described in subparagraph (A)(ii) is equal to 150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college for a single independent student.

(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $600.

d) Reallocation of excess allocations

(1) If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall, in accordance with regulations, reallocate such excess to other institutions.

(2) If under paragraph (1) of this subsection an institution returns more than 10 percent of its allocation, the institution’s allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing this paragraph would be contrary to the interest of the program.

e) Filing deadlines

The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.


See References in Text note below.
REFERENCES IN TEXT

Subpart 3 of this part, referred to in subsec. (c)(1)(B), was redesignated subpart 4 by Pub. L. 102–325, title IV, §402(a)(2), July 23, 1992, 106 Stat. 482, and former subpart 2 [this subpart] was redesignated as subpart 3.

PRIOR PROVISIONS


AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–315, §406(c), substituted “such institution received and used under this subpart for fiscal year 1985”.


1988—Subsec. (a)(1). Pub. L. 105–244, §406(c)(1)(A), which directed substitution of “received under sections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year)” for “such institution received and used under this subpart for fiscal year 1985”, could not be executed because the phrase “received and used under this part for fiscal year 1985” did not appear in text.


Subsec. (b). Pub. L. 105–244, §406(c)(2)(A), (D), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “From one-quarter of the remainder of the amount appropriated pursuant to section 1070b(b) of this title for any fiscal year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as the amount the eligible institution receives for such fiscal year under subsection (a) of this section bears to the amount all such institutions receive under such subsection (a) of this section.”

Subsec. (c). Pub. L. 105–244, §406(c)(2)(D), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 105–244, §406(c)(2)(B), substituted “the remainder” for “three-quarters of the remainder”.

Subsec. (c)(2)(A)(i). Pub. L. 105–244, §406(c)(2)(C), substituted “subsection (c)” for “subsection (d)”.

Subsec. (d) to (f). Pub. L. 105–244, §406(c)(2)(D), redesignated subs. (e) and (f) as (d) and (e), respectively.

Former subsec. (d) redesignated (c).

1993—Subsec. (d)(3)(C). Pub. L. 103–208 substituted “150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college” for “three-fourths in the Pell Grant family size offset”.


Subsec. (d)(2)(D). Pub. L. 100–50, §4(a)(1), added subpar. (F) and struck out former subpar. (F) which read as follows: “multiply the number of eligible independent students in each income category by the lesser of—

“(i) 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

“(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero”.


Subsec. (d)(3)(B). Pub. L. 100–50, §4(b)(2), struck out “and graduate and professional” after “average undergraduate” and struck out “and graduate” after “from undergraduate”.

SECTION 406(b)(3) OF THE ACT

Effective Date of 1998 Amendment


Effective Date of 1993 Amendment


Effective Date of 1987 Amendment


Carryover and carryback authority

(a) Carryover authority

Of the sums made available to an eligible institution under this subpart for a fiscal year, not more than 10 percent may, at the discretion of the institution, remain available for expenditure during the succeeding fiscal year to carry out the program under this subpart.

(b) Carryback authority

(1) In general

Of the sums made available to an eligible institution under this subpart for a fiscal year, not more than 10 percent may, at the discretion of the institution, be used by the institution for expenditure for the fiscal year preceding the fiscal year for which the sums were appropriated.

(2) Use of carried-back funds

An eligible institution may make grants to students after the end of the academic year,
but prior to the beginning of the succeeding fiscal year, from such succeeding fiscal year’s appropriations.


**Effective Date**


**Subpart 4—Leveraging Educational Assistance Partnership Program**

**Codification**


Pub. L. 102–325, title IV, § 407(a)(1), (2), July 23, 1992, 106 Stat. 482, redesignated former subpart 3 as 4 and repealed former subpart 4, comprising sections 1070d to 1070d–1d, which authorized special programs for students from disadvantaged backgrounds.

§ 1070c. Purpose; appropriations authorized

**(a) Purpose of subpart**

It is the purpose of this subpart to make incentive grants available to States to assist States in—

(1) providing grants to—

(A) eligible students attending institutions of higher education or participating in programs of study abroad that are approved for credit by institutions of higher education at which such students are enrolled; and

(B) eligible students for campus-based community service work-study; and

(2) carrying out the activities described in section 1070c–3a of this title.

**(b) Authorization of appropriations; availability**

**(1) In general**

There are authorized to be appropriated to carry out this subpart $200,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

**(2) Reservation**

For any fiscal year for which the amount appropriated under paragraph (1) exceeds $30,000,000, the excess amount shall be available to carry out section 1070c–3a of this title.

**(3) Availability**

Sums appropriated pursuant to the authority of paragraph (1) for any fiscal year shall remain available for payments to States under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated.


**Prior Provisions**


**Amendments**

2008—Subsec. (b)(1), (2). Pub. L. 110–315 added pars. (1) and (2) and struck out former pars. (1) and (2) which related to appropriations and reservation of funding for section 1070c–3a of this title for fiscal year 1999 and the 4 succeeding fiscal years.

2000—Subsec. (a)(2). Pub. L. 106–554, which directed amendment of section 415 of the Higher Education Act of 1965 in section 415A(a)(2) by substituting “section 1070c–3a of this title” for “section 1070c–4 of this title”, was executed by making the substitution in subsec. (a)(2) of this section, which is section 415A of the Higher Education Act of 1965, to reflect the probable intent of Congress.

1998—Subsec. (a). Pub. L. 105–244, § 407(c)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “It is the purpose of this subpart to make incentive grants available to States to assist States in providing grants to—

“(1) eligible students attending institutions of higher education or participating in programs of study abroad that are approved for credit by institutions of higher education at which such students are enrolled; and

“(2) eligible students for campus-based community service work-study.”


Subsec. (b)(2), (3). Pub. L. 105–244, § 407(b)(2), (3), added par. (2) and redesignated former par. (2) as (3).

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows:

“(a) PURPOSE OF SUBPART.—It is the purpose of this subpart to make incentive grants available to the States to assist them in providing grants to eligible students attending institutions of higher education and grants to eligible students for campus-based community service work learning study.

“(b) AUTHORIZATION OF APPROPRIATIONS; AVAILABILITY.—(1) There are authorized to be appropriated $85,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

“(2) Sums appropriated pursuant to paragraph (1) for any fiscal year shall remain available for payments to States under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated.”

**Effective Date of 1998 Amendment**


§ 1070c–1. Allotment among States

**(a) Allotment based on number of eligible students in attendance**

(1) From the sums appropriated pursuant to section 1070c(b)(1) of this title and not reserved under section 1070c(b)(2) of this title for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such sums as the number of students who are deemed eligible in such State for participation in the grant program authorized by this subpart bears to the total number of such students in all the States, except that no State shall receive less than the State received for fiscal year 1979.
(2) For the purpose of this subsection, the number of students who are deemed eligible in a State for participation in the grant program authorized by this subpart, and the number of such students in all the States, shall be determined for the most recent year for which satisfactory data are available.

(b) Reallocation

The amount of any State's allotment under subsection (a) of this section for any fiscal year which the Secretary determines will not be required for such fiscal year for the leveraging educational assistance partnership program of that State shall be available for reallocation from time to time, on such dates during such year as the Secretary may fix, to other States in proportion to the original allotments to such States under such part for such year, but with such proportionate amount for any of such States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use for such year for carrying out the State plan. The total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State under this part during a year from funds appropriated pursuant to section 1070c(b)(1) of this title shall be deemed part of its allotment under subsection (a) of this section for such year.

(c) Allotments subject to continuing compliance

The Secretary shall make payments for continuing incentive grants only to States which continue to meet the requirements of section 1070c–2(b) of this title.


PRIOR PROVISIONS


AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–244, §407(c)(2), inserted “and not reserved under section 1070c(b)(2) of this title” after “1070c(b)(1) of this title”.

Subsec. (b). Pub. L. 105–244, §407(a)(2)(A), substituted “‘leveraging educational assistance partnership’ for ‘State student grant incentive’.”

EFFECTIVE DATE OF 1998 AMENDMENT


§ 1070c–2. Applications for leveraging educational assistance partnership programs

(a) Submission and contents of applications

A State which desires to obtain a payment under this subpart for any fiscal year shall submit annually an application therefor through the State agency administering its program under this subpart as of July 1, 1985, unless the Governor of that State so designates, in writing, a different agency to administer the program. The application shall contain such information as may be required by, or pursuant to, regulation for the purpose of enabling the Secretary to make the determinations required under this subpart.

(b) Payment of Federal share of grants made by qualified program

From a State’s allotment under this subpart for any fiscal year the Secretary is authorized to make payments to such State for paying up to 50 percent of the amount of student grants pursuant to a State program which—

(1) is administered by a single State agency;

(2) provides that such grants will be in amounts not to exceed the lesser of $12,500 or the student’s cost of attendance per academic year (A) for attendance on a full-time basis at an institution of higher education, and (B) for campus-based community service work learning study jobs;

(3) provides that—

(A) not more than 20 percent of the allotment to the State for each fiscal year may be used for the purpose described in paragraph (2)(B);

(B) grants for the campus-based community work learning study jobs may be made only to students who are otherwise eligible for assistance under this subpart; and

(C) grants for such jobs be made in accordance with the provisions of section 2753(b)(1) of title 42;

(4) provides for the selection of recipients of such grants or of such State work-study jobs on the basis of substantial financial need determined annually on the basis of criteria established by the State and approved by the Secretary, except that for the purpose of collecting data to make such determination of financial need, no student or parent shall be charged a fee that is payable to an entity other than such State;

(5) provides that, effective with respect to any academic year beginning on or after October 1, 1978, all nonprofit institutions of higher education in the State are eligible to participate in the State program, except in any State in which participation of nonprofit institutions of higher education is in violation of the constitution of the State or in any State in which participation of nonprofit institutions of higher education is in violation of a statute of the State which was enacted prior to October 1, 1978;

(6) provides for the payment of the non-Federal portion of such grants or of such work-study jobs from funds supplied by such State which represent an additional expenditure for such year by such State for grants or work-study jobs for students attending institutions of higher education over the amount expended by such State for such grants or work-study jobs, if any, during the second fiscal year preceding the fiscal year in which such State initially received funds under this subpart;

(7) provides that if the State’s allocation under this subpart is based in part on the fi-
nancial aid demonstrated by students who are independent students or attending the institution less than full time, a reasonable proportion of the State's allocation shall be made available to such students;

(b) provides for State expenditures under such program of an amount not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years;

(c) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the State agency under this subpart, and (B) for the making of such reports, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his functions under this subpart;

(d) for any academic year beginning after June 30, 1987, provides the non-Federal share of the amount of student grants or work-study jobs under this subpart through State funds for the program under this subpart; and

(e) provides notification to eligible students that such grants are—

(A) Leveraging Educational Assistance Partnership Grants; and

(B) funded by the Federal Government, the State, and, where applicable, other contributing partners.

(c) Reservation and disbursement of allotments and reallotments

Upon his approval of any application for a payment under this subpart, the Secretary shall reserve from the applicable allotment (including any applicable reallotment) available therefor, the amount of such payment, which (subject to the limits of such allotment or reallotment) shall be equal to the Federal share of the cost of the students' incentive grants or work-study jobs covered by such application. The Secretary shall pay such reserved amount, in advance or by way of reimbursement, and in such installments as the Secretary may determine. The Secretary may amend the reservation of any amount under this section, either upon approval of an amendment of the application or upon revision of the estimated cost of the student grants or work-study jobs with respect to which such reservation was made. If the Secretary approves an upward revision of such estimated cost, the Secretary may reserve the Federal share of the added cost only from the applicable allotment (or reallotment) available at the time of such approval.


Prior Provisions


Amendments

2008—Subsec. (b)(2). Pub. L. 110–315, §407(b)(1), substituted “not to exceed the lesser of $12,500 or the student’s cost of attendance per academic year” for “not in excess of $5,000 per academic year”.


1998—Pub. L. 105–244 substituted “leveraging educational assistance partnership” for “State student incentive grant” in section catchline.


1992—Subsec. (b)(2). Pub. L. 102–325, §404(b), substituted “$5,000” for “$2,500”.

Subsec. (b)(4). Pub. L. 102–325, §404(c), inserted before semicolon at end “, except that for the purpose of collecting data to make such determination of financial need, no student or parent shall be charged a fee that is payable to an entity other than such State”.

Subsec. (b)(7). Pub. L. 102–325, §404(d), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “provides that, if the institution’s allocation under this subpart is based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the institution’s allocation shall be made available to such students;”.

Effective Date of 1998 Amendment


Effective Date of 1993 Amendment

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§1070c–3. Administration of State programs; judicial review

(a) Disapproval of applications; suspension of eligibility

(1) The Secretary shall not finally disapprove any application for a State program submitted under section 1070c–2 of this title, or any modification thereof, without first affording the State agency submitting the program reasonable notice and opportunity for a hearing.

(2) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering a State program approved under this subpart, finds—

(A) that the State program has been so changed that it no longer complies with the provisions of this subpart, or

(B) that in the administration of the program there is a failure to comply substantially with any such provisions,

the Secretary shall notify such State agency that the State will not be regarded as eligible to
participate in the program under this subpart until he is satisfied that there is no longer any such failure to comply.

(b) Review of decisions

(1) If any State is dissatisfied with the Secretary's final action with respect to the approval of its State program submitted under this subpart or with his final action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located. The summons and notice of appeal may be served at any place in the United States. The Commissioner shall forthwith certify and file in the court the transcript of the proceedings and the record on which he based his action.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

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


PRIOR PROVISIONS


§ 1070c–3a. Grants for access and persistence

(a) Purpose

It is the purpose of this section to expand college access and increase college persistence by making allotments to States to enable the States to—

(1) expand and enhance partnerships with institutions of higher education, early information and intervention, mentoring, or outreach programs, private corporations, philanthropic organizations, and other interested parties, including community-based organizations, in order to—

(A) carry out activities under this section; and

(B) provide coordination and cohesion among Federal, State, and local governmental and private efforts that provide financial assistance to help low-income students attend an institution of higher education;

(2) provide need-based grants for access and persistence to eligible low-income students;

(3) provide early notification to low-income students of the students' eligibility for financial aid; and

(4) encourage increased participation in early information and intervention, mentoring, or outreach programs.

(b) Allotments to States

(1) In general

(a) Authorization

From sums reserved under section 1070c(b)(2) of this title for each fiscal year, the Secretary shall make an allotment to each State that submits an application for an allotment in accordance with subsection (c), to enable the State to pay the Federal share, as described in paragraph (2), of the cost of carrying out the activities under subsection (d).

(b) Determination of allotment

In making allotments under subparagraph (A), the Secretary shall consider the following:

(i) Continuation of award

Except as provided in clause (ii), if a State continues to meet the specifications established in such State's application under subsection (c), the Secretary shall make an allotment to such State that is not less than the allotment made to such State for the previous fiscal year.

(ii) Special continuation and transition rule

If a State that applied for and received an allotment under this section for fiscal year 2010 pursuant to subsection (j) meets the specifications established in the State's application under subsection (c) for fiscal year 2011, then the Secretary shall make an allotment to such State for fiscal year 2011 that is not less than the allotment made pursuant to subsection (j) to such State for fiscal year 2010 under this section (as this section was in effect on the day before August 14, 2008).

(iii) Priority

The Secretary shall give priority in making allotments to States that meet the requirements described in paragraph (2)(B)(ii).

(2) Federal share

(A) In general

The Federal share of the cost of carrying out the activities under subsection (d) for any fiscal year shall not exceed 66.66 percent.

(B) Different percentages

The Federal share under this section shall be determined in accordance with the following:

(i) The Federal share of the cost of carrying out the activities under subsection (d) shall be 57 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, and—
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(1) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(ii) The Federal share of the cost of carrying out the activities under subsection (d) shall be 66.66 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State, and—

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(C) Non-Federal share

(i) In general

The non-Federal share under this section may be provided in cash or in kind, fairly evaluated.

(ii) In-kind contribution

For the purpose of calculating the non-Federal share under this subparagraph, an in-kind contribution is a non-cash contribution that—

(I) has monetary value, such as the provision of—

(aa) room and board; or

(bb) transportation passes; and

(II) helps a student meet the cost of attendance at an institution of higher education.

(iii) Effect on need analysis

For the purpose of calculating a student’s need in accordance with part E, an in-kind contribution described in clause (ii) shall not be considered an asset or income of the student or the student’s parent.

(c) Application for allotment

(1) In general

(A) Submission

A State that desires to receive an allotment under this section on behalf of a partnership described in paragraph (3) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(B) Content

An application submitted under subparagraph (A) shall include the following:

(i) A description of the State’s plan for using the allotted funds;

(ii) An assurance that the State will provide matching funds, in cash or in kind, from State, institutional, philanthropic, or private funds, of not less than 33.33 percent of the cost of carrying out the activities under subsection (d). The State shall specify the methods by which matching funds will be paid. A State that uses non-Federal funds to create or expand partnerships with entities described in subsection (a)(1), in which such entities match State funds for student scholarships, may apply such matching funds from such entities toward fulfilling the State’s matching obligation under this clause.

(iii) An assurance that the State will use funds provided under this section to supplement, and not supplant, Federal and State funds available for carrying out the activities under this subchapter and part C of subchapter I of chapter 34 of title 42.

(iv) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make such programs widely available.

(v) A description of the organizational structure that the State has in place to administer the activities under subsection (d), including a description of how the State will compile information on degree completion of students receiving grants under this section.

(vi) A description of the steps the State will take to ensure that students who receive grants under this section persist to degree completion.

(vii) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution determination described in section 1087ss(c) of this title, to identify eligible low-income students and award State grant aid to such students.

(viii) An assurance that the State will provide notification to eligible low-income students that grants under this section are—

(I) Leveraging Educational Assistance Partnership Grants; and

(II) funded by the Federal Government and the State, and, where applicable, other contributing partners.

(2) State agency

The State agency that submits an application for a State under section 1070c–2(a) of this title shall be the same State agency that submits an application under paragraph (1) for such State.

(3) Partnership

In applying for an allotment under this section, the State agency shall apply for the allotment in partnership with—

(A) not less than one public and one private degree-granting institution of higher education that are located in the State, if applicable;

(B) new or existing early information and intervention, mentoring, or outreach programs located in the State; and

(C) not less than one—

(i) philanthropic organization located in, or that provides funding in, the State; or

(ii) private corporation located in, or that does business in, the State.
(4) Roles of partners

(A) State agency

A State agency that is in a partnership receiving an allotment under this section—

(i) shall—

(I) serve as the primary administrative unit for the partnership; 
(II) provide or coordinate non-Federal share funds, and coordinate activities among partners; 
(III) encourage each institution of higher education in the State to participate in the partnership; 
(IV) make determinations and early notifications of assistance as described under subsection (d)(2); and 
(V) annually report to the Secretary on the partnership’s progress in meeting the purpose of this section; and 

(ii) may provide early information and intervention, mentoring, or outreach programs.

(B) Degree-granting institutions of higher education

A degree-granting institution of higher education that is in a partnership receiving an allotment under this section—

(i) shall—

(I) recruit and admit participating qualified students and provide such additional institutional grant aid to participating students as agreed to with the State agency; 
(II) provide support services to students who receive grants for access and persistence under this section and are enrolled at such institution; and 
(III) assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and 

(ii) may provide funding for early information and intervention, mentoring, or outreach programs or provide such services directly.

(C) Programs

An early information and intervention, mentoring, or outreach program that is in a partnership receiving an allotment under this section shall provide direct services, support, and information to participating students.

(D) Philanthropic organization or private corporation

A philanthropic organization or private corporation that is in a partnership receiving an allotment under this section shall provide funds for grants for access and persistence for participating students, or provide funds or support for early information and intervention, mentoring, or outreach programs.

(d) Authorized activities

(1) In general

(A) Establishment of partnership

Each State receiving an allotment under this section shall use the funds to establish a partnership to award grants for access and persistence to eligible low-income students in order to increase the amount of financial assistance such students receive under this subpart for undergraduate education expenses.

(B) Amount of grants

The amount of a grant for access and persistence awarded by a State to a student under this section shall be not less than—

(i) the average undergraduate tuition and mandatory fees at the public institutions of higher education in the State where the student resides that are of the same type of institution as the institution of higher education the student attends; minus 

(ii) other Federal and State aid the student receives.

(C) Special rules

(i) Partnership institutions

A State receiving an allotment under this section may restrict the use of grants for access and persistence under this section by awarding the grants only to students attending institutions of higher education that are participating in the partnership.

(ii) Out-of-State institutions

If a State provides grants through another program under this subpart to students attending institutions of higher education located in another State, grants awarded under this section may be used at institutions of higher education located in another State.

(2) Early notification

(A) In general

Each State receiving an allotment under this section shall annually notify low-income students in grades seven through 12 in the State, and their families, of their potential eligibility for student financial assistance, including an access and persistence grant, to attend an institution of higher education.

(B) Content of notice

The notice under subparagraph (A)—

(i) shall include—

(I) information about early information and intervention, mentoring, or outreach programs available to the student; 
(II) information that a student’s eligibility for a grant for access and persistence is enhanced through participation in an early information and intervention, mentoring, or outreach program; 
(III) an explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a grant for access and persistence and other student aid programs; 
(IV) a nonbinding estimate of the total amount of financial aid that a low-income student with a similar income level may expect to receive, including an
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or (B):

(3) Eligibility

In determining which students are eligible for a grant for access and persistence, at a minimum, a student shall—

(a) meet the requirement under paragraph (3);

(b) graduate from secondary school; and

(c) enroll at an institution of higher education—

(A) that is a partner in the partnership; or

(B) with respect to which attendance is permitted under subsection (d)(1)(C)(ii);

(VI) information on any additional requirements (such as a student pledge detailing student responsibilities) that the State may impose for receipt of a grant for access and persistence under this section; and

(VII) instructions on how to apply for a grant for access and persistence and an explanation that a student is required to file a Free Application for Federal Student Aid authorized under section 1090(a) of this title to be eligible for such grant and assistance from other Federal and State financial aid programs; and

(ii) may include a disclaimer that grant awards for access and persistence are contingent on—

(I) a determination of the student’s financial eligibility at the time of the student’s enrollment at an institution of higher education that is a partner in the partnership or qualifies under subsection (d)(1)(C)(ii);

(II) annual Federal and State spending for higher education; and

(III) other aid received by the student at the time of the student’s enrollment at such institution of higher education.

(3) Eligibility

In determining which students are eligible to receive grants for access and persistence, the State shall ensure that each such student complies with the following subparagraph (A) or (B):

(A) Meets not less than two of the following criteria, with priority given to students meeting all of the following criteria:

(i) Has an expected family contribution equal to zero, as determined under part E, or a comparable alternative based upon the State’s approved criteria in section 1070c–2(b)(4) of this title.

(ii) Qualifies for the State’s maximum undergraduate award, as authorized under section 1070c–2(b) of this title.

(iii) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as recognized by the State agency administering activities under this section.

(B) Is receiving, or has received, a grant for access and persistence under this section, in accordance with paragraph (5).

(4) Grant award

Once a student, including those students who have received early notification under paragraph (2) from the State, applies for admission to an institution that is a partner in the partnership, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State under paragraph (3), the State shall—

(A) issue the student a preliminary award certificate for a grant for access and persistence with estimated award amounts; and

(B) inform the student that payment of the grant for access and persistence award amounts is subject to certification of enrollment and award eligibility by the institution of higher education.

(5) Duration of award

An eligible student who receives a grant for access and persistence under this section shall receive such grant award for each year of such student’s undergraduate education in which the student remains eligible for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, including pursuant to section 1091(c) of this title, and remains financially eligible as determined by the State, except that the State may impose reasonable time limits to degree completion.

(e) Administrative cost allowance

A State that receives an allotment under this section may reserve not more than two percent of the funds made available annually through the allotment for State administrative functions required to carry out this section.

(f) Statutory and regulatory relief for institutions of higher education

The Secretary may grant, upon the request of an institution of higher education that is in a partnership described in subsection (b)(2)(B)(i) and that receives an allotment under this section, a waiver for such institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(g) Applicability rule

The provisions of this subpart that are not inconsistent with this section shall apply to the program authorized by this section.

(h) Maintenance of effort requirement

Each State receiving an allotment under this section for a fiscal year shall provide the Secretary with an assurance that the aggregate amount expended per student or the aggregate expenditures by the State, from funds derived from non-Federal sources, for the authorized activities described in subsection (d) for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditures by the State for the activities for the second preceding fiscal year.
(i) Special rule
Notwithstanding subsection (b), for purposes of determining a State’s share of the cost of the authorized activities described in subsection (d), the State shall consider only those expenditures from non-Federal sources that exceed the State’s total expenditures for need-based grants, scholarships, and work-study assistance for fiscal year 1999 (including any such assistance provided under this subpart).

(j) Continuation and transition
For the two-year period that begins on August 14, 2008, the Secretary shall continue to award grants under section 1070c–3a of this title as such section existed on the day before August 14, 2008, to States that choose to apply for grants under such predecessor section.

(k) Reports
Not later than three years after August 14, 2008, and annually thereafter, the Secretary shall submit a report describing the activities and the impact of the partnerships under this section to the authorizing committees.

§1070c–4. “Community service” defined
For the purpose of this subpart, the term “community service” means services, including direct service, planning, and applied research which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, and which:

(1) are designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to the needs of such residents, including but not limited to, such fields as health care, child care, education, literacy, training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement; and

(2) provide participating students with work-learning opportunities related to their educational or vocational programs or goals.


Effective Date of 1987 Amendment
Amendment by Pub. L. 100–50 effective as if enacted part of the Higher Education Amendments of 1986.

Amendments 1987—Par. (1). Pub. L. 100–50 substituted “literacy” for “literacy”.

Effective Date of 1987 Amendment
Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986.


Effective Date
§ 1070d-2. Maintenance and expansion of existing programs

(a) Program authority

The Secretary shall maintain and expand existing secondary and postsecondary high school equivalency program and college assistance migrant program projects located at institutions of higher education or at private nonprofit organizations working in cooperation with institutions of higher education.

(b) Services provided by high school equivalency program

The services authorized by this subpart for the high school equivalency program include—

(1) recruitment services to reach persons—
   (A)(i) who are 16 years of age and over; or
   (B)(i) who are beyond the age of compulsory school attendance in the State in which such persons reside and are not enrolled in school;

(2) educational services which provide instruction designed to help students obtain a general education diploma which meets the guidelines established by the State in which the project is located for high school equivalency;

(3) supportive services which include the following:
   (A) personal, vocational, and academic counseling;
   (B) placement services designed to place students in a university, college, or junior college program (including preparation for college entrance examinations), or in military service or career positions;
   (C) health services;
   (4) information concerning, and assistance in obtaining, available student financial aid;
   (5) stipends for high school equivalency program participants;
   (6) housing for those enrolled in residential programs;
   (7) exposure to cultural events, academic programs, and other educational and cultural activities usually not available to migrant youth;
   (8) other essential supportive services (such as transportation and child care), as needed to ensure the success of eligible students; and
   (9) other activities to improve persistence and retention in postsecondary education.

(c) Services provided by college assistance migrant program

(1) Services authorized by this subpart for the college assistance migrant program include—
   (A) outreach and recruitment services to reach persons who themselves or whose immediate family have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork; or
   (ii) who are eligible to participate, or have participated within the preceding 2 years, in programs under part C of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6391 et seq.] or section 2912 of title 29; and
   (C) who lack a high school diploma or its equivalent;

(2) educational services which provide instruction designed to help students obtain a general education diploma which meets the guidelines established by the State in which the project is located for high school equivalency;

(3) supportive services which include the following:
   (A) personal, vocational, and academic counseling;
   (B) placement services designed to place students in a university, college, or junior college program (including preparation for college entrance examinations), or in military service or career positions;
   (C) health services;
   (4) information concerning, and assistance in obtaining, available student financial aid;
   (5) stipends for high school equivalency program participants;
   (6) housing for those enrolled in residential programs;
   (7) exposure to cultural events, academic programs, and other educational and cultural activities usually not available to migrant youth;
   (8) other essential supportive services (such as transportation and child care), as needed to ensure the success of eligible students; and
   (9) other activities to improve persistence and retention in postsecondary education.

SUBPART 5—SPECIAL PROGRAMS FOR STUDENTSwhose families are engaged in migrant and seasonal farmwork
(C) assistance in obtaining student financial aid which includes, but is not limited to:
   (i) stipends;
   (ii) scholarships;
   (iii) student travel;
   (iv) career oriented work study;
   (v) books and supplies;
   (vi) tuition and fees;
   (vii) room and board; and
   (viii) other assistance necessary to assist students in completing their first year of college;
(D) housing support for students living in institutional facilities and commuting students;
(E) exposure to cultural events, academic programs, and other activities not usually available to migrant youth;
(F) internships; and
(G) other essential supportive services (such as transportation and child care) as necessary to ensure the success of eligible students.

(2) A recipient of a grant to operate a college assistance migrant program under this subpart shall provide followup services for migrant students after such students have completed their first year of college, and shall not use more than 10 percent of such grant for such followup services. Such followup services may include—

(A) monitoring and reporting the academic progress of students who participated in the project during such student’s first year of college and during such student’s subsequent years in college;
(B) referring such students to on- or off-campus providers of counseling services, academic assistance, or financial aid, and coordinating such services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and
(C) students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of such students.

(d) Management plan required

Each project application shall include a management plan which contains assurances that the grant recipient will coordinate the project, to the extent feasible, with other local, State, and Federal programs to maximize the resources available for migrant students, and that staff shall have a demonstrated knowledge and be sensitive to the unique characteristics and needs of the migrant and seasonal farmworker population, and provisions for:

(1) staff in-service training;
(2) training and technical assistance;
(3) staff travel;
(4) student travel;
(5) interagency coordination; and
(6) an evaluation plan.

(e) Five-year grant period; consideration of prior experience

Except under extraordinary circumstances, the Secretary shall award grants for a 5-year period. For the purpose of making grants under this subpart, the Secretary shall consider the prior experience of service delivery under the particular project for which funds are sought by each applicant. Such prior experience shall be awarded the same level of consideration given this factor for applicants for programs in accordance with section 1070a-11(n)(2) of this title.

(f) Minimum allocations

The Secretary shall not allocate an amount less than—
(1) $180,000 for each project under the high school equivalency program, and
(2) $180,000 for each project under the college assistance migrant program.

(g) Reservation and allocation of funds

From the amounts made available under subsection (l), the Secretary—

(1) may reserve not more than a total of ½ of one percent for outreach activities, technical assistance, and professional development programs relating to the programs under subsection (a);
(2) for any fiscal year for which the amount appropriated to carry out this section is equal to or greater than $40,000,000, shall, in awarding grants from the remainder of such amounts—
   (A) make available not less than 45 percent of such remainder for the high school equivalency programs and not less than 45 percent of such remainder for the college assistance migrant programs;
   (B) award the rest of such remainder for high school equivalency programs or college assistance migrant programs based on the number, quality, and promise of the applications; and
   (C) consider the need to provide an equitable geographic distribution of such grants; and

(3) for any fiscal year for which the amount appropriated to carry out this section is less than $40,000,000, shall, in awarding grants from the remainder of such amounts make available the same percentage of funds to the high school equivalency program and to the college assistance migrant program as was made available for each such program for the fiscal year preceding the fiscal year for which the grant was made.

(h) Data collection

The Secretary shall—

(1) annually collect data on persons receiving services authorized under this subpart regarding such persons’ rates of secondary school graduation, entrance into postsecondary education, and completion of postsecondary education, as applicable;
(2) not less often than once every two years, prepare and submit to the authorizing committees a report based on the most recently available data under paragraph (1); and
(3) make such report available to the public.

(i) Authorization of appropriations

For the purpose of making grants and contracts under this section, there are authorized to be appropriated $75,000,000 for fiscal year 2009 and such sums as may be necessary for the each of the five succeeding fiscal years.

REFERENCES IN TEXT


PRIOR PROVISIONS


Amendments


Subsec. (b)(8). Pub. L. 110–315, § 408(1)(E), inserted “(such as transportation and child care)” after “services” and substituted “and” for “and” at end.


Subsec. (c)(1)(A). Pub. L. 110–315, § 408(2)(A)(i), substituted “immediate family” for “parents” and struck out “(or such part’s predecessor authority)” before “or section 3021”.


Subsec. (c)(1)(E) to (G). Pub. L. 110–315, § 408(2)(A)(iii)(vi), struck out “and” at end of subpar. (E), added subpar. (F), redesignated former subpar. (F) as (G), redesignated former subpar. (G) as (H), and struck out (I) to (viii), respectively, redesignated subpar. (3) and (C) to (E) as subpars. (A) to (B), respectively, and subpar. (5) to (F) respectively, and added par. (2). Prior to amendment, par. (1) read as follows: “outreach and recruitment services to reach persons who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent.”

Subsec. (c)(4). Pub. L. 110–315, § 408(1)(B), inserted comma after “concerning” and “grant obtaining”.

Subsec. (c)(5). Pub. L. 110–325, § 408(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: “recruitment services to reach persons who are 17 years of age and over, who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent.”

Subsec. (c)(6). Pub. L. 110–325, § 408(a)(2), designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A) and amended it generally, redesignated par. (2) and its subpars. (A) to (E) as subpars. (B) to (F), respectively, and added par. (2). Prior to amendment, par. (1) read as follows: “outreach and recruitment services to reach persons who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who meet the minimum qualifications for attendance at a college or university.”

Subsec. (c)(7). Pub. L. 102–325, § 405(c), substituted “Five-year” for “Three-year” in heading and “5-year” for “3-year” in text.

Subsec. (c)(8). Pub. L. 102–325, § 405(d), amended subsec. (g) generally, substituting present provisions for former provisions which authorized appropriations for fiscal years 1987 through 1991.

1987—Subsec. (g). Pub. L. 100–50 amendsubsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “There is authorized to be appropriated for this part $9,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.”
§ 1070d–31. Statement of purpose

It is the purpose of this subpart to establish a Robert C. Byrd Honors Scholarship Program to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued excellence.


§ 1070d–33. Scholarships authorized

(a) Program authority

The Secretary is authorized, in accordance with the provisions of this subpart, to make grants to States to enable the States to award scholarships to individuals who have demonstrated outstanding academic achievement and who show promise of continued academic achievement.

(b) Period of award

Scholarships under this section shall be awarded for a period of not less than 1 or more than 4 years during the first 4 years of study at any institution of higher education eligible to participate in any programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 22. The State educational agency administering the program in a State shall have discretion to determine the period of the award (within the limits specified in the preceding sentence), except that—

(1) if the amount appropriated for this subpart for any fiscal year exceeds the amount appropriated for this subpart for fiscal year 1993, the Secretary shall, for each State educational agency, identify the number of scholarships available to that State under section 1070d–34(b) of this title that are attributable to such excess; and

(2) the State educational agency shall award not less than that number of scholarships for a period of 4 years.

(c) Use at any institution permitted

A student awarded a scholarship under this subpart may attend any institution of higher education.

(d) Byrd Scholars

Individuals awarded scholarships under this subpart shall be known as “Byrd Scholars.”

Prior Provisions


Amendments


1992—Subsec. (b). Pub. L. 103–208 substituted “for a period of not less than 1 or more than 4 years” for “for a period of not more than 4 years.”

1993—Subsec. (b). Pub. L. 103–208 substituted “for a period of not more than 4 years” for “for a period of not more than 4 years” and inserted at end “The State educational agency administering the program in a State shall have discretion to determine the period of the award (within the limits specified in the preceding sentence), except that—

“(1) if the amount appropriated for this subpart for any fiscal year exceeds the amount appropriated for this subpart for fiscal year 1993, the Secretary shall identify to each State educational agency the number of scholarships available to that State under section 1070d–34(b) of this title that are attributable to such excess; and

“(2) the State educational agency shall award not less than that number of scholarships for a period of 4 years.”

Effective date of 1998 Amendments


Effective date of 1987 Amendment


Subpart 6—Robert C. Byrd Honors Scholarship Program

§ 1070d–34. Statement of purpose

It is the purpose of this subpart to establish the Robert C. Byrd Honors Scholarship Program to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued excellence.

Prior Provisions

§ 1070d–34. Allocation among States

(a) Allocation formula

From the sums appropriated pursuant to the authority of section 1070d–41 of this title for any fiscal year, the Secretary shall allocate to each State that has an agreement under section 1070d–35 of this title an amount equal to $1,500 multiplied by the number of scholarships determined by the Secretary to be available to such State in accordance with subsection (b) of this section.

(b) Number of scholarships available

The number of scholarships to be made available in a State for any fiscal year shall bear the same ratio to the number of scholarships made available to all States as the State's population ages 5 through 17 bears to the population ages 5 through 17 in all the States, except that not less than 10 scholarships shall be made available to any State.

(c) Use of census data

For the purpose of this section, the population ages 5 through 17 in a State and in all the States shall be determined by the most recently available data, satisfactory to the Secretary, from the Bureau of the Census.

(d) Consolidation by Insular Areas prohibited

Notwithstanding section 1469a of title 48, funds allocated under this part to an Insular Area described in that section shall be deemed to be direct payments to classes of individuals, and the Insular Area may not consolidate such funds with other funds received by the Insular Area from any department or agency of the United States Government.

(e) FAS eligibility

(1) Fiscal years 2000 through 2004

Notwithstanding any other provision of this subpart, in the case of students from the Freely Associated States who may be selected to receive a scholarship under this subpart for the first time for any of the fiscal years 2000 through 2004—

(A) there shall be 10 scholarships in the aggregate awarded to such students for each of the fiscal years 2000 through 2004; and

(B) the Pacific Regional Educational Laboratory shall administer the program under this subpart in the case of scholarships for students in the Freely Associated States.

(2) Termination of eligibility

A student from the Freely Associated States shall not be eligible to receive a scholarship under this subpart after September 30, 2004.

Prior Provisions


Amendments


1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows: “From the sums appropriated pursuant to section 1070d–41 of this title for any fiscal year, the Secretary shall allocate to each State having an agreement under section 1070d–35 of this title—

“(1) $1,500 multiplied by the number of individuals in the State eligible for scholarships pursuant to section 1070d–37(b) of this title, plus

“(2) $10,000, plus 5 percent of the amount to which a State is eligible under paragraph (1) of this section.”

Effective Date of 2009 Amendment


Effective Date of 1998 Amendment


Effective Date of 1993 Amendment


§ 1070d–35. Agreements

The Secretary shall enter into an agreement with each State desiring to participate in the scholarship program authorized by this subpart.

Each such agreement shall include provisions designed to assure that—

(1) the State educational agency will administer the scholarship program authorized by this subpart in the State;

(2) the State educational agency will comply with the eligibility and selection provisions of this subpart;

(3) the State educational agency will conduct outreach activities to publicize the availability of scholarships under this subpart to all eligible students in the State, with particular emphasis on activities designed to assure that students from low-income and moderate-income families have access to the information on the opportunity for full participation in the scholarship program authorized by this subpart; and

(4) the State educational agency will pay to each individual in the State who is awarded a scholarship under this subpart $1,500.

Prior Provisions

The State educational agency is authorized to establish the criteria for the selection of scholars under this subpart.

(b) Adoption of procedures

The State educational agency shall adopt selection procedures designed to ensure an equitable geographic distribution of awards within the State (and in the case of the Federated States of Micronesia, the Republic of the Marshall Islands, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or Palau (until such time as the Compact of Free Association is ratified), not to exceed 10 individuals will be selected from such entities).

(c) Consultation requirement

In carrying out its responsibilities under subsections (a) and (b) of this section, the State educational agency shall consult with school administrators, school boards, teachers, counselors, and parents.

(d) Timing of selection

The selection process shall be completed, and the awards made, prior to the end of each secondary school academic year.

§ 1070d–38. Stipends and scholarship conditions

(a) Amount of award

Each student awarded a scholarship under this subpart shall receive a stipend of $1,500 for the academic year of study for which the scholarship is awarded, except that in no case shall the total amount of financial aid awarded to such student exceed such student’s total cost-of-attendance.

(b) Use of award

The State educational agency shall establish procedures to assure that a scholar awarded a
scholarship under this subpart pursues a course of study at an institution of higher education.


PRIOR PROVISIONS


AMENDMENTS

1992—Subsec. (a). Pub. L. 102–325 inserted before period at end “”, except that in no case shall the total amount of financial aid awarded to such student exceed such student’s total cost-of-attendance”.


§ 1070d–40. Construction of needs provisions

Except as provided in section 1087kk of this title, nothing in this subpart, or any other Act, shall be construed to permit the receipt of a scholarship under this subpart to be counted for any needs test in connection with the awarding of any grant or the making of any loan under this chapter and part C of subchapter I of chapter 34 of title 42 or any other provision of Federal law relating to educational assistance.


PRIOR PROVISIONS


AMENDMENTS

1992—Pub. L. 102–325 substituted “Except as provided in section 1087kk of this title, nothing” for “Nothing”.

§ 1070d–41. Authorization of appropriations

There are authorized to be appropriated for this subpart such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PRIOR PROVISIONS


AMENDMENTS

2008—Pub. L. 110–315 substituted “such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years” for “$45,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years”.

1992—Pub. L. 102–325 substituted “$45,000,000 for fiscal year 1999” for “$10,000,000 for fiscal year 1993”.

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated for this subpart $8,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.”

EFFECTIVE DATE OF 1998 AMENDMENT


SUBPART 7—CHILD CARE ACCESS MEANS PARENTS IN SCHOOL

PRIOR PROVISIONS

A prior subpart 7, consisted of sections 1070e and 1070e–1 and related to assistance to institutions of higher education, prior to the repeal of sections 1070e and 1070e–1 by Pub. L. 102–325, title IV, §§407, 408, July 23, 1992, 106 Stat. 510.

§ 1070e. Child care access means parents in school

(a) Purpose

The purpose of this section is to support the participation of low-income parents in post-secondary education through the provision of campus-based child care services.

(b) Program authorized

(1) Authority

The Secretary may award grants to institutions of higher education to assist the institutions in providing campus-based child care services to low-income students.

(2) Amount of grants

(A) In general

The amount of a grant awarded to an institution of higher education under this section for a fiscal year shall not exceed 1 percent of the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution of higher education for the preceding fiscal year.

(B) Minimum

(i) In general

Except as provided in clause (ii), a grant under this section shall be awarded in an amount that is not less than $10,000.

(ii) Increase trigger

For any fiscal year for which the amount appropriated under the authority of sub-
section (g) is equal to or greater than $20,000,000, a grant under this section shall be awarded in an amount that is not less than $30,000.

(3) Duration; renewal; and payments

(A) Duration

The Secretary shall award a grant under this section for a period of 4 years.

(B) Payments

Subject to subsection (e)(2) of this section, the Secretary shall make annual grant payments under this section.

(4) Eligible institutions

An institution of higher education shall be eligible to receive a grant under this section for a fiscal year if the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution of higher education for the preceding fiscal year equals or exceeds $350,000, except that for any fiscal year for which the amount appropriated to carry out this section is equal to or greater than $20,000,000, this sentence shall be applied by substituting “$250,000” for “$350,000”.

(5) Use of funds

Grant funds under this section shall be used by an institution of higher education to support or establish a campus-based child care program primarily serving the needs of low-income students enrolled at the institution of higher education. Grant funds under this section may be used to provide before and after school services to the extent necessary to enable low-income students enrolled at the institution of higher education to pursue post-secondary education.

(6) Construction

Nothing in this section shall be construed to prohibit an institution of higher education that receives grant funds under this section from serving the child care needs of the community served by the institution.

(7) Definition of low-income student

For the purpose of this section, the term “low-income student” means a student—

(A) who is eligible to receive a Federal Pell Grant for the award year for which the determination is made; or

(B) who would otherwise be eligible to receive a Federal Pell Grant for the award year for which the determination is made, except that the student fails to meet the requirements of—

(i) section 1070a(c)(1) of this title because the student is enrolled in a graduate or first professional course of study; or

(ii) section 1091(a)(5) of this title because the student is in the United States for a temporary purpose.

(8) Applications

The Secretary shall publicize the availability of grants under this section in appropriate periodicals, in addition to publication in the Federal Register, and shall inform appropriate educational organizations of such availability.

(c) Applications

An institution of higher education desiring a grant under this section shall submit an applica-
the applicable State or local government licensing, certification, approval, or registration requirements; and

(10) contain a plan for any child care facility assisted under this section to become accredited within 3 years of the date the institution first receives assistance under this section.

(d) Priority

The Secretary shall give priority in awarding grants under this section to institutions of higher education that submit applications describing programs that—

(1) leverage significant local or institutional resources, including in-kind contributions, to support the activities assisted under this section;

(2) utilize a sliding fee scale for child care services provided under this section in order to support a high number of low-income parents pursuing postsecondary education at the institution.

(e) Reporting requirements; continuing eligibility

(1) Reporting requirements

(A) Reports

Each institution of higher education receiving a grant under this section shall report to the Secretary annually.

(B) Contents

The report shall include—

(i) data on the population served under this section;

(ii) information on campus and community resources and funding used to help low-income students access child care services;

(iii) information on progress made toward accreditation of any child care facility; and

(iv) information on the impact of the grant on the quality, availability, and affordability of campus-based child care services.

(2) Continuing eligibility

The Secretary shall make continuation awards under this section to an institution of higher education only if the Secretary determines, on the basis of the reports submitted under paragraph (1), that the institution is making a good faith effort to ensure that low-income students at the institution have access to affordable, quality child care services.

(f) Construction

No funds provided under this section shall be used for construction, except for minor renovation or repair to meet applicable State or local health or safety requirements.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


AMENDMENTS

2008—Subsec. (b)(2)(B), Pub. L. 110–315, §410(a), redesignated existing provisions as cl. (i), inserted heading, substituted ‘‘Except as provided in clause (ii), a grant’’ for ‘‘A grant’’, and added cl. (ii).

Subsec. (b)(4). Pub. L. 110–315, §410(b), inserted ‘‘, except that for any fiscal year for which the amount appropriated to carry out this section is equal to or greater than $20,000,000, this sentence shall be applied by substituting ‘$250,000’ for ‘$350,000’’ before period at end.

Subsec. (b)(7). Pub. L. 110–315, §410(c), amended par. (7) generally. Prior to amendment, text read as follows: ‘‘For the purpose of this section, the term ‘low-income student’ means a student who is eligible to receive a Federal Pell Grant for the fiscal year for which the determination is made.’’

Subsec. (b)(8). Pub. L. 110–315, §410(d), added par. (8). Subsec. (e)(1)(A), Pub. L. 110–315, §410(e)(1), substituted ‘‘annually’’ for ‘‘18 months, and 36 months, after receiving the first grant payment under this section’’.

Subsec. (e)(2). Pub. L. 110–315, §410(e)(2), substituted ‘‘continuation awards for ‘‘the third annual grant payment’ and ‘‘the reports’ for ‘‘the 18-month report’’.’’

Subsec. (g). Pub. L. 110–315, §410(f), substituted ‘‘such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years’ for ‘‘$45,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years’’.

EFFECTIVE DATE


SUBPART 8—[REPEALED]

§§ 1070f–1 to 1070g–1. Program established

(a) Program authority

(1) Payments required

The Secretary shall pay to each eligible institution such sums as may be necessary to pay to each teacher candidate who files an application and agreement in accordance with section 1070g–2 of this title, and who qualifies under paragraph (2) of section 1070g–2(a) of this title, a TEACH Grant in the amount of $4,000 for each year during which that teacher candidate is in attendance at the institution.

(2) References

Grants made under paragraph (1) shall be known as “Teacher Education Assistance for College and Higher Education Grants” or “TEACH Grants”.

(b) Payment methodology

(1) Prepayment

Not less than 85 percent of any funds provided to an eligible institution under subsection (a) shall be advanced to the eligible institution prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay teacher candidates until such time as the Secretary determines and publishes in the Federal Register with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and timely manner, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

(2) Direct payment

Nothing in this section shall be interpreted to prohibit the Secretary from paying directly to teacher candidates, in advance of the begin-
ning of the academic term, an amount for which teacher candidates are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

(3) Distribution of grants to teacher candidates

Payments under this subpart shall be made, in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purposes of this subpart. Any disbursement allowed to be made by crediting the teacher candidate’s account shall be limited to tuition and fees and, in the case of institutionally-owned housing, room and board. The teacher candidate may elect to have the institution provide other such goods and services by crediting the teacher candidate’s account.

(c) Reductions in amount

(1) Part-time students

In any case where a teacher candidate attends an eligible institution on less than a full-time basis (including a teacher candidate who attends an eligible institution on less than a half-time basis) during any year, the amount of a grant under this subpart for which that teacher candidate is eligible shall be reduced in proportion to the degree to which that teacher candidate is not attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subpart, computed in accordance with this subpart. Such schedule of reductions shall be established by regulation and published in the Federal Register in accordance with section 1089 of this title.

(2) No exceeding cost

The amount of a grant awarded under this subpart, in combination with Federal assistance and other assistance the student may receive, shall not exceed the cost of attendance at the eligible institution at which that teacher candidate is in attendance.

(d) Period of eligibility for grants

(1) Undergraduate and post-baccalaureate students

The period during which an undergraduate or post-baccalaureate student may receive grants under this subpart shall be the period required for the completion of the first undergraduate baccalaureate or post-baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the teacher candidate to utilize already existing knowledge, training, or skills.

(2) Graduate students

The period during which a graduate student may receive grants under this subpart shall be the period required for the completion of a master’s degree course of study pursued by the teacher candidate at the eligible institution at which the teacher candidate is in attendance, except that the total amount that a teacher candidate may receive under this subpart for graduate study shall not exceed $8,000.

(3) Remedial course; study abroad

Nothing in this section shall be construed to exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language acquisition) which are determined by the eligible institution to be necessary to help the teacher candidate be prepared for the pursuit of a first undergraduate baccalaureate or post-baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the teacher candidate to utilize already existing knowledge, training, or skills.

In any case where a teacher candidate at an eligible institution is enrolled in a noncredit or remedial course of study as described in paragraph (3) shall not be counted for the purpose of this paragraph; and

(A) any period during which the teacher candidate is enrolled in a noncredit or remedial course of study as described in paragraph (3) shall not be counted for the purpose of this paragraph; and

(B) the total amount that a teacher candidate may receive under this subpart for undergraduate or post-baccalaureate course of study being pursued by the teacher candidate at the eligible institution at which the teacher candidate is in attendance, except that

(1) the student is an eligible student for purposes of section 1091 of this title;

(ii) the student—

(i) has a grade point average that is determined, under standards prescribed by the Secretary, to be comparable to a 3.25 average on a zero to 4.0 scale, except that, if the student is in the first year of
a program of undergraduate education, such grade point average shall be determined on the basis of the student’s cumulative secondary school grade point average; or

(II) displayed high academic aptitude by receiving a score above the 75th percentile on at least one of the batteries in an undergraduate, post-baccalaureate, or graduate school admissions test; and

(iii) the student is completing coursework and other requirements necessary to begin a career in teaching, or plans to complete such coursework and requirements prior to graduating; or

(B) if the applicant is a current or prospective teacher applying for a grant to obtain a graduate degree—

(i) the applicant is a teacher or a retiree from another occupation with expertise in a field in which there is a shortage of teachers, such as mathematics, science, special education, English language acquisition, or another high-need subject; or

(ii) the applicant is or was a teacher who is using high-quality alternative certification routes, such as Teach for America, to get certified.

(b) Agreements to serve

Each application under subsection (a) shall contain or be accompanied by an agreement by the applicant that—

(1) the applicant will—

(A) serve as a full-time teacher for a total of not less than 4 academic years within 8 years after completing the course of study for which the applicant received a TEACH Grant under this subpart;

(B) teach in a school described in section 1087ee(a)(2)(A) of this title;

(C) teach in any of the following fields—

(i) mathematics;

(ii) science;

(iii) a foreign language;

(iv) bilingual education;

(v) special education;

(vi) as a reading specialist; or

(vii) another field documented as high-need by the Federal Government, State government, or local educational agency, and approved by the Secretary;

(D) submit evidence of such employment in the form of a certification by the chief administrative officer of the school upon completion of each year of such service; and

(E) comply with the requirements for being a highly qualified teacher as defined in section 7801 of this title;

(2) in the event that the applicant is determined to have failed or refused to carry out such service obligation, the sum of the amounts of any TEACH Grants received by such applicant will be treated as a loan and collected from the applicant in accordance with subsection (c) and the regulations thereunder; and

(3) contains, or is accompanied by, a plain-language disclosure form developed by the Secretary that clearly describes the nature of the TEACH Grant award, the service obligation, and the loan repayment requirements that are the consequence of the failure to complete the service obligation.

(c) Repayment for failure to complete service

In the event that any recipient of a grant under this subpart fails or refuses to comply with the service obligation in the agreement under subsection (b), the sum of the amounts of any TEACH Grants received by such recipient shall, upon a determination of such a failure or refusal in such service obligation, be treated as a Federal Direct Unsubsidized Stafford Loan under part C, and shall be subject to repayment, together with interest thereon accruing from the date of the grant award, in accordance with terms and conditions specified by the Secretary in regulations under this subpart.

(d) Additional administrative provisions

(1) Change of high-need designation

If a recipient of an initial grant under this subpart has acquired an academic degree, or expertise, in a field that was, at the time of the recipient’s application for that grant, designated as high need in accordance with subsection (b)(1)(C)(vii), but is no longer so designated, the grant recipient may fulfill the service obligation described in subsection (b)(1) by teaching in that field.

(2) Extenuating circumstances

The Secretary shall establish, by regulation, categories of extenuating circumstances under which a recipient of a grant under this subpart who is unable to fulfill all or part of the recipient’s service obligation may be excused from fulfilling that portion of the service obligation.


AMENDMENTS


EFFECTIVE DATE OF 2008 AMENDMENT

§ 1070g–3. Program period and funding

Beginning on July 1, 2008, there shall be available to the Secretary to carry out this subpart, from funds not otherwise appropriated, such sums as may be necessary to provide TEACH Grants in accordance with this subpart to each eligible applicant.


§ 1070g–4. Program report

Not later than two years after August 14, 2008, and every two years thereafter, the Secretary shall prepare and submit to the authorizing
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committees a report on TEACH grants with respect to the schools and students served by recipients of such grants. Such report shall take into consideration information related to—

1. the number of TEACH grant recipients;
2. the degrees obtained by such recipients;
3. the location, including the school, local educational agency, and State, where the recipients completed the service agreed to under section 1070g–2(b) of this title and the subject taught;
4. the duration of such service; and
5. any other data necessary to conduct such evaluation.


SUBPART 10—SCHOLARSHIPS FOR VETERAN'S DEPENDENTS

§ 1070h. Scholarships for veteran's dependents

(a) Definition of eligible veteran's dependent

The term “eligible veteran’s dependent” means a dependent or an independent student—

1. whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001; and
2. who, at the time of the parent or guardian’s death, was—
   a. less than 24 years of age; or
   b. enrolled at an institution of higher education on a part-time or full-time basis.

(b) Grants

(1) In general

The Secretary shall award a grant to each eligible veteran’s dependent to assist in paying the eligible veteran’s dependent’s cost of attendance at an institution of higher education.

(2) Designation

Grants made under this section shall be known as “Iraq and Afghanistan Service Grants”.

(c) Prevention of double benefits

No eligible veteran’s dependent may receive a grant under both this section and section 1070a of this title.

(d) Terms and conditions

The Secretary shall award grants under this section in the same manner, and with the same terms and conditions, including the length of the period of eligibility, as the Secretary awards Federal Pell Grants under section 1070a of this title, except that—

1. the award rules and determination of need applicable to the calculation of Federal Pell Grants, shall not apply to grants made under this section;
2. the provisions of subsection (a)(3), subsection (b)(1), the matter following subsection (b)(2)(A)(v), subsection (b)(3), and subsection (f), of section 1070a of this title shall not apply; and
3. a grant made under this section to an eligible veteran’s dependent for any award year shall equal the maximum Federal Pell Grant available for that award year, except that such a grant under this section—
   a. shall not exceed the cost of attendance of the eligible veteran’s dependent for that award year; and
   b. shall be adjusted to reflect the attendance by the eligible veteran’s dependent on a less than full-time basis in the same manner as such adjustments are made under section 1070a of this title.

(e) Estimated financial assistance

For purposes of determinations of need under part E, a grant awarded under this section shall not be treated as estimated financial assistance as described in sections 1087kk(3) and 1087vv(j) of this title.

(f) Authorization and appropriations of funds

There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, for the Secretary to carry out this section, such sums as may be necessary for fiscal year 2010 and each succeeding fiscal year.


REFERENCES IN TEXT

Section 1070a(b)(2)(A) of this title, referred to in subsection (d)(2), as originally enacted, contained cls. (i) to (vi) followed by concluding provisions. Section 1070a(b)(2)(A) of this title was amended generally by section 210(a)(1) of Pub. L. 111–152 and, as so amended, no longer contains either a cl. (v) or concluding provisions.

EFFECTIVE DATE

Pub. L. 111–39, title IV, § 401(b), July 1, 2009, 123 Stat. 1940, provided that: “The amendment made by subsection (a)(9) (enacting this subpart) shall take effect on July 1, 2010.”

PART B—FEDERAL FAMILY EDUCATION LOAN PROGRAM

CONSIDERATION


1 See References in Text note below.
§ 1071. Statement of purpose; nondiscrimination; and appropriations authorized

(a) Purpose; discrimination prohibited

(1) Purpose

The purpose of this part is to enable the Secretary—
(A) to encourage States and nonprofit private institutions and organizations to establish adequate loan insurance programs for students in eligible institutions (as defined in section 1065 of this title),
(B) to provide a Federal program of student loan insurance for students or lenders who do not have reasonable access to a State or private nonprofit program of student loan insurance covered by an agreement under section 1078(b) of this title,
(C) to pay a portion of the interest on loans to qualified students which are insured under this part, and
(D) to guarantee a portion of each loan insured under a program of a State or of a nonprofit private institution or organization which meets the requirements of section 1078(a)(1)(B) of this title.

(b) Authorization of appropriations

For the purpose of carrying out this part—
(1) there are authorized to be appropriated to the student loan insurance fund (established by section 1081 of this title) (A) the sum of $1,000,000, and (B) such further sums, if any, as may become necessary for the adequacy of the student loan insurance fund,
(2) there are authorized to be appropriated, for payments under section 1073 of this title with respect to interest on student loans and for payments under section 1087 of this title, such sums for the fiscal year ending June 30, 1966, and succeeding fiscal years, as may be required therefor,
(3) there is authorized to be appropriated the sum of $17,500,000 for making advances pursuant to section 1072 of this title for the reserve funds of State and nonprofit private student loan insurance programs, and
(4) there are authorized to be appropriated (A) the sum of $12,500,000 for making advances after June 30, 1968, pursuant to sections 1072(a) and (b) of this title, and (B) such sums as may be necessary for making advances pursuant to section 1072(c) of this title, for the reserve funds of State and nonprofit private student loan insurance programs,
(5) there are authorized to be appropriated such sums as may be necessary for the purpose of paying a loan processing and issuance fee in accordance with section 1078(f) of this title to guaranty agencies, and
(6) there is authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose of carrying out section 1072(c)(7) of this title.

Sum appropriated under paragraphs (1), (2), (4), and (5) of this subsection shall remain available until expended, except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement is after such date. No additional sums are authorized to be appropriated under paragraph (3) or (4) of this subsection by reason of the reenactment of such paragraphs by the Higher Education Amendments of 1986.

(c) Designation

The program established under this part shall be referred to as the “Robert T. Stafford Federal Student Loan Program”. Loans made pursuant to sections 1077 and 1078 of this title shall be known as “Federal Stafford Loans”.

(d) Termination of authority to make or insure new loans

Notwithstanding paragraphs (1) through (6) of subsection (b) or any other provision of law—
(1) no new loans (including consolidation loans) may be made or insured under this part after June 30, 2010; and
(2) no funds are authorized to be appropriated, or may be expended, under this chapter and part C of subchapter I of chapter 34 of title 42 or any other Act to make or insure loans under this part (including consolidation loans) for which the first disbursement is after June 30, 2010,


REFERENCES IN TEXT


CODIFICATION

Another section 411 of Pub. L. 98–244 enacted subpart 8 (§ 1070f et seq.) of part A of this subchapter.

PRIOR PROVISIONS

and implementation of programs to provide low-interest insured loans to students in institutions of higher education, prior to the general revision of this part by Pub. L. 99–486.

**AMENDMENTS**

2010—Subsec. (b). Pub. L. 111–152, § 2201(1), inserted "", except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement is after such date"" after ""expended"" in concluding provisions.


2006—Subsec. (b)(5). Pub. L. 109–171 substituted "a loan processing and issuance fee" for "an administrative cost allowance".

1998—Subsec. (d). Pub. L. 105–244 struck out heading and text of subsec. (d). Text read as follows: "Notwithstanding any other provision of this part, no new loan guarantees shall be issued after June 30, 1994, if the Secretary does not issue final regulations implementing the changes made to this part under the Higher Education Amendments of 1992 prior to that date. The authority to issue new loan guarantees shall resume upon the Secretary's issuance of such regulations. This subsection shall not provide the basis for avoiding any requirements for notice and public hearing on such regulations."

1992—Subsec. (c). Pub. L. 102–325, § 411(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: "The program established under this part shall be referred to as the "Robert T. Stafford Student Loan Program". Loans made under this part shall be known as "Stafford Loans"."


1988—Subsec. (c). Pub. L. 100–297 added subsec. (c) which read as follows: "Identifying loans made under this part as "Stafford Loans".

Pub. L. 100–297 added subsec. (c).
only to loans disbursed on or after January 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1987;

(4) the changes made in subsections (a), (b), and (d) of section 433 of the Act [20 U.S.C. 1083(a), (b), (d)] shall apply with respect only to loans disbursed on or after January 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1987;

(5) the changes in section 428(b)(1)(H) [20 U.S.C. 1076(b)(1)(H)] shall apply with respect only to loans for which the borrower files an application on or after July 1, 1987;

(6) the changes in sections 435(d)(5) and 438(d) of the Act [20 U.S.C. 1085(d)(5), 1087–1(d)] shall take effect 30 days after the date of enactment of this Act [Oct. 17, 1986]; and

(7) the changes made in section 438(b) [20 U.S.C. 1087–1(b)] shall take effect with respect to loans disbursed on or after 30 days after the date of enactment of this Act [Oct. 17, 1986] or made to cover the costs of instruction for periods of enrollment beginning on or after 30 days after the date of enactment of this Act.

(c) Changes Effective Without regard to Regulations; Republication of Regulations.—The changes made in part B of title IV of the Act [20 U.S.C. 1071 et seq.], by the amendment made by subsection (a) of this section shall be effective in accordance with subsection (b) of this section without regard to whether such changes are reflected in the regulations prescribed by the Secretary of Education for the purpose of such part.

(d) New Borrowers.—For the purpose of this section, the term ‘new borrower’ means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of title IV of the Act [20 U.S.C. 1071 et seq.].

STUDY OF ROLE OF GUARANTY AGENCIES


GENERAL ACCOUNTING OFFICE REPORTS


§1072. Advances for reserve funds of State and nonprofit private loan insurance programs

(a) Purpose of and authority for advances to reserve funds

(1) Purpose; eligible recipients

From sums appropriated pursuant to paragraphs (3) and (4)(A) of section 1071(b) of this title, the Secretary is authorized to make advances to any State with which the Secretary has made an agreement pursuant to section 1078(b) of this title for the purpose of helping to establish or strengthen the reserve fund of the student loan insurance program covered by that agreement. If for any fiscal year a State does not have a student loan insurance program covered by an agreement made pursuant to section 1078(b) of this title, and the Secretary determines after consultation with the chief executive officer of that State that there is no reasonable likelihood that the State will have such a student loan insurance program for such year, the Secretary may make advances for such year for the same purpose to one or more nonprofit private institutions or organizations with which the Secretary has made an agreement pursuant to section 1078(b) of this title in order to enable students in the State to participate in a program of student loan insurance covered by such an agreement. The Secretary may make advances under this subsection both to a State program (with which he has such an agreement) and to one or more nonprofit private institutions or organizations (with which he has such an agreement) in that State if he determines that such advances are necessary in order that students in each eligible institution have access through such institution to a student loan insurance program which meets the requirements of section 1078(b)(1) of this title.

(2) Matching requirement

No advance shall be made after June 30, 1968, unless matched by an equal amount from non-Federal sources. Such equal amount may include the unencumbered non-Federal portion of a reserve fund. As used in the preceding sentence, the term “unencumbered non-Federal portion” means the amount (determined as of the time immediately preceding the making of the advance) of the reserve fund less the greater of—

(A) the sum of—

(i) advances made under this section prior to July 1, 1968;

(ii) an amount equal to twice the amount of advances made under this section after June 30, 1968, and before the advance for purposes of which the determination is made; and

(iii) the proceeds of earnings on advances made under this section; or

(B) any amount which is required to be maintained in such fund pursuant to State law or regulation, or by agreement with lenders, as a reserve against the insurance of outstanding loans.

Except as provided in section 1078(c)(9)(E) or (F) of this title, such unencumbered non-Federal portion shall not be subject to recall, repayment, or recovery by the Secretary.

(3) Terms and conditions; repayment

Advances pursuant to this subsection shall be upon such terms and conditions (including conditions relating to the time or times of payment) consistent with the requirements of section 1078(b) of this title as the Secretary determines will best carry out the purpose of this section. Advances made by the Secretary under this subsection shall be repaid within
such period as the Secretary may deem to be appropriate in each case in the light of the maturity and solvency of the reserve fund for which the advance was made.

(b) Limitations on total advances

(1) In general

The total of the advances from the sums appropriated pursuant to paragraph (4)(A) of section 1071(b) of this title to nonprofit private institutions and organizations for the benefit of students in any State and to such State may not exceed an amount which bears the same ratio to such sums as the population of such State aged 18 to 22, inclusive, bears to the population of all the States aged 18 to 22 inclusive, but such advances may otherwise be in such amounts as the Secretary determines will best achieve the purposes for which they are made. The amount available for advances to any State shall not be less than $25,000 and any additional funds needed to meet this requirement shall be derived by proportionately reducing (but not below $25,000) the amount available for advances to each of the remaining States.

(2) Calculation of population

For the purpose of this subsection, the population aged 18 to 22, inclusive, of each State and of all the States shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(c) Advances for insurance obligations

(1) Use for payment of insurance obligations

From sums appropriated pursuant to section 1071(b)(4)(B) of this title, the Secretary shall advance to each State which has an agreement with the Secretary under section 1078(c) of this title with respect to a student loan insurance program, an amount determined in accordance with paragraph (2) of this subsection to be used for the purpose of making payments under the State’s insurance obligations under such program.

(2) Amount of advances

(A) Except as provided in subparagraph (B), the amount to be advanced to each such State shall be equal to 10 percent of the principal amount of loans made by lenders and insured by such agency on those loans on which the first payment of principal became due during the fiscal year immediately preceding the fiscal year in which the advance is made.

(B) The amount of any advance determined according to subparagraph (A) of this paragraph shall be reduced by—

(i) the amount of any advance or advances made to such State pursuant to this subsection at an earlier date; and

(ii) the amount of the unspent balance of the advances made to a State pursuant to subsection (a) of this section.

Notwithstanding subparagraph (A) and the preceding sentence of this subparagraph, but subject to subparagraph (D) of this paragraph, the amount of any advance to a State described in paragraph (5)(A) for the first year of its eligibility under such paragraph, and the amount of any advance to any State described in paragraph (5)(B) for each year of its eligibility under such paragraph, shall not be less than $50,000.

(C) For the purpose of subparagraph (B), the unspent balance of the advances made to a State pursuant to subsection (a) of this section shall be that portion of the balance of the State’s reserve fund (remaining at the time of the State’s first request for an advance pursuant to this subsection) which bears the same ratio to such balance as the Federal advances made and not returned by such State, pursuant to subsection (a) of this section, bears to the total of all past contributions to such reserve funds from all sources (other than interest on investment of any portion of the reserve fund) contributed since the date such State executed an agreement pursuant to section 1078(b) of this title.

(D) If the sums appropriated for any fiscal year for paying the amounts determined under subparagraphs (A) and (B) are not sufficient to pay such amounts in full, then such amounts shall be reduced—

(i) by ratably reducing that portion of the amount allocated to each State which exceeds $50,000; and

(ii) if further reduction is required, by equally reducing the $50,000 minimum allocation of each State.

If additional sums become available for paying such amounts for any fiscal year during which the preceding sentence has been applied, such reduced amounts shall be increased on the same basis as they were reduced.

(3) Use of earnings for insurance obligations

The earnings, if any, on any investments of advances received pursuant to this subsection must be used for making payments under the State’s insurance obligations.

(4) Repayment of advances

Advances made by the Secretary under this subsection shall, subject to subsection (d) of this section, be repaid within such period as the Secretary may deem to be appropriate and shall be deposited in the fund established by section 1081 of this title.

(5) Limitation on number of advances

Except as provided in paragraph (7), advances pursuant to this subsection shall be made to a State—

(A) in the case of a State which is actively carrying on a program under an agreement pursuant to section 1078(b) of this title which was entered into before October 12, 1976, upon such date as such State may request, but not before October 1, 1977, and on the same day of each of the 2 succeeding calendar years after the date so requested; and

(B) in the case of a State which enters into an agreement pursuant to section 1078(b) of this title on or after October 12, 1976, or which is not actively carrying on a program under an agreement pursuant to such section on such date, upon such date as such State may request, but not before October 1, 1977, and on the same day of each of the 4 succeeding calendar years after the date so requested of the advance.
(6) Payment of advances where no State program

(A) If for any fiscal year a State does not have a student loan insurance program covered by an agreement made pursuant to section 1078(b) of this title, and the Secretary determines after consultation with the chief executive officer of that State that there is no reasonable likelihood that the State will have such a student loan insurance program for such year, the Secretary may make advances pursuant to this subsection for such year for the same purpose to one or more nonprofit private institutions or organizations with which he has made an agreement pursuant to subsection (c), as well as subsection (b), of section 1078 of this title and subparagraph (B) of this paragraph in order to enable students in that State to participate in a program of student loan insurance covered by such agreements.

(B) The Secretary may enter into an agreement with a private nonprofit institution or organization for the purpose of this paragraph under which such institution or organization—

(i) agrees to establish within such State at least one office with sufficient staff to handle written, electronic, and telephone inquiries from students, eligible lenders, and other persons in the State, to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major eligible lenders within the State;

(ii) agrees that its insurance will not be denied any student because of his or her choice of eligible institutions; and

(iii) certifies that it is neither an eligible institution, nor has any substantial affiliation with an eligible institution.

(7) Emergency advances

The Secretary is authorized to make advances, on terms and conditions satisfactory to the Secretary, to a guaranty agency—

(A) in accordance with section 1078(j) of this title, in order to ensure that the guaranty agency shall make loans as the lender-of-last-resort; or

(B) if the Secretary is seeking to terminate the guaranty agency’s agreement, or assuming the guaranty agency’s functions, in accordance with section 1078(c)(9)(F)(V) of this title, in order to assist the agency in meeting its immediate cash needs, ensure the uninterrupted payment of claims, or ensure that the guaranty agency shall make loans as described in subparagraph (A).

(d) Recovery of advances during fiscal years 1988 and 1989

(1) Amount and use of recovered funds

Notwithstanding any other provision of this section, advances made by the Secretary under this section shall be repaid in accordance with this subsection and shall be deposited in the fund established by section 1081 of this title. The Secretary shall, in accordance with the requirements of paragraph (2), recover (and so deposit) an amount equal to $75,000,000 during fiscal year 1988 and an amount equal to $35,000,000 for fiscal year 1989.

(2) Determination of guaranty agency obligations

In determining the amount of advances which shall be repaid by a guaranty agency under paragraph (1), the Secretary—

(A) shall consider the solvency and maturity of the reserve and insurance funds of the guaranty agency assisted by such advances, as determined by the Comptroller General taking into account the requirements of State law as in effect on October 17, 1986;

(B) shall not seek repayment of such advances from any State described in subsection (c)(5)(B) of this section during any year of its eligibility under such subsection; and

(C) shall not seek repayment of such advances from any State if such repayment encumbers the reserve fund requirement of State law as in effect on October 17, 1986.

(e) Correction for errors under reduction of excess cash reserves

(1) In general

The Secretary shall pay any guaranty agency the amount of reimbursement of claims under section 1078(c)(1) of this title, filed between September 1, 1988, and December 31, 1989, which were previously withheld or canceled in order to satisfy such agency’s obligation to eliminate excess cash reserves held by such agency, based on the maximum cash reserve (as described in subsection (e) of this section as in effect on September 1, 1988) permitted at the end of 1986. If such maximum cash reserve was miscalculated because of erroneous financial information provided by such agency to the Secretary and if (A) such erroneous information is verified by an audited financial statement of the reserve fund, signed by a certified public accountant, and (B) such audited financial statement is provided to the Secretary prior to January 1, 1993.

(2) Amount

The amount of reimbursement for claims shall be equal to the amount of reimbursement for claims withheld or canceled in order to be applied to satisfy such agency’s obligation to eliminate excess cash reserves which exceeds the amount of that which would have been withheld or canceled if the maximum excess cash reserves had been accurately calculated.

(f) Refund of cash reserve payments

The Secretary shall, within 30 days after July 23, 1992, pay the full amount of payments withheld or canceled under paragraph (3) of this subsection to any guaranty agency which—

(1) was required to eliminate excess cash reserves, based on the maximum cash reserve (as described in subsection (e) of this section as in effect on September 1, 1988) permitted at the end of 1986;

(2) appealed the Secretary’s demand that such agency should eliminate such excess cash reserves and received a waiver of a portion of the amount of such excess cash reserves to be eliminated;

(3) had payments under section 1078(c)(1) of this title or section 1078(f) of this title pre-
vously withheld or canceled in order to be applied to satisfy such agency’s obligation to eliminate excess cash reserves held by such agency, based on the maximum cash reserve (as described in subsection (e) of this section as in effect on September 1, 1996) permitted at the end of 1996; and

(4) according to a Department of Education review that was completed and forwarded to such guaranty agency prior to January 1, 1992, is expected to become insolvent during or before 1996 and the payments withheld or canceled under paragraph (3) of this subsection are a factor in such agency’s impending insolvency.

(g) Preservation and recovery of guaranty agency reserves

(1) Authority to recover funds

Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased with such reserve funds, regardless of who holds or controls the reserves or assets, shall be considered to be the property of the United States to be used in the operation of the program authorized by this part. However, the Secretary may not require the return of all reserve funds of a guaranty agency to the Secretary unless the Secretary determines that such return is in the best interest of the operation of the program authorized by this part. However, the Secretary may not require the return of all reserve funds of a guaranty agency to the Secretary unless the Secretary determines that such return is in the best interest of the operation of the program authorized by this part, or to ensure the proper maintenance of such agency’s funds or assets or the orderly termination of the guarantee agency’s operations and the liquidation of its assets. The reserves shall be maintained by each guaranty agency to pay program expenses and contingent liabilities, as authorized by the Secretary, except that—

(A) the Secretary may direct a guaranty agency to return to the Secretary a portion of its reserve fund which the Secretary determines is unnecessary to pay the program expenses and contingent liabilities of the guaranty agency;

(B) the Secretary may direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the guaranty agency, or which are required for the orderly termination of the guaranty agency’s operations and the liquidation of its assets;

(C) the Secretary may direct a guaranty agency, or such agency’s officers or directors, to cease any activities involving expenditure, use or transfer of the guaranty agency’s reserve funds or assets which the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets; and

(D) any such determination under subparagraph (A) or (B) shall be based on standards prescribed by regulations that are developed through negotiated rulemaking and that include procedures for administrative due process.

(2) Termination provisions in contracts

(A) To ensure that the funds and assets of the guaranty agency are preserved, any contract with respect to the administration of a guaranty agency’s reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after August 10, 1993, shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section.

(B) The Secretary may direct a guaranty agency to suspend or cease activities under any contract entered into by or on behalf of such agency after January 1, 1993, if the Secretary determines that the misuse or improper expenditure of such guaranty agency’s funds or assets or such contract provides unnecessary or improper benefits to such agency’s officers or directors.

(3) Penalties

Violation of any direction issued by the Secretary under this subsection may be subject to the penalties described in section 1097 of this title.

(4) Availability of funds

Any funds that are returned or otherwise recovered by the Secretary pursuant to this subsection shall be available for expenditure for expenses pursuant to section 1067h of this title.

(b) Recall of reserves; limitations on use of reserve funds and assets

(1) In general

Notwithstanding any other provision of law, the Secretary shall, except as otherwise provided in this subsection, recall $1,000,000,000 from the reserve funds held by guaranty agencies on September 1, 2002.

(2) Deposit

Funds recalled by the Secretary under this subsection shall be deposited in the Treasury.

(3) Required share

The Secretary shall require each guaranty agency to return reserve funds under paragraph (1) based on the agency’s required share of recalled reserve funds held by guaranty agencies as of September 30, 1996. For purposes of this paragraph, a guaranty agency’s required share of recalled reserve funds shall be determined as follows:

(A) The Secretary shall compute each guaranty agency’s reserve ratio by dividing (i) the amount held in the agency’s reserve funds as of September 30, 1996 (but reflecting later accounting or auditing adjustments approved by the Secretary), by (ii) the original principal amount of all loans for which the agency has an outstanding insurance obligation as of such date, including amounts of outstanding loans transferred to the agency from another guaranty agency.
(B) If the reserve ratio of any guaranty agency as computed under subparagraph (A) exceeds 2.0 percent, the agency’s required share shall include so much of the amounts held in the agency’s reserve funds as exceed a reserve ratio of 2.0 percent.

(C) If any additional amount is required to be recalled under paragraph (1) (after deducting the total of the required shares calculated under subparagraph (B)), such additional amount shall be obtained by dividing the equal percentage reduction in the amount of the agency’s reserve ratio being reduced below the amount recalled under subparagraph (B), except that such percentage reduction under this subparagraph shall not result in the agency’s reserve ratio being reduced below 0.58 percent. The equal percentage reduction shall be the percentage obtained by dividing—

(i) the additional amount required to be recalled (after deducting the total of the required shares calculated under subparagraph (B)), by

(ii) the total amount of all such agencies’ reserve funds remaining (after deduction of the required shares calculated under such subparagraph).

(D) If any additional amount is required to be recalled under paragraph (1) (after deducting the total of the required shares calculated under subparagraphs (B) and (C)), such additional amount shall be obtained by dividing—

(i) the additional amount to be recalled under paragraph (1) (after deducting the required amount recalled under subparagraphs (B) and (C)), by

(ii) the total amount of all such agencies’ reserve funds remaining (after deduction of the required shares calculated under such subparagraphs) that exceed a reserve ratio of 0.58 percent.

The equal percentage reduction shall be the percentage obtained by dividing—

(i) the additional amount to be recalled under paragraph (1) (after deducting the required amount recalled under subparagraphs (B) and (C)), by

(ii) the total amount of all such agencies’ reserve funds remaining (after deduction of the required shares calculated under such subparagraphs) that exceed a reserve ratio of 0.58 percent.

(4) Restricted accounts required

(A) In general

Within 90 days after the beginning of each of the fiscal years 1998 through 2002, each guaranty agency shall transfer a portion of the agency’s required share determined under paragraph (3) to a restricted account in accordance with such other payment schedules as are approved by the Secretary.

(B) Requirement

A guaranty agency shall not use the funds in such a restricted account for any purpose without the express written permission of the Secretary, except that a guaranty agency may use the earnings from such restricted account for default reduction activities.

(C) Installments

In each of fiscal years 1998 through 2002, each guaranty agency shall transfer the agency’s required share to such restricted account in 5 equal annual installments, except that—

(i) a guaranty agency that has a reserve ratio (as computed under subparagraph (3)(A)) of or less than 1.10 percent may transfer the agency’s required share to such account in 4 equal installments beginning in fiscal year 1999; and

(ii) a guaranty agency may transfer such required share to such account in accordance with such other payment schedules as are approved by the Secretary.

(5) Shortage

If, on September 1, 2002, the total amount in the restricted accounts described in paragraph (4) is less than the amount the Secretary is required to recall under paragraph (1), the Secretary shall require the return of the amount of the shortage from other reserve funds held by guaranty agencies under procedures established by the Secretary. The Secretary shall first attempt to obtain the amount of such shortage from each guaranty agency that failed to transfer the agency’s required share to the agency’s restricted account in accordance with paragraph (4).

(6) Enforcement

(A) In general

The Secretary may take such reasonable measures, and require such information, as may be necessary to ensure that guaranty agencies comply with the requirements of this subsection.

(B) Prohibition

If the Secretary determines that a guaranty agency has failed to transfer to a restricted account any portion of the agency’s required share under this subsection, the agency may not receive any other funds under this part until the Secretary determines that the agency has so transferred the agency’s required share.

(C) Waiver

The Secretary may waive the requirements of subparagraph (B) for a guaranty agency described in such subparagraph if the Secretary determines that there are extenuating circumstances beyond the control of the agency that justify such waiver.

(7) Limitation

(A) Restriction on other authority

The Secretary shall not have any authority to direct a guaranty agency to return reserve funds under subsection (g)(1)(A) of this section during the period from August 5, 1997, through September 30, 2002.

(B) Use of termination collections

Any reserve funds directed by the Secretary to be returned to the Secretary under
§ 1072

(8) Definitions

(B) Reserve funds

subsection (g)(1)(B) of this section during such period that do not exceed a guaranty agency’s required share of recalled reserve funds under paragraph (3)—

(i) shall be used to satisfy the agency’s required share of recalled reserve funds; and

(ii) shall be deposited in the restricted account established by the agency under paragraph (4), without regard to whether such funds exceed the next installment required under such paragraph.

(C) Use of sanctions collections

Any reserve funds directed by the Secretary to be returned to the Secretary under subsection (g)(1)(C) of this section during such period that do not exceed a guaranty agency’s next installment under paragraph (4)—

(i) shall be used to satisfy the agency’s next installment; and

(ii) shall be deposited in the restricted account established by the agency under paragraph (4).

(D) Balance available to Secretary

Any reserve funds directed by the Secretary to be returned under paragraph (B) or (C) of subsection (g)(1) of this section that remain after satisfaction of the requirements of subparagraphs (B) and (C) of this paragraph shall be deposited in the Treasury.

(i) Additional recall of reserves

(1) In general

Notwithstanding any other provision of law and subject to paragraph (4), the Secretary shall recall, from reserve funds held in the Federal Student Loan Reserve Funds established under section 1072a of this title by guaranty agencies—

(A) $35,000,000 in fiscal year 2002;

(B) $32,500,000 in fiscal year 2006; and

(C) $32,500,000 in fiscal year 2007.

(2) Deposit

Funds recalled by the Secretary under this subsection shall be deposited in the Treasury.

(3) Required share

The Secretary shall require each guaranty agency to return reserve funds under paragraph (1) on the basis of the agency’s required share. For purposes of this paragraph, a guaranty agency’s required share shall be determined as follows:

(A) Equal percentage

The Secretary shall require each guaranty agency to return an amount representing an equal percentage reduction in the amount of reserve funds held by the agency on September 30, 1996.

(B) Calculation

The equal percentage reduction shall be the percentage obtained by dividing—

(i) $250,000,000, by

(ii) the total amount of all guaranty agencies’ reserve funds held on September 30, 1996, less any amounts subject to recall under subsection (h) of this section.

(C) Special rule

Notwithstanding subparagraphs (A) and (B), the percentage reduction under subparagraph (B) shall not result in the depletion of the reserve funds of any agency which charges the 1.0 percent insurance premium pursuant to section 1078(b)(1)(H) of this title below an amount equal to the amount of lender claim payments paid during the 90 days prior to the date of the return under this subsection. If any additional amount is required to be returned after deducting the total of the required shares under subparagraph (B) and as a result of the preceding sentence, such additional amount shall be obtained by imposing on each guaranty agency to which the preceding sentence does not apply, an equal percentage reduction in the amount of the agency’s remaining reserve funds.

(4) Offset of required shares

If any guaranty agency returns to the Secretary any reserve funds in excess of the amount required under this subsection or subsection (h) of this section, the total amount required to be returned under paragraph (1) shall be reduced by the amount of such excess reserve funds returned.
(5) Definition of reserve funds

The term “reserve funds” when used with respect to a guaranty agency—

(A) includes any reserve funds in cash or liquid assets held by the guaranty agency, or held by, or under the control of, any other entity; and

(B) does not include buildings, equipment, or other nonliquid assets.


CODIFICATION

Amendment by Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed to this section as amended by Pub. L. 103–325 and Pub. L. 105–66, to reflect the probable intent of Congress.

PRIOR PROVISIONS


AMENDMENTS


1993—Subsec. (c)(7)(A). Pub. L. 105–244, § 412(2)(B), struck out “during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part C of this subchapter after ’lender-of-last-resort’” after “lender of last resort”.


1989—Subsec. (c)(5), (7). Pub. L. 102–325, § 416(p)(8), substituted “Except as provided in paragraph (7), advances” for “Advances” in par. (5) and added par. (7).

1987—Subsec. (e). Pub. L. 100–203, § 3002(a), struck out subsec. (e) which related to reduction of excess cash reserves.

EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 3002(a) of Pub. L. 100–203 provided that the amendment made by that section 3002(a) is effective Sept. 30, 1989.

§ 1072a. Federal Student Loan Reserve Fund

(a) Establishment

Each guaranty agency shall, not later than 60 days after October 7, 1998, deposit all funds, securities, and other liquid assets contained in the reserve fund established pursuant to section 1072 of this title into a Federal Student Loan Reserve Fund (in this section and section 1072b of this title referred to as the “Federal Fund”), which shall be an account of a type selected by the agency, with the approval of the Secretary.

(b) Investment of funds

Funds transferred to the Federal Fund shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary. Earnings from the Federal Fund shall be the sole property of the Federal Government.

(c) Additional deposits

After the establishment of the Federal Fund, a guaranty agency shall deposit into the Federal Fund—

(1) all amounts received from the Secretary as payment of reinsurance on loans pursuant to section 1078(c)(1) of this title;

(2) from amounts collected on behalf of the obligation of a defaulted borrower, a percentage amount equal to the complement of the reinsurance percentage in effect when payment under the guaranty agreement was made—

(A) with respect to the defaulted loan pursuant to sections 1078(c)(6)(A)1 and 1078–6(a)(1)(B) of this title; and

(B) with respect to a loan that the Secretary has repaid or discharged under section 1087 of this title;

(3) insurance premiums collected from borrowers pursuant to sections 1078(b)(1)(H) and 1078–8(h) of this title;

1 See References in Text note below.
(4) all amounts received from the Secretary as payment for supplemental preclaims activity performed prior to October 7, 1998;

(5) 70 percent of amounts received after October 7, 1998, from the Secretary as payment for administrative cost allowances for loans upon which insurance was issued prior to October 7, 1998; and

(6) other receipts as specified in regulations of the Secretary.

(d) Uses of funds

Subject to subsection (f) of this section, the Federal Fund may only be used by a guaranty agency—

(1) to pay lender claims pursuant to sections 1078(b)(1)(G), 1078(j), and 1087 of this title; and

(2) to pay into the Agency Operating Fund established pursuant to section 1072b of this title (in this section and section 1072b of this title referred to as the “Operating Fund”) a default aversion fee in accordance with section 1078(f) of this title.

(e) Ownership of Federal Fund

The Federal Fund, and any nonliquid asset (such as a building or equipment) developed or purchased by the guaranty agency in whole or in part with Federal reserve funds, regardless of who holds or controls the Federal reserve funds or such asset, shall be considered to be the property of the United States, prorated based on the percentage of such asset developed or purchased with Federal reserve funds, which property shall be used in the operation of the program authorized by this part, as provided in subsection (d) of this section. The Secretary may restrict or regulate the use of such asset only to the extent necessary to reasonably protect the Secretary’s prorated share of the value of such asset. The Secretary may direct a guaranty agency, or such agency’s officers or directors, to cease any activity involving expenditures, use, or transfer of the Federal Fund administered by the guaranty agency that the Secretary determines is a misapplication, misuse, or improper expenditure of the Federal Fund or the Secretary’s share of such asset.

(f) Transition

(1) In general

In order to establish the Operating Fund, each guaranty agency may transfer not more than 180 days’ cash expenses for normal operating expenses (not including claim payments) as a working capital reserve as defined in Office of Management and Budget Circular A–87 (Cost Accounting Standards) from the Federal Fund for deposit into the Operating Fund for use in the performance of the guaranty agency’s duties under this part. Such transfers may occur during the first 3 years following the establishment of the Operating Fund. However, no agency may transfer in excess of 45 percent of the balance, as of September 30, 1998, of the agency’s Federal Fund to the agency’s Operating Fund during such 3-year period. In determining the amount that may be transferred, the agency shall ensure that sufficient funds remain in the Federal Fund to pay lender claims within the required time periods and to meet the reserve recall requirements of this section and subsections (h) and (i) of section 1072 of this title.

(2) Special rule

A limited number of guaranty agencies may transfer interest earned on the Federal Fund to the Operating Fund during the first 3 years after October 7, 1998, if the guaranty agency demonstrates to the Secretary that—

(A) the cash flow in the Operating Fund will be negative without the transfer of such interest; and

(B) the transfer of such interest will substantially improve the financial circumstances of the guaranty agency.

(3) Repayment provisions

Each guaranty agency shall begin repayment of sums transferred pursuant to this subsection not later than the start of the fourth year after the establishment of the Operating Fund, and shall repay all amounts transferred not later than 5 years from the date of the establishment of the Operating Fund. With respect to amounts transferred from the Federal Fund, the guaranty agency shall not be required to repay any interest on the funds transferred and subsequently repaid. The guaranty agency shall provide to the Secretary a reasonable schedule for repayment of the sums transferred and an annual financial analysis demonstrating the agency’s ability to comply with the schedule and repay all outstanding sums transferred.

(4) Prohibition

If a guaranty agency transfers funds from the Federal Fund in accordance with this section, and fails to make scheduled repayments to the Federal Fund, the agency may not receive any other funds under this part until the Secretary determines that the agency has made such repayments. The Secretary shall pay to the guaranty agency any funds withheld in accordance with this paragraph immediately upon making the determination that the guaranty agency has made all such repayments.

(5) Waiver

The Secretary may—

(A) waive the requirements of paragraph (3), but only with respect to repayment of interest that was transferred in accordance with paragraph (2); and

(B) waive paragraph (4);

for a guaranty agency, if the Secretary determines that there are extenuating circumstances (such as State constitutional prohibitions) beyond the control of the agency that justify such a waiver.

(6) Extension of repayment period for interest

(A) Extension permitted

The Secretary shall extend the period for repayment of interest that was transferred in accordance with paragraph (2) from 2 years to 5 years if the Secretary determines that—

(i) the cash flow of the Operating Fund will be negative as a result of repayment as required by paragraph (3);
(ii) the repayment of the interest transferred will substantially diminish the financial circumstances of the guaranty agency; and

(iii) the guaranty agency has demonstrated—

(I) that the agency is able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund; and

(II) that the agency will be financially sound on the completion of repayment.

(B) Repayment of income on transferred funds

All repayments made to the Federal Fund during the 6th, 7th, and 8th years following the establishment of the Operating Fund of interest that was transferred shall include the sums transferred plus any income earned from the investment of the sums transferred after the 5th year.

(7) Investment of Federal funds

Funds transferred from the Federal Fund to the Operating Fund for operating expenses shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary.

(8) Special rule

In calculating the minimum reserve level required by section 1078(c)(9)(A) of this title, the Secretary shall include all amounts owed to the Federal Fund by the guaranty agency in the calculation.


REFERENCES IN TEXT


AMENDMENTS


EFFECTIVE DATE


§ 1072b. Agency Operating Fund

(a) Establishment

Each guaranty agency shall, not later than 60 days after October 7, 1998, establish a fund designated as the Operating Fund.

(b) Investment of funds

Funds deposited into the Operating Fund shall be invested at the discretion of the guaranty agency in accordance with prudent investor standards.

(c) Additional deposits

After the establishment of the Operating Fund, the guaranty agency shall deposit into the Operating Fund—

(1) the loan processing and issuance fee paid by the Secretary pursuant to section 1078(f) of this title;

(2) 30 percent of amounts received after October 7, 1998, from the Secretary as payment for administrative cost allowances for loans upon which insurance was issued prior to October 7, 1998;

(3) the account maintenance fee paid by the Secretary in accordance with section 1087h of this title;

(4) the default aversion fee paid in accordance with section 1078(l) of this title;

(5) amounts remaining pursuant to section 1078(c)(6)(B) of this title from collection on defaulted loans held by the agency, after payment of the Secretary’s equitable share, excluding amounts deposited in the Federal Fund pursuant to section 1072a(c)(2) of this title; and

(6) other receipts as specified in regulations of the Secretary.

(d) Uses of funds

(1) In general

Funds in the Operating Fund shall be used for application processing, loan disbursement, enrollment and repayment status management, default aversion activities (including those described in section 1072(h)(4) of this title), default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other student financial aid related activities, as selected by the guaranty agency.

(2) Special rule

The guaranty agency may, in the agency’s discretion, transfer funds from the Operating Fund to the Federal Fund for use pursuant to section 1072a of this title. Such transfer shall be irrevocable, and any funds so transferred shall become the sole property of the United States.

(3) Definitions

For purposes of this subsection:

(A) Default collection activities

The term “default collection activities” means activities of a guaranty agency that are directly related to the collection of the loan on which a default claim has been paid to the participating lender, including the due diligence activities required pursuant to regulations of the Secretary.

(B) Default aversion activities

The term “default aversion activities” means activities of a guaranty agency that are directly related to providing collection assistance to the lender on a delinquent loan, prior to the loan’s being legally in a default status, including due diligence activities required pursuant to regulations of the Secretary.

(C) Enrollment and repayment status management

The term “enrollment and repayment status management” means activities of a

1 See References in Text note below.
guaranty agency that are directly related to ascertaining the student’s enrollment status, including prompt notification to the lender of such status, an audit of the note or written agreement to determine if the provisions of that note or agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note or agreement to assure that the repayment provisions are consistent with the provisions of this part.

(e) Ownership and regulation of Operating Fund

(1) Ownership

The Operating Fund, with the exception of funds transferred from the Federal Fund in accordance with section 1072a(f) of this title, shall be considered to be the property of the guaranty agency.

(2) Regulation

Except as provided in paragraph (3), the Secretary may not regulate the uses or expenditure of moneys in the Operating Fund, but the Secretary may require such necessary reports and audits as provided in section 1078(b)(2) of this title.

(3) Exception

Notwithstanding paragraphs (1) and (2), during any period in which funds are owed to the Federal Fund as a result of transfer under section 1072a(f) of this title—

(A) moneys in the Operating Fund may only be used for expenses related to the student loan programs authorized under this part; and

(B) the Secretary may regulate the uses or expenditure of moneys in the Operating Fund.

§1073. Effects of adequate non-Federal programs

(a) Federal insurance barred to lenders with access to State or private insurance

Except as provided in subsection (b) of this section, the Secretary shall not issue certificates of insurance under section 1079 of this title to a lender in a State—

(1) for insurance of a loan made to a student borrower who does not, by reason of the borrower’s residence, have access to loan insurance under the loan insurance program of such State (or under any private nonprofit loan insurance program which has received approval under section 1072 of this title for the benefit of students in such State); or

(2) for insurance of all the loans made to student borrowers by a lender who satisfies the Secretary that, by reason of the residence of such borrowers, such lender will not have access to any single State or nonprofit private loan insurance program which will insure substantially all of the loans such lender intends to make to such student borrowers; or

(3) under such circumstances as may be approved by the guaranty agency in such State, for the insurance of a loan to a borrower for whom such lender previously was issued such a certificate if the loan covered by such certificate is not yet repaid.


§1074. Scope and duration of Federal loan insurance program

(a) Limitations on amounts of loans covered by Federal insurance

The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 1065 of this title) to students covered by Federal loan insurance under this part shall not exceed $2,000,000,000 for the period from July 1, 1976, to September 30, 1976, for each of the succeeding fiscal years ending prior to October 1, 2009, and for the period from October 1, 2009, to June 30, 2010, for loans first disbursed on or before June 30, 2010.

(b) Apportionment of amounts

The Secretary may, if he or she finds it necessary to do so in order to assure an equitable distribution of the benefits of this part, assign, within the maximum amounts specified in subsection (a) of this section, Federal loan insurance quotas applicable to eligible lenders, or to States or areas, and may from time to time reassign unused portions of these quotas.


AMENDMENTS

2010—Subsec. (a). Pub. L. 111–152 substituted “September 30, 1976, for each of the succeeding fiscal years ending prior to October 1, 2009, and for the period from October 1, 2009, to June 30, 2010, for loans first disbursed on or before June 30, 2010,” for “September 30, 1976, and for each of the succeeding fiscal years ending prior to October 1, 2014. Thereafter, Federal loan insurance pursuant to this part may be granted only for loans made after October 1, 2014.”


2010 amendments apply to loans first disbursed on or after July 1, 2010, and to new loans under Federal loan insurance program, except as otherwise provided, see section 1001(c) of Pub. L. 111–152, set out as a note under section 1002 of this title.

1992 amendments apply to new loans under Federal loan insurance program, except as otherwise provided, see section 8001(c) of Pub. L. 102–325, set out as a note under section 8002 of this title.

§1075. Limitations on individual federally insured loans and on Federal loan insurance

(a) Annual and aggregate limits

(1) Annual limits

(A) The total of loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this part may not exceed—

(i) in the case of a student at an eligible institution who has not successfully completed the first year of a program of undergraduate education—

(I) $5,500, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1088 of this title); and

(II) if such student is enrolled in a program of undergraduate education which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as the length of such program measured in semester, trimester, quarter, or clock hours bears to one academic year;

(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

(I) $4,500; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

(iii) in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education but has not successfully completed the remainder of such program—

(I) $5,500; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year; and

(iv) in the case of a graduate or professional student (as defined in regulations of the Secretary) at an eligible institution, $8,500.

(B) The annual insurable limits contained in subparagraph (A) shall not apply in cases where the Secretary determines, pursuant to regulations, that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education. The annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

(C) For the purpose of subparagraph (A), the number of years that a student has completed in a program of undergraduate education shall include any prior enrollment in an eligible program of undergraduate education for which the student was awarded an associate or baccalaureate degree, if such degree is required by the institution for admission to the program in which the student is enrolled.
(2) Aggregate limits

(A) The aggregate insured unpaid principal amount for all such insured loans made to any student shall not at any time exceed—

(i) $23,000, in the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under section 1078–1 or 1078–2 of this title; and

(ii) $65,500, in the case of any graduate or professional student (as defined by regulations of the Secretary) and (I) including any loans which are insured by the Secretary under this section, or by a guaranty agency, made to such student before the student became a graduate or professional student),2 but (II) excluding loans made under section 1078–1 or 1078–2 of this title,

except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive.

(B) The Secretary may increase the aggregate insurable limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive.

(b) Level of insurance coverage based on default rate

(1) Reduction for defaults in excess of 5 or 9 percent

(A) Except as provided in subparagraph (B), the insurance liability on any loan insured by the Secretary under this part shall be 100 percent of the unpaid balance of the principal amount of the loan plus interest, except that—

(i) if, for any fiscal year, the total amount of payments under section 1080 of this title by the Secretary to any eligible lender as described in section 1085(d)(1)(D) of this title exceeds 5 percent of the sum of the loans made by such lender which are insured by the Secretary and which were in repayment at the end of the preceding fiscal year, the insurance liability under this subsection for that portion of such excess which represents loans insured after the applicable date with respect to such loans, as determined under subparagraph (C), shall be equal to 80 percent of the amount of such excess.

(ii) if, for any fiscal year, the total amount of such payments to such a lender exceeds 9 percent of such sum, the insurance liability under this subsection for that portion of such excess which represents loans insured after the applicable date with respect to such loans, as determined under subparagraph (C), shall be equal to 70 percent of the amount of such excess.

(B) Notwithstanding subparagraph (A), the provisions of clauses (i) and (ii) of such subparagraph shall not apply to an eligible lender as described in section 1085(d)(1)(D) of this title for the fiscal year in which such lender begins to carry on a loan program insured by the Secretary, or for any of the 4 succeeding fiscal years.

(C) The applicable date with respect to a loan made by an eligible lender as described in section 1085(d)(1)(D) of this title shall be—

(i) the 90th day after the adjournment of the next regular session of the appropriate State legislature which convenes after October 12, 1976, or

(ii) if the primary source of lending capital for such lender is derived from the sale of bonds, and the constitution of the appropriate State prohibits a pledge of such State's credit as security against such bonds, the day which is one year after such 90th day.

(2) Computation of amounts in repayment

For the purpose of this subsection, the sum of the loans made by a lender which are insured by the Secretary and which are in repayment shall be the original principal amount of loans made by such lender which are insured by the Secretary reduced by—

A) the amount the Secretary has been required to pay to discharge his or her insurance obligations under this part;

(B) the original principal amount of loans insured by the Secretary which have been fully repaid;

(C) the original principal amount insured on those loans for which payment of first installment of principal has not become due pursuant to section 1077(a)(2)(D) of this title or such first installment need not be paid pursuant to section 1077(a)(2)(C) of this title; and

(D) the original principal amount of loans repaid by the Secretary under section 1087 of this title.

(3) Payments to assignees

For the purpose of this subsection, payments by the Secretary under section 1080 of this title to an assignee of the lender with respect to a loan shall be deemed payments made to such lender.

(4) Pledge of full faith and credit

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the provisions of section 1080 or 1087 of this title.


References in Text


Prior Provisions


AMENDMENTS


1992—Subsec. (a)(1)(A)(ii)(I), (III). Pub. L. 105–244, §415(1)(B), added subcl. (II) and struck out former subcls. (II) and (III) which read as follows: “(II) $1,750, if such student is enrolled in a program whose length is less than 2⁄3, but at least 2⁄3, of such an academic year; and

(III) $3,500, in the case of any graduate or professional student)’’. Subsec. (a)(1)(A)(ii)(II). Pub. L. 105–244, §415(2), added subcl. (II) and struck out former subcls. (I), (II), and (III) which read as follows: “(I) $3,500, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1086 of this title); and

(II) $2,625, if such student is enrolled in a program whose length is less than one academic year, but at least 2⁄3 of such an academic year; and

(III) $1,825, if such student is enrolled in a program whose length is less than 2⁄3, but at least 2⁄3, of such an academic year;’’.

1990—Subsec. (a)(1)(A)(iv). Pub. L. 101–300, §2(c)(2)(A), added cls. (i) and (ii) which read as follows: “(i) $7,500, in the case of an academic year; and

(ii) $1,825, if such student is enrolled in a program whose length is less than 2⁄3, but at least 2⁄3, of such an academic year; and

(III) $1,825, if such student is enrolled in a program whose length is less than 2⁄3, but at least 2⁄3, of such an academic year;’’.


EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VIII, §8006(e), Feb. 8, 2006, 120 Stat. 159, provided that: “The amendments made by subsections (a), (b), and (d) [amending this section and sections 1078 and 1078–8 of this title] shall be effective July 1, 2007.”

EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1993 AMENDMENT


EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, with changes made in subsec. (a), relating to annual and aggregate loan limits, applicable with respect to loans for which first disbursement is made on or after July 1, 1993, except that changes made in subsec. (a)(1)(A) applicable with respect to loans for which first disbursement is made on or after Oct. 1, 1992, and except that changes made in subsec. (a)(1)(A)(iv) applicable with respect to loans to cover costs of instruction for periods of enrollment beginning on or after Oct. 1, 1993, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT


EFFECTIVE DATE

Section effective Oct. 17, 1986, except that subsection (a) of this section applicable only to loans disbursed on or after Jan. 1, 1987, or made to cover the costs of instruction for periods of enrollment beginning on or after Jan. 1, 1987, see section 402(b) of Pub. L. 99–498, set out as a note under section 1071 of this title.

§1076. Sources of funds

Loans made by eligible lenders in accordance with this part shall be insured by the Secretary whether made from funds fully owned by the lender or from funds held by the lender in a trust or similar capacity and available for such loans.


PRIOR PROVISIONS

§ 1077. Eligibility of student borrowers and terms of federally insured student loans

(a) List of requirements

Except as provided in section 1078–3 of this title, a loan by an eligible lender shall be insurable by the Secretary under the provisions of this part only if—

1. made to a student who (A) is an eligible student under section 1091 of this title, (B) has agreed to notify promptly the holder of the loan concerning any change of address, and (C) is carrying at least one-half the normal full-time academic workload for the course of study the student is pursuing (as determined by the institution); and

2. evidenced by a note or other written agreement which—
   (A) is made without security and without endorsement;
   (B) provides for repayment (except as provided in subsection (c) of this section) of the principal amount of the loan in installments over a period of not less than 5 years (unless sooner repaid or unless the student, during the 6 months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years beginning 6 months after the month in which the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution, except—
      (i) as provided in subparagraph (C);
      (ii) that the note or other written instrument may contain such reasonable provisions relating to repayment in the event of default in the payment of interest or in the payment of the cost of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary; and
      (iii) that the lender and the student, after the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution, may agree to a repayment schedule which begins earlier, or is of shorter duration, than required by this subparagraph, but in the event a borrower has requested and obtained a repayment period of less than 5 years, the borrower may at any time prior to the total repayment of the loan, have the repayment period extended so that the total repayment period is not less than 5 years;

(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period—
   (i) during which the borrower—
       (I) is pursuing at least a half-time course of study as determined by an eligible institution; or
       (II) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,

       except that no borrower shall be eligible for a deferment under this clause, or a loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program;

   (ii) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment; or

   (iii) not in excess of 3 years for any reason which the lender determines, in accordance with regulations prescribed by the Secretary under section 1085(o) of this title, has caused or will cause the borrower to have an economic hardship:

   and provides that any such period shall not be included in determining the 10-year period described in subparagraph (B);

   (D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed in section 1077a of this title, which interest shall be payable in installments over the period of the loan except that, if provided in the note or other written agreement, any interest payable by the student may be deferred until not later than the date upon which repayment of the first installment of principal falls due, in which case interest accrued during that period may be added on that date to the principal;

   (E) provides that the lender will not collect or attempt to collect from the borrower any portion of the interest on the note which is payable by the Secretary under this part, and that the lender will enter into such agreements with the Secretary as may be necessary for the purpose of section 1087 of this title;

   (F) entitles the student borrower to accelerate without penalty repayment of the whole or any part of the loan;

   (G)(i) contains a notice of the system,1 of disclosure of information concerning such loan to consumer reporting agencies under section 1060a of this title, and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such consumer reporting agencies;

   (H) provides that, no more than 6 months prior to the date on which the borrower’s first payment on a loan is due, the lender shall offer the borrower the option of repaying the loan in accordance with a graduated or income-sensitive repayment schedule established by the lender and in accordance with the regulations of the Secretary; and

   (I) contains such other terms and conditions, consistent with the provisions of this part and with the regulations issued by the Secretary pursuant to this part, as may be

1 So in original. The comma probably should not appear.
agreed upon by the parties to such loan, including, if agreed upon, a provision requiring the borrower to pay the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan;

(3) the funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except—

(A) that nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted—

(i) to allow the Secretary to require checks to be made co-payable to the institution and the borrower; or

(ii) to prohibit the disbursement of loan proceeds by means other than by check; and

(B) in the case of any student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled, the funds shall, at the request of the borrower, be delivered directly to the student and the checks may be endorsed, and fund transfers authorized, pursuant to an authorized power-of-attorney; and

(4) the funds borrowed by a student are disbursed in accordance with section 1078-7 of this title.

(b) Special rules for multiple disbursement

For the purpose of subsection (a)(4) of this section—

(1) all loans issued for the same period of enrollment shall be considered as a single loan; and

(2) the requirements of such subsection shall not apply in the case of a loan made under section 1078-2 or 1078-3 of this title, or made to a student to cover the cost of attendance at an eligible institution outside the United States.

(c) Special repayment rules

Except as provided in subsection (a)(2)(H) of this section, the total of the payments by a borrower during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this part shall not, unless the borrower and the lender otherwise agree, be less than $600 or the balance of all such loans (together with interest thereon), whichever amount is less (but in no instance less than the amount of interest due and payable).

(d) Borrower information

The lender shall obtain the borrower’s driver’s license number, if any, at the time of application for the loan.


PRIOR PROVISIONS


AMENDMENTS


1992—Subsec. (a)(2)(A). Pub. L. 102–325, § 414(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “is made without security and without endorsement, except that prior to making a loan insurable by the Secretary under this part a lender shall—

‘‘(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

‘‘(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain an credit worthy cosigner in order to obtain the loan, provided that, for purposes of this inscription, an insufficient or non-existent credit history may not be considered to be an adverse credit history:’’.

Subsec. (a)(2)(C), Pub. L. 102–325, § 414(b), added subpar. (C) generally, revising and restating as cls. (i) to (III) provisions formerly contained in cls. (i) to (x). Subsec. (a)(2)(G) to (I), Pub. L. 102–325, § 414(c)(1), struck out “and” at end of subpar. (G), added subpar. (H), and redesignated former subpar. (H) as (I).

Subsec. (a)(3), Pub. L. 102–325, § 414(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “the funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower; or

Subsec. (c), Pub. L. 102–325, § 414(c)(2), (e), substituted “Minimum repayment rate’’ in heading and in text “except as provided in subsection (a)(2)(H) of this section, the total” for “The total” and “but in no instance less than the amount of
interest due and payable”) for “except that in the case of a husband and wife, both of whom have such loans outstanding, the total of the combined payments for such a couple during any year shall not be less than $600 or the balance of all such loans, whichever is less.

1991—Subsec. (a)(2)(A). Pub. L. 102–164, § 606(a), amended subsec. (A) generally. Prior to amendment, subsec. (A) read as follows—"(A) generally. Prior to amendment, any borrower would not, under the applicable law, create a binding obligation, endorsement may be required.

Subsec. (d). Pub. L. 102–164, § 606(a), added subsec. (d), inserted before semicolon at end “except that no borrower shall be eligible for a deferment under this subsection, or a loan made under this part (other than a loan made under section 1993, to an individual who is a new borrower on date which first disbursement is made on or after July 1, 1993, except that changes made in subsec. (a)(2)(C), relating to offering a borrower under section 427(a)(2)(C)(v), 428(b)(1)(B)(iv), or 464(c)(2)(A)(i) of the Higher Education Act of 1965 (sections 1077(a)(2)(C)(v), 1078(b)(1)(B)(iv), and 1078(d)(2)(A)(i) of this title) for service in a medical internship or residency program that is completed prior to the effective date of this section [Dec. 19, 1968]."

Subsec. (a)(4). Pub. L. 101–239, § 2004(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows—“in the case of any loan made for any period of enrollment that ends more than 180 days (or 6 months) after the date disbursement is scheduled to occur, and for an amount of $1,000 or more, the proceeds of the loan will, subject to subsection (b) of this section, be disbursed directly by the lender in two or more installments, none of which exceeds one-half of the loan, with the second installment being disbursed after not less than one-third of such period (except as necessary to permit the second installment to be disbursed at the beginning of the second semester, quarter, or similar division of such period of enrollment).”


Subsec. (b)(2). Pub. L. 100–369, § 5(b)(1), substituted “service” for “service”.

Subsec. (b)(2). Pub. L. 100–369, § 5(b)(1), substituted “service” for “service”.


Subsec. (a)(2)(C)(vii). Pub. L. 100–50, § 10(b)(2), inserted “or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers undergraduate training” before semicolon at end.

Subsec. (a)(4). Pub. L. 100–50, § 10(c), substituted ‘‘$1,000 or more’’ for ‘‘more than $1,000’’.

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.

Effective Date of 1992 Amendment
Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in subsec. (a)(2)(C), relating to deferments, applicable with respect to loans for which first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on date such individual applies for a loan, and except that changes made in subsec. (a)(2)(H), relating to offering graduated or income sensitive repayment options, applicable with respect to loans for which first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on date such individual applies for a loan, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

Effective Date of 1989 Amendment
Section 2002(a)(4) of Pub. L. 101–239 provided that: ‘‘The amendments made by this subsection [amending this section and sections 1078 and 1078a of this title] shall apply to any loan made, insured, or guaranteed under part B or part E of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq., 1071a et seq., including a loan made before the enactment of this Act [Dec. 19, 1968]], and shall take effect on January 1, 1990, except that such amendments shall not apply with respect to any portion of a second disbursement granted to a borrower under section 427(a)(2)(C)(v), 428(b)(1)(B)(iv), or 464(c)(2)(A)(i) of the Higher Education Act of 1965 (sections 1077(a)(2)(C)(v), 1078(b)(1)(B)(iv), and 1078(d)(2)(A)(i) of this title) for service in a medical internship or residency program that is completed prior to the effective date of this section [Dec. 19, 1968].’’

Effective Date of 1988 Amendment
Section 11(b) of Pub. L. 100–369 provided that: ‘‘The amendments made by subsection (a) [amending this section and section 1078 of this title] and section 10(b) of the Higher Education Technical Amendments Act of 1987 [section 10(b) of Pub. L. 100–50, amending this section and section 1078 of this title] shall apply with respect to loans made, insured or guaranteed under part B of the Higher Education Act of 1965 [probably means part B of title IV of Pub. L. 99–398 which is classified to this part], on, before, or after the date of enactment of the Higher Education Technical Amendments Act of 1987 [June 3, 1987].’’

Amendment by section 5(b)(1) of Pub. L. 100–369 effective with respect to loans made on or after Oct. 1, 1988, and amendment by section 7(c) of Pub. L. 100–369 effective July 18, 1988, see section 13(b) of Pub. L. 100–369, set out as a note under section 1001 of this title.

Effective Date of 1987 Amendment
Amendment by section 10(b) of Pub. L. 100–50 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 11(b) of Pub. L. 100–369, set out as an Effective Date of 1988 Amendment note above.


Effective Date
Section effective Oct. 17, 1986, except that subsec. (a)(2)(C) (other than cls. (viii), (ix), and (x) thereof) of this section shall apply only to loans to new borrowers made to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1981.

§ 1077a. Applicable interest rates
(a) Rates to be consistent for borrower’s entire debt

With respect to any loan to cover the cost of instruction for any period of instruction beginning on or after January 1, 1981, the rate of interest applicable to any borrower shall—

(1) not exceed 7 percent per year on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has an outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, for which the interest rate does not exceed 7 percent;
(2) except as provided in paragraph (3), be 9 percent per year on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has no outstanding balance of principal or interest on any loan described in paragraph (1) or any loan for which the interest rate is determined under paragraph (1); or

(3) be 8 percent per year on the unpaid principal balance of the loan for a loan to cover the cost of education for any period of enrollment beginning on or after a date which is 3 months after a determination made under subsection (b) of this section in the case of any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan for which the interest rate is determined under paragraph (1) or (2) of this subsection.

(b) Reduction for new borrowers after decline in Treasury bill rates

If for any 12-month period beginning on or after January 1, 1981, the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period is equal to or less than 9 percent, the interest rate for loans under this part shall be the rate prescribed in subsection (a) of this section for borrowers described in such subsection.

(c) Rates for supplemental loans for students and loans for parents

(1) In general

Except as otherwise provided in this subsection, the applicable rate of interest on loans made pursuant to section 1078–1 of 1078–2 of this title on or after October 1, 1981, shall be 14 percent per year on the unpaid principal balance of the loan.

(2) Reduction of rate after decline in Treasury bill rates

If for any 12-month period beginning on or after October 1, 1981, the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period is equal to or less than 14 percent, the applicable rate of interest on loans made pursuant to section 1078–1 or 1078–2 of this title on and after the first day of the first month beginning after the date of publication of such determination shall be 12 percent per year on the unpaid principal balance of the loan.

(3) Increase of rate after increase in Treasury bill rates

If for any 12-month period beginning on or after the date of publication of a determination under paragraph (2), the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period exceeds 14 percent, the applicable rate of interest for loans made pursuant to section 1078–1 or 1078–2 of this title on and after the first day of the first month beginning after the date of publication of that determination under this paragraph shall be 14 percent per year on the unpaid principal balance of the loan.

(4) Availability of variable rates

(A) For any loan made pursuant to section 1078–1 or 1078–2 of this title and disbursed on or after July 1, 1987, or any loan made pursuant to such section prior to such date that is refinanced pursuant to section 1078–1(d) or 1078–2(d) of this title, the applicable rate of interest during any 12-month period beginning on July 1 and ending on June 30 shall be determined under subparagraph (B), except that such rate shall not exceed 12 percent.

(B)(i) For any 12-month period beginning on July 1 and ending on or before June 30, 2001, the rate determined under this subparagraph is determined on the preceding June 1 and is equal to—

(I) the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1; plus

(II) 3.25 percent.

(ii) For any 12-month period beginning on July 1 of 2001 or any succeeding year, the rate determined under this subparagraph is determined on the preceding June 26 and is equal to—

(I) the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus

(II) 3.25 percent.

(C) The Secretary shall determine the applicable rate of interest under subparagraph (B) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(D) Notwithstanding subparagraph (A)—

(i) for any loan made pursuant to section 1078–1 of this title for which the first disbursement is made on or after October 1, 1992—

(I) subparagraph (B) shall be applied by substituting "3.1" for "3.25"; and

(II) the interest rate shall not exceed 11 percent; and

(ii) for any loan made pursuant to section 1078–2 of this title for which the first disbursement is made on or after October 1, 1992—

(I) subparagraph (B) shall be applied by substituting "3.1" for "3.25"; and

(II) the interest rate shall not exceed 10 percent.

(E) Notwithstanding subparagraphs (A) and (D) for any loan made pursuant to section 1078–2 of this title for which the first disbursement is made on or after July 1, 1994—

(i) subparagraph (B) shall be applied by substituting "3.1" for "3.25"; and

(ii) the interest rate shall not exceed 9 percent.

1See References in Text note below.
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(d) Interest rates for new borrowers after July 1, 1988

Notwithstanding subsections (a) and (b) of this section, with respect to any loan (other than a loan made pursuant to sections 1078–1, 1078–2, and 1078–3 of this title) to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1988, to any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, the applicable rate of interest shall be—

(1) 8 percent per year on the unpaid principal balance of the loan during the period beginning on the date of the disbursement of the loan and ending 4 years after the commencement of repayment; and

(2) 10 percent per year on the unpaid principal balance of the loan during the remainder of the repayment period.

(e) Interest rates for new borrowers after October 1, 1992

(1) In general

Notwithstanding subsections (a), (b), and (d) of this section, with respect to any loan (other than a loan made pursuant to sections 1078–1, 1078–2 and 1078–3 of this title) for which the first disbursement is made on or after October 1, 1992, to any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under section 1077, 1078, or 1078–8 of this title, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 3.10 percent,

except that such rate shall not exceed 9 percent.

(2) Consultation

The Secretary shall determine the applicable rate of interest under paragraph (1) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(f) Interest rates for new loans after July 1, 1994

(1) In general

Notwithstanding subsections (a), (b), (d), and (e) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 3.10 percent,

except that such rate shall not exceed 8.25 percent.

(2) Consultation

The Secretary shall determine the applicable rate of interest under paragraph (1) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(g) In school and grace period rules

(1) General rule

Notwithstanding the provisions of subsection (f) of this section, but subject to subsection (h) of this section, with respect to any loan under section 1078 or 1078–8 of this title for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest which accrues—

(A) prior to the beginning of the repayment period of the loan; or

(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title,

shall not exceed the rate determined under paragraph (2).

(2) Rate determination

For purposes of paragraph (1), the rate determined under this paragraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

(B) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

(3) Consultation

The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(h) Interest rates for new loans after July 1, 1998

(1) In general

Notwithstanding subsections (a), (b), (d), (e), (f), and (g) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to sections 1078–2 and 1078–3 of this title) for which the first disbursement is made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of the securities with a comparable maturity as established by the Secretary; plus

(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

(2) Interest rates for new PLUS loans after July 1, 1998

Notwithstanding subsections (a), (b), (d), (e), (f), and (g) of this section, with respect to any
(i) Treatment of excess interest payments on new borrower accounts resulting from decline in Treasury bill rates

(1) Excess interest on 10 percent loans

If, with respect to a loan for which the applicable interest rate is 10 percent under subsection (d) of this section at the close of any calendar quarter, the sum of the average of the bond equivalent rates of 91-day Treasury bills auctioned for that quarter and 3.25 percent is less than 10 percent, then an adjustment shall be made to a borrower’s account—

(A) by calculating excess interest in the amount computed under paragraph (2) of this subsection; and

(B) (i) during any period in which a student is eligible to have interest payments paid on his or her behalf by the Government pursuant to section 1078(a) of this title, by crediting the excess interest to the Government; or

(ii) during any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (5) of this subsection.

(2) Amount of adjustment for 10 percent loans

The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

(A) 10 percent minus the sum of (i) the average of the bond equivalent rates of 91-day Treasury bills auctioned for such calendar quarter, and (ii) 3.25 percent; multiplied by

(B) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(C) four.

(3) Excess interest on loans after 1992 amendments, to borrowers with outstanding balances

If, with respect to a loan made on or after July 23, 1992, to a borrower, who on the date of entering into the note or other written evidence of the loan, has an outstanding balance of principal or interest on any other loan made, insured, or guaranteed under this part, the sum of the average of the bond equivalent rates of 91-day Treasury bills auctioned for that quarter and 3.1 percent is less than the applicable interest rate, then an adjustment shall be made—

(A) by calculating excess interest in the amount computed under paragraph (4) of this subsection; and

(B) (i) during any period in which a student is eligible to have interest payments paid on his or her behalf by the Government pursuant to section 1078(a) of this title, by crediting the excess interest to the Government; or

(ii) during any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (5) of this subsection.

(4) Amount of adjustment

The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

(A) the applicable interest rate minus the sum of (i) the average of the bond equivalent rates of 91-day Treasury bills auctioned for such calendar quarter, and (ii) 3.1 percent; multiplied by

(B) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(C) four.

(5) Annual adjustment of interest and borrower eligibility for credit

Any adjustment amount computed pursuant to paragraphs (2) and (4) of this subsection for any quarter shall be credited, by the holder of the loan on the last day of the calendar year in which such quarter falls, to the loan account of the borrower so as to reduce the principal balance of such account. No such credit shall be made to the loan account of a borrower who on the last day of the calendar year is delinquent for more than 30 days in making a required payment on the loan, but the excess interest shall be calculated and credited to the Secretary. Any credit which is to be made to a borrower’s account pursuant to this subsection shall be made effective commencing no later than 30 days following the last day of the calendar year in which the quarter falls for which the credit is being made. Nothing in this subsection shall be construed to require refunding any repayment of a loan. At the option of the lender, the amount of such adjustment may be distributed to the borrower either by reduction in the amount of the periodic payment on loan, by reducing the number of payments that shall be made with respect to the loan, or by reducing the amount of the final payment of the loan. Nothing in this paragraph shall be construed to require the lender to make additional disclosures pursuant to section 1083(b) of this title.

(6) Publication of Treasury bill rate

For the purpose of enabling holders of loans to make the determinations and adjustments provided for in this subsection, the Secretary shall for each calendar quarter commencing with the quarter beginning on July 1, 1967, publish a notice of the average of the bond equivalent rates of 91-day Treasury bills auctioned for such quarter. Such notice shall be published not later than 7 days after the end of the quarter to which the notice relates.
(7) Conversion to variable rate

(A) Subject to subparagraphs (C) and (D), a lender or holder shall convert the interest rate on a loan that is made pursuant to this part and is subject to the provisions of this subsection to a variable rate. Such conversion shall occur not later than January 1, 1995, and, commencing on the date of conversion, the applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 shall be determined by the Secretary on the June 1 preceding each such 12-month period and be equal to the sum of (i) the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to such June 1; and (ii) 3.25 percent in the case of loans described in paragraph (1), or 3.10 percent in the case of loans described in paragraph (3).

(B) In connection with the conversion specified in subparagraph (A) for any period prior to such conversion, and subject to paragraphs (C) and (D), a lender or holder shall convert the interest rate to a variable rate on a loan that is made pursuant to this part and is subject to the provisions of this subsection to a variable rate. The interest rates for such period shall be reset on a quarterly basis and the applicable interest rate for any quarter or portion thereof shall equal the sum of (i) the average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period, and (ii) 3.25 percent in the case of loans described in paragraph (1) or 3.10 percent in the case of loans described in paragraph (3). The rebate of excess interest derived through the adjustment otherwise provided for under this part shall be provided to the borrower as specified in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title.

(C) A lender or holder of a loan being converted pursuant to this paragraph shall complete such conversion on or before January 1, 1995. The lender or holder shall notify the borrower that the loan shall be converted to a variable interest rate and provide a description of the rate to the borrower not later than 30 days prior to the conversion. The notice shall advise the borrower that such rate shall be calculated in accordance with the procedures set forth in this paragraph and shall provide the borrower with a substantially equivalent benefit as the adjustment otherwise provided for under this subsection. Such notice may be incorporated into the disclosure required under section 1083(b) of this title if such disclosure has not been previously made.

(D) The interest rate on a loan converted to a variable rate pursuant to this paragraph shall not exceed the maximum interest rate applicable to the loan prior to such conversion.

(E) Loans on which the interest rate is converted in accordance with paragraph (A) or (B) shall not be subject to any other provisions of this subsection.

(j) Interest rates for new loans between July 1, 1998, and October 1, 1998

(1) In general

Notwithstanding subsection (h) of this section, with respect to any loan under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 2.3 percent

except that such rate shall not exceed 8.25 percent.

(2) In school and grace period rules

Notwithstanding subsection (h) of this section, with respect to any loan under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest for interest which accrues—

(A) prior to the beginning of the repayment period of the loan; or

(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title,

shall be determined under paragraph (1) by substituting “1.7 percent” for “2.3 percent”.

(3) PLUS loans

Notwithstanding subsection (h) of this section, with respect to any loan under section 1078–2 of this title for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the lesser of—

(A)(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 3.1 percent; or

(B) 9.0 percent.

(4) Consultation

The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

(k) Interest rates for new loans on or after October 1, 1998, and before July 1, 2006

(1) In general

Notwithstanding subsection (h) of this section and subject to paragraph (2) of this subsection, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2 or 1078–3 of this title) for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be deter-
Interest rates for new loans on or after July 1, 2006, and before July 1, 2010, the applicable rate of interest is made on or after July 1, 2006, and before July 1, 2010, the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

(2) PLUS loans
Notwithstanding subsection (h) of this section, with respect to any loan under section 1078–2 of this title for which the first disbursement is made on or after July 1, 2006, and before July 1, 2010, the applicable rate of interest shall be 8.5 percent on the unpaid principal balance of the loan.

(3) Consolidation loans
With respect to any consolidation loan under section 1078–3 of this title for which the application is received by an eligible lender on or after July 1, 2006, and that was disbursed before July 1, 2010, the applicable rate of interest shall be at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—
(A) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of 1 percent; or
(B) 8.25 percent.

(4) Reduced rates for undergraduate subsidized loans
Notwithstanding subsection (h) and paragraph (1) of this subsection, with respect to any loan to an undergraduate student made, insured, or guaranteed under this part (other than a loan made pursuant to section 1078–2, 1078–3, or 1078–8 of this title) for which the first disbursement is made on or after July 1, 2006, and before July 1, 2010, the applicable rate of interest shall be as follows:
(A) For a loan for which the first disbursement is made on or after July 1, 2006, and before July 1, 2008, 6.8 percent on the unpaid principal balance of the loan.
(B) For a loan for which the first disbursement is made on or after July 1, 2008, and before July 1, 2009, 6.0 percent on the unpaid principal balance of the loan.
(C) For a loan for which the first disbursement is made on or after July 1, 2009, and before July 1, 2010, 5.6 percent on the unpaid principal balance of the loan.

(m) Lesser rates permitted
Nothing in this section or section 1078–3 of this title shall be construed to prohibit a lender from charging a borrower interest at a rate less than the rate which is applicable under this part.

(n) Definitions
For the purpose of subsections (a) and (d) of this section—
(1) the term “period of instruction” shall, at the discretion of the lender, be any academic year, semester, trimester, quarter, or other academic period; or shall be the period for which the loan is made as determined by the institution of higher education; and
(2) the term “period of enrollment” shall be the period for which the loan is made as determined by the institution of higher education and shall coincide with academic terms such as academic year, semester, trimester, quarter, or other academic period as defined by such institution.
under this subparagraph is determined on the preceding
June 1, and is equal to—

July 1 and ending on June 30, the rate determined
read as follows: "For any 12-month period beginning on
July 1, 2006,''.

paragraph (5) of this subsection. See Codification note
above.

"average daily principal balance" for "outstanding
principal balance" and "during" for "at the end of". See
Codification note above.

"average daily principal balance" for "outstanding
principal balance" and "during" for "at the end of". See
Codification note above.

Subsec. (j)(5). Pub. L. 103–208, § 2(c)(9)(A)(i), (B), sub-
stituted "paragraphs (2) and (4)" for "paragraph (2)" in
first sentence and inserted "— but the excess interest
shall be calculated and credited to the Secretary" after
"required payment on the loan" in second sentence.
See Codification note above.

Subsec. (j)(6). Pub. L. 103–208, § 2(c)(8), substituted
"average daily principal balance" for "outstanding
principal balance" and "during" for "at the end of". See
Codification note above.

Subsecs. (j), (k). Pub. L. 103–66, § 4101(2), redesignated
subsecs. (g) and (h) as (j) and (k), respectively.

subpar. (D).

(d).

Amendments

1991—Subsec. (k). Former subsec. (k) redesignated (l),

Subsec. (b). Pub. L. 102–325, § 415(b), amended par. (1) heading
and substituted "paragraph (5)" for "paragraph (3)" in par.
(1)(B), amended par. (2) heading, added pars. (3) and (4),
designated former par. (3) as (5), struck out "or" before
"by reducing the number" and inserted "— but the excess
interest shall be calculated and credited to the Secretary" after
"required payment on the loan" in second sentence.

Subsecs. (f) to (h). Pub. L. 103–208, § 415(c)(1), redesignated
subsecs. (e) to (g) as (f) to (h), respectively.

designated former subsec. (c) as (d), redesignated former subsec.
(d) as (c), and inserted "— but the excess interest shall be
calculated and credited to the Secretary" after "required
payment on the loan" in second sentence.

(B) and struck out former subpar. (B) which
read as follows: ‘For any calendar year, the rate determined under this subparagraph is determined on December 15 preceding such calendar year and is equal to—

“(i) the average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12 months ending on November 30 preceding such calendar year; plus

“(ii) 3.75 percent.’

**Effective Date of 2007 Amendment**

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1108(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

**Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

**Effective Date of 1998 Amendment**

Pub. L. 105–244, title IV, §416(c), Oct. 7, 1998, 112 Stat. 1682, provided that: ‘The amendments made by this section (amending this section and sections 1078–2, 1078–3, and 1087–1 of this title) shall apply with respect to any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] for which the first disbursement is made on or after October 1, 1998, and before July 1, 2003, except that such amendments shall apply with respect to any loan made under section 428C of such Act [20 U.S.C. 1078–3] for which the application is received by an eligible lender on or after October 1, 1998, and before July 1, 2003.’

**Effective Date of 1993 Amendment**

Amendment by section 2(c)(5) of Pub. L. 103–208 effective on and after Dec. 20, 1993, and amendment by section 2(c)(6)–(10) of Pub. L. 103–208 effective, except as otherwise provided, as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, see section 5(a), (b)(2) of Pub. L. 103–208, set out as a note under section 1051 of this title.

**Effective Date of 1987 Amendment**


**§1078. Federal payments to reduce student interest costs**

**(a) Federal interest subsidies**

**(1) Types of loans that qualify**

Each student who has received a loan for study at an eligible institution for which the first disbursement is made before July 1, 2010, and—

(A) which is insured by the Secretary under this part; or

(B) which is insured under a program of a State or of a nonprofit private institution or organization which was contracted for, and paid to the student, within the period specified in paragraph (5), and which—

(i) in the case of a loan insured prior to July 1, 1967, was made by an eligible lender and is insured under a program which meets the requirements of subparagraph (b)(1) of this section and provides that repayment of such loan shall be in installments beginning not earlier than 60 days after the student ceases to pursue a course of study (as described in subparagraph (D) of subsection (b)(1) of this section) at an eligible institution, or

(ii) in the case of a loan insured after June 30, 1967, was made by an eligible lender and is insured under a program covered by an agreement made pursuant to subsection (b) of this section, shall be entitled to have paid on his or her behalf and for his or her account to the holder of the loan a portion of the interest on such loan under circumstances described in paragraph (2).

**(2) Additional requirements to receive subsidy**

(A) Each student qualifying for a portion of an interest payment under paragraph (1) shall—

(i) have provided to the lender a statement from the eligible institution, at which the student has been accepted for enrollment, or at which the student is in attendance, which—

(I) sets forth the loan amount for which the student shows financial need; and

(II) sets forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 1078–7 of this title;

(ii) meet the requirements of subparagraph (B); and

(iii) have provided to the lender at the time of application for a loan made, insured, or guaranteed under this part, the student’s driver’s number, if any.

(B) For the purpose of clause (i) of subparagraph (A), a student shall qualify for a portion of an interest payment under paragraph (1) if the eligible institution has determined and documented the student’s amount of need for attendance, estimated financial assistance, and, for the purpose of an interest payment pursuant to this section, expected family contribution (as determined under part E of this subchapter), subject to the provisions of subparagraph (D).

(C) For the purpose of this paragraph—

(i) a student’s cost of attendance shall be determined under section 1087ll of this title;

(ii) a student’s estimated financial assistance means, for the period for which the loan is sought—

(I) the amount of assistance such student will receive under subpart 1 of part A of this subchapter (as determined in accordance with section 1091(b) of this title), subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 and part D of this subchapter; plus

(II) other scholarship, grant, or loan assistance, but excluding—

(aa) any national service education award or post-service benefit under title I of the National and Community Service Act of 1990 [42 U.S.C. 12511 et seq.]; and

(bb) any veterans’ education benefits as defined in section 1087vv(c) of this title; and
(iii) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated in accordance with part E of this subchapter.

(D) An eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, provide a statement which certifies the eligibility of any student to receive any loan under this part in excess of the maximum amount applicable to such loan.

(E) For the purpose of subparagraphs (B) and (C) of this paragraph, any loan obtained by a student under section 1078–1 or 1078–8 of this title or under any State-sponsored or private loan program for an academic year for which the determination is made may be used to offset the expected family contribution of the student for that year.

(3) Amount of interest subsidy

(A)(i) Subject to section 1087–1(c) of this title, the portion of the interest on a loan which a student is entitled to have paid, on behalf of and for the account of the student, to the holder of the loan pursuant to paragraph (1) of this subsection shall be equal to the total amount of the interest on the unpaid principal amount of the loan—

(I) which accrues prior to the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution), or

(II) which accrues during a period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in subsection (b)(1)(M) of this section or in section 1077(a)(2)(C) of this title.

(ii) Such portion of the interest on a loan shall not exceed, for any period, the amount of the interest on that loan which is payable by the student after taking into consideration the amount of any interest on that loan which the student is entitled to have paid on his or her behalf for that period under any State or private loan insurance program.

(iii) The holder of a loan with respect to which payments of interest are required to be made under this section shall be deemed to have a contractual right, as against the United States, to receive from the Secretary the portion of interest which has been so determined without administrative delay after the receipt by the Secretary of an accurate and complete request for payment pursuant to paragraph (4).

(iv) The Secretary shall pay this portion of the interest to the holder of the loan on behalf of and for the account of the borrower at such times as may be specified in regulations in force when the applicable agreement entered into pursuant to subsection (b) of this section was made, or, if the loan was made by a State or is insured under a program which is not covered by such an agreement, at such times as may be specified in regulations in force at the time the loan was paid to the student.

(v) A lender may not receive interest on a loan for any period that precedes the date that is—

(I) in the case of a loan disbursed by check, 10 days before the first disbursement of the loan;

(II) in the case of a loan disbursed by electronic funds transfer, 3 days before the first disbursement of the loan; or

(III) in the case of a loan disbursed through an escrow agent, 3 days before the first disbursement of the loan.

(B) If—

(i) a State student loan insurance program is covered by an agreement under subsection (b) of this section,

(ii) a statute of such State limits the interest rate on loans insured by such program to a rate which is less than the applicable interest rate under this part, and

(iii) the Secretary determines that subsection (d) of this section does not make such statutory limitation inapplicable and that such statutory limitation threatens to impede the carrying out of the purpose of this part,

then the Secretary may pay an administrative cost allowance to the holder of each loan which is insured under such program and which is made during the period beginning on the 60th day after October 16, 1968, and ending 120 days after the adjournment of such State’s first regular legislative session which adjourns after January 1, 1969. Such administrative cost allowance shall be paid over the term of the loan in an amount per year (determined by the Secretary) which shall not exceed 1 percent of the unpaid principal balance of the loan.

(4) Submission of statements by holders on amount of payment

Each holder of a loan with respect to which payments of interest are required to be made by the Secretary shall submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Secretary to determine the amount of the payment which he must make with respect to that loan.

(5) Duration of authority to make interest subsidized loans

The period referred to in subparagraph (B) of paragraph (1) of this subsection shall begin on November 8, 1965, and end at the close of June 30, 2010.

(6) Assessment of borrower’s financial condition not prohibited or required

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 or any other Act shall be construed to prohibit or require, unless otherwise specifically provided by law, a lender to evaluate the total financial situation of a student making application for a loan under this part, or to counsel a student with respect to any such loan, or to make a decision based on such evaluation and counseling with respect to the dollar amount of any such loan.

1 See References in Text note below.
(7) Loans that have not been consummated

Lenders may not charge interest or receive interest subsidies or special allowance payments for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed.

(b) Insurance program agreements to qualify

(1) Requirements of insurance program

Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) of this section if the Secretary determines that the student loan insurance program—

(A) authorizes the insurance in any academic year, as defined in section 1089(a)(2) of this title, or its equivalent (as determined under regulations of the Secretary) for any student who is carrying at an eligible institution or in a program of study abroad approved for credit by the eligible home institution at which such student is enrolled at least one-half the normal full-time academic workload (as determined by the institution) in any amount up to a maximum of—

(i) in the case of a student at an eligible institution who has successfully completed the first year of a program of undergraduate education—

(I) $3,500, if such student is enrolled in a program whose length is at least one academic year in length; and

(II) if such student is enrolled in a program of undergraduate education which is less than 1 academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to 1 academic year;

(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

(I) $4,500; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

(iii) in the case of a student enrolled in coursework specified in sections 1091(b)(3)(B) and 1091(b)(4)(B) of this title—

(I) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program, and, in the case of a student who has obtained a baccalaureate degree, $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program; and

(II) in the case of a student who has obtained a baccalaureate degree, $5,500 for coursework necessary for a professional credential or certification from a State required for employment as a teacher in an elementary school or secondary school;

except in cases where the Secretary determines, pursuant to regulations, that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education, but the annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any years in excess of the annual limit;

(B) provides that the aggregate insured unpaid principal amount for all such insured loans made to any student shall be any amount up to a maximum of—

(i) $23,000, in the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under section 1078–1 or 1078–2 of this title; and

(ii) $65,500, in the case of any graduate or professional student (as defined by regulations of the Secretary), and (I) including any loans which are insured by the Secretary under this section, or by a guaranty
agency, made to such student before the student became a graduate or professional student, but (II) excluding loans made under section 1078–1 or 1078–2 of this title, except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive; (C) authorizes the insurance of loans to any individual student for at least 6 academic years of study or their equivalent (as determined under regulations of the Secretary); (D) provides that (i) the student borrower shall be entitled to accelerate without penalty the whole or any part of an insured loan, (ii) the student borrower may annually change the selection of a repayment plan under this part, and (iii) the note, or other written evidence of any loan, may contain such reasonable provisions relating to repayment in the event of default by the borrower as may be authorized by regulations of the Secretary in effect at the time such note or written evidence was executed, and shall contain a notice that repayment may, following a default by the borrower, be subject to income contingent repayment in accordance with subsection (m) of this section; (E) subject to subparagraphs (D) and (L), and except as provided by subparagraph (M), provides that— (i) not more than 6 months prior to the date on which the borrower's first payment is due, the lender shall offer the borrower of a loan made, insured, or guaranteed under this section or section 1078–8 of this title, the option of repaying the loan in accordance with a standard, graduated, income-sensitive, or extended repayment schedule (as described in paragraph (9)) established by the lender in accordance with regulations of the Secretary; and (ii) repayment of loans shall be in installments in accordance with the repayment plan selected under paragraph (9) and commencing at the beginning of the repayment period determined under paragraph (7); (F) authorizes interest on the unpaid balance of the loan at a yearly rate not in excess (exclusive of any premium for insurance which may be paid on to the borrower) of the rate required by section 1077a of this title; (G) insures 98 percent of the unpaid principal of loans insured under the program, except that— (i) such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to subsection (j); (ii) for any loan for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2010, the preceding provisions of this subparagraph shall be applied by substituting “97 percent” for “98 percent”; and (iii) notwithstanding the preceding provisions of this subparagraph, such program shall insure 100 percent of the unpaid principal amount of exempt claims as defined in subsection (c)(1)(G); (H) provides— (i) for loans for which the date of guarantee of principal is on or after July 1, 2006, and that are first disbursed before July 1, 2010, for the collection, and the deposit into the Federal Student Loan Reserve Fund under section 1072a of this title of a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources, and ensures that the proceeds of the Federal default fee will not be used for incentive payments to lenders; (I) provides that the benefits of the loan insurance program will not be denied any student who is eligible for interest benefits under subsection (a)(1) and (2) of this section; (J) provides that a student may obtain insurance under the program for a loan for any year of study at an eligible institution; (K) in the case of a State program, provides that such State program is administered by a single State agency, or by one or more nonprofit private institutions or organizations under supervision of a single State agency; (L) provides that the total of the payments by borrower— (i) except as otherwise provided by a repayment plan selected by the borrower under clause (ii), (iii), or (v) of paragraph (9)(A), during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this part shall not, unless the borrower and the lender otherwise agree, be less than $600 or the balance of all such loans (together with interest thereon), whichever amount is less (but in no instance less than the amount of interest due and payable, notwithstanding any payment plan under paragraph (9)(A)); and (ii) for a monthly or other similar payment period with respect to the aggregate of all loans held by the lender may, when the amount of a monthly or other similar payment is not a multiple of $5, be rounded to the next highest whole dollar amount that is a multiple of $5; (M) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid by the Secretary, during any period— (i) during which the borrower— (I) is pursuing at least a half-time course of study as determined by an eli-
ducible institution, except that no borrow-
er, notwithstanding the provisions of the
promissory note, shall be required to
borrow an additional loan under this
subchapter and part C of subchapter I of
chapter 34 of title 42 in order to be eligi-
bly to receive a deferment under this
clause; or
(II) is pursuing a course of study pursu-
ant to a graduate fellowship program ap-
proved by the Secretary, or pursuant to
a rehabilitation training program for
disabled individuals approved by the Sec-
retary,
except that no borrower shall be eligible
for a deferment under this clause, or loan
made under this part (other than a loan
made under section 1078–2 or 1078–3 of this
title), while serving in a medical intern-
ship or residency program;
(i) not in excess of 3 years during which
the borrower is seeking and unable to find
full-time employment, except that no bor-
rower who provides evidence of eligibility
for unemployment benefits shall be re-
quired to provide additional paperwork for
a deferment under this clause;
(ii) during which the borrower—
(I) is serving on active duty during a
war or other military operation or na-
tional emergency; or
(II) is performing qualifying National
Guard duty during a war or other mili-
tary operation or national emergency,
and for the 180-day period following the de-
mobilization date for the service described
in subclause (I) or (II); or
(iv) not in excess of 3 years for any rea-
son which the lender determines, in ac-
cordance with regulations prescribed by
the Secretary under section 1065(o) of this
title, has caused or will cause the borrower
to have an economic hardship;
(N) provides that funds borrowed by a stu-
dent—
(i) are disbursed to the institution by
check or other means that is payable to,
and requires the endorsement or other cer-
tification by, such student;
(ii) in the case of a student who is study-
ing outside the United States in a program
of study abroad that is approved for credit
by the home institution at which such stu-
dent is enrolled, and only after verifica-
tion of the student’s enrollment by the
lender or guaranty agency, are, at the re-
quest of the student, disbursed directly to
the student by the means described in
clause (i), unless such student requests
that the check be endorsed, or the funds
transfer be authorized, pursuant to an au-
thorized power-of-attorney; or
(iii) in the case of a student who is study-
ing outside the United States in a
program of study at an eligible foreign in-
stitution, are, at the request of the foreign
institution, disbursed directly to the stu-
dent, only after verification of the stu-
dent’s enrollment by the lender or guar-

anty agency by the means described in
clause (i). 2

(O) provides that the proceeds of the loans
will be disbursed in accordance with the re-
quirements of section 1078–7 of this title;
(P) requires the borrower to notify the in-
stitution concerning any change in local ad-
dress during enrollment and requires the
borrower and the institution at which the
borrower is in attendance promptly to notify
the holder of the loan, directly or through
the guaranty agency, concerning (i) any
change of permanent address, (ii) when the
student ceases to be enrolled on at least a
half-time basis, and (iii) any other change in
status, when such change in status affects
the student’s eligibility for the loan;
(Q) provides for the guarantee of loans
made to students and parents under sections
1078–1 1 and 1078–2 of this title;
(R) with respect to lenders which are eligi-
bale institutions, provides for the insurance
of loans by only such institutions as are lo-
cated within the geographic area served by
such guaranty agency;
(S) provides no restrictions with respect to
the insurance of loans for students who are
otherwise eligible for loans under such pro-
gram if such a student is accepted for enroll-
ment in or is attending an eligible institu-
tion within the State, or if such a student is
a legal resident of the State and is accepted
for enrollment in or is attending an eligible
institution outside that State;
(T) authorizes (i) the limitation of the
total number of loans or volume of loans,
made under this part to students attending a
particular eligible institution during any
academic year; and (ii) the limitation, sus-
pension, or termination of the eligibility of
an eligible institution if—
(I) such institution is ineligibile for the
emergency action, limitation, suspension,
or termination of eligible institutions
under regulations issued by the Secretary
or is ineligible pursuant to criteria, rules,
or regulations issued under the student
loan insurance program which are substan-
tially the same as regulations with respect
to emergency action, limitation, suspen-
sion, or termination of such eligibility is-
sued by the Secretary;
(II) there is a State constitutional prohi-
bition affecting the eligibility of such an
institution;
(III) such institution fails to make timely
refunds to students as required by regu-
lations issued by the Secretary or has not
satisfied within 30 days of issuance a final
judgment obtained by a student seeking
such a refund;
(IV) such institution or an owner, direc-
tor, or officer of such institution is found
guilty in any criminal, civil, or adminis-
trative proceeding, or such institution or
an owner, director, or officer of such insti-
tution is found liable in any civil or ad-
ministrative proceeding, regarding the ob-

2So in original. The period probably should be a semicolon.
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(1) the lender shall determine the eligibility of a borrower for a deferment described in subparagraph (M)(i) based on—

(I) receipt of a request for deferment from the borrower and documentation of the borrower’s eligibility for the deferment;

(II) receipt of a newly completed loan application that documents the borrower’s eligibility for a deferment;

(III) receipt of student status information documenting that the borrower is enrolled on at least a half-time basis; or

(IV) the lender’s confirmation of the borrower’s half-time enrollment status through use of the National Student Loan Data System, if the confirmation is requested by the institution of higher education;

(ii) the lender will notify the borrower of the granting of any deferment under clause (i)(II) or (III) of this subparagraph and of the option to continue paying on the loan; and

(iii) the lender shall, at the time the lender grants a deferment to a borrower who received a loan under section 1078–8 of this title and is eligible for a deferment under subparagraph (M) of this paragraph, provide information to the borrower to assist the borrower in understanding the impact of the capitalization of interest on the borrower’s loan principal and on the total amount of interest to be paid during the life of the loan.

(2) Contents of insurance program agreement

Such an agreement shall—

(A) provide that the holder of any such loan will be required to submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Secretary to determine the amount of the payment which must be made with respect to that loan;

(B) include such other provisions as may be necessary to protect the United States from the risk of unreasonable loss and promote the purpose of this part, including such provisions as may be necessary for the purpose of section 1087 of this title, and as are agreed to by the Secretary and the guaranty agency, as the case may be;

(C) provide for making such reports, in such form and containing such information,
including financial information, as the Secretary may reasonably require to carry out the Secretary’s functions under this part and protect the financial interest of the United States, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports; (D) provide for—

(i) conducting, except as provided in clause (ii), financial and compliance audits of the guaranty agency on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a guaranty program of a State which is audited under chapter 75 of title 31, deeming such audit to satisfy the requirements of clause (i) for the period of time covered by such audit;

(E)(i) provide that any guaranty agency may transfer loans which are insured under this part to any other guaranty agency with the approval of the holder of the loan and such other guaranty agency; and

(ii) provide that the lender (or the holder of the loan) shall, not later than 120 days after the borrower has left the eligible institution, notify the borrower of the date on which the repayment period begins; and

(F) provide that, if the sale, other transfer, or assignment of a loan made under this part to another holder will result in a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loan, then—

(i) the transferor and the transferee will be required, not later than 45 days from the date the transferee acquires a legally enforceable right to receive payment from the borrower on such loan, either jointly or separately to provide a notice to the borrower of—

(I) the sale or other transfer;

(II) the identity of the transferee;

(III) the name and address of the party to whom subsequent payments or communications must be sent;

(IV) the telephone numbers of both the transferor and the transferee;

(V) the effective date of the transfer;

(VI) the date on which the current servicer (as of the date of the notice) will stop accepting payments; and

(VII) the date on which the new servicer will begin accepting payments; and

(ii) the transferee will be required to notify the guaranty agency, and, upon the request of an institution of higher education, the guaranty agency shall notify the last such institution the student attended prior to the beginning of the repayment period of any loan made under this part, of—

(I) any sale or other transfer of the loan; and

(II) the address and telephone number by which contact may be made with the new holder concerning repayment of the loan.

except that this subparagraph (F) shall only apply if the borrower is in the grace period described in section 1077(a)(2)(B) of this title or subsection (b)(7) of this section or is in repayment status.

(3) Restrictions on inducements, payments, mailings, and advertising

A guaranty agency shall not—

(A) offer, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or other inducements to—

(i) any institution of higher education, any employee of an institution of higher education, or any individual or entity in order to secure applicants for loans made under this part; or

(ii) any lender, or any agent, employee, or independent contractor of any lender or guaranty agency, in order to administer or market loans made under this part (other than a loan made as part of the guaranty agency’s lender-of-last-resort program pursuant to subsection (j)), for the purpose of securing the designation of the guaranty agency as the insurer of such loans;

(B) conduct unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary educational institutions, or to the families of such students, except that applications may be mailed, by postal or electronic means, to students or borrowers who have previously received loans guaranteed under this part by the guaranty agency;

(C) perform, for an institution of higher education participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, any function that such institution is required to perform under this subchapter and part C of subchapter I of chapter 34 of title 42, except that the guaranty agency may perform functions on behalf of such institution in accordance with section 1092(b) or 1092(l) of this title;

(D) pay, on behalf of an institution of higher education, another person to perform any function that such institution is required to perform under this subchapter and part C of subchapter I of chapter 34 of title 42, except that the guaranty agency may perform functions on behalf of such institution in accordance with section 1092(b) or 1092(l) of this title; or

(E) conduct fraudulent or misleading advertising concerning loan availability, terms, or conditions.

It shall not be a violation of this paragraph for a guaranty agency to provide technical assistance to institutions of higher education comparable to the technical assistance provided to
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(4) Special rule

With respect to the graduate fellowship program referred to in paragraph (1)(M)(ii), the Secretary shall approve any course of study at a foreign university that is accepted for the completion of a recognized international fellowship program by the administrator of such a program. Requests for deferment of repayment of loans under this part by students engaged in graduate or postgraduate fellowship-supported study (such as pursuant to a Fulbright grant) outside the United States shall be approved until completion of the period of the fellowship.

(5) Guaranty agency information transfers

(A) Until such time as the Secretary has implemented section 1092b of this title and is able to provide to guaranty agencies the information required by such section, any guaranty agency may request information regarding loans made after January 1, 1987, to students who are residents of the State for which the agency is the designated guarantor, from any other guaranty agency insuring loans to such students.

(B) Upon a request pursuant to subparagraph (A), a guaranty agency shall provide—

(i) the name and the social security number of the borrower; and

(ii) the amount borrowed and the cumulative amount borrowed.

(C) Any costs associated with fulfilling the request of a guaranty agency for information on students shall be paid by the guaranty agency requesting the information.

(6) State guaranty agency information request of State licensing boards

Each guaranty agency is authorized to enter into agreements with each appropriate State licensing board under which the State licensing board, upon request, will furnish the guaranty agency with the address of a student borrower in any case in which the location of the student borrower is unknown or unavailable to the guaranty agency.

(7) Repayment period

(A) In the case of a loan made under section 1077 of this title or this section, the repayment period shall exclude any period of authorized deferment or forbearance and shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).

(B) In the case of a loan made under section 1078–8 of this title, the repayment period shall exclude any period of authorized deferment or forbearance, and shall begin as described in subparagraph (A), but interest shall begin to accrue or be paid by the borrower on the day the loan is disbursed.

(C) In the case of a loan made under section 1078–2 or 1078–3 of this title, the repayment period shall begin on the day the loan is disbursed, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement, and shall exclude any period of authorized deferment or forbearance.

(D) There shall be excluded from the 6-month period that begins on the date on which a student ceases to carry at least one-half the normal full-time academic workload as described in subparagraph (A) any period not to exceed 3 years during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10 is called or ordered to active duty for a period of more than 30 days (as defined in section 101(d)(2) of such title). Such period of exclusion shall include the period necessary to resume enrollment at the borrower’s next available regular enrollment period.

(8) Means of disbursement of loan proceeds

Nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted to prohibit the disbursement of loan proceeds by means other than by check or to allow the Secretary to require checks to be made co-payable to the institution and the borrower.

(9) Repayment plans

(A) Design and selection

In accordance with regulations promulgated by the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subparagraph for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than 5 years unless the borrower, during the 6 months immediately preceding the start of the repayment period, specifically requests that repayment be made over of a shorter period.

The borrower may choose from—

(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed 10 years;

(ii) a graduated repayment plan paid over a fixed period of time, not to exceed 10 years;

(iii) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed 10 years, except that the borrower’s scheduled payments shall not be less than the amount of interest due;

(iv) for new borrowers on or after October 7, 1998, who accumulate (after October 7, 1998) outstanding loans under this part totaling more than $30,000, an extended repayment plan, with a fixed annual or graduated repayment amount paid over an extended period of time, not to exceed 25 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (1)(L)(i); and

(v) beginning July 1, 2009, an income-based repayment plan that enables a borrower who has a partial financial hardship to make a lower monthly payment in accordance with section 1098e of this title, except that the plan described in this

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clause shall not be available to a borrower for a loan under section 1078–2 of this title made on behalf of a dependent student or for a consolidation loan under section 1078–3 of this title, if the proceeds of such loan were used to discharge the liability of a loan under section 1078–2 of this title made on behalf of a dependent student.

(B) Lender selection of option if borrower does not select

If a borrower of a loan made under this part does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

(c) Guaranty agreements for reimbursing losses

(1) Authority to enter into agreements

(A) The Secretary may enter into a guaranty agreement with any guaranty agency, whereby the Secretary shall undertake to reimburse it, under such terms and conditions as the Secretary may establish, with respect to losses resulting from the default of the student borrower on the unpaid balance of the principal and accrued interest of any insured loan. The guaranty agency shall be deemed to have a contractual right against the United States, during the life of such loan, to receive reimbursement according to the provisions of this subsection. Upon receipt of an accurate and complete request by a guaranty agency for reimbursement with respect to such losses, the Secretary shall pay promptly and without administrative delay. Except as provided in subparagraph (B) of this paragraph and in paragraph (7), the amount to be paid a guaranty agency as reimbursement under this subsection shall be equal to 95 percent of the amount expended by it in discharge of its insurance obligation under this section, the Secretary shall exclude a guaranty agency pursuant to a plan approved by the Secretary in response to the insolvency of the latter such guarantee agency, the Secretary shall apply the provisions of—

(i) the fourth sentence of subparagraph (A) by substituting “100 percent” for “95 percent”;

(ii) subparagraph (B)(i) by substituting “100 percent” for “85 percent”; and

(iii) subparagraph (B)(ii) by substituting “100 percent” for “75 percent”.

(B) Notwithstanding any other provisions of this section, in the case of a loan made pursuant to a lender-of-last-resort program, the Secretary shall apply the provisions of—

(i) the fourth sentence of subparagraph (A) by substituting “100 percent” for “95 percent”;

(ii) subparagraph (B)(i) by substituting “90 percent” for “85 percent”; and

(iii) subparagraph (B)(ii) by substituting “80 percent” for “75 percent”.

(F) Notwithstanding any other provisions of this section, in the case of exempt claims, the Secretary shall apply the provisions of—

(i) the fourth sentence of subparagraph (A) by substituting “100 percent” for “95 percent”;

(ii) subparagraph (B)(i) by substituting “100 percent” for “85 percent”; and

(iii) subparagraph (B)(ii) by substituting “100 percent” for “75 percent”.

(G) Notwithstanding any other provision of this section, the Secretary shall exclude a loan made pursuant to a lender-of-last-resort program when making reimbursement payments under subparagraphs (B) and (C).

(2) Contents of guaranty agreements

The guaranty agreement—

(A) shall set forth such administrative and fiscal procedures as may be necessary to pro-
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tect the United States from the risk of unreasonable loss thereunder, to ensure proper and efficient administration of the loan insurance program, and to assure that due diligence will be exercised in the collection of loans insured under the program, including (i) a requirement that each beneficiary of insurance on the loan submit proof that the institution was contacted and other reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known) and (ii) requirements establishing procedures to preclude consolidation lending from being an excessive proportion of guaranty agency recoveries on defaulted loans under this part;

(B) shall provide for making such reports, in such form and containing such information, as the Secretary may reasonably require to carry out the Secretary’s functions under this subsection, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

(C) shall set forth adequate assurances that, with respect to so much of any loan insured under the loan insurance program as may be guaranteed by the Secretary pursuant to this subsection, the undertaking of the Secretary under the guaranty agreement is acceptable in full satisfaction of State law or regulation requiring the maintenance of a reserve;

(D) shall provide that, if, after the Secretary has made payment under the guaranty agreement pursuant to paragraph (1) of this subsection with respect to any loan, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after such payment by the Secretary), there shall be paid over to the Secretary (for deposit in the fund established by section 1081 of this title) such proportion of the amounts of such payments as is determined (in accordance with paragraph (6)(A)) to represent his equitable share thereof, but (i) shall provide for subrogation of the United States to the rights of any insurance beneficiary only to the extent required for the purpose of paragraph (6); and (ii) except as the Secretary may otherwise provide, the amounts so paid by a borrower on such a loan shall be first applied in reduction of principal owing on such loan;

(E) shall set forth adequate assurance that an amount equal to each payment made under paragraph (1) will be promptly deposited in or credited to the accounts maintained for the purpose of section 1072(c) of this title;

(F) set forth adequate assurances that the guaranty agency will not engage in any pattern or practice which results in a denial of a borrower’s access to loans under this part because of the borrower’s race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the guaranty agency, length of the borrower’s educational program, or the borrower’s academic year in school;

(G) shall prohibit the Secretary from making any reimbursement under this subsection to a guaranty agency when a default claim is based on an inability to locate the borrower, unless the guaranty agency, at the time of filing for reimbursement, certifies to the Secretary that diligent attempts, including contact with the institution, have been made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with regulations prescribed by the Secretary; and

(H) set forth assurances that—

(i) upon the request of an eligible institution, the guaranty agency shall, subject to clauses (ii) and (iii), furnish to the institution information with respect to students (including the names and addresses of such students) who received loans made, insured, or guaranteed under this part for attendance at the eligible institution and for whom default aversion assistance activities have been requested under subsection (l) of this section;

(ii) the guaranty agency shall not require the payment from the institution of any fee for such information; and

(iii) the guaranty agency will require the institution to use such information only to assist the institution in reminding students of their obligation to repay student loans and shall prohibit the institution from disseminating the information for any other purpose.

(I) may include such other provisions as may be necessary to promote the purpose of this part.

(3) Forbearance

A guaranty agreement under this subsection—

(A) shall contain provisions providing that—

(i) upon request, a lender shall grant a borrower forbearance, renewable at 12-month intervals, on terms agreed to by the parties to the loan with the approval of the insurer and documented in accordance with paragraph (10), and otherwise consistent with the regulations of the Secretary, if the borrower—

(I) is serving in a medical or dental internship or residency program, the successful completion of which is required to begin professional practice or service, or is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training, provided that if the borrower qualifies for a deferment under section 1077(a)(2)(C)(vii) of this title or subsection (b)(1)(M)(vii) of this section as in effect prior to the enactment of the Higher Education Amendments of 1992,
or section 1077(a)(2)(C) of this title or subsection (b)(1)(M) of this section as amended by such amendments, the borrower has exhausted his or her eligibility for such deferment;

(II) has a debt burden under this subchapter and part C of subchapter I of chapter 34 of title 42 that equals or exceeds 20 percent of income;

(III) is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993; or

(IV) is eligible for interest payments to be made on such loan for service in the Armed Forces under section 2174 of title 10, and, pursuant to that eligibility, the interest is being paid on such loan under subsection (o) of this section;

(ii) the length of the forbearance granted by the lender—

(I) under clause (i)(I) shall equal the length of time remaining in the borrower’s medical or dental internship or residency program, if the borrower is not eligible to receive a deferment described in such clause, or such length of time remaining in the program after the borrower has exhausted the borrower’s eligibility for such deferment;

(II) under clause (i)(II) or (IV) shall not exceed 3 years; or

(III) under clause (i)(III) shall not exceed the period for which the borrower is serving in a position described in such clause; and

(iii) no administrative or other fee may be charged in connection with the granting of a forbearance under clause (i), and no adverse information regarding a borrower may be reported to a consumer reporting agency solely because of the granting of such forbearance;

(B) may, to the extent provided in regulations of the Secretary, contain provisions that permit such forbearance for the benefit of the student borrower as may be agreed upon by the parties to an insured loan and approved by the insurer;

(C) shall contain provisions that specify that—

(i) the form of forbearance granted by the lender pursuant to this paragraph, other than subparagraph (A)(i)(IV), shall be temporary cessation of payments, unless the borrower selects forbearance in the form of an extension of time for making payments, or smaller payments than were previously scheduled;

(ii) the form of forbearance granted by the lender pursuant to subparagraph (A)(i)(IV) shall be the temporary cessation of all payments on the loan other than payments of interest on the loan that are made under subsection (o) of this section;

(iii) the lender shall, at the time of granting a borrower forbearance, provide information to the borrower to assist the borrower in understanding the impact of capitalization of interest on the borrower’s loan principal and total amount of interest to be paid during the life of the loan; and

(iv) the lender shall contact the borrower not less often than once every 180 days during the period of forbearance to inform the borrower of—

(I) the amount of unpaid principal and the amount of interest that has accrued since the last statement of such amounts provided to the borrower by the lender;

(II) the fact that interest will accrue on the loan for the period of forbearance;

(III) the amount of interest that will be capitalized, and the date on which capitalization will occur;

(IV) the option of the borrower to pay the interest that has accrued before the interest is capitalized; and

(V) the borrower’s option to discontinue the forbearance at any time; and

(D) shall contain provisions that specify that—

(i) forbearance for a period not to exceed 60 days may be granted if the lender reasonably determines that such a suspension of collection activity is warranted following a borrower’s request for deferment, forbearance, a change in repayment plan, or a request to consolidate loans, in order to collect or process appropriate supporting documentation related to the request, and

(ii) during such period interest shall accrue but not be capitalized.

Guaranty agencies shall not be precluded from permitting the parties to such a loan from entering into a forbearance agreement solely because the loan is in default. The Secretary shall permit lenders to exercise administrative forbearances that do not require the agreement of the borrower, under conditions authorized by the Secretary. Such forbearances shall include (i) forbearances for borrowers who are delinquent at the time of the granting of an authorized period of deferment under subsection (b)(1)(M) of this section or section 1077(a)(2)(C) of this title, and (ii) if the borrower is less than 60 days delinquent on such loans at the time of sale or transfer, forbearances for borrowers on loans which are sold or transferred.

(4) Definitions

For the purpose of this subsection, the terms “insurance beneficiary” and “default” have the meanings assigned to them by section 1085 of this title.

(5) Applicability to existing loans

In the case of any guaranty agreement with a guaranty agency, the Secretary may, in accordance with the terms of this subsection, undertake to guarantee loans described in paragraph (1) which are insured by such guaranty agency and are outstanding on the date of execution of the guaranty agreement, but only with respect to defaults occurring after the execution of such guaranty agreement or, if later, after its effective date.
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(6) Secretary’s equitable share

(A) For the purpose of paragraph (2)(D), the Secretary’s equitable share of payments made by the borrower shall be that portion of the payments remaining after the guaranty agency with which the Secretary has an agreement under this subsection has deducted from such payments—

(i) a percentage amount equal to the complement of the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

(ii) an amount equal to 24 percent of such payments for use in accordance with section 1072b of this title, except that—

(I) beginning October 1, 2003 and ending September 30, 2007, this clause shall be applied by substituting “23 percent” for “24 percent”; and

(II) beginning October 1, 2007, this clause shall be applied by substituting “16 percent” for “24 percent”.

(B) A guaranty agency shall—

(i) on or after October 1, 2006—

(I) not charge the borrower collection costs in an amount in excess of 18.5 percent of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(II) remit to the Secretary a portion of the collection charge under subclause (I) equal to 8.5 percent of the outstanding principal and interest of such defaulted loan; and

(ii) on and after October 1, 2009, remit to the Secretary the entire amount charged under clause (i)(I) with respect to each defaulted loan that is paid off with excess consolidation proceeds.

(C) For purposes of subparagraph (B), the term “excess consolidation proceeds” means, with respect to any guaranty agency for any Federal fiscal year beginning on or after October 1, 2009, the proceeds of consolidation of defaulted loans under this subchapter and part C of subchapter I of chapter 34 of title 42 that exceed 45 percent of the agency’s total collections on defaulted loans in such Federal fiscal year.

(7) New programs eligible for 100 percent reinsurance

(A) Notwithstanding paragraph (1)(C), the Secretary may pay a guaranty agency 100 percent of the amount expended by such agency in discharge of such agency’s insurance obligation for any fiscal year which—

(i) begins on or after October 1, 1991; and

(ii) is the fiscal year in which such guaranty agency begins to actively carry on a student loan insurance program which is subject to a guaranty agreement under subsection (b) of this section or is one of the 4 succeeding fiscal years.

(B) Notwithstanding the provisions of paragraph (1)(C), the Secretary may pay a guaranty agency 100 percent of the amount expended by such agency in discharge of such agency’s insurance obligation for any fiscal year which—

(i) begins on or after October 1, 1991; and

(ii) is the fiscal year in which such guaranty agency begins to actively carry on a student loan insurance program which is subject to a guaranty agreement under subsection (b) of this section or is one of the 4 succeeding fiscal years.

(C) The Secretary shall continuously monitor the operations of those guaranty agencies to which the provisions of subparagraph (A) or (B) are applicable and revoke the application of such subparagraph to any such guaranty agency which the Secretary determines has not exercised reasonable prudence in the administration of such program.

(8) Assignment to protect Federal fiscal interest

If the Secretary determines that the protection of the Federal fiscal interest so requires, a guaranty agency shall assign to the Secretary any loan of which it is the holder and for which the Secretary has made a payment pursuant to paragraph (1) of this subsection.

(9) Guaranty agency reserve level

(A) Each guaranty agency which has entered into an agreement with the Secretary pursuant to this subsection shall maintain in the agency’s Federal Student Loan Reserve Fund established under section 1072a of this title a current minimum reserve level of at least 0.25 percent of the total attributable amount of all outstanding loans guaranteed by such agency. For purposes of this paragraph, such total attributable amount does not include amounts of outstanding loans transferred to the guaranty agency from another guaranty agency pursuant to a plan of the Secretary in response to the insolvency of the latter such guaranty agency.

(B) The Secretary shall collect, on an annual basis, information from each guaranty agency having an agreement under this subsection to enable the Secretary to evaluate the financial solvency of each such agency. The information collected shall include the level of such agency’s current reserves, cash disbursements and accounts receivable.

(C) If (i) any guaranty agency falls below the required minimum reserve level in any 2 consecutive years, (ii) any guaranty agency’s Federal reimbursement payments are reduced to 85 percent pursuant to paragraph (1)(B)(i), or (iii) the Secretary determines that the administrative or financial condition of a guaranty agency jeopardizes such agency’s continued ability to perform its responsibilities under its guaranty agreement, then the Secretary shall require the guaranty agency to submit and implement a management plan acceptable to the Secretary within 45 working days of any such event.

(D)(i) If the Secretary is not seeking to terminate the guaranty agency’s agreement
under subparagraph (E), or assuming the guaranty agency’s functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the guaranty agency will improve its financial and administrative condition to the required level within 18 months.

(ii) If the Secretary is seeking to terminate the guaranty agency’s agreement under subparagraph (E), or assuming the guaranty agency’s functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the Secretary and the guaranty agency shall work together to ensure the orderly termination of the operations, and liquidation of the assets, of the guaranty agency.

The Secretary may terminate a guaranty agency’s agreement in accordance with subparagraph (F) if—

(i) a guaranty agency required to submit a management plan under this paragraph fails to submit a plan that is acceptable to the Secretary;

(ii) the Secretary determines that a guaranty agency has failed to substantially improve its administrative and financial condition;

(iii) the Secretary determines that the guaranty agency is in danger of financial collapse;

(iv) the Secretary determines that such action is necessary to protect the Federal fiscal interest; or

(v) the Secretary determines that such action is necessary to ensure the continued availability of loans to student or parent borrowers.

If a guaranty agency’s agreement under this subsection is terminated pursuant to subparagraph (E), then the Secretary shall assume responsibility for all functions of the guaranty agency under the loan insurance program of such agency. In performing such functions the Secretary is authorized to—

(i) permit the transfer of guarantees to another guaranty agency;

(ii) revoke the reinsurance agreement of the guaranty agency at a specified date, as to require the merger, consolidation, or termination of the guaranty agency;

(iii) transfer guarantees to the Department of Education for the purpose of payment of such claims and process such claims using the claims standards of the guaranty agency, if such standards are determined by the Secretary to be in compliance with this chapter and part C of subchapter I of chapter 34 of title 42;

(iv) design and implement a plan to restore the guaranty agency’s viability;

(v) provide the guaranty agency with additional advance funds in accordance with section 1072(c)(7) of this title, with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to—

(I) meet the immediate cash needs of the guaranty agency;

(II) ensure the uninterrupted payment of claims; or

(III) ensure that the guaranty agency will make loans as the lender-of-last-resort, in accordance with subsection (j) of this section;

(vi) use all funds and assets of the guaranty agency to assist in the activities undertaken in accordance with this subparagraph and take appropriate action to require the return, to the guaranty agency or the Secretary, of any funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization; or

(vii) take any other action the Secretary determines necessary to ensure the continued availability of loans made under this part to residents of the State or States in which the guaranty agency did business, the full honoring of all guarantees issued by the guaranty agency prior to the Secretary’s assumption of the functions of such agency, and the proper servicing of loans guaranteed by the guaranty agency prior to the Secretary’s assumption of the functions of such agency, and to avoid disruption of the student loan program.

Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency’s agreement under subparagraph (E), or has assumed a guaranty agency’s functions under subparagraph (F)—

(i) no State court may issue any order affecting the Secretary’s actions with respect to such guaranty agency;

(ii) any contract with respect to the administration of a guaranty agency’s reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after August 10, 1993, shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

(iii) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency.

Notwithstanding any other provision of law, the Secretary’s liability for any outstanding liabilities of a guaranty agency (other than outstanding student loan guarantees under this part), the functions of which the Secretary has assumed, shall not exceed the fair market value of the reserves of the guaranty agency, minus any necessary liquidation or other administrative costs.

The Secretary shall not take any action under subparagraph (E) or (F) without giving the guaranty agency notice and the opportunity for a hearing that, if commenced after September 24, 1998, shall be on the record.

Notwithstanding any other provision of law, the information transmitted to the Secretary pursuant to this paragraph shall be
confidential and exempt from disclosure under section 552 of title 5, relating to freedom of information, or any other Federal law.

(K) The Secretary, within 6 months after the end of each fiscal year, shall submit to the authorizing committees a report specifying the Secretary’s assessment of the fiscal soundness of the guaranty agency system.

(10) Documentation of forbearance agreements

For the purposes of paragraph (3), the terms of forbearance agreed to by the parties shall be documented by confirming the agreement of the borrower by notice to the borrower from the lender, and by recording the terms in the borrower’s file.

(d) Usury laws inapplicable

No provision of any law of the United States (other than this chapter and part C of subchapter I of chapter 34 of title 42 and section 527 of the Appendix to title 50) or of any State (other than a statute applicable principally to such State’s student loan insurance program) which limits the rate or amount of interest payable on loans shall apply to a loan—

(1) which bears interest (exclusive of any premium for insurance) on the unpaid principal balance at a rate not in excess of the rate specified in this part; and

(2) which is insured (i) by the United States under this part, or (ii) by a guaranty agency under a program covered by an agreement made pursuant to subsection (b) of this section.


(f) Payments of certain costs

(1) Payment for certain activities

(A) In general

The Secretary—

(i) for loans originated during fiscal years beginning on or after October 1, 1998, and before October 1, 2003, and in accordance with the provisions of this paragraph, shall, except as provided in subparagraph (C), pay to each guaranty agency, a loan processing and issuance fee equal to 0.65 percent of the total principal amount of the loans on which insurance was issued under this part during such fiscal year by such agency; and

(ii) for loans originated on or after October 1, 2003, and before July 1, 2010, and in accordance with the provisions of this paragraph, shall, except as provided in subparagraph (C), pay to each guaranty agency, a loan processing and issuance fee equal to 0.40 percent of the total principal amount of the loans on which insurance was issued under this part during such fiscal year by such agency.

(B) Payment

The payment required by subparagraph (A) shall be paid on a quarterly basis. The guaranty agency shall be deemed to have a contractual right against the United States to receive payments according to the provisions of this paragraph. Payments shall be made promptly and without administrative delay to any guaranty agency submitting an accurate and complete application under this subparagraph.

(C) Requirement for payment

No payment may be made under this paragraph for loans for which the disbursement of proceeds of a loan to a student at such institution.

(g) Action on insurance program and guaranty agreements

If a nonprofit private institution or organization—

(1) applies to enter into an agreement with the Secretary under subsections (b) and (c) of this section with respect to a student loan insurance program to be carried on in a State with which the Secretary does not have an agreement under subsection (b) of this section, and

(2) as provided in the application, undertakes to meet the requirements of section 1072(c)(6)(B)(i), (ii), and (iii) of this title, the Secretary shall consider and act upon such application within 180 days, and shall forthwith notify the authorizing committees of his actions.


(i) Multiple disbursement of loans

(1) Escrow accounts administered by escrow agent

Any guaranty agency or eligible lender (hereafter in this subsection referred to as the “escrow agent”) may enter into an agreement with any other eligible lender that is not an eligible institution or an agency or instrumentality of the State (hereafter in this subsection referred to as the “lender”) for the purpose of authorizing disbursements of the proceeds of a loan to a student. Such agreement shall provide that the lender will pay the proceeds of such loans into an escrow account to be administered by the escrow agent in accordance with the provisions of paragraph (2) of this subsection. Such agreement may allow the lender to make payments into the escrow account in amounts that do not exceed the sum of the amounts required for disbursement of initial or subsequent installments to borrowers and to make such payments not more than 10 days prior to the date of the disbursement of such installment to such borrowers. Such agreement shall require the lender to notify promptly the eligible institution when funds are escrowed under this subsection for a student at such institution.

(2) Authority of escrow agent

Each escrow agent entering into an agreement under paragraph (1) of this subsection is authorized to—

(A) make the disbursements in accordance with the note evidencing the loan;

(B) commingle the proceeds of all loans paid to the escrow agent pursuant to the es-
crow agreement entered into under such paragraph (1); 
(C) invest the proceeds of such loans in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government; 
(D) retain interest or other earnings on such investment; and 
(E) return to the lender undisbursed funds when the student ceases to carry at an eligible institution at least one-half of the normal full-time academic workload as determined by the institution.

(j) Lenders-of-last-resort

(1) General requirement

In each State, the guaranty agency or an eligible lender in the State described in section 1085(d)(1)(D) of this title shall, before July 1, 2010, make loans directly, or through an agreement with an eligible lender or lenders, to eligible students and parents who are otherwise unable to obtain loans under this part (except for consolidation loans under section 1078–3 of this title) or who attend an institution of higher education in the State that is designated under paragraph (4). Loans made under this subsection shall not exceed the amount of the need of the borrower, as determined under subsection (a)(2)(B) of this section, nor be less than $200. No loan under sections 1078, 1078–2, or 1078–8 of this title that is guaranteed under paragraph (4). Loans made pursuant to this subsection shall be made with interest rates, origination or default fees, or other terms and conditions that are more favorable to the borrower than the maximum interest rates, origination or default fees, or other terms and conditions applicable to that type of loan under this part. The guaranty agency shall consider the request of any eligible lender, as defined under section 1085(d)(1)(A) of this title, to serve as the lender-of-last-resort pursuant to this subsection.

(2) Rules and operating procedures

The guaranty agency shall develop rules and operating procedures for the lender-of-last-resort program designed to ensure that—

(A) the program establishes operating hours and methods of application designed to facilitate application by students and ensure a response within 60 days after the student’s original complete application is filed under this subsection; 
(B) consistent with standards established by the Secretary, students applying for loans under this subsection shall not be subject to additional eligibility requirements or requests for additional information beyond what is required under this subchapter and part C of subchapter I of chapter 34 of title 42 in order to receive a loan under this part from an eligible lender, nor, in the case of students and parents applying for loans under this subsection because of an inability to otherwise obtain loans under this part (except for consolidation loans under section 1078–3 of this title), be required to receive more than two rejections from eligible lenders in order to obtain a loan under this subsection; 
(C) information about the availability of loans under the program is made available to institutions of higher education in the State; and 
(D) appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation.

(3) Advances to guaranty agencies for lender-of-last-resort services

(A) In order to ensure the availability of loan capital, the Secretary is authorized to provide a guaranty agency designated for a State with additional advance funds in accordance with subparagraph (C) and section 1072(c)(7) of this title, with such restrictions on the use of such funds as are determined appropriate by the Secretary, in order to ensure that the guaranty agency will make loans as the lender-of-last-resort. Such agency shall make such loans in accordance with this subsection and the requirements of the Secretary. 
(B) Notwithstanding any other provision in any other provision in this part, a guaranty agency serving as a lender-of-last-resort under this paragraph shall be paid a fee, established by the Secretary, for making such loans in lieu of interest and special allowance subsidies, and shall be required to assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance represented by the loans assigned shall be considered repaid by such guaranty agency.

(C) The Secretary shall exercise the authority described in subparagraph (A) only if the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part or designates an institution of higher education for participation in the program under this subsection under paragraph (4), and that the guaranty agency designated for that State has the capability to provide lender-of-last-resort loans in a timely manner, in accordance with the guaranty agency’s obligations under paragraph (1), but cannot do so without advances provided by the Secretary under this paragraph. If the Secretary makes the determinations described in the preceding sentence and determines that it would be cost-effective to do so, the Secretary may provide advances under this paragraph to such guaranty agency. If the Secretary determines that such guaranty agency does not have such capability, or will not provide such loans in a timely fashion, the Secretary may provide such advances to enable another guaranty agency, that the Secretary determines to have such capability, to make lender-of-last-resort loans to eligible borrowers in that State who are experiencing loan access problems or to eligible borrowers who attend an institution in the State that is designated under paragraph (4).

(4) Institution-wide student qualification

Upon the request of an institution of higher education and pursuant to standards developed by the Secretary, the Secretary shall designate such institution for participation in the lender-of-last-resort program under this para-
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So in original. Probably should be “subsection.”

If the Secretary designates an institution under this paragraph, the guaranty agency designated for the State in which the institution is located shall make loans, in the same manner as such loans are made under paragraph (1), to students and parent borrowers of the designated institution, regardless of whether the students or parent borrowers are otherwise unable to obtain loans under this part (other than a consolidation loan under section 1078–3 of this title).

(5) Standards developed by the Secretary

In developing standards with respect to paragraph (4), the Secretary may require—

(A) an institution of higher education to demonstrate that, despite due diligence on the part of the institution, the institution has been unable to secure the commitment of eligible lenders willing to make loans under this part to a significant number of students attending the institution;

(B) that, prior to making a request under such paragraph for designation for participation in the lender-of-last-resort program, an institution of higher education shall demonstrate that the institution has met a minimum threshold, as determined by the Secretary, for the number or percentage of students at such institution who have received rejections from eligible lenders for loans under this part; and

(C) any other standards and guidelines the Secretary determines to be appropriate.

(6) Expiration of authority

The Secretary’s authority under paragraph (4) to designate institutions of higher education for participation in the program under this subsection shall expire on June 30, 2010.

(7) Expiration of designation

The eligibility of an institution of higher education, or borrowers from such institution, to participate in the program under this subsection pursuant to a designation of the institution by the Secretary under paragraph (4) shall expire on June 30, 2010. After such date, borrowers from an institution designated under paragraph (4) shall be eligible to participate in the program under this subsection as such program existed on the day before May 7, 2008.

(8) Prohibition on inducements and marketing

Each guaranty agency or eligible lender that serves as a lender-of-last-resort under this subsection—

(A) shall be subject to the prohibitions on inducements contained in subsection (b)(3) and the requirements of section 1085(d)(5) of this title; and

(B) shall not advertise, market, or otherwise promote loans under this subsection, except that nothing in this paragraph shall prohibit a guaranty agency from fulfilling its responsibilities under paragraph (2)(C).

(9) Dissemination and reporting

(A) In general

The Secretary shall—

(i) broadly disseminate information regarding the availability of loans made under this subsection;

(ii) during the period beginning July 1, 2008 and ending June 30, 2011, provide to the authorizing committees and make available to the public—

(I) copies of any new or revised plans or agreements made by guaranty agencies or the Department related to the authorities under this subsection;

(II) quarterly reports on—

(aa) the number and amounts of loans originated or approved pursuant to this subsection by each guaranty agency and eligible lender; and

(bb) any related payments by the Department, a guaranty agency, or an eligible lender; and

(iii) beginning July 1, 2011, provide to the authorizing committees and make available to the public—

(I) copies of any new or revised plans or agreements made by guaranty agencies or the Department related to the authorities under this subsection; and

(II) annual reports on—

(aa) the number and amounts of loans originated or approved pursuant to this subsection by each guaranty agency and eligible lender; and

(bb) any related payments by the Department, a guaranty agency, or an eligible lender.

(B) Separate reporting

The information required to be reported under subparagraph (A)(ii)(II) shall be reported separately for loans originated or approved pursuant to paragraph (4), or payments related to such loans, for the time period in which the Secretary is authorized to make designations under paragraph (4).

(k) Information on defaults

(1) Provision of information to eligible institutions

Notwithstanding any other provision of law, in order to notify eligible institutions of former students who are in default of their continuing obligation to repay student loans, each guaranty agency shall, upon the request of an eligible institution, furnish information with respect to students who were enrolled at the eligible institution and who are in default on the repayment of any loan made, insured, or guaranteed under this part. The information authorized to be furnished under this subsection shall include the names and addresses of such students.
(2) Public dissemination not authorized

Nothing in paragraph (1) of this subsection shall be construed to authorize public dissemination of the information described in paragraph (1).

(3) Borrower location information

Any information provided by the institution relating to borrower location shall be used by the guaranty agency in conducting required skip-tracing activities.

(4) Provision of information to borrowers in default

Each guaranty agency that has received a default claim from a lender regarding a borrower, shall provide the borrower in default, on not less than two separate occasions, with a notice, in simple and understandable terms, of not less than the following information:

(A) The options available to the borrower to remove the borrower's loan from default.
(B) The relevant fees and conditions associated with each option.

(i) Default aversion assistance

(1) Assistance required

Upon receipt of a complete request from a lender received not earlier than the 60th day of delinquency, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in default aversion activities designed to prevent the default by a borrower on a loan covered by such agreement.

(2) Reimbursement

(A) In general

A guaranty agency, in accordance with the provisions of this paragraph, may transfer from the Federal Student Loan Reserve Fund under section 1072a of this title to the Agency Operating Fund under section 1072b of this title a default aversion fee. Such fee shall be paid for any loan on which a claim for default has not been paid as a result of the loan being brought into current repayment status by the guaranty agency on or before the 300th day after the loan becomes 60 days delinquent.

(B) Amount

The default aversion fee shall be equal to 1 percent of the total unpaid principal and accrued interest on the loan at the time the request is submitted by the lender. A guaranty agency may transfer such fees earned under this subsection not more frequently than monthly. Such a fee shall not be paid more than once on any loan for which the guaranty agency averts the default unless—

(i) at least 18 months has elapsed between the date the borrower entered current repayment status and the date the lender filed a subsequent default aversion assistance request; and
(ii) during the period between such dates, the borrower was not more than 30 days past due on any payment of principal and interest on the loan.

(C) Definition

For the purpose of earning the default aversion fee, the term “current repayment status” means that the borrower is not delinquent in the payment of any principal or interest on the loan.

(m) Income contingent and income-based repayment

(1) Authority of Secretary to require

The Secretary may require borrowers who have defaulted on loans made under this part that are assigned to the Secretary under subsection (c)(8) of this section to repay those loans under an income contingent repayment plan or income-based repayment plan, the terms and conditions of which shall be established by the Secretary and the same as, or similar to, an income contingent repayment plan established for purposes of part C of this subchapter or an income-based repayment plan under section 1098e of this title, as the case may be.

(2) Loans for which income contingent or income-based repayment may be required

A loan made under this part may be required to be repaid under this subsection if the note or other evidence of the loan has been assigned to the Secretary pursuant to subsection (c)(8) of this section.

(n) Blanket certificate of loan guaranty

(1) In general

Subject to paragraph (3), any guaranty agency that has entered into or enters into any insurance program agreement with the Secretary under this part may—

(A) offer eligible lenders participating in the agency’s guaranty program a blanket certificate of loan guaranty that permits the lender to make loans without receiving prior approval from the guaranty agency of individual loans for eligible borrowers enrolled in eligible programs at eligible institutions; and

(B) provide eligible lenders with the ability to transmit electronically data to the agency concerning loans the lender has elected to make under the agency’s insurance program via standard reporting formats, with such reporting to occur at reasonable and standard intervals.

(2) Limitations on blanket certificate of guaranty

(A) An eligible lender may not make a loan to a borrower under this section after such lender receives a notification from the guaranty agency that the borrower is not an eligible borrower.

(B) A guaranty agency may establish limitations or restrictions on the number or volume of loans issued by a lender under the blanket certificate of guaranty.

(3) Participation level

During fiscal years 1999 and 2000, the Secretary may permit, on a pilot basis, a limited number of guaranty agencies to offer blanket certificates of guaranty under this subsection. Beginning in fiscal year 2001, any guaranty agency that has an insurance program agreement with the Secretary may offer blanket certificates of guaranty under this subsection.
(4) Report required

The Secretary shall, at the conclusion of the pilot program under paragraph (3), provide a report to the authorizing committees on the impact of the blanket certificates of guaranty on program efficiency and integrity.

(o) Armed Forces student loan interest payment program

(1) Authority

Using funds received by transfer to the Secretary under section 2174 of title 10 for the payment of interest and any special allowance on a loan to a member of the Armed Forces that is made, insured, or guaranteed under this part, the Secretary shall pay the interest and special allowance on such loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest or any special allowance on such a loan out of any funds other than those that have been so transferred.

(2) Forbearance

During the period in which the Secretary is making payments on a loan under paragraph (1), the lender shall grant the borrower forbearance in accordance with the guaranty agreement under subsection (c)(5)(A)(i)(IV) of this section.

(3) Special allowance defined

For the purposes of this subsection, the term “special allowance” means a special allowance that is payable with respect to a loan under section 1087–1 of this title.


PRIOR PROVISIONS


Amendments by section 2(c)(17), (26), (27) of Pub. L. 103–208 (which were effective as if included in Pub. L. 103–325) were executed to this section, as amended by Pub. L. 102–325, Pub. L. 103–66, and Pub. L. 103–82, to reflect the probable intent of Congress.
2011—Subsec. (a)(3)(A)(i). Pub. L. 112–74 amended subcl. (i) generally. Prior to amendment, subcl. (i) read as follows: “which accrues prior to the beginning of the repayment period of the loan or”,

2010—Subsec. (a)(1). Pub. L. 111–152, § 2204(a)(1), inserted “‘for which the first disbursement is made before July 1, 2010,’ after ‘‘July 1, 2006,‘‘”.

Subsec. (a)(5). Pub. L. 111–152, § 2204(a)(1)(B), substituted “‘June 30, 2010.’” for “‘September 30, 2014, except that, in the case of a loan made or insured under a student loan or loan insurance program to enable a student who has obtained a prior loan made or insured under such program to continue his or her education, or the employees of an institution of higher education, or any institution of higher education comparable to the kinds of assistance provided to institutions of higher education by the Department of Education.’”


Subsec. (b)(1)(H)(ii). Pub. L. 111–152, § 2204(a)(2)(B), added subcl. (i) and struck out former subcl. (i) which read as follows: “‘the lender shall determine the eligibility of a borrower for a deferment described in subparagraph (B) based on receipt of—’ (I) a request for deferment from the borrower and documentation of the borrower’s eligibility for the deferment; (II) a newly completed loan application that documents the borrower’s eligibility for a deferment; or (III) student status information received by the lender that the borrower is enrolled on at least a half-time basis; and,”.


Subsec. (b)(1)(Y)(v). Pub. L. 110–315, § 422(c)(2)(A), struck out “‘A guaranty agency shall not—’ (A) offer, directly or indirectly, premiums, payments, or other inducements to any educational institution or its employees in order to secure applicants for loans under this part; (B) offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any agent, employee, or independent contractor of any lender or guaranty agency, in order to administer or market loans made under this part (other than a loan made under section 1078–8 of this title or a loan made as part of a guaranty agency’s lender-of-last-resort program) for the purpose of securing the designation of that guaranty agency as the insurer of such loans; (C) conduct unsolicited mailings of student loan application forms to students enrolled in secondary school or a postsecondary institution, or to parents of such students, except that applications may be mailed to borrowers who have previously received loans guaranteed under this part by the guaranty agency; or (D) conduct fraudulent or misleading advertising concerning loan availability. It shall not be a violation of this paragraph for a guaranty agency to provide assistance to institutions of higher education comparable to the kinds of assistance provided to institutions of higher education by the Department of Education.”

Subsec. (c)(9)(K). Pub. L. 111–39, § 402(f)(1)(C), substituted “‘‘6 months’’ for ‘‘3 months’’. 2008—Subsec. (a)(2)(C). Pub. L. 110–315, § 422(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “For the purpose of subparagraph (B) and this paragraph— (i) a student’s cost of attendance shall be determined under section 1087ff of this title; (ii) a student’s estimated financial assistance means, for the period for which the loan is sought— (I) the amount of assistance such student will receive under subpart 1 of part A of this subchapter (as determined in accordance with section 1091(b) of this title), subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 and part D of this subchapter; (II) any veterans’ education benefits paid because of enrollment in a postsecondary education institution, including veterans’ education benefits (as defined in section 1087ff(v)(2) of this title, but excluding benefits described in paragraph (2)(E) of such section); plus (III) other scholarship, grant, or loan assistance, but excluding any national service education or post-service benefit under title I of the National and Community Service Act of 1990; and (IV) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated in accordance with part E of this subchapter.”

Subsec. (a)(5). Pub. L. 110–315, § 422(b), substituted “‘2014’” for “‘2012’” and “‘2018’”. Pub. L. 110–315, § 422(c)(1)(A), added cl. (i) and struck out former cl. (i) which read as follows: “the lender shall determine the eligibility of a borrower for a deferment described in subparagraph (B) based on receipt of— (I) a request for deferment from the borrower and documentation of the borrower’s eligibility for the deferment; (II) a newly completed loan application that documents the borrower’s eligibility for a deferment; or (III) student status information received by the lender that the borrower is enrolled on at least a half-time basis; and,”.


Subsec. (b)(3). Pub. L. 110–315, § 422(d), amended par. (3) generally. Prior to amendment, text read as follows: “A guaranty agency shall not— (A) offer, directly or indirectly, premiums, payments, or other inducements to any educational institution or its employees in order to secure applicants for loans under this part; (B) offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any agent, employee, or independent contractor of any lender or guaranty agency, in order to administer or market loans made under this part (other than a loan made under section 1078–8 of this title or a loan made as part of a guaranty agency’s lender-of-last-resort program) for the purpose of securing the designation of that guaranty agency as the insurer of such loans; (C) conduct unsolicited mailings of student loan application forms to students enrolled in secondary school or a postsecondary institution, or to parents of such students, except that applications may be mailed to borrowers who have previously received loans guaranteed under this part by the guaranty agency; or (D) conduct fraudulent or misleading advertising concerning loan availability. It shall not be a violation of this paragraph for a guaranty agency to provide assistance to institutions of higher education comparable to the kinds of assistance provided to institutions of higher education by the Department of Education.”


Subsec. (c)(9)(K). Pub. L. 110–315, § 103(b)(4)(A), substituted “authorizing committees” for “House Committee on Education and the Workforce and the Senate Committee on Labor and Human Resources”.

Subsec. (d). Pub. L. 110–315, § 422(g)(1), inserted “and section 527 of the Appendix to title 50” after “other than this chapter and part C of chapter 34 of title 42” in introductory provisions.


(e). Text read as follows: “At the time of offering a borrower a loan under this part, and at the time of offering the borrower the option of repaying a loan in accordance with this section, the lender shall provide the borrower with a notice that informs the borrower, in a form prescribed by the Secretary by regulation—

(1) that all borrowers are eligible for income-sensitive repayment, including through loan consolidation under section 1078–3 of this title;

(2) the procedures by which the borrower may elect income-sensitive repayment; and

(3) where and how the borrower may obtain additional information concerning income-sensitive repayment.”

Subsec. (g). Pub. L. 110–315, § 103(b)(4)(B), substituted “authorizing committees” for “Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives” in concluding provisions.


Subsec. (j)(1). Pub. L. 110–227, § 5(a)(1), after second sentence inserted “No loan under section 1078, 1078–2, or 1078–8 of this title that is made pursuant to this subpart shall be made with interest rates, origination or default fees, or other terms and conditions that are more favorable to the borrower than the maximum interest rates, origination or default fees, or other terms and conditions applicable to that type of loan under this part.”

Pub. L. 110–227, § 5(a)(1), in first sentence, substituted “eligible students and parents who are otherwise unable to obtain loans under this part (except for consolidation loans under section 1078–3 of this title)” for “student”.

Subsec. (j)(2)(B). Pub. L. 110–227, § 5(a)(2), inserted “and” at the end of subpar. (C), substituted period for “;” at the end of subpar. (D), and struck out subpar. (E) which read as follows: “the guaranty agency believes or has reasonable cause to believe that the Secretary may need to exercise the Secretary’s authority under section 1087–2(q) of this title”.

Subsec. (j)(3)(C). Pub. L. 110–227, § 5(a)(3), inserted “or designates an institution of higher education for participation in the program under this subsection under paragraph (4)” after “under this part” in first sentence and “or to eligible borrowers who attend an institution in the State that is designated under paragraph (4)” after “problems” in third sentence.

Subsec. (j)(4)(A) to (E). Pub. L. 110–315, § 439(a)(2)(C), inserted “and” at the end of subpar. (C), substituted period for “;” at the end of subpar. (D), and struck out subpar. (E) which read as follows: “the guaranty agency believes or has reasonable cause to believe that the Secretary may need to exercise the Secretary’s authority under section 1087–2(q) of this title”.


Subsec. (j)(8). Pub. L. 110–315, § 422(k), added pars. (8) and (9).


Subsec. (m)(1). Pub. L. 110–315, § 422(j)(2), inserted “or income-based repayment plan” before “, the terms and conditions of which are favorable to the borrower” in section 1098e of this title, as the case may be before the period at end.


Subsec. (n)(4). Pub. L. 110–315, § 103(b)(4)(D), substituted “authorizing committees” for “Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate”.

2007—Subsec. (b)(1)(G). Pub. L. 110–84, § 303(a), which directed the general amendment of subpar. (G), was repealed by Pub. L. 111–152, § 241(c).

Subsec. (b)(1)(M)(iii). Pub. L. 110–84, § 202(a), struck out “not in excess of 3 years” before “during” in introductory provisions, substituted “and” for “or” at end of subcl. (II), and inserted concluding provisions.

Subsec. (c)(1)(D) to (H). Pub. L. 110–84, § 304(b)(1), redesignated subpars. (E) to (H) as (D) to (G), respectively, and struck out former subpar. (D) which read as follows: “Reimbursements of losses made by the Secretary on loans submitted for claim by an eligible lender, servicer, or guaranty agency designated for exceptional performance.”

Subsec. (c)(6)(A)(ii). Pub. L. 110–84, § 301, amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “an amount equal to 24 percent of such payments for use in accordance with section 1072b of this title, except that, beginning on October 1, 2003, this subparagraph shall be applied by substituting ‘25 percent’ for ‘24 percent’.”


Subsec. (b)(1)(A)(ii)(I). Pub. L. 109–171, § 8014(a)(1), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: “insures 98 percent of the unpaid principal of loans insured under the program, except that such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to subsection (j) of this section or section 1087–2(q) of this title.”
Subsec. (b)(1)(H). Pub. L. 109–171, §8013(b)(1), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: "provides for collection of a single insurance premium equal to not more than 10 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and insures that the proceeds of the premium will not be used for incentive payments to lenders;".

Subsec. (b)(1)(M)(iii), (iv). Pub. L. 109–171, §8007(a), added cl. (iii) and redesignated former cl. (ii) as (iv). Subsec. (b)(1)(N)(ii), (iii). Pub. L. 109–171, §8008(a), added cls. (ii) and (iii) and struck out former cl. (ii), which read as follows: "in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled or at an eligible foreign institution, are, at the request of the student, determined direct or indirect costs described in clause (i), unless such student requests that the check be endorsed, or the funds transfer authorized, pursuant to an authorized power-of-attorney.".

Subsec. (b)(7)(A). Pub. L. 109–171, §8009(b)(1), substituted "shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution)" for "shall begin—"

"(i) the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

"(ii) on an earlier date if the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier date.

Subsec. (c)(1)(A). Pub. L. 109–171, §8014(c)(2), substituted "30 days" for "45 days" in last sentence.

Subsec. (c)(1)(C). Pub. L. 109–171, §8014(c)(1), added subpar. (G) and redesignated former subpar. (G) as (H) and realigned margins.


Subsec. (c)(2)(D). Pub. L. 109–171, §8014(d)(2), substituted "written provisions, struck out "writing" after "on terms agreed to" and inserted "and documented in accordance with paragraph (10)" after "approval of the insurer".

Subsec. (c)(6). Pub. L. 109–171, §8014(d)(3), designated existing provisions as subpar. (A), redesignated former subpar. (C) and (D) as cls. (i) and (ii), respectively, of subpar. (A), and added subpars. (B) and (C). Subsec. (c)(10). Pub. L. 109–171, §8004(c)(2), added par. (10).


2002—Subsec. (c)(3)(A)(i)(IV). Pub. L. 107–314, §1071–314, added subpar. (C) and struck out former subpar. (C), which read as follows: "shall contain provisions that specify the form of forbearance granted by the lender for purposes of this paragraph shall be the temporary cessation of payments, unless the borrower selects forbearance in the form of an extension of time for making payments, or smaller payments than were previously scheduled; and"


1998—Subsec. (a)(2)(A)(ii). Pub. L. 105–224, §417(a)(1), amended subsec. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpar. (B) and (C). Subsec. (b)(1)(A)(i)(II), (III). Pub. L. 105–224, §417(b)(1)(B)(i), substituted "length; and "length (as determined under section 1087vv(c) of this title), unless such student requests that the check be endorsed, or the funds transfer authorized, pursuant to an authorized power-of-attorney.".

Subsec. (b)(1)(A)(ii), (iii). Pub. L. 105–224, §417(b)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "For the purpose of subparagraph (A) if the eligible institution has provided the lender with a statement evidencing a determination of need for a loan (as determined under part E of this subchapter) and the amount of such need, subject to the provisions of subparagraph (D)."

Subsec. (a)(2)(C). Pub. L. 105–224, §417(a)(1)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "For the purpose of paragraph (i) and this paragraph—"

"(i) a student’s estimated financial assistance means, for the period for which the loan is sought, the amount of assistance such student will receive under part 1 of part A of this subchapter (as determined in accordance with section 1091(b) of this title), subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 and part D of this subchapter, and any veterans' education benefits paid because of enrollment in a postsecondary education institution, including veterans' education benefits (as defined in section 1087vv(c) of this title), plus other scholarship, grant, or loan assistance; and

"(ii) the determination of need and of the amount of a loan by an eligible institution under paragraph (B) with respect to a student shall be calculated in accordance with part E of this subchapter.

Subsec. (a)(2)(F). Pub. L. 105–224, §417(a)(1)(D), struck out subpar. (F) which read as follows: "Except as provided in subparagraph (D), an eligible institution may refuse to certify a statement which permits a student to receive a loan under this part or to certify a loan amount that is less than the student’s determination of need (as determined under part E of this subchapter), if the reason for such action is documented and provided in written form to each student so affected."


Subsec. (b)(1)(A)(i)(II), (III). Pub. L. 105–224, §417(b)(1)(B)(ii), added subcl. (II) and struck out former subcls. (II) and (III) which read as follows: "(II) $1,750, if such student is enrolled in a program whose length is less than one academic year, but at least ½ of such an academic year;"

"(III) $375, if such student is enrolled in a program whose length is less than ½, but at least ¼, of such an academic year;"


Subsec. (b)(1)(D)(i). Pub. L. 105–224, §417(b)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the repayment period of any insured loan may not exceed 10 years, and"

Subsec. (b)(1)(E). Pub. L. 105–224, §417(b)(3), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "subject to subparagraphs (D) and (L), except as provided by subparagraph (M), provides that—"

"(i) not more than 6 months prior to the date on which the borrower's first payment is due, the lender shall offer the borrower of a loan made, insured, or guaranteed under this section or section 1078–1 of this title, the option of repaying the loan in accordance with a graduated or income-sensitive repayment schedule established by the lender and in accordance with regulations of the Secretary; and
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Subsec. (c)(2)(G). Pub. L. 105-224, § 417(c)(2)(B), substituted "certifies to the Secretary that diligent attempts, including contact with the institution, have been made" for "certifies to the Secretary that diligent attempts have been made".

Subsec. (c)(2)(H)(i). Pub. L. 105-224, § 417(c)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the guaranty agency may require the institution of a reasonable fee (as determined in accordance with regulations prescribed by the Secretary) for such information; and"


Subsec. (c)(6). Pub. L. 105-224, § 417(c)(5), amended heading and text of par. (6) generally, revising and restating provisions relating to Secretary's equitable share.

Subsec. (c)(8). Pub. L. 105-224, § 417(c)(6), redesignated subpar. (A) as entire par. and struck out subpar. (B) which read as follows: "An orderly transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part C of this subchapter shall be deemed to be in the Federal fiscal interest, and a guaranty agency shall promptly assign loans to the Secretary under this paragraph upon the Secretary's request."

Subsec. (c)(9)(A). Pub. L. 105-224, § 417(c)(7)(A), substituted "maintain in the agency's Federal Student Loan Reserve Fund established under section 1072a of this title a current minimum reserve level of at least 0.25 percent" for "maintain a current minimum reserve level of at least .5 percent".

Subsec. (c)(9)(C). Pub. L. 105-224, § 417(c)(7)(B), substituted "85 percent pursuant to paragraph (1)(B)(i)" for "80 percent pursuant to subsection (c)(1)(B)(ii) of this section", struck out "as appropriate", after "Secretary shall require", and substituted "45 working days" for "30 working days".

Subsec. (c)(9)(E)(iv). Pub. L. 105-224, § 417(c)(7)(C)(i), inserted "or" at end.

Subsec. (c)(9)(E)(vi). Pub. L. 105-224, § 417(c)(7)(C)(iii), struck out "on the record" after "for a hearing".

Subsec. (c)(9)(F)(vii). Pub. L. 105-224, § 417(c)(7)(D), substituted "and to avoid disruption of the student loan program" for "to avoid disruption of the student loan program, and to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part C of this subchapter."
...on the next page...
(A) In the case of a loan made under section 1077 of this title or this section, the repayment period shall begin on the day immediately following the expiration of the 6-month period after the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution, unless the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier point in time, and shall exclude any period of authorized deferment or forbearance.

(B) In the case of a loan made under section 1078–1 or 1078–3 of this title, the repayment period shall begin on the day the loan is disbursed, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement, and shall exclude any period of authorized deferment or forbearance.

(C) In the case of a loan made under section 1078–2 or 1078–3 of this title, the repayment period shall begin on the day the loan is disbursed, and shall exclude any period of authorized deferment or forbearance.

(D) In the case of a loan made under section 1087h of this title, the repayment period shall begin on the day immediately following the expiration of 270 days after the loan becomes delinquent, or

(E) a guaranty agency that is backed by the full faith and credit of the State where such guaranty agency is the primary guarantor.

(F) a guaranty agency that is backed by the full faith and credit of the United States.

(G) a guaranty agency that is backed by the full faith and credit of the District of Columbia.

(H) a guaranty agency that is backed by the full faith and credit of a territory of the United States.

(I) a guaranty agency that is backed by the full faith and credit of a possession of the United States.

(J) a guaranty agency that is backed by the full faith and credit of a Commonwealth of the United States.

(K) a guaranty agency that is backed by the full faith and credit of a cooperative endeavor of the United States.

(6) In the case of a loan made under section 1087h of this title, the repayment period shall begin on the day immediately following the expiration of 270 days after the loan becomes delinquent, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement, and shall exclude any period of authorized deferment or forbearance.

(7) Generally. Prior to amendment, par. (7) read as follows:

"(A) In the case of a loan made under section 1077 of this title or this section, the repayment period shall begin on the day immediately following the expiration of the 6-month period after the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution, unless the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier point in time, and shall exclude any period of authorized deferment or forbearance."

Subsec. (f)(1)(A). Pub. L. 103–66, §4107(b)(1), substituted “‘For a fiscal year prior to fiscal year 1994, the Secretary’” for “‘The Secretary’”.


Subsec. (k)(2)(E). Pub. L. 103–66, §4041(a)(2)(B), in subpar. (A) inserted before semicolon “‘and assures a response within 60 days after the student’s original complete application is filed under this subsection’”, added subpar. (B), and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (j)(3). Pub. L. 103–66, §4041(a)(1), added par. (3) consisting of subpars. (A) and (B), and struck out former par. (3) relating to limitation on lender-of-last-resort program, consisting of subpars. (A) to (C).

Subsec. (j)(2). Pub. L. 103–66, §4112(a), inserted second sentence and struck out former second sentence which read as follows: “Such payments shall be equal to $56.00 for each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender or before the 150th day after the loan becomes 120 days delinquent.”

Subsec. (m). Pub. L. 103–66, §4083(a)(2), amended par. (1) generally, added par. (2), and struck out former paras. (2) to (4). Prior to amendment, former pars. (1) to (4) related to establishment of terms and conditions, collection mechanism, loans for which income contingent repayment is required, and additional authority, respectively.

Subsec. (n). Pub. L. 103–66, §4201(a), added subsec. (n). 1992—Subsec. (a)(2)(C). Pub. L. 102–325, §416(a)(1), amended cl. (i) and (ii) generally. Prior to amendment, cl. (i) and (ii) read as follows: “(i) a student’s estimated financial assistance means, for the period for which the loan is sought, the amount of assistance such student will receive under subpart 1 of part A of this subchapter, part D of this subchapter, and part C of subchapter 1 of chapter 34 of title 42, and any amount paid the student under chapters 32, 34, and 35 of title 38, plus other scholarship, grant, or loan assistance; and

(ii) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated by subtracting from the estimated cost of attendance at the eligible institution, the portion of the expected family contribution with respect to such student plus any estimated financial assistance reasonably available to such student.”


Subsec. (b)(1)(A). Pub. L. 102–325, §416(b)(1)(A), inserted “or in a program of study abroad approved for credit by the eligible home institution at which such student is enrolled” in introductory provisions.

Subsec. (b)(1)(A)(1) to (iv). Pub. L. 102–325, §416(b)(1)(B), added cl. (i) to (iv) and struck out former cl. (i) to (iv) which read as follows: “(i) $2,625, in the case of a student who has not successfully completed the first and second year of a program of undergraduate education; and

(ii) $4,000, in the case of a student who has successfully completed such first and second year but who has not successfully completed the remainder of a program of undergraduate education; and

(iii) $7,500, in the case of a graduate or professional student (as defined in regulations of the Secretary).”

Subsec. (b)(1)(B). Pub. L. 102–325, §416(b)(2), which directed the amendment of subpar. (B) by striking clauses (i) and (ii) and inserting language which contained new clss. (i) and (ii) followed by concluding provisions, was executed by substituting the new clss. (i) and (ii) and concluding provisions for former clss. (i) and (ii) and former concluding provisions to reflect the probable intent of Congress. Prior to amendment, (i) and (ii) and concluding provisions read as follows:

“(i) $17,250, in the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under section 1078–1 or 1078–2 of this title; and

(ii) $54,750, in the case of any graduate or professional student (as defined by regulations of the Secretary and including any loans which are insured by the Secretary under this part, or by a guaranty agency, made to such student before the student became a graduate or professional student), excluding loans made under section 1078–1 or 1078–2 of this title except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive.”

Subsec. (b)(1)(D). (E). Pub. L. 102–325, §416(c)(1), amended subpars. (D) and (E) generally. Prior to amendment, subpars. (D) and (E) read as follows:

“(D) provides that (1) the student borrower shall be entitled to accelerate without penalty the whole or any part of an insured loan, (ii) except as provided in subparagraph (M) of this paragraph, the repayment period of any insured loan may not exceed 10 years, and (iii) the note or other written evidence of any loan, may contain such reasonable provisions relating to repayment in the event of default by the borrower as may be authorized by regulations of the Secretary in effect at the time such note or written evidence was executed;”

“(E) subject to subparagraphs (D) and (L) of this paragraph and except as provided by subparagraph (M) of this paragraph, provides that repayment of loans shall be in installments over a period of not less than 5 years (unless the student, during the 6 months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years beginning 6 months after the month in which the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution.”

Subsec. (b)(1)(L)(I). Pub. L. 102–325, §416(d), substituted “(but in no instance less than the amount of interest due and payable)” for “”, except that, in the case of a husband and wife, both of whom have such loans outstanding, the total of the combined payments for such a couple during any year shall not be less than $600 or the balance of all such loans, whichever is less”.

Subsec. (b)(1)(M). Pub. L. 102–325, §416(e)(1), amended subpar. (M) generally, revising and restating as clss. (i) to (iii) provisions formerly contained in clss. (i) to (xi).

Subsec. (b)(1)(N). Pub. L. 102–325, §416(f), substituted “except in the case of students who are studying outside the United States in a program of study abroad that is approved for credit by the home institution or which the student is enrolled, the funds shall be delivered directly to the student and the checks may be endorsed, and fund transfers authorized, pursuant to an authorized power-of-attorney;” for “except in the case of attendance at an institution outside the United States, the funds shall be delivered directly to the student:”.

Subsec. (b)(1)(T). Pub. L. 102–325, §416(g), amended subpar. (T) generally. Prior to amendment, subpar. (T) read as follows: “provides no restrictions with respect to eligible institutions (other than nonresidential correspondence schools) which are more onerous than eligibility requirements for institutions under the Federal student loan insurance program as in effect on January 1, 1985, unless—

(i) that institution is ineligible under regulations for the emergency action, limitation, suspension, or termination of eligible institutions under the Federal student loan insurance program or is ineligible pursu-
ant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility issued under the Federal student loan insurance program;

“(ii) there is a State constitutional prohibition affecting the eligibility of such an institution;”

Subsec. (b)(1)(V). Pub. L. 102–325, § 416(i)(4), added subpar. (W) to (Y) and struck out former subpars. (W) to (X) which related to credit reports, credit worthy cosigners, and authorizations for entry of judgments against borrowers in the event of default.

Subsec. (b)(2)(C). Pub. L. 102–325, § 416(k)(1), substituted “, including financial information, as the Secretary may reasonably require to carry out the Secretary’s functions under this part and protect the financial interest of the United States,” for “, as the Secretary may reasonably require to carry out the Secretary’s functions under this part,”

Subsec. (b)(2)(D)(i). Pub. L. 102–325, § 416(k)(2)(A), substituted “on at least an annual basis” for “at least once every 2 years”.


Subsec. (b)(3)(B) to (D). Pub. L. 102–325, § 416(h), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (b)(4). Pub. L. 102–325, § 416(n), inserted at end sentence relating to requests for deferment of repayment by students engaged in fellowship-supported study outside the United States.

Pub. L. 102–325, § 416(m), redesignated par. (5) as (4) and struck out former par. (4) which related to targeted teacher deferment rule.


Subsec. (c)(1)(A). Pub. L. 102–325, § 416(p)(1), substituted “, or later than 45 days after the guaranty agency discharges its insurance obligation on the loan,” for period at end.


Subsec. (c)(2). Pub. L. 102–325, § 416(p)(3), struck out “and” at end of subpar. (F), added subpar. (G) and (H), and redesignated former subpar. (G) as (I).

Subsec. (c)(3). Pub. L. 102–325, § 416(p)(4), added subpar. (C) and concluding provisions and struck out former last sentence which read as follows: “Such regulations shall not preclude guaranty agencies from permitting the parties to such a loan from entering into a forbearance agreement solely because the loan is in default.”


Subsec. (c)(7)(C). Pub. L. 102–325, § 416(p)(5)(B), (C), redesignated subpar. (B) as (C) and inserted “or (R)” after “(A)”.

Subsec. (c)(8). Pub. L. 102–325, § 416(p)(6), inserted provisions at end directing Secretary to develop criteria to determine whether agency has made adequate collection efforts and directing Secretary to consider certain factors in making determination.


Subsec. (j). Pub. L. 102–325, § 416(r), designated existing provisions as par. (1), inserted par. heading, and added pars. (2) and (3).


Subsec. (a)(2)(F). Pub. L. 102–26 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “Except as provided in subparagraph (D), an eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, refuse to provide to any eligible lender which has an agreement under subsection (b) of this section with any guaranty agency, a statement which permits a student to receive any loan under this part, except that, in individual cases where the institution determines that the portion of the student’s expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement.”


Subsec. (c)(6)(D). Pub. L. 102–164, § 605(b)(2), struck out subpar. (D) which read as follows: “In the case of a State which enacts and enforces a garnishment law that complies with the requirements of section 1078–5 of this title, subparagraph (A)(ii) shall be applied by substituting ‘35 percent’ for ‘30 percent’.”

1990—Subsec. (a)(2)(F). Pub. L. 101–508, § 3004(b), inserted before period at end “, except that, in individual cases where the institution determines that the portion of the student’s expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement”.

Subsec. (c)(1)(A). Pub. L. 101–508, § 3002(a)(1), struck out before period at end “, including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C)”.

Subsec. (c)(6)(C). Pub. L. 101–508, § 3002(a)(3)–(5), in introductory provisions of cl. (i), substituted “subparagraph (b) of this section” for “this paragraph”, in cl. (i)(I), substituted “generally comparable in intensiveness to the level of preclaims assistance performed, prior to the 120th day of delinquency, by the guaranty agency as of October 16, 1990” for “required or permitted under paragraph (2)(A) of this subsection and subsection (f) of this section”, in cl. (ii), substituted “payment under subsection (b) of this section” for “reimbursement” and “described in division (i)(I) of this subparagraph” for “which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f) of this section”, and in cl. (iv), struck out first sentence which read as follows: “The costs for each delinquency which is associated with carrying out this subparagraph may not exceed 2 percent of the outstanding principal balance of each such loan subject to the supplemental preclaims assistance authorized by this subparagraph or $100 , whichever is less.”


Subsec. (b)(1)(M)(i). Pub. L. 101–239, § 3003(b)(1), inserted before semicolon at end “, except that no borrower shall be eligible for a deferment under this
clause, or loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program.

Subsec. (b)(9)(D). Pub. L. 100–203, § 3002(b)(2), substituted “an amount equal to” for “an amount, subject to section 1072(e) of this title, equal to” in introductory provisions.

Subsec. (c)(9)(A)(i). Pub. L. 100–203, § 3002(b)(2), substituted “shall be deemed” for “shall, subject to section 1072(e) of this title, be deemed” for “shall be deemed”.


Subsec. (f)(1)(B). Pub. L. 100–203, § 3002(b)(3), substituted “shall be deemed” for “shall, subject to section 1072(e) of this title, be deemed” for “shall be deemed”.

Subsec. (1)(1). Pub. L. 100–50, § 10(k), struck out “multiple” after “authorizing” and substituted “21 days” for “45 days”.

Subsec. (j). Pub. L. 100–50, § 10(m), inserted provision at end that the guaranty agency consider the request of an eligible lender to serve as the lender-of-last-resort pursuant to this subsection.

Subsec. (k)(1). Pub. L. 100–203, § 3003, substituted “Notwithstanding any other provision of law, in” for “In”, “guaranty agency shall” for “guaranty agency may”, and “subsection shall include” for “subsection may include”.

Subsec. (b)(1)(A). Pub. L. 100–50, § 10(k)(1), struck out former cl. (ii) which read as follows: “the amount borrowed, the cumulative amount borrowed, the income reported on the loan application, and the purposes and the cost of attendance of the borrower.”

Subsec. (c)(1)(A). Pub. L. 100–203, § 3000(b)(1), substituted “shall be deemed” for “shall, subject to section 1072(e) of this title, be deemed”.

Subsec. (b)(6)(B)(ii). Pub. L. 100–50, § 10(h)(2), added cl. (ii) and struck out former cl. (ii) which read as follows: “the amount borrowed, the cumulative amount borrowed, the income reported on the loan application, and the purposes and the cost of attendance of the borrower.”

Subsec. (c)(1)(D). Pub. L. 100–50, § 10(i), inserted at end “in the case of accounts brought into repayment status as a result of performing supplemental pre-claims assistance, the cost of such assistance is a permissible charge to the borrower (for the cost of collection) for which the borrower shall be liable.”

Subsec. (b)(6)(D). Pub. L. 100–50, § 10(l), inserted “and enforces” after “enacts”.

Subsec. (c)(9)(A). Pub. L. 100–203, § 3002(b)(2), substituted “shall be deemed” for “shall, subject to section 1072(e) of this title, be deemed” for “shall be deemed”.

Subsec. (b)(1)(M)(vii). Pub. L. 100–369, § 7(c), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (b)(1)(M)(v). Pub. L. 100–50, § 10(j), substituted “and the purposes and the cost of attendance of the borrower shall be liable.”

Subsec. (c)(3)(P) and struck out former subpar. (P) which read as follows: “requires the borrower and the institution of higher education, a hospital, or a health care facility that offers postgraduate training,” before “and except in the case of attendance at an institution of higher education, a hospital, or a health care facility that offers postgraduate training”.

Subsec. (b)(1)(M)(v). Pub. L. 100–369, § 7(c), substituted “shall be deemed” for “shall, subject to section 1072(e) of this title, be deemed” for “shall be deemed”.

Subsec. (b)(1)(M)(iv). Pub. L. 100–369, § 7(c), substituted “an amount, subject to section 1072(e) of this title, equal to” for “an amount equal to” in introductory provisions.


Subsec. (b)(1)(M)(vii). Pub. L. 100–369, § 7(c), inserted “‘the amount borrowed, the cumulative amount borrowed, the income reported on the loan application, and the purposes and the cost of attendance of the borrower.’”

Subsec. (b)(1)(T). Pub. L. 100–50, § 10(k)(5), inserted “or serving in a medical internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training” before semicolon at end.

Subsec. (b)(1)(N). Pub. L. 100–50, § 10(k)(2), inserted “and except in the case of attendance at an institution outside the United States, the funds shall be delivered directly to the student” before semicolon at end.

Subsec. (b)(1)(O). Pub. L. 100–50, § 10(c), substituted “$1,000 or more” for “more than $1,000”.


Subsec. (b)(1)(P). Pub. L. 100–50, § 10(f)(4), added subpar. (P) and struck out former subpar. (P) which read as follows: “requires the borrower and the institution at which the borrower is in attendance to promptly notify the holder of the loan, directly or through the guaranty agency, concerning any change of address or status”.

Subsec. (b)(1)(T). Pub. L. 100–50, § 10(f)(5), inserted “other than nonresidential correspondence schools” after “‘eligible institutions’”.

Subsec. (b)(5). Pub. L. 100–50, § 10(g), substituted “paragraph (1)(M)(vii)” for “paragraph (1)(M)”.

Subsec. (b)(6)(A). Pub. L. 100–50, § 10(h)(1), substituted “Until such time as the Secretary has implemented section 1092b of this title and is able to provide to guaranty agencies the information required by such section” for “Prior to the implementation of section 1092b of this title”.

Subsec. (b)(6)(B)(ii). Pub. L. 100–50, § 10(h)(2), added cl. (ii) and struck out former cl. (ii) which read as follows: “the amount borrowed, the cumulative amount borrowed, the income reported on the loan application, and the purposes and the cost of attendance of the borrower.”
paragraph (1) [amending this section] shall take effect on July 1, 2010.’’

Pub. L. 110–315, title IV, § 422(g)(3), Aug. 14, 2008, 122 Stat. 2293, provided that: ‘‘The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Aug. 14, 2008], and the amendment made by paragraph (2) [amending section 1087–1 of this title] shall take effect for loans for which the first disbursement is made on or after July 1, 2008.’’

Pub. L. 110–315, title IV, § 422(g)(3), Aug. 14, 2008, 122 Stat. 2293, provided that: ‘‘The amendments made by this section [amending this section and section 1078–2 of this title] shall take effect for loans for which the first disbursement is made on or after July 1, 2008.’’

Pub. L. 110–315, title IV, § 422(g)(3), Aug. 14, 2008, 122 Stat. 2293, provided that: ‘‘The amendments made by this section [amending this section and section 1078–2 of this title] shall take effect for loans for which the first disbursement is made on or after July 1, 2008.’’

Pub. L. 110–227, § 5(b), May 7, 2008, 122 Stat. 746, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [May 7, 2008].’’

**Effective Date of 2007 Amendment**

Amendment by sections 202(a), (d) and 301 of Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

Pub. L. 110–84, title III, § 302(c), Sept. 27, 2007, 121 Stat. 796, provided that: ‘‘The amendments made by subsections (a) and (b) [amending this section and section 1087–1 of this title] shall be effective on October 1, 2007, except that section 4261 of the Higher Education Act of 1965 [20 U.S.C. 1078–9] (as in effect on the day before the date of enactment of this Act [Sept. 27, 2007]) shall apply to eligible lenders that received a designation under subsection (a) of such section prior to October 1, 2007, for the remainder of the year for which the designation was made.’’

Pub. L. 110–84, title III, § 303(b), Sept. 27, 2007, 121 Stat. 797, which provided that amendment by former section 303(a) of Pub. L. 110–84 (amending this section) would be effective on Oct. 1, 2012, and applicable with respect to loans made on or after such date, was repealed by Pub. L. 111–152, title II, § 202(b), Mar. 18, 2009, 123 Stat. 1075.

**Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 1(c) of Pub. L. 109–171, set out as a note under section 1062 of this title.

Amendment by section 800(b) of Pub. L. 109–171 effective Jan. 1, 2007, see section 800(c) of Pub. L. 109–171, set out as a note under section 1075 of this title.


Pub. L. 109–171, title VIII, § 801(a)(2), Aug. 23, 2006, 120 Stat. 168, provided that: ‘‘The amendment made by this subsection [amending this section] shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.’’

Pub. L. 109–171, title VIII, § 801(c)(2), Aug. 23, 2006, 120 Stat. 170, provided that: ‘‘The amendments made by this subsection [amending this section] shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.’’

**Effective Date of 2002 Amendment**

Amendment by Pub. L. 107–314 applicable with respect to interest, and any special allowance under section 1087–1 of this title, that accrue for months beginning on or after Oct. 1, 2003, on student loans described in section 217(c) of Title 10, Armed Forces, that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of Title 10) on or after that date, see section 651(e) of Pub. L. 107–314, set out as an Effective Date note under section 2174 of Title 10.

**Effective Date of 1998 Amendment**

Amendment by section 417(a), (b), (c)(2)–(k) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 417(c)(1)(B), Oct. 7, 1998, 112 Stat. 1687, provided that: ‘‘The amendments made by subparagraph (A) of this paragraph [amending this section] apply to loans for which the first disbursement is made on or after October 1, 1998.’’

**Effective Date of 1994 Amendment**

Section 355(b) of Pub. L. 103–382 provided that: ‘‘Subsection (a) [amending this section] and the amendment made by subsection (a) shall take effect on August 10, 1993.’’

**Effective Date of 1993 Amendments**


Section 404(b) of Pub. L. 103–66 provided that: ‘‘The amendments made by this section [amending this section] shall take effect on July 1, 1994.’’

Section 4107(c) of Pub. L. 103–66 provided that: ‘‘The amendments made by this section [amending this section and sections 1078–8 and 1087–1 of this title] shall take effect on July 1, 1994.’’

**Effective Date of 1992 Amendment**


‘‘(a) In General.—The changes made in part B of title IV of the Act [20 U.S.C. 1071 et seq.] by the amendments made by this part [part B (§§ 411–432) of title IV of Pub. L. 102–325, see Tables for classification] shall take effect on the date of enactment of this Act [July 23, 1992], except—

‘‘(1) as otherwise provided in such part B;

‘‘(2) that the changes made in sections 425(a), 428(b)(1)(A), 428(b)(1)(B), 428(b)(B) [20 U.S.C. 1075(a), 1078(b)(1)(A), (B), 1078–1(b), 1078–2(b)(b)], relating
to annual and aggregate loan limits, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, except that—

(A) the changes made in section 425(a)(1)(A)(i) and 428(b)(1)(A)(i) shall apply with respect to loans for which the first disbursement is made on or after October 1, 1992; and

(B) the changes made in section 425(a)(1)(A)(iv) and 428(b)(1)(A)(iv) shall apply with respect to loans to cover the costs of instruction for periods of enrollment beginning on or after October 1, 1993; 

(3) that the changes made in sections 427(a)(2)(C), 428(b)(1)(M), and 428(b)(1)(I), relating to offering graduated or interest rates, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on the date such individual applies for a loan;

(4) that the changes made in sections 428(a)(7) and 428(f)(1)(C), relating to payments for un consumed loans, shall apply with respect to loans made on or after October 1, 1992;

(5) that the changes made in sections 427(a)(2)(H) and 428(b)(1)(I)(i), relating to offering graduated or income sensitive repayment options, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on the date such individual applies for a loan;

(6) that the changes made in section 428(b)(4), relating to teacher deferment, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower on the date such individual applies for a loan;

(7) that section 428(c)(2)(B)(i) as added by such amendments shall be effective on and after October 1, 1992;

(8) that the changes in section 428(c)(3) with respect to forbearance after a default shall be effective on and after Oct. 1, 1992;

(9) that the changes made in section 428(b)(2) with respect to use of credit histories shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993;

(10) that section 428(b)(15)(A) as added by such amendments, relating to disbursement of Federal PLUS Loans, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993;

(11) that the changes made in section 428C with respect to forbearance after a default shall be effective on or after Jan. 1, 1993;

(12) that section 428H with respect to loans made on or after July 1, 1993, relating to consolidation loans, shall apply with respect to loans under such section for which the application is received by an eligible lender on or after Jan. 1, 1993;

(13) that the changes made in section 428H with respect to loans made on or after July 1, 1993, relating to consolidation loans, shall apply with respect to loans under such section for which the application is received by an eligible lender on or after Jan. 1, 1993;

(14) that the changes in section 438 with respect to loans made on or after October 1, 1992; and

(15) that the changes in the designation or names of loans or programs under part B is [sic] effective with respect to applications or other documents (used in making such loans) that are printed after the date of enactment of this Act.

(b) New Borrowers.—For purposes of the section, the term ‘new borrower’ means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of title IV of the Act [20 U.S.C. 1071 et seq.]."

**Effective Date of 1989 Amendment**

Amendment by section 2002(a)(2) of Pub. L. 101–239 applicable to any loan made, insured, or guaranteed under this part or part D of this subchapter, including a loan made before Dec. 19, 1989, and amendment effective Jan. 1, 1990, but inapplicable with respect to any portion of a period of deferment granted to a borrower under section 1077(a)(2)(C), 1078(b)(1)(M), or 1087d(c)(2)(A)(i) of this title for service in a medical internship or residency program completed prior to Dec. 19, 1989, see section 2002(a)(4) of Pub. L. 101–239, set out as a note under section 1077 of this title.

Section 2002(b)(2) of Pub. L. 101–239 provided that:

"The amendments made by this subsection (amending this section) shall apply with respect to loans made before, on, or after the date of enactment of this Act [Dec. 19, 1989]."

Amendment by section 2004(b)(1), (3) of Pub. L. 101–239 applicable with respect to loans made to cover the cost of instruction for periods of enrollment beginning on or after Jan. 1, 1990, see section 2004(c) of Pub. L. 101–239, set out as a note under section 1077 of this title.

**Effective Date of 1988 Amendment**

Amendment by section 11(a) of Pub. L. 100–369 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 11(b) of Pub. L. 100–369, set out as a note under section 1077 of this title.

Amendment by section 5(b)(2) of Pub. L. 100–369 effective with respect to loans made on or after Oct. 1, 1988, and amendment by section 7(c) of Pub. L. 100–369 effective July 18, 1988, see section 13(b) of Pub. L. 100–369, set out as a note under section 1091 of this title.

**Effective Date of 1987 Amendments**

Section 3002(b)(1)–(3) of Pub. L. 100–203 provided in part that the amendments by section 3002(b)(1)–(3) of Pub. L. 100–203 are effective Sept. 30, 1989.

Amendment by section 10(b) of Pub. L. 100–50 applicable with respect to loans made, insured or guaranteed under this part on, before, or after June 3, 1987, see section 3002(b)(1)–(3) of Pub. L. 100–203, set out as a note under section 1001 of this title.

**Effective Date**

Section effective Oct. 17, 1987, with subsection (b)(1)(M) (except cls. (viii), (ix), and (x)) applicable only to loans to new borrowers made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, and amendment by section 11(a) of Pub. L. 100–369, set out as an Effective Date of 1988 Amendment note under section 1077 of this title.


**Construction of 2006 Amendment**

Pub. L. 109–171, title VIII, § 8007(e), Apr. 6, 2006, 120 Stat. 161, provided that: ‘‘Nothing in the amendments made by this section [amending this section and sections 1087e, 1087dd, and 1088 of this title] shall be construed to authorize any refunding of any repayment of a loan.’’

**Review of Inducements Limitations**

Pub. L. 110–227, § 5(c), May 7, 2008, 122 Stat. 746, provided that: ‘‘Within 90 days after the date of enactment of this Act [May 7, 2008], the Secretary of Education shall review, and as necessary revise, the Department of Education’s regulations concerning prohibited guaranty agency inducements to eligible lenders (34 CFR 682.401(e)) to ensure that such agencies do not engage in improper inducements in the expansion of operations of the lender-of-last-resort program as authorized by the
amendments made by this section [amending this section]. The Secretary shall submit a report on the review and revision required by this subsection to the Committee on Education and the Workforce (now Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate] with the Secretary.

§1078–1

(1) Authority

Subject to paragraph (2), the Secretary may enter into a voluntary, flexible agreement with a guaranty agency under this section, in lieu of agreements with a guaranty agency under subsections (b) and (c) of section 1078 of this title. The Secretary may waive or modify any requirement under such subsections, except that the Secretary may not waive—

(A) any statutory requirement pertaining to the terms and conditions attached to student loans or default claim payments made to lenders;

(B) the prohibitions on inducements contained in section 1078(b)(3) of this title; or

(C) the Federal default fee required by section 1078(b)(1)(H) of this title and the second sentence of section 1078–8(h) of this title.

(2) Eligibility

During fiscal years 1999, 2000, and 2001, the Secretary may enter into a voluntary, flexible agreement with not more than 6 guaranty agencies that had 1 or more agreements with the Secretary under subsections (b) and (c) of section 1078 of this title as of the day before October 7, 1998. Beginning in fiscal year 2002, any guaranty agency or consortium thereof may enter into a voluntary flexible agreement with the Secretary.

(3) Report required

(A) In general

The Secretary, in consultation with the guaranty agencies operating under voluntary flexible agreements, shall report on

an annual basis to the authorizing committees regarding the program outcomes that the voluntary flexible agreements have had with respect to—

(i) program integrity and program and cost efficiencies, delinquency prevention, and default aversion, including a comparison of such outcomes to such outcomes for each guaranty agency operating under an agreement under subsection (b) or (c) of section 1078 of this title;

(ii) consumer education programs described in section 1083a of this title; and

(iii) the availability and delivery of student financial aid.

(B) Contents

Each report described in subparagraph (A) shall include—

(i) a description of each voluntary flexible agreement and the performance goals established by the Secretary for each guaranty agency operating under voluntary flexible agreements;

(ii) the specific statutory or regulatory waivers provided to each such guaranty agency; and

(iii) any other waivers provided to other guaranty agencies under paragraph (1);

(iv) an analysis of the fees paid by the Secretary, and the costs and efficiencies achieved under each voluntary flexible agreement; and

(v) an identification of promising practices for program improvement that could be replicated by other guaranty agencies.

(b) Terms of agreement

An agreement between the Secretary and a guaranty agency under this section—

(1) shall be developed by the Secretary, in consultation with the guaranty agency, on a case-by-case basis;

(2) may only include provisions—

(A) specifying the responsibilities of the guaranty agency under the agreement, with respect to—

(i) administering the issuance of insurance on loans made under this part on behalf of the Secretary;

(ii) monitoring insurance commitments made under this part;

(iii) default aversion activities;

(iv) review of default claims made by lenders;

(v) payment of default claims;

(vi) collection of defaulted loans;

(vii) adoption of internal systems of accounting and auditing that are acceptable to the Secretary, and reporting the result thereof to the Secretary in a timely manner, and on an accurate, and auditable basis;

See References in Text note below.
(viii) timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the programs under this subchapter and part C of subchapter I of chapter 34 of title 42;

(ix) monitoring of institutions and lenders participating in the program under this part; and

(x) informational outreach to schools and students in support of access to higher education;

(B) regarding the fees the Secretary shall pay, in lieu of revenues that the guaranty agency may otherwise receive under this part, to the guaranty agency under the agreement, and other funds that the guaranty agency may receive or retain under the agreement, except that in no case may the cost to the Secretary of the agreement, as reasonably projected by the Secretary, exceed the cost to the Secretary, as similarly projected, in the absence of the agreement;

(C) regarding the use of net revenues, as described in the agreement under this section, for such other activities in support of postsecondary education as may be agreed to by the Secretary and the guaranty agency;

(D) regarding the standards by which the guaranty agency’s performance of the agency’s responsibilities under the agreement will be assessed, and the consequences for a guaranty agency’s failure to achieve a specified level of performance on 1 or more performance standards;

(E) regarding the circumstances in which a guaranty agency’s agreement under this section may be ended in advance of the agreement’s expiration date;

(F) regarding such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage; and

(G) such other provisions as the Secretary may determine to be necessary in order to ensure the efficient transfer of responsibilities between the agreement under this section and the agreements under subsections (b) and (c) of section 1078 of this title, subject only to such additional requirements as the Secretary determines to be necessary in order to ensure the efficient transfer of responsibilities between the agreement under this section and the agreements under subsections (b) and (c) of section 1078 of this title that are not part of such an agreement, shall be readily available to the public.

(5) Modification notice

The text of any voluntary flexible agreement, and any subsequent revisions, and any waivers related to section 1078(b)(3) of this title that are not part of such an agreement, shall be readily available to the public.

(6) Termination

At the expiration or early termination of an agreement under this section, the Secretary shall reinstate the guaranty agency’s prior agreements under subsections (b) and (c) of section 1078 of this title, subject only to such additional requirements as the Secretary determines to be necessary in order to ensure the efficient transfer of responsibilities between the agreement under this section and the agreements under subsections (b) and (c) of section 1078 of this title that are not part of such an agreement, shall be readily available to the public.

(c) Public notice

(1) In general

The Secretary shall publish in the Federal Register a notice to all guaranty agencies that sets forth:

(A) an invitation for the guaranty agencies to enter into agreements under this section; and

(B) the criteria that the Secretary will use for selecting the guaranty agencies with which the Secretary will enter into agreements under this section.

(2) Agreement notice

The Secretary shall notify the members of the authorizing committees not later than 30 days prior to concluding an agreement under this section. The notice shall contain—

(A) a description of the voluntary flexible agreement and the performance goals established by the Secretary for the agreement;

(B) a list of participating guaranty agencies and the specific statutory or regulatory waivers provided to each guaranty agency;

(C) a description of the standards by which each guaranty agency’s performance under the agreement will be assessed; and

(D) a description of the fees that will be paid to each participating guaranty agency.

(3) Waiver notice

The Secretary shall notify the members of the authorizing committees not later than 30 days prior to the granting of a waiver pursuant to subsection (a)(2) of this section to a guaranty agency that is not a party to a voluntary flexible agreement.

(4) Public availability

The text of any voluntary flexible agreement, and any subsequent revisions, and any waivers related to section 1078(b)(3) of this title that are not part of such an agreement, shall be readily available to the public.

(5) Modification notice

The Secretary shall notify the members of the authorizing committees 30 days prior to any modifications to an agreement under this section.

(d) Termination

At the expiration or early termination of an agreement under this section, the Secretary shall reinstate the guaranty agency’s prior agreements under subsections (b) and (c) of section 1078 of this title, subject only to such additional requirements as the Secretary determines to be necessary in order to ensure the efficient transfer of responsibilities between the agreement under this section and the agreements under subsections (b) and (c) of section 1078 of this title that are not part of such an agreement, shall be readily available to the public.

REFERENCES IN TEXT


PRIOR PROVISIONS


§ 1078–2 Title 20—Education

This section in amounts specified in subsection (b) of this section, if—

(A) the graduate or professional student or the parents do not have an adverse credit history as determined pursuant to regulations promulgated by the Secretary;

(B) in the case of a graduate or professional student or parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this subchapter and part C of subchapter I of chapter 34 of title 42, such graduate or professional student or parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 obtained by fraud; and

(C) the graduate or professional student or the parents meet such other eligibility criteria as the Secretary may establish by regulation, after consultation with guaranty agencies, eligible lenders, and other organizations involved in student financial assistance.

(2) Terms, conditions, and benefits

Except as provided in subsections (c), (d), and (e) of this section, loans made under this section shall have the same terms, conditions, and benefits as all other loans made under this part.

(3) Special rules

(A) Parent borrowers

Whenever necessary to carry out the provisions of this section, the terms “student” and “borrower” as used in this part shall include a parent borrower under this section.

(B)(i) Extenuating circumstances

An eligible lender may determine that extenuating circumstances exist under the regulations promulgated pursuant to paragraph (1)(A) if, during the period beginning January 1, 2007, and ending December 31, 2009, an applicant for a loan under this section—

(I) is or has been delinquent for 180 days or fewer on mortgage loan payments or on medical bill payments during such period; and

(II) does not otherwise have an adverse credit history, as determined by the lender in accordance with the regulations promulgated pursuant to paragraph (1)(A), as such regulations were in effect on the day before May 7, 2008.

(ii) Definition of mortgage loan

In this subparagraph, the term “mortgage loan” means an extension of credit to a borrower that is secured by the primary residence of the borrower.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to limit an eligible lender’s authority under the regulations promulgated pursuant to paragraph (1)(A) to determine that extenuating circumstances exist.

(a) Authority to borrow

Authority and eligibility

Prior to July 1, 2010, a graduate or professional student or the parents of a dependent student shall be eligible to borrow funds under this section in amounts specified in subsection (b) of this section, if—

Amendments


Subsec. (c)(2), (3). Pub. L. 110–315, § 109(b)(5)(A), (B), substituted “members of the authorizing committees” for “Chairperson and the Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives”.

Subsec. (c)(5). Pub. L. 110–315, § 103(b)(5)(C), substituted “members of the authorizing committees” for “Chairperson and the Ranking Minority Members of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives”.

2006—Subsec. (a)(1)(B). Pub. L. 109–171, § 8014(f)(1), struck out “unless the Secretary determines that such a waiver is consistent with the purposes of this section and is limited to activities of the guaranty agency serves as the designated guarantor” before “; or”.


Subsec. (a)(2). Pub. L. 109–171, § 8014(f)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “If the Secretary grants a waiver pursuant to paragraph (1)(B), any guaranty agency doing business within the affected State or States may request, and the Secretary shall grant, an identical waiver to such guaranty agency under the same terms and conditions (including service area limitations) as govern the original waiver.”

Subsec. (a)(4). Pub. L. 109–171, § 8014(f)(4), struck out par. (4), which required the Secretary to report to congressional committees regarding the impact that the voluntary flexible agreements had on program integrity, program and cost efficiencies, and the availability and delivery of student financial aid.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date

Section effective Oct. 1, 1998, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1996 Amendment note under section 1001 of this title.

§ 1078–2 Federal PLUS loans

(a) Authority to borrow

Authority and eligibility

Prior to July 1, 2010, a graduate or professional student or the parents of a dependent student shall be eligible to borrow funds under this section...
(d) Payment of principal and interest

(1) Commencement of repayment

Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by the lender, subject to deferral—

(A)(i) during any period during which the parent borrower or the graduate or professional student borrower meets the conditions required for a deferral under section 1077(a)(2)(C)(i)(I) or 1078(b)(1)(M)(i)(I) of this title; and

(ii) upon the request of the parent borrower, during any period during which the student on whose behalf the loan was borrowed by the parent borrower meets the conditions required for a deferral under section 1077(a)(2)(C)(i)(I) or 1078(b)(1)(M)(i)(I) of this title; and

(B)(i) in the case of a parent borrower, upon the request of the parent borrower, during the 6-month period beginning on the later of—

(I) the day after the date the student on whose behalf the loan was borrowed ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

(II) if the parent borrower is also a student, the day after the date such parent borrower ceases to carry at least one-half such a workload; and

(ii) in the case of a graduate or professional student borrower, during the 6-month period beginning on the day after the date such student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).

(2) Capitalization of interest

(A) In general

Interest on loans made under this section for which payments of principal are deferred pursuant to paragraph (1) shall, if agreed upon by the borrower and the lender—

(i) be paid monthly or quarterly; or

(ii) be added to the principal amount of the loan not more frequently than quarterly by the lender.

(B) Insurable limits

Capitalization of interest under this paragraph shall not be deemed to exceed the annual insurable limit on account of the borrower.

(3) Subsidies prohibited

No payments to reduce interest costs shall be paid pursuant to section 1078(a) of this title on loans made pursuant to this section.

(4) Applicable rates of interest

Interest on loans made pursuant to this section shall be at the applicable rate of interest provided in section 1077a of this title.

(5) Amortization

The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the notes or other written evidence of the loan may require that—

(A) the amount of the periodic payment will be adjusted annually, or

(B) the period of repayment of principal will be lengthened or shortened, in order to reflect adjustments in interest rates occurring as a consequence of section 1077a(c)(4) of this title.

(e) Refinancing

(1) Refinancing to secure combined payment

An eligible lender may at any time consolidate loans held by it which are made under this section to a borrower, including loans which were made under this section as in effect prior to October 17, 1986, under a single repayment schedule which provides for a single principal payment and a single payment of interest, and shall calculate the repayment period for each included loan from the date of the commencement of repayment of the most recent included loan. Unless the consolidated loan is obtained by a borrower who is electing to obtain variable interest under paragraph (2) or (3), such consolidated loan shall bear interest at the weighted average of the rates of all included loans. The extension of any repayment period of an included loan pursuant to this paragraph shall be reported (if required by them) to the Secretary or guaranty agency insuring the loan, as the case may be, but no additional insurance premiums shall be payable with respect to any such extension. The extension of the repayment period of any included loan shall not require the formal extension of the promissory note evidencing the included loan or the execution of a new promissory note, but shall be treated as an administrative forbearance of the repayment terms of the included loan.

(2) Refinancing to secure variable interest rate

An eligible lender may reissue a loan which was made under this section before July 1, 1987, or under this section as in effect prior to October 17, 1986, in order to permit the borrower to obtain the interest rate provided
under section 1077a(c)(4) of this title. A lender offering to reissue a loan or loans for such purpose may charge a borrower an amount not to exceed $100 to cover the administrative costs of reissuing such loan or loans, not more than one-half of which shall be paid to the guarantor of the loan being reissued to cover costs of reissuance. Reissuance of a loan under this paragraph shall not affect any insurance applicable with respect to the loan, and no additional insurance fee may be charged to the borrower with respect to the loan.

(3) Refinancing by discharge of previous loan

A borrower who has applied to an original lender for reissuance of a loan under paragraph (2) and who is denied such reissuance may obtain a loan from another lender for the purpose of discharging the loan from such original lender. A loan made for such purpose—

(A) shall bear interest at the applicable rate of interest provided under section 1077a(c)(4) of this title;

(B) shall not result in the extension of the duration of the note (other than as permitted under subsection (d)(5)(B) of this section);

(C) may be subject to an additional insurance fee but shall not be subject to the administrative cost charge permitted by paragraph (2) of this subsection; and

(D) shall be applied to discharge the borrower from any remaining obligation to the original lender with respect to the original loan.

(4) Certification in lieu of promissory note presentation

Each new lender may accept certification from the original lender of the borrower's social security number and immigration status in the same manner and as social security numbers are verified for reissuance. Reissuance of a loan under this paragraph shall not affect any insurance applicable with respect to the loan, and no additional insurance fee may be charged to the borrower with respect to the loan.

(5) Verification of immigration status and social security number

A parent who wishes to borrow funds under this section shall be subject to verification of the parent's—

(1) immigration status in the same manner as immigration status is verified for students under section 1001(g)(1) of this title; and

(2) social security number in the same manner as social security numbers are verified for students under section 1001(p) of this title.


Prior to amendment, text related to commencement of repayment and capitalization of interest, Pub. L. 109–227, § 4(a), amended par. (3) generally. Prior to amendment, text read as follows: ‘‘Whenever necessary to carry out the provisions of this section, the terms ‘student’ and ‘borrower’ as used in this part shall include a parent borrower under this section.’’

Amendments

2010—Subsec. (a)(1). Pub. L. 111–152 substituted ‘‘Prior to July 1, 2016, a graduate’’ for ‘‘A graduate’’ in introductory provisions.


2008—Subsec. (a)(3). Pub. L. 110–227, § 4, amended par. (3) generally. Prior to amendment, text read as follows: ‘‘Whenever necessary to carry out the provisions of this section, the terms ‘student’ and ‘borrower’ as used in this part shall include a parent borrower under this section.’’

Subsec. (a)(4)(B). Pub. L. 110–227, § 424(a)(1), added subcl. (II) and struck out former subcl. (II) which read as follows: ‘‘is not and has not been more than 90 days delinquent on the repayment of any other debt during such period.’’

Subsec. (d)(1), (2). Pub. L. 110–315, § 424(a)(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to commencement of repayment and capitalization of interest.

Pub. L. 110–227, § 3(a), amended pars. (1) and (2) generally. Prior to amendment, text related to commencement of repayment and capitalization of interest.

2006—Subsec. (a)(1). Pub. L. 109–171, § 8005(c)(1)(A), in introductory provisions, substituted ‘‘A graduate or professional student or the parents’’ for ‘‘the parents’’.

Subsec. (a)(1)(A). Pub. L. 109–171, § 8005(c)(1)(B), substituted ‘‘the graduate or professional student or the parents’’ for ‘‘the parents’’.


Pub. L. 109–171, § 8005(c)(1)(C), substituted ‘‘the graduate or professional student or the parents’’ for ‘‘the parents’’.


Subsec. (b). Pub. L. 109–171, § 8005(c)(2), substituted ‘‘any graduate or professional student or any parent’’ for ‘‘any parent’’.

Subsec. (c)(2). Pub. L. 109–171, § 8005(c)(3), substituted ‘‘graduate or professional student or parent’’ for ‘‘parent’’.

Subsec. (d)(1). Pub. L. 109–171, § 8005(c)(4), substituted ‘‘the graduate or professional student or the parent’’ for ‘‘the parent’’.

1998—Subsec. (a). Pub. L. 105–244, § 419(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ‘‘Parents of a dependent student, who do not have an adverse credit history as determined pursuant to regulations of the Secretary, shall be eligible to borrow funds under this section in amounts specified in subsection (b) of this section, and unless otherwise specified in subsections (c), (d), and (e) of this section, such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section, the terms ‘student’ and ‘borrower’ as used in this part shall include a parent borrower under this section.’’

Subsec. (d)(4). Pub. L. 105–244, § 419(a)(2), substituted ‘‘section 1077a’’ for ‘‘section 1077a(a)’’.

Pub. L. 105–174 which directed substitution of ‘‘section 1077a of this title for loans made under this section’’ for ‘‘section 1077a(c) of this title’’ in ‘‘section
428B(d)(4) (20 U.S.C. 1078–2(d)(4))” could not be executed because it did not indicate what act was to be amended. Subsec. (f), Pub. L. 105–244, § 418(c), added subsec. (f).

Subsec. (c). Pub. L. 103–366 inserted “shall be disbursed in accordance with the requirements of section 1078–7 of this title” and “and” after “under this section”.


Subsec. (a). Pub. L. 102–325, § 418(b)(1), substituted “subsections (c), (d), and (e)” for “subsections (c) and (d)” and inserted “, who do not have an adverse credit history as determined pursuant to regulations of the Secretary,” after “a dependent student”.

Subsec. (b). Pub. L. 102–325, § 418(b)(2), struck out subsec. (b) designation and heading, redesignated par. (3) as subsec. (b), and struck out pars. (1) and (2) which set the annual limit on the amount parents may borrow for one student in any academic year at $4,000 and set the aggregate insured principal amount for insured loans at not to exceed $20,000.


Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–325, § 418(c), (d), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(1) COMMENCEMENT OF REPAYMENT.—Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by the lender, subject to deferral (A) during any period during which the parent meets the conditions required for a deferral under clause (i), (viii), or (ix) of section 1077(a)(2)(C) or 1078(b)(1)(M) of this title; and (B) during any period during which the borrower has a dependent student for whom a loan obligation was incurred under this section and who meets the conditions required for a deferral under clause (i) of either such section.

“(2) CAPITALIZATION OF INTEREST.—Interest on loans made under this section for which payments of principal are deferred pursuant to paragraph (1) of this subsection shall, if agreed upon by the borrower and the lender (A) be paid monthly or quarterly or (B) be added to the principal amount of the loan on a quarterly basis by the lender. Such capitalization of interest shall not be deemed to exceed the annual insurable limit on account of the student.”

Pub. L. 102–325, § 418(b)(3), redesignated subsec. (c) as (d), Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 102–325, § 418(b)(3), redesignated subsec. (d) as (e).

1987—Subsec. (a). Pub. L. 100–50, § 10(o)(2)(A), struck out “, but such a parent borrower shall not be eligible for any deferment pursuant to section 1077(a)(2)(C) or 1078(b)(1)(M) of this title except for the deferment allowed (with respect to the student) under clauses (i), (viii), and (ix) of such sections” after “borrower under this section”.

Subsec. (b)(3). Pub. L. 100–50, § 10(p)(2), amended first sentence generally, substituting “for any academic year in excess of (A) the student’s estimated cost of attendance, minus (B) other financial aid” for “which would cause the combined loans of the parent and the student for any academic year to exceed the student’s estimated cost of attendance minus such student’s estimated financial assistance”.

Subsec. (c)(1). Pub. L. 100–50, § 10(o)(2)(B), struck out “pursuant to sections 1077(a)(2)(C)(i), (viii), and (ix) and 1078(b)(1)(M)(i), (viii), and (ix) of this title” after “subject to deferral” and inserted in lieu cls. (A) and (B).

1983—Subsec. (c). Pub. L. 98–224, § 12(b)(2), (c)(2), in introductory provisions, struck out “and” after “and” first reference to “principal”, and substituted “pursuant to paragraph (1) of this subsection” for “under section 1077(a)(2)(C)” and “1078(b)(1)(M)” of this title”.

Subsec. (d)(c). Pub. L. 100–50, § 10(r)(1)(A), inserted “monthly or” before “quarterly”.

Subsec. (d)(1). Pub. L. 100–50, § 10(r)(1)(A), inserted “at any time” after “eligible lender may” in first sentence, substituted “the consolidated loan is obtained by a borrower who is electing to obtain variable interest under paragraph (2) or (3)” for “the borrower complies with the requirements of paragraph (2)” in second sentence, and inserted “(if required by them)” after “shall be reported” in third sentence.

Subsec. (d)(2). Pub. L. 100–50, § 10(r)(1)(B), inserted “under this section before July 1, 1987, or” before “under this section” and substituted “to reissue a loan” and “reissuing such loan or loans” for “reissuing such loan or loans”.

Subsec. (d)(5). Pub. L. 100–50, § 10(r)(1)(C), substituted “October 1, 1987” for “January 1, 1987” and, in subpar. (B), inserted “and of the practical consequences of such options in terms of interest rates and monthly and total payments for a set of loan examples” before semicolon at end.

Effective Date of 2009 Amendment


Effective Date of 2008 Amendment

Amendment by Pub. L. 110–315 effective for loans for which the first disbursement is made on or after July 1, 2008, see section 424(c) of Pub. L. 110–315, set out as a note under section 1078 of this title.

Amendment by section 3(a) of Pub. L. 110–227 effective for loans first disbursed on or after July 1, 2008, see section 3(c) of Pub. L. 110–227, set out as a note under section 1078 of this title.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 1998 Amendment

Amendment by section 416(a)(2) of Pub. L. 105–244 applicable with respect to any loan made, insured, or guaranteed under this part for which the first disbursement is made on or after Oct. 1, 1998, before July 1, 2003, except that such amendment is applicable with respect to any loan made under section 1078–3 of this title for which application is received by an eligible lender on or after Oct. 1, 1998, and before July 1, 2003, see section 416(c) of Pub. L. 105–244, set out as a note under section 1077a of this title.


Effective Date of 1993 Amendment

Section 419(c) of Pub. L. 103–66 provided that: “The amendments made by this section [amending this section and section 1078–7 of this title] shall be effective with respect to loans for which the first disbursement is made on or after October 1, 1993.”

Effective Date of 1992 Amendment

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in subsec. (b), relating to annual and aggregate loan limits, are applicable with respect to loans for which first disbursement is made on or after July 1, 1993, changes made in subsec. (a) with respect to use of credit histories are applicable with respect to loans for which first disbursement is made on or after July 1, 1993, and subsec. (c), as added by Pub. L. 102–325, relating to disbursement of Federal PLUS Loans, is applicable with respect to loans for which first disbursement is made on or after Oct. 1, 1992, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–50 effective as if enacted as part of the Higher Education Amendments of 1986.
§ 1078–3. Federal consolidation loans

(a) Agreements with eligible lenders

(1) Agreement required for insurance coverage

For the purpose of providing loans to eligible borrowers for consolidation of their obligations with respect to eligible student loans, the Secretary or a guaranty agency shall enter into agreements in accordance with subsection (b) of this section with the following eligible lenders:

(A) the Student Loan Marketing Association or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title;

(B) State agencies described in subparagraphs (D) and (F) of section 1085(d)(1) of this title; and

(C) other eligible lenders described in subparagraphs (A), (B), (C), (E), and (J) of such section.

(2) Insurance coverage of consolidation loans

Except as provided in section 1079(e) of this title, no contract of insurance under this part shall apply to a consolidation loan unless such loan is made under an agreement pursuant to this section and is covered by a certificate issued in accordance with subsection (b)(2) of this section. Loans covered by such a certificate that is issued by a guaranty agency shall be considered to be insured loans for the purposes of reimbursements under section 1078(c) of this title, but no payment shall be made with respect to such loans under section 1078(f) of this title to any such agency.

(b) Contents of agreements, certificates of insurance, and loan notes

(1) Agreements with lenders

Any lender described in subparagraph (A), (B), or (C) of subsection (a)(1) of this section who wishes to make consolidation loans under

(II) is in a grace period preceding repayment; or

(III) is a defaulted borrower who has made arrangements to repay the obligation on the defaulted loans satisfactory to the holders of the defaulted loans.

(B)(i) An individual’s status as an eligible borrower under this section or under section 1087e(g) of this title terminates under both sections upon receipt of a consolidation loan under this section or under section 1087e(g) of this title, except that—

(I) an individual who receives eligible student loans after the date of receipt of the consolidation loan may receive a subsequent consolidation loan;

(II) loans received prior to the date of the consolidation loan may be added during the 180-day period following the making of the consolidation loan;

(III) loans received following the making of the consolidation loan may be added during the 180-day period following the making of the consolidation loan;

(IV) loans received prior to the date of the first consolidation loan may be added to a subsequent consolidation loan; and

(V) an individual may obtain a subsequent consolidation loan under section 1087e(g) of this title only—

(aa) for the purposes of obtaining income contingent repayment or income-based repayment, and only if the loan has been submitted to the guaranty agency for default aversion or if the loan is already in default;

(bb) for the purposes of using the public service loan forgiveness program under section 1087e(m) of this title; or

(cc) for the purpose of using the no accrual of interest for active duty service members benefit offered under section 1087e(o) of this title.

(4) “Eligible student loans” defined

For the purpose of paragraph (1), the term “eligible student loans” means loans—

(A) made, insured, or guaranteed under this part, and first disbursed before July 1, 2010, including loans on which the borrower has defaulted (but has made arrangements to repay the obligation on the defaulted loans satisfactory to the Secretary or guaranty agency, whichever insured the loans);

(B) made under part D of this subchapter;

(C) made under part C of this subchapter;

(D) made under subpart II of part A of title VII of the Public Health Service Act [42 U.S.C. 292q et seq.]; or

(E) made under part E of title VIII of the Public Health Service Act [42 U.S.C. 297a et seq.].

1 So in original. No cl. (ii) has been enacted.
this section shall enter into an agreement with the Secretary or a guaranty agency which provides—

(A) that, in the case of all lenders described in subsection (a)(1) of this section, the lender will make a consolidation loan to an eligible borrower (on request of that borrower) only if the borrower certifies that the borrower has no other application pending for a loan under this section;

(B) that each consolidation loan made by the lender will bear interest, and be subject to repayment, in accordance with subsection (c) of this section;

(C) that each consolidation loan will be made, notwithstanding any other provision of this part limiting the annual or aggregate principal amount for all insured loans made to a borrower, in an amount (i) which is not less than the minimum amount required for eligibility of the borrower under subsection (a)(3) of this section, and (ii) which is equal to the sum of the unpaid principal and accrued unpaid interest and late charges of all eligible student loans received by the eligible borrower which are selected by the borrower for consolidation;

(D) that the proceeds of each consolidation loan will be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans;

(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations promulgated by the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994, and before July 1, 2010;

(F) that the lender shall disclose to a prospective borrower, in simple and understandable terms, at the time the lender provides an application for a consolidation loan—

(i) whether consolidation would result in a loss of loan benefits under this part or part C, including loan forgiveness, cancellation, and deferment;

(ii) with respect to Federal Perkins Loans under part D—

(I) that if a borrower includes a Federal Perkins Loan under part D in the consolidation loan, the borrower will lose all interest-free periods that would have been available for the Federal Perkins Loan, such as—

(aa) the periods during which no interest accrues on such loan while the borrower is enrolled in school at least half-time;

(bb) the grace period under section 1078(c)(1)(A) of this title; and

(cc) the periods during which the borrower’s student loan repayments are deferred under section 1087dd(c)(2) of this title;

(II) that if a borrower includes a Federal Perkins Loan in the consolidation loan, the borrower will no longer be eligible for cancellation of part or all of the Federal Perkins Loan under section 1087ee(a) of this title; and

(III) the occupations listed in section 1087ee of this title that qualify for Federal Perkins Loan cancellation under section 1087ee(a) of this title;

(iii) the repayment plans that are available to the borrower;

(iv) the options of the borrower to prepay the consolidation loan, to pay such loan on a shorter schedule, and to change repayment plans;

(v) that borrower benefit programs for a consolidation loan may vary among different lenders;

(vi) the consequences of default on the consolidation loan; and

(vii) that by applying for a consolidation loan, the borrower is not obligated to agree to take the consolidation loan; and

(G) such other terms and conditions as the Secretary or the guaranty agency may specifically require of the lender to carry out this section.

(2) Issuance of certificate of comprehensive insurance coverage

The Secretary shall issue a certificate of comprehensive insurance coverage under section 1079(b) of this title to a lender which has entered into an agreement with the Secretary under paragraph (1) of this subsection. The guaranty agency may issue a certificate of comprehensive insurance coverage to a lender with which it has an agreement under such paragraph. The Secretary shall not issue a certificate to a lender described in subparagraph (B) or (C) of subsection (a)(1) of this section unless the Secretary determines that such lender has first applied to, and has been denied a certificate of insurance by, the guaranty agency which insures the preponderance of its loans (by value).

(3) Contents of certificate

A certificate issued under paragraph (2) shall, at a minimum, provide—

(A) that all consolidation loans made by such lender in conformity with the requirements of this section will be insured by the Secretary or the guaranty agency (whichever is applicable) against loss of principal and interest;

(B) that a consolidation loan will not be insured unless the lender has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being consolidated—

(i) that the loan is a legal, valid, and binding obligation of the borrower;

(ii) that each such loan was made and serviced in compliance with applicable laws and regulations; and

(iii) in the case of loans under this part, that the insurance on such loan is in full force and effect;

(C) the effective date and expiration date of the certificate;

(D) the aggregate amount to which the certificate applies;

(E) the reporting requirements of the Secretary on the lender and an identification of the office of the Department of Education or of the guaranty agency which will process
claims and perform other related administrative functions;

(F) the alternative repayment terms which will be offered to borrowers by the lender;

(G) that, if the lender prior to the expiration of the certificate no longer proposes to make consolidation loans, the lender will so notify the issuer of the certificate in order that the certificate may be terminated (without affecting the insurance on any consolidation loan made prior to such termination); and

(H) the terms upon which the issuer of the certificate may limit, suspend, or terminate the lender's authority to make consolidation loans under the certificate (without affecting the insurance on any consolidation loan made prior to such limitation, suspension, or termination).

(4) Terms and conditions of loans

A consolidation loan made pursuant to this section shall be insurable by the Secretary or a guaranty agency pursuant to paragraph (2) only if the loan is made to an eligible borrower who has agreed to notify the holder of the loan promptly concerning any change of address and the loan is evidenced by a note or other written agreement which—

(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him or her would not, under applicable law, create a binding obligation, endorsement may be required;

(B) provides for the payment of interest and the repayment of principal in accordance with subsection (c) of this section;

(C)(i) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid in accordance with clause (ii), during any period for which the borrower would be eligible for a deferral under section 1078(b)(1)(M) of this title, and that any such period shall not be included in determining the repayment schedule pursuant to subsection (c)(2) of this section; and

(ii) provides that interest shall accrue and be paid during any such period—

(I) by the Secretary, in the case of a consolidation loan for which the application is received by an eligible lender before November 13, 1997, that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 1078 of this title;

(II) by the Secretary, in the case of a consolidation loan for which the application is received by an eligible lender on or after November 13, 1997, except that the Secretary shall pay such interest only on that portion of the loan that repays Federal Stafford Loans for which the student borrower received an interest subsidy under section 1078 of this title or Federal Direct Stafford Loans for which the borrower received an interest subsidy under section 1087e of this title; or

(III) by the borrower, or capitalized, in the case of a consolidation loan other than a loan described in subclause (I) or (II);

(D) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan; and

(E)(i) contains a notice of the system of disclosure concerning such loan to consumer reporting agencies under section 1080a of this title, and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such consumer reporting agencies.

(5) Direct loans

If, before July 1, 2010, a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms or income-based repayment terms acceptable to the borrower from such a lender, or chooses to obtain a consolidation loan for the purposes of using the public service loan forgiveness program offered under section 1087e(m) of this title, the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. In addition, in the event that a borrower chooses to obtain a consolidation loan for the purposes of using the no accrual of interest for active duty service members program offered under section 1087e(o) of this title, the Secretary shall offer a Federal Direct Consolidation loan to any such borrower who applies for participation in such program. A direct consolidation loan offered under this paragraph shall, as requested by the borrower, be repaid either pursuant to income contingent repayment under part C of this subchapter, pursuant to income-based repayment under section 1086e of this title, or pursuant to any other repayment provision under this section, except that if a borrower intends to be eligible to use the public service loan forgiveness program under section 1087e(m) of this title, such loan shall be repaid using one of the repayment options described in section 1087e(m)(i)(A) of this title. The Secretary shall not offer such loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangements in place for such loans.

(6) Nondiscrimination in loan consolidation

An eligible lender that makes consolidation loans under this section shall not discriminate against any borrower seeking such a loan—

(A) based on the number or type of eligible student loans the borrower seeks to consolidate, except that a lender is not required to consolidate loans described in subparagraph (D) or (E) of subsection (a)(4) of this section or subsection (d)(1)(C)(ii) of this section;

(B) based on the type or category of institution of higher education that the borrower attended;

(C) based on the interest rate to be charged to the borrower with respect to the consolidation loan; or

(D) with respect to the types of repayment schedules offered to such borrower.

(c) Payment of principal and interest

(1) Interest rate

(A) Notwithstanding subparagraphs (B) and (C), with respect to any loan made under this
section for which the application is received by an eligible lender—

(i) on or after October 1, 1998, and before July 1, 2006, the applicable interest rate shall be determined under section 1077a(k)(4) of this title; or

(ii) on or after July 1, 2006, and that is disbursed before July 1, 2010, the applicable interest rate shall be determined under section 1077a(l)(3) of this title.

(B) A consolidation loan made before July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of—

(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

(C) A consolidation loan made on or after July 1, 1994, and disbursed before July 1, 2010, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(D) A consolidation loan for which the application is received by an eligible lender on or after November 13, 1997, and before October 1, 1998, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the rate specified in section 1077a(f) of this title, except that the eligible lender may continue to calculate interest on such a loan at the rate previously in effect and defer, until not later than April 1, 1998, the recalculation of the interest on such a loan at the rate required by this subparagraph if the recalculation is applied retroactively to the date on which the loan is made.

(2) Repayment schedules

(A) Notwithstanding any other provision of this part, to the extent authorized by its certificate of insurance under subsection (b)(2) of this section and approved by the issuer of such certificate, the lender of a consolidation loan shall establish repayment terms as will promote the objectives of this section, which shall include the establishment of graduated, income-sensitive, or income-based repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income-sensitive or income-based repayment schedules, or by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5) of this section, the lender of a consolidation loan may, with respect to repayment on the loan, when the amount of a monthly or other similar payment on the loan is not a multiple of $5, round the payment to the next highest whole dollar amount that is a multiple of $5; and

(C) an income-based repayment schedule under section 1098e of this title shall not be available to a consolidation loan borrower who used the proceeds of the loan to discharge the liability on a loan under section 1078–2 of this title, or a Federal Direct PLUS loan, made on behalf of a dependent student.

(4) Commencement of repayment

Repayment of a consolidation loan shall commence within 60 days after all holders have, pursuant to subsection (b)(1)(D) of this section, discharged the liability of the borrower on the loans selected for consolidation.

(5) Insurance premiums prohibited

No insurance premium shall be charged to the borrower on any consolidation loan, and no insurance premium shall be payable by the lender to the Secretary with respect to any such loan, but a fee may be payable by the lender to the guaranty agency to cover the costs of increased or extended liability with respect to such loan.

(d) Special program authorized

(1) General rule and definition of eligible student loan

(A) In general

Subject to the provisions of this subsection, the Secretary or a guaranty agency shall enter into agreements with eligible lenders described in subparagraphs (A), (B), and (C) of subsection (a)(1) of this section for the consolidation of eligible student loans.
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(3) Special rules

(A) In general

The portion of each consolidated loan that is attributable to an eligible student loan described in paragraph (1)(C)(ii) shall bear interest at a rate not to exceed the rate determined under subparagraph (B).

(B) Determination of the maximum interest rate

For the 12-month period beginning after July 1, 1992, and for each 12-month period thereafter, beginning on July 1 and ending on June 30, the interest rate applicable under subparagraph (A) shall be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter prior to July 1, for each 12-month period for which the determination is made, plus 3 percent.

(C) Publication of maximum interest rate

The Secretary shall determine the applicable rate of interest under subparagraph (B) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of such determination.

(4) Regulations

The Secretary is authorized to promulgate such regulations as may be necessary to facilitate carrying out the provisions of this subsection.

(e) Termination of authority

The authority to make loans under this section expires at the close of June 30, 2010. No loan may be made under this section for which the disbursement is on or after July 1, 2010. Nothing in this section shall be construed to authorize the Secretary to promulgate rules or regulations governing the terms or conditions of the agreements and certificates under subsection (b) of this section. Loans made under this section which are insured by the Secretary shall be considered to be new loans made to students for the purpose of section 1074(a) of this title.

(f) Interest payment rebate fee

(1) In general

For any month beginning on or after October 1, 1993, each holder of a consolidation loan under this section for which the first disbursement was made on or after October 1, 1993, shall pay to the Secretary, on a monthly basis and in such manner as the Secretary shall prescribe, a rebate fee calculated on an annual basis equal to 1.05 percent of the principal plus accrued unpaid interest on such loan.

(2) Special rule

For consolidation loans based on applications received during the period from October 1, 1998 through January 31, 1999, inclusive, the rebate described in paragraph (1) shall be equal to 0.62 percent of the principal plus accrued unpaid interest on such loan.

(3) Deposit

The Secretary shall deposit all fees collected pursuant to this subsection into the insurance fund established in section 1081 of this title.

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (a)(4)(D), (E) and (d)(1)(C)(ii), (3)(D), is act July 1, 1944, ch. 373, 58 Stat. 682. Subparts I and II of part A of title VIII of the Act are classified generally to subpart I (§229a et seq.) and subpart II (§232q et seq.), respectively, of part A of subchapter V of chapter 6A of Title 42. The Public Health and Welfare. Part E of title VIII of the Act is classified generally to part E (§229a et seq.) of subchapter VI of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

CODIFICATION

Amendments by section 2(e)(33), (36) of Pub. L. 103–208 (which were effective as if included in Pub. L. 102–325) were executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–466, to reflect the probable intent of Congress.

PRIOR PROVISIONS


AMENDMENTS

Subsec. (b)(5). Pub. L. 111–152, §2206(a)(2)(B), substituted “If, before July 1, 2010,” for “In the event that”.
Subsec. (e). Pub. L. 111–152, §2206(a)(4), substituted “June 30, 2010. No loan may be made under this section for which the disbursement is on or after July 1, 2010,” for “September 30, 2010.”
Subsec. (f)(3). Pub. L. 111–39, §402(f)(3)(D), substituted “this subsection” for “subsection (a) of this section”.

Pub. L. 110–315, §425(b)(2), substituted “A direct consolidation loan offered under this paragraph” for “without a direct consolidation loan” and inserted after first sentence “In addition, in the event that a borrower chooses to obtain a consolidation loan for the purposes of using the no accrual of interest for active duty service members program offered under section 1067(e)(3) of this title, the Secretary shall offer a Federal Direct Consolidation loan to any such borrower who applies for participation in such program.”
Subsec. (c)(2)(A). Pub. L. 110–315, §425(d)(1)(A), in introductory provisions, substituted “income-sensitive, or income-based” for “or income-sensitive” and inserted “or income-based” after “such income-sensitive”.
Subsec. (c)(3). Pub. L. 110–315, §425(d)(1)(B), inserted “except in the case of an income-based repayment schedule under section 1098e of this title” before “a repayment schedule” in subpar. (A) and added subpar. (C).
2007—Subsec. (a)(3)(B)(i)(V). Pub. L. 110–84, §303(b)(1)(A), amended subcl. (V) generally. Prior to amendment, subcl. (V) read as follows: “an individual may obtain a subsequent consolidation loan under section 1087e(g) of this title only for the purposes of obtaining an income contingent repayment plan, and only if the loan has been submitted to the guaranty agency for default aversion.”
Pub. L. 110–84, §303(b)(2)(B), inserted “or income-based repayment terms” after “income-sensitive repayment terms” in first sentence.
Pub. L. 110–84, §303(b)(1)(B), (C), inserted “or chooses to obtain a consolidation loan for the purposes of using the public service loan forgiveness program offered under section 1087e(m) of this title,” after “from such a lender,” in first sentence and “except that if a borrower intends to be eligible to use the public service loan forgiveness program under section 1087e(m) of this title, such loan shall be repaid using one of the repayment options described in section 1087e(m)(1)(A) of this title before period at end of second sentence.”
Subsec. (a)(3)(B)(i). Pub. L. 109–171, §8009(a)(1)(A), (B), substituted “under this section or section under section 1087e(g) of this title terminates under both sections upon receipt of a consolidation loan under this section or under section 1087e(g) of this title” for “under this section terminates upon receipt of a consolidation loan under this section”.
Subsec. (a)(3)(C). Pub. L. 109–171, §8009(c), struck out subpar. (C), which read as follows:
“(C) if a married couple, each of whom has eligible student loans, may be treated as if such couple were an individual borrowing under subparagraphs (A) and (B) if such couple agrees to be held jointly and severally liable for the repayment of a consolidation loan, without regard to the amounts of the respective loan obligations that are to be consolidated, and without regard to

This section applies to consolidation loans made or disbursed before July 1, 2010, unless otherwise provided herein.
any subsequent change that may occur in such couple’s marital status.

“(II) Only one spouse in a married couple applying for a consolidation loan under this subparagraph need meet any of the requirements of subsection (b) of this section, except that each spouse shall—

(I) individually make the initial certification that no other application is pending in accordance with subsection (b)(1)(A) of this section; and

(II) agree to notify the holder concerning any change of address in accordance with subsection (b)(4) of this section.”

Subsec. (b)(1)(A). Pub. L. 109–234, § 7015(a), struck out “and (i) the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, except that this clause shall not apply in the case of a borrower with multiple holders of loans under this part, or (ii) the borrower certifies that the borrower has sought and has been unable to obtain a consolidation loan with income-sensitive repayment terms from the holders of the outstanding balances of that borrower (which are so selected for consolidation) after "loan under this section".”

Subsec. (b)(5). Pub. L. 109–234, § 7015(c), reenacted heading without change and substituted in text “In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer such a loan to a borrower who has applied for it, a Federal Direct Consolidation loan. Such direct consolidation loan for “In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer such a loan to a borrower who has applied for it, a Federal Direct Consolidation loan. Such direct consolidation loan”.

Pub. L. 109–171, § 609(c)(2), (3), inserted par. (2) and redesignated former par. (2) as (3). 1997—Subsec. (a)(4)(C) to (E). Pub. L. 105–78, § 609(b), added, subpar. (A) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(4)(C)(ii)(I). Pub. L. 105–78, § 609(c)(1), (2), redesignated former subpar. (C) which read as follows: “Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B), (C), or (D). For the purposes of payment of special allowances under section 1087–1(b)(2) of this title, the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan”.


Subsec. (f)(2), (3). Pub. L. 105–244, § 420(e), added par. (2) and redesignated former par. (2) as (3). 1997—Subsec. (a)(4)(C) to (E). Pub. L. 105–78, § 609(b), added, subpar. (C) and redesignated former subpar. (A) which read as follows: “Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B), (C), or (D). For the purposes of payment of special allowances under section 1087–1(b)(2) of this title, the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan”.


Subsec. (c)(1). Pub. L. 105–244, § 420(b)(2), amended heading, added subpar. (A), and struck out former subpar. (A) which read as follows: “Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B), (C), or (D). For the purposes of payment of special allowances under section 1087–1(b)(2) of this title, the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan”.


Subsec. (f)(2), (3). Pub. L. 105–244, § 420(e), added par. (2) and redesignated former par. (2) as (3). 1997—Subsec. (a)(4)(C) to (E). Pub. L. 105–78, § 609(b), added, subpar. (C) and redesignated former subpar. (A) which read as follows: “Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B), (C), or (D). For the purposes of payment of special allowances under section 1087–1(b)(2) of this title, the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan”.


Subsec. (f)(2), (3). Pub. L. 105–244, § 420(e), added par. (2) and redesignated former par. (2) as (3). 1997—Subsec. (a)(4)(C) to (E). Pub. L. 105–78, § 609(b), added, subpar. (C) and redesignated former subpar. (A) which read as follows: “Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B), (C), or (D). For the purposes of payment of special allowances under section 1087–1(b)(2) of this title, the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan”.


Subsec. (c)(1)(B), (C), (D). Pub. L. 105–78, § 609(c)(3)(5), added subcl. (II) and redesignated former subcl. (II) as (III) and inserted “or (II)” before “before semi-

Subsec. (b)(6). Pub. L. 105–78, § 609(d), added par. (6). Subsec. (c)(1)(A). Pub. L. 105–78, § 609(e)(1), substituted “subparagraph (B), (C), or (D)” for “subparagraph (B) or (D)”.


Subsec. (a)(3)(A). Pub. L. 103–208, § 2(c)(33), substituted “defaulted borrower who has made arrangements to repay the obligation on the defaulted loans to the holders of the defaulted loans” for “delinquent or defaulted borrower who will reenter repayment through loan consolidation”. See Codification note above.

Pub. L. 103–66, § 404(a)(1), amended subpar. (A). Generally. Prior to amendment, subpar. (A) read as follows: “For the purpose of this section, the term ‘eligible borrower’ means a borrower who, at the time of application for a consolidation loan—

“(i) has an outstanding indebtedness on eligible student loans, at the time of application for a consolidation loan, of not less than $7,500; and

“(ii) is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation.”

Subsec. (a)(3)(B)(i). Pub. L. 103–66, § 404(b)(2), struck out at end “Nothing in this section shall be interpreted to authorize the Secretary to require lenders, holders, guarantors, or guarantors of Consolidated Direct Loans to receive, to maintain, or to make reports with respect to preexisting records relating to any eligible student loan as defined
under paragraph (4)) discharged by a borrower in receiving a consolidation loan.”

Subsec. (a)(4)(A). Pub. L. 103–208, §2(c)(34), struck out borrowing criterion at end “except for loans made to parent borrowers under section 1078–2 of this title as in effect prior to October 17, 1986.”


Subsec. (b)(4)(C). Pub. L. 103–66, §4046(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “provides that periodic installments of principal need not be paid, but interest shall accrue and be paid by the Secretary, during any period for which the borrower would be eligible for a deferral under section 1078(b)(1)(M) of this title, and that any such period shall not be included in determining the repayment period pursuant to subsection (c)(2) of this section.”


Subsec. (c)(1)(B), (C). Pub. L. 103–66, §4046(a)(3)(A), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows: “(B) Except as provided in subparagraph (C), a consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan which is equal to the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

“(C) A consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan equal to not less than 9 percent.”


Pub. L. 103–66, §4046(a)(3)(B)(i), in introductory provisions substituted “income-sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income-sensitive repayment schedules, or by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5) of this section, such repayment terms” for “income-sensitive repayment schedules. Such repayment terms”, added cl. (i), and redesignated former clars (i) to (v) as (ii) to (vi), respectively.

Subsec. (c)(2)(B), (C). Pub. L. 103–66, §4046(a)(3)(B)(ii), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “Unless a consolidation loan under subparagraph (A)(ii) will be used to discharge at least $5,000 of loans made under this part, such loan shall be repaid in accordance with subparagraph (A)(i).”

Subsec. (c)(3)(A). Pub. L. 103–208, §2(c)(37), inserted “be an amount” before “equal to”.

Subsec. (c)(3)(B). Pub. L. 103–66, §4046(a)(3)(C), inserted “except as required by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5) of this section,” before “the lender”.


Subsec. (a)(3)(A)(ii). Pub. L. 102–325, §419(b)(1)(B), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “is in repayment status, or in a grace period preceding repayment, and is not delinquent with respect to any required payment on such indebtedness by more than 30 days.”

Subsec. (a)(3)(B). Pub. L. 102–325, §419(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “An individual’s status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except with respect to eligible student loans received after the date of receipt of the consolidation loan. Loans made under this section shall, to the extent used to discharge loans made under this subchapter and part C of chapter 4 of title 42, be counted against the applicable limits on aggregate indebtedness contained in sections 1075(a)(2), 1078(b)(1)(B), 1078–1(b)(2), and 1087(d)(a)(2) of this title. Nothing in this subparagraph shall be interpreted to authorize the Secretary to require lenders, holders, or guarantors of consolidation loans to receive, to maintain, or to make reports with respect to pre-existing records relating to any eligible student loan (as defined under subsection (a)(4) of this section) discharged by a borrower in receiving a consolidation loan.”


Subsec. (a)(4)(A). Pub. L. 102–325, §419(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “made, insured, or guaranteed under this part, except for loans made to parent borrowers under section 1078–2 of this title, including loans made to parent borrowers under section 1078–2 of this title as in effect prior to October 17, 1986.”

Subsec. (b)(4)(C). Pub. L. 102–325, §419(e), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period for which the borrower would be eligible for a deferral under clause (i), (viii), or (ix) of section 1078(b)(1)(M) of this title, and that any such period shall not be included in determining the repayment period pursuant to subsection (c)(2) of this section.”

Subsec. (c)(2)(A). Pub. L. 102–325, §419(f), substituted “which shall include” for “which may include” in first sentence, inserted second sentence, and struck out former second sentence which read as follows: “Such repayment terms shall require that if the sum of the consolidation loan and the amount outstanding on other student loans to the individual—

“(i) is equal to or greater than $5,000 but less than $7,500, then such consolidation loan shall be repaid in not more than 10 years;

“(ii) is equal to or greater than $7,500 but less than $10,000, then such consolidation loan shall be repaid in not more than 12 years;

“(iii) is equal to or greater than $10,000 but less than $20,000, then such consolidation loan shall be repaid in not more than 15 years;

“(iv) is equal to or greater than $20,000 but less than $45,000, then such consolidation loan shall be repaid in not more than 20 years; or

“(v) is equal to or greater than $45,000, then such consolidation loan shall be repaid in not more than 25 years.”


Pub. L. 102–325, §419(g), substituted “September 30, 1998” for “September 30, 1992.”


Pub. L. 102–408, §306(a)(1), redesignated subsec. (d) as subsec. (e).

1997—Subsec. (a)(1)(C). Pub. L. 100–50, §10(e)(1), which directed the amendment of subpart. (C) by substituting “(C), (E), and (J)” for “(C) and (E)”, was executed by substituting the new language for “(C), and (E)”, as the probable intent of Congress.

Subsec. (a)(3)(A). Pub. L. 100–50, §10(a)(2), struck out cl. (ii) which read as follows: “is not a parent borrower under section 1078–2 of this title.”

Subsec. (a)(3)(B). Pub. L. 100–50, §10(e)(3), substituted “eligible student loans received” for “loans received under this subchapter and part C of subchapter I of
chapter 34 of title 42, "under this subchapter and part C of chapter I of chapter 34 of title 42" for "for this subchapter", and "1078(b)(1)(B), 1078-1(b)(2), and 1078(d)(4) of this title" for "and 1078(b)(1)(B) of this title", and inserted provision that nothing in subpar. (b) should be interpreted to authorize Secretary to require lenders, holders, or guarantors of consolidation loans to make reports with respect to pre-existing records relating to eligible student loans discharged by a borrower in receiving a consolidation loan.


Subsec. (b)(1)(C). Pub. L. 100–50, § 10(s)(5), in cl. (i), substituted "subsection (a)(3) of this section" for "subsection (a)(2) of this section" and, in cl. (ii), substituted "all eligible student loans received by the eligible borrower for "all eligible student loans received by the eligible borrower under this subchapter and part C of chapter I of chapter 34 of title 42".

Subsec. (c)(2)(A)(v). Pub. L. 100–50, § 10(s)(6), substituted "equal to or greater" for "more" the first time appearing, as the probable intent of Congress.

Subsec. (c)(5). Pub. L. 100–50, § 10(s)(7), inserted "but" before period at end.

**Effective Date of 2009 Amendment**


Pub. L. 111–39, title IV, § 425(c)(2), July 1, 2009, 123 Stat. 2041, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if enacted as part of the amendments in section 425(d)(1) of the Higher Education Opportunity Act (Pub. L. 111–315), and shall take effect on July 1, 2009."

**Effective Date of 2008 Amendment**


**Effective Date of 2007 Amendment**

Pub. L. 110–94, title II, § 203(c), Sept. 27, 2007, 121 Stat. 795, provided that: "(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 1098b of this title and amending this section and section 1087e of this title] shall be effective on January 1, 2009.

(2) EXCEPTION.—The amendments made by subsection (b)(1) [amending this section] shall be effective on July 1, 2008."

**Effective Date of 2006 Amendment**

Pub. L. 109–234, title VII, § 7015(b), June 15, 2006, 120 Stat. 485, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to any loan made under section 428C of the Higher Education Act of 1965 (20 U.S.C. 1078–3) for which the application is received by an eligible lender on or after the date of enactment of this Act [June 15, 2006]."

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8011(c) of Pub. L. 109–171, set out as a note under section 1092 of this title.

**Effective Date of 1998 Amendment**

Amendment by section 416(b)(2) of Pub. L. 105–244 applicable with respect to any loan made, insured, or guaranteed under this part for which the first disbursement is made on or after Oct. 1, 1998, and before July 1, 2003, except that such amendment is applicable with respect to any loan made under this section for which application is received by an eligible lender on or after Oct. 1, 1998, and before July 1, 2003, see section 416(c) of Pub. L. 105–244, set out as a note under section 1077a of this title.


**Effective Date of 1996 Amendment**

Section 101(e) [title VI, § 602(b)(1)(B)] of div. A of Pub. L. 104–208 provided that: "The amendments made by this paragraph [amending this section and section 1085 of this title] shall take effect on July 1, 1994, except that the amendments made by subsection (a)(2)(B) [amending this section] shall take effect upon enactment [Aug. 10, 1993]."

**Effective Date of 1993 Amendments**

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Section 409(c) of Pub. L. 103–66 provided that: "The amendments made by this section [amending this section and section 1085 of this title] shall take effect on July 1, 1994, except that the amendments made by subsection (a)(2)(B) [amending this section] shall take effect upon enactment [Aug. 10, 1993]."

**Effective Date of 1992 Amendments**

Section 306(c) of Pub. L. 102–408 provided that: "The amendments made by this section [amending this section] take effect 80 days after the date of enactment of this Act [Oct. 13, 1992]."

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in this section, relating to consolidation loans, applicable with respect to loans for which the application is received by an eligible lender on or after Jan. 1, 1993, see section 432, set out as a note under section 1078 of this title.

**Effective Date of 1987 Amendment**


**Pending Applicants**

Section 609(c) of Pub. L. 103–78 provided that: "The consolidation loans authorized by the amendments made by this section [amending this section] shall be available notwithstanding any pending application by a student for a consolidation loan under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), upon withdrawal of such application by the student at any time prior to receipt of such a consolidation loan."

**Cost Evaluation Report**

Pub. L. 99–272, title XVI, § 1601(d), Apr. 7, 1986, 100 Stat. 348, provided that: "The Secretary of Education shall evaluate the cost, efficiency, and impact of the consolidation loan program established by the amendments made by this section [enacting former section 1078–3 of this title and amending former sections 1077, 1085, 1087–1, and 1087–2 of this title] and shall report to the Congress not later than June 30, 1988, on the findings and recommendations required by this subsection."

§ 1078–4. Commingling of funds

Notwithstanding any other provision of this part regarding permissible uses of funds from any source, funds received by a guaranty agency under any provision of this part may be commingled with funds received under any other
provision of this part and may be used to carry out the purposes of such other provision, except that—

(1) the total amount expended for the purposes of such other provision shall not exceed the amount the guaranty agency would otherwise be authorized to expend; and

(2) the authority to commingle such funds shall not relieve such agency of any accounting or auditing obligations under this part.


(a) Other repayment incentives

(1) Sale or assignment of loan

(A) In general

Each guaranty agency, upon securing 9 payments made within 20 days of the due date during 10 consecutive months of amounts owed on a loan for which the Secretary has made a payment under paragraph (1) of section 1078(c) of this title, shall—

(i) if practicable, sell the loan to an eligible lender; or

(ii) on or before September 30, 2011, assign the loan to the Secretary if—

(I) the Secretary has determined that market conditions unduly limit a guaranty agency’s ability to sell loans under clause (i); and

(II) the guaranty agency has been unable to sell loans under clause (i).

(B) Monthly payments

Neither the guaranty agency nor the Secretary shall demand from a borrower as monthly payment amounts described in subparagraph (A) more than is reasonable and affordable based on the borrower’s total financial circumstances.

(C) Consumer reporting agencies

Upon the sale or assignment of the loan, the Secretary, guaranty agency or other holder of the loan shall request any consumer reporting agency to which the Secretary, guaranty agency or other holder, as applicable, reported the default of the loan, to remove the record of the default from the borrower’s credit history.

(D) Duties upon sale

With respect to a loan sold under subparagraph (A)(i)—

(i) the guaranty agency—

(I) shall repay the Secretary 81.5 percent of the amount of the principal balance outstanding at the time of such sale, multiplied by the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

(II) may, in order to defray collection costs—

(aa) charge to the borrower an amount not to exceed 18.5 percent of the outstanding principal and interest at the time of the loan sale; and

(bb) retain such amount from the proceeds of the loan sale; and

(ii) the Secretary shall reimburse the Secretary’s obligation to—

(I) reimburse the guaranty agency for the amount that the agency may, in the future, expend to discharge the guaranty agency’s insurance obligation; and

(II) pay to the holder of such loan a special allowance pursuant to section 1087–1 of this title.

(E) Duties upon assignment

With respect to a loan assigned under subparagraph (A)(i)—

(i) the guaranty agency shall add to the principal and interest outstanding at the time of the assignment of such loan an amount equal to the amount described in subparagraph (D)(i)(II)(aa); and

(ii) the Secretary shall—

(I) the Secretary shall pay the guaranty agency, for deposit in the agency’s Operating Fund established pursuant to section 1072b of this title, an amount equal to the amount added to the principal and interest outstanding at the time of the assignment in accordance with clause (i).

(F) Eligible lender limitation

A loan shall not be sold to an eligible lender under subparagraph (A)(i) if such lender has been found by the guaranty agency or the Secretary to have substantially failed to exercise the due diligence required of lenders under this part.

(G) Default due to error

A loan that does not meet the requirements of subparagraph (A) may also be eligible for sale or assignment under this paragraph upon a determination that the loan was in default due to clerical or data processing error and would not, in the absence of such error, be in a delinquent status.

(2) Use of proceeds of sales

Amounts received by the Secretary pursuant to the sale of such loans by a guaranty agency under paragraph (1)(A)(i) shall be deducted from the calculations of the amount of reimbursement for which the agency is eligible under paragraph (1)(D)(ii)(I) for the fiscal year in which the amount was received, notwithstanding the fact that the default occurred in a prior fiscal year.

(3) Borrower eligibility

Any borrower whose loan is sold or assigned under paragraph (1)(A) shall not be precluded by section 1091 of this title from receiving additional loans or grants under this subchapter and part C of subchapter I of chapter 34 of title 42 (for which he or she is otherwise eligible) on the basis of defaulting on the loan prior to such loan sale or assignment.

(4) Applicability of general loan conditions

A loan that is sold or assigned under paragraph (1) shall, so long as the borrower con-
tinue to make scheduled repayments thereon, be subject to the same terms and conditions and qualify for the same benefits and privileges as other loans made under this part.

(5) Limitation

A borrower may obtain the benefits available under this subsection with respect to re-habilitating a loan (whether by loan sale or assignment) only once in a payment period or any time period consisting of more than a single payment period.

(b) Satisfactory repayment arrangements to renew eligibility

Each guaranty agency shall establish a program which allows a borrower with a defaulted loan or loans to renew eligibility for all title IV student financial assistance (regardless of whether the defaulted loan has been sold to an eligible lender or assigned to the Secretary) upon the borrower’s payment of 6 consecutive monthly payments. The guaranty agency shall not demand from a borrower as a monthly payment amount under this subsection more than is reasonable and affordable based upon the borrower’s total financial circumstances. A borrower may only obtain the benefit of this subsection with respect to renewed eligibility once.

(c) Financial and economic literacy

Each program described in subsection (b) shall include making available financial and economic education materials for a borrower who has rehabilitated a loan.


Subsec. (b). Pub. L. 111–39, § 402(d)(1)(B), inserted “or assigned to the Secretary” after “sold to an eligible lender.”

2008—Subsec. (a)(1)(A). Pub. L. 110–315, § 426(1)(A), inserted at end “Upon the sale of the loan to an eligible lender, the guaranty agency or other holder of the loan shall request any consumer reporting agency to which the guaranty agency or holder, as applicable, reported the default of the loan, to remove the record of default from the borrower’s credit history.”


2006—Subsec. (a)(1)(A). Pub. L. 109–171, § 8014(h)(1), substituted “9 payments made within 20 days of the due date during 10 consecutive months” for “consecutive payments for 12 months”.

Subsec. (a)(1)(C). Pub. L. 109–171, § 8014(h)(2), (3), added subpar. (C) and redesignated former subpar. (C) as (D).


1993—Subsec. (a)(2). Pub. L. 102–325, § 420(3)(A)–(C), substituted “paragraph (1) of this subsection” for “this paragraph” and “this subsection” for “this section”.

Subsec. (a)(4). Pub. L. 102–325, § 420(3)(B), substituted “paragraph (1) of this subsection” for “this paragraph”.

Subsec. (b). Pub. L. 101–213, § 2(c)(38), inserted at end “A borrower may only obtain the benefit of this subsection with respect to renewed eligibility once.”

1992—Subsec. (a). Pub. L. 102–325, § 420(1)–(3), redesignated subsec. (b) as (a), in par. (1)(A) substituted “Each guaranty agency shall enter into an agreement with the Secretary which shall provide that upon” for “Upon” and inserted provision at end that neither the guaranty agency nor the Secretary demand from the borrower as monthly payments more than is reasonable and affordable based upon the borrower’s total financial circumstances, in par. (3) inserted “or grants” after “loans”, and struck out former subsec. (a) which related to program requirements for the default reduction program.


1987—Subsecs. (b), (c). Pub. L. 100–505 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The loans which shall be eligible for rehabilitation under this section shall be only those loans which are made to borrowers who, at the time of default on the loan, are unemployed or institutionalized.”

Effective Date of 2009 Amendment

Pub. L. 111–39, title IV, § 402(d)(2), July 1, 2009, 123 Stat. 2012, provided that: “The amendments made by paragraph (1) (amending this section) shall be effective on the date of enactment of this Act (July 1, 2009), and shall apply to any loan on which monthly payments described in section 428F(a)(1)(A) [42 U.S.C. 1076–6(a)(1)(A)] were paid before, on, or after such date of enactment.”

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 1998 Amendment

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section...
tion 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.

**Effective Date of 1987 Amendment**


**Publicity Through Communications Media of Availability of Default Reduction Program**

Section 2005(b) of Pub. L. 101–239 provided that: "The Secretary of Education shall, from funds available through student loan collections, commencing not less than 30 days before the beginning of the default reduction period, widely publicize (through various communications media) the availability of the default reduction program."**

§ 1078–7. Requirements for disbursement of student loans

(a) Multiple disbursement required

(1) Two disbursements required

The proceeds of any loan made, insured, or guaranteed under this part that is made for any period of enrollment shall be disbursed in 2 or more installments, none of which exceeds one-half of the loan.

(2) Minimum interval required

The interval between the first and second such installments shall be not less than one-half of such period of enrollment, except as necessary to permit the second installment to be disbursed at the beginning of the second semester, quarter, or similar division of such period of enrollment.

(3) Special rule

An institution whose cohort default rate (as determined under section 1085(m) of this title) for each of the 3 most recent fiscal years for which data are available is less than 10 percent shall be exempt from the requirements of this section; and

(3) notwithstanding subsection (a)(2), may, with the permission of the borrower, be disbursed by the lender on a weekly or monthly basis, provided that the proceeds of the loan are disbursed by the lender in substantially equal weekly or monthly installments, as the case may be, over the period of enrollment for which the loan is made.

(4) Amendment to special rule

Beginning on October 1, 2011, the special rule under paragraph (3) shall be applied by substituting "15 percent" for "10 percent".

(b) Disbursement and endorsement requirements

(1) First year students

The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of a program of undergraduate education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period. An institution whose cohort default rate (as determined under section 1085(m) of this title) for each of the three most recent fiscal years for which data are available is less than 10 percent shall be exempt from the requirements of this paragraph. Notwithstanding section 422(d) of the Higher Education Amendments of 1998, the second sentence of this paragraph shall be effective beginning on February 8, 2006.

(2) Other students

The proceeds of any loan made, insured, or guaranteed under this part that is made to any student other than a student described in paragraph (1) shall not be disbursed more than 30 days prior to the beginning of the period of enrollment for which the loan is made.

(3) Amendment to cohort default rate exemption

Beginning on October 1, 2011, the exemption to the requirements of paragraph (1) in the second sentence of such paragraph shall be applied by substituting "15 percent" for "10 percent".

(3) Method of multiple disbursement

Disbursements under subsection (a) of this section—

(1) shall be made in accordance with a schedule provided by the institution (under section 1078(a)(2)(A)(I) of this title) that complies with the requirements of this section;

(2) may be made directly by the lender or, in the case of a loan under sections 1078 and 1078–1 of this title, may be disbursed pursuant to the escrow provisions of section 1078(i) of this title; and

(3) notwithstanding subsection (a)(2), may, with the permission of the borrower, be disbursed by the lender on a weekly or monthly basis, provided that the proceeds of the loan are disbursed by the lender in substantially equal weekly or monthly installments, as the case may be, over the period of enrollment for which the loan is made.

(d) Withholding of second disbursement

(1) Withdrawing students

A lender or escrow agent that is informed by the borrower or the institution that the borrower has ceased to be enrolled before the disbursement of the second or any succeeding installment shall withhold such disbursement. Any disbursement which is so withheld shall be credited to the borrower’s loan and treated as a prepayment thereon.

(2) Students receiving over-awards

If the sum of a disbursement for any student and the other financial aid obtained by such student exceeds the amount of assistance for

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1 See References in Text note below.
which the student is eligible under this subchapter and part C of subchapter I of chapter 34 of title 42, the institution such student is attending shall withhold and return to the lender or escrow agent the portion (or all) of such installment that exceeds such eligible amount, except that overawards permitted pursuant to section 2753(b)(4) of title 42 shall not be construed to be overawards for purposes of this paragraph. Any portion (or all) of a disbursement installment which is so returned shall be credited to the borrower’s loan and treated as a prepayment thereon.

(e) Exclusion of consolidation and foreign study loans

The provisions of this section shall not apply in the case of a loan made under section 1078-3 of this title, or made to a student to cover the cost of attendance in a program of study abroad approved by the home eligible institution if the home eligible institution has a cohort default rate (as calculated under section 1085(m) of this title) of less than 5 percent.

(f) Beginning of period of enrollment

For purposes of this section, a period of enrollment begins on the first day that classes begin for the applicable period of enrollment.

(g) Sales prior to disbursement prohibited

An eligible lender shall not sell or transfer a promissory note for any loan made, insured, or guaranteed under this part until the final disbursement of such loan has been made, except that the prohibition of this subsection shall not apply to—

(1) the sale of the loan does not result in a change in the identity of the party to whom payments will be made for the loan; and

(2) the first disbursement of such loan has been made.


REFERENCES IN TEXT

Section 422(d) of the Higher Education Amendments of 1998, referred to in subsecs. (a)(3) and (b)(1), is section 422(d) of Pub. L. 105–244, set out as an Effective and Termination Dates of 1998 Amendment note below.


CODIFICATION

Text of subsec. (a)(3) and second sentence of subsec. (b)(1), which was temporarily added by Pub. L. 105–244, §422(a), (b), and then omitted, was restored pursuant to amendment by Pub. L. 109–171, §8010(1), (2). See 1998 and 2006 Amendment notes and Effective and Termination Dates of 1998 Amendment note below.

AMENDMENTS


Subsec. (c)(3). Pub. L. 111–39, §402(f)(4)(B), added par. (3) and struck out former par. (3) which read as follows: “Notwithstanding subsection (a)(2) of this section, may, with the permission of the borrower, be disbursed by the lender on a weekly or monthly basis, provided that the proceeds of the loan are disbursed in substantially equal weekly or monthly installments, as the case may be, over the period of enrollment for which the loan is made.”


Subsec. (a). Pub. L. 109–171, §8010(3), struck out “made to a student to cover the cost of attendance at an eligible institution outside the United States” after “section 1078–3 of this title”.

1998—Subsec. (a)(3). Pub. L. 105–244, §422(a), (d), temporarily added par. (3) which read as follows: “An institution whose cohort default rate (as determined under section 1085(m)(2) of this title) for each of the three most recent fiscal years for which data are available is less than 10 percent may disburse any loan made, insured, or guaranteed under this part in a single installment for any period of enrollment that is not more than one semester, one trimester, one quarter, or four months.” See Codification note and 2006 Amendment note above and Effective and Termination Dates of 1998 Amendment note below.

Subsec. (b)(1). Pub. L. 105–244, §422(b), (d), temporarily inserted at end “An institution whose cohort default rate (as determined under section 1085(m)(2) of this title) for each of the three most recent fiscal years for which data are available is less than 10 percent shall be exempt from the requirements of this paragraph.” See Codification note and 2006 Amendment note above and Effective and Termination Dates of 1998 Amendment note below.

Subsec. (e). Pub. L. 105–244, §422(c), substituted “made to a student” for “or made to a student” and inserted before the period at end “, or made to a student to cover the cost of attendance in a program of study abroad approved by the home eligible institution if the home eligible institution has a cohort default rate (as calculated under section 1085(m) of this title) of less than 5 percent”.

1993—Subsec. (c)(3). Pub. L. 103–208 directed the substitution of “disbursed by the lender” for “disbursed” and was executed by making the substitution the first place “disbursed” appeared, to reflect the probable intent of Congress.


Subsec. (d)(2). Pub. L. 102–325, §421(b), inserted “, except that overawards permitted pursuant to section 2753(b)(4) of title 42 shall not be construed to be overawards for purposes of this paragraph” before period at end of first sentence.
§ 1078–8. Unsubsidized Stafford loans for middle-income borrowers

(a) In general

It is the purpose of this section to authorize insured loans under this part that are first disbursed before July 1, 2010, for borrowers who do not qualify for Federal interest subsidy payments under section 1078 of this title. Except as provided in this section, all terms and conditions for Federal Stafford loans established under section 1078 of this title shall apply to loans made pursuant to this section.

(b) Eligible borrowers

Prior to July 1, 2010, any student meeting the requirements for student eligibility under section 1091 of this title (including graduate and professional students as defined in regulations promulgated by the Secretary) shall be entitled to borrow an unsubsidized Federal Stafford Loan for which the first disbursement is made before such date if the eligible institution at which the student has been accepted for enrollment, or at which the student is in attendance, has—

(1) determined and documented the student’s need for the loan based on the student’s estimated cost of attendance (as determined under section 1087f of this title) and the student’s estimated financial assistance, including a loan which qualifies for interest subsidy payments under section 1078 of this title; and

(2) provided the lender a statement—

(A) certifying the eligibility of the student to receive a loan under this section and the amount of the loan for which such student is eligible, in accordance with subsection (c) of this section; and

(B) setting forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 1079–7 of this title.

(c) Determination of amount of loan

The determination of the amount of a loan by an eligible institution under subsection (b) of this section shall be calculated by subtracting from the estimated cost of attendance at the eligible institution any estimated financial assistance reasonably available to such student. An eligible institution may not, in carrying out the provisions of subsection (b) of this section, provide a statement which certifies the eligibility of any student to receive any loan under this section in excess of the amount calculated under the preceding sentence.

(d) Loan limits

(1) In general

Except as provided in paragraphs (2), (3), and (4), the annual and aggregate limits for loans under this section shall be the same as those established under section 1078(b)(1) of this title, less any amount received by such student pursuant to the subsidized loan program established under section 1078 of this title.

(2) Limits for graduate, professional, and independent postbaccalaureate students

(A) Annual limits

The maximum annual amount of loans under this section a graduate or professional student, or a student described in clause (ii), may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the amount determined under paragraph (1), plus—

(i) in the case of such a student who is a graduate or professional student attending an eligible institution, $12,000; and

(ii) notwithstanding paragraph (4), in the case of an independent student, or a de-
pendent student whose parents are unable to borrow under section 1078-2 of this title or the Federal Direct PLUS Loan Program, who has obtained a baccalaureate degree and who is enrolled in coursework specified in paragraph (3)(B) or (4)(B) of section 1091(b) of this title—

(I) $7,000 for coursework necessary for enrollment in a graduate or professional program; and

(II) $7,000 for coursework necessary for a professional credential or certification from a State required for employment as a teacher in an elementary or secondary school.

except in cases where the Secretary determines that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education, but the annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any years in excess of the annual limit.

(B) Aggregate limit

The maximum aggregate amount of loans under this section a student described in subparagraph (A) may borrow shall be the amount described in paragraph (1), adjusted to reflect the increased annual limits described in subparagraph (A), as prescribed by the Secretary by regulation.

(3) Limits for undergraduate dependent students

(A) Annual limits

The maximum annual amount of loans under this section an undergraduate dependent student (except an undergraduate dependent student whose parents are unable to borrow under section 1078-2 of this title or the Federal Direct PLUS Loan Program) may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the sum of the amount determined under paragraph (1), plus $2,000.

(B) Aggregate limits

The maximum aggregate amount of loans under this section a student described in subparagraph (A) may borrow shall be $31,000.

(4) Limits for undergraduate independent students

(A) Annual limits

The maximum annual amount of loans under this section an undergraduate independent student, or an undergraduate dependent student whose parents are unable to borrow under section 1078-2 of this title or the Federal Direct PLUS Loan Program, may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the sum of the amount determined under paragraph (1), plus—

(i) in the case of such a student attending an eligible institution who has not completed such student’s first 2 years of undergraduate study—

(I) $6,000, if such student is enrolled in a program whose length is at least one academic year in length; or

(II) if such student is enrolled in a program of undergraduate education which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as the length of such program measured in semester, trimester, quarter, or clock hours bears to one academic year;

(ii) in the case of such a student at an eligible institution who has successfully completed such first and second years but has not successfully completed the remainder of a program of undergraduate education—

(I) $7,000; or

(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year; and

(iii) in the case of such a student enrolled in coursework specified in—

(I) section 1091(b)(3)(B) of this title, $6,000; or

(II) section 1091(b)(4)(B) of this title, $7,000.

(B) Aggregate limits

The maximum aggregate amount of loans under this section a student described in subparagraph (A) may borrow shall be $57,500.

(5) Capitalized interest

Interest capitalized shall not be deemed to exceed a maximum aggregate amount determined under subparagraph (B) of paragraph (2), (3), or (4).

(e) Payment of principal and interest

(1) Commencement of repayment

Repayment of principal on loans made under this section shall begin at the beginning of the repayment period described in section 1078(b)(7) of this title. Not less than 30 days prior to the anticipated commencement of such repayment period, the holder of such loan shall provide notice to the borrower that interest will accrue before repayment begins and of the borrower’s option to begin loan repayment at an earlier date.

(2) Capitalization of interest

(A) Interest on loans made under this section for which payments of principal are not required during the in-school and grace periods or for which payments are deferred under sections 1077(a)(2)(C) and 1078(b)(1)(M) of this
title shall, if agreed upon by the borrower and the lender—
(i) be paid monthly or quarterly; or
(ii) be added to the principal amount of the loan by the lender only;
(I) when the loan enters repayment;
(II) at the expiration of a grace period, in the case of a loan that qualifies for a grace period;
(III) at the expiration of a period of deferment or forbearance; or
(IV) when the borrower defaults.

(B) The capitalization of interest described in subparagraph (A) shall not be deemed to exceed the annual insurable limit on account of the student.

(3) Subsidies prohibited

No payments to reduce interest costs shall be paid pursuant to section 1078(a) of this title on loans made pursuant to this section.

(4) Applicable rates of interest

Interest on loans made pursuant to this section shall be at the applicable rate of interest provided in section 1077a of this title.

(5) Amortization

The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the note or other written evidence of the loan may require that—
(A) the amount of the periodic payment will be adjusted annually; or
(B) the period of repayment of principal will be lengthened or shortened, in order to reflect adjustments in interest rates occurring as a consequence of section 1077a(c)(4) of this title.

(6) Repayment period

For purposes of calculating the repayment period under section 1078(b)(9) of this title, such period shall commence at the time the first payment of principal is due from the borrower.

(7) Qualification for forbearance

A lender may grant the borrower of a loan under this section a forbearance for a period not to exceed 60 days if the lender reasonably determines that such a forbearance from collection activity is warranted following a borrower’s request for forbearance, deferment, or a change in repayment plan, or a request to consolidate loans in order to collect or process appropriate supporting documentation related to the request. During any such period, interest on the loan shall accrue but not be capitalized.


(g) Single application form and loan repayment schedule

A guaranty agency shall use a single application form and a single repayment schedule for subsidized Federal Stafford loans made pursuant to section 1078 of this title and for unsubsidized Federal Stafford loans made pursuant to this section.

(h) Insurance premium

Each State or nonprofit private institution or organization having an agreement with the Secretary under section 1078(b)(1) of this title may charge a borrower under this section an insurance premium equal to not more than 1.0 percent of the principal amount of the loan, if such premium will not be used for incentive payments to lenders. Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, and that are first disbursed before July 1, 2010, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 1078(b)(1) of this title shall collect and deposit into the Federal Student Loan Reserve Fund under section 1072a of this title, a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources. The Federal default fee shall not be used for incentive payments to lenders.

Amendments

2010—Subsec. (a). Pub. L. 111–152, §2207(1), inserted “that are first disbursed before July 1, 2010,” after “under this part”.

Subsec. (b). Pub. L. 111–152, §2207(2), substituted “Prior to July 1, 2010, any student” for “Any student” and inserted “for which the first disbursement is made before such date” after “unsubsidized Federal Stafford Loan” in introductory provisions.


Subsec. (e)(6). Pub. L. 111–39, §402(f)(5)(B), amended par. (6) generally, resulting in text identical to that...


Subsec. (d)(2). Pub. L. 110–315, §428(a)(1)(A), which directed substitution of “Graduate and professional students” for “Graduate and professional students” in heading, was executed by substituting “Graduate, professional, and independent postbaccalaureate students” for “Graduate and professional students” to reflect the probable intent on Congress.

Subsec. (d)(2)(A)(i). Pub. L. 110–315, §428(a)(1)(B)(i), added cl. (i) and struck out former cl. (ii) which read as follows: “in the case of a graduate student enrolled in coursework specified in sections 1091(b)(3)(B) and 1091(b)(4)(B) of this title, $7,000.”

Subsec. (d)(4)(A)(iii). Pub. L. 110–315, §428(a)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: “in the case of a graduate student enrolled in coursework specified in sections 1091(b)(3)(B) and 1091(b)(4)(B) of this title, $6,000 for coursework necessary for enrollment in an undergraduate degree or certification program.”


Subsec. (d)(2)(D). Pub. L. 109–171, §8005(d)(2), substituted “$7,000” for “$5,000” in cl. (i) and (ii).

Subsec. (h). Pub. L. 109–171, §8014(b)(2), inserted at end “Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 1078(b)(1) of this title shall collect and deposit into the Federal Student Loan Reserve Fund under section 1072a of this title, a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-federal sources. The Federal default fee shall not be used for incentive payments to lenders.”

1996—Subsec. (b). Pub. L. 104–134 substituted semi-colon for period at end of subpar. (C) and inserted concluding provisions.

1993—Subsec. (b). Pub. L. 103–66, §4047(a)(1), inserted “(including graduate and professional students as defined in regulations promulgated by the Secretary)” in introductory provisions.

Subsec. (d). Pub. L. 103–66, §4047(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The annual and aggregate limits for loans under this section shall be the same as those established under section 1078(b)(1) of this title, less any amount received by such student pursuant to the subsidized loan program established under section 1078 of this title.”

Subsec. (d)(2)(B). Pub. L. 103–208, §2(c)(42), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “in the case of such a student attending an eligible institution who has completed the first 2 years of undergraduate study but who has not completed the remainder of a program of undergraduate study—

(i) $5,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 1086 of this section); and

(ii) $3,250, if such student is enrolled in a program whose length is less than one academic year, but at least 2⁄3 of such an academic year; and

(iii) $1,675, if such student is enrolled in a program whose length is less than 2⁄3, but at least 2⁄3, of such an academic year; and

(iv) $1,000, if such student is enrolled in a program whose length is less than 2⁄3, but at least 1⁄2, of such an academic year; and

(v) $500, if such student is enrolled in a program whose length is less than 1⁄2, but at least 1⁄2, of such an academic year; and

(vi) $250, if such student is enrolled in a program whose length is less than one academic year, but at least 1⁄4 of such an academic year; and
Subsec. (f)(1). Pub. L. 103–66, §4102(b)(1)(B), struck out reference to insurance premium in heading and in text substituted “an origination fee in the amount of 6.5 percent” for “a combined origination fee and insurance premium in the amount of 6.5 percent” and struck out second sentence which read as follows: “A guaranty agency may not charge an insurance premium on any loan made under this section.”

Subsec. (f)(2). Pub. L. 103–66, §4102(b)(1)(D), substituted “origination fee” for “combined fee and premium”.


Subsec. (f)(4). Pub. L. 103–66, §4102(b)(1)(F), in heading substituted “origination fee” for “insurance premium” and in text substituted “origination fees” for “combined origination fee and insurance premiums” and “to pay” for “and premiums to pay”.

Subsec. (f)(5). Pub. L. 103–66, §4102(b)(1)(G), inserted “origination fee and” in heading and in text substituted “do not exceed the combined origination fee under this subsection and the insurance premium under subsection (h) of this section” for “do not exceed the 6.5 percent insurance premium, the Secretary is directed to lower the origination fee and insurance premium accordingly”.


**Effective Date of 2009 Amendment**


**Effective Date of 2008 Amendment**


Pub. L. 110–227, §2(b), May 7, 2008, 122 Stat. 742, provided that: “Loan limit increases authorized by the amendments made by this section [amending this section] shall be available only to students who meet the requirements of section 444(a) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)).”

**Continuing Applicability of Terms, Conditions, and Benefits of Loans**

Section 4047(c) of Pub. L. 103–66 provided that: “Notwithstanding the amendments made by this section [amending this section], with respect to loans provided under sections 428A [former 20 U.S.C. 1078–1 and 1078–2] of the Act [20 U.S.C. 1078–2] (as such sections existed on the date preceding the date of enactment of this Act [Aug. 10, 1993]) the terms, conditions and benefits applicable to such loans under such sections shall continue to apply to such loans after the date of enactment of this Act.”


**Effective Date of Repeal**

Repeal effective Oct. 1, 2007, except that section as in effect on the day before Sept. 27, 2005, shall apply to eligible lenders that received a designation under subsec. (c) of this section prior to Oct. 1, 2007, for the remainder of the year for which the designation was made, see section 302(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1078 of this title.

**$1078–10. Loan forgiveness for teachers**

(a) **Statement of purpose**

It is the purpose of this section to encourage individuals to enter and continue in the teaching profession.

(b) **Program authorized**

The Secretary shall carry out a program, through the holder of the loan, of assuming the obligation to repay a qualified loan amount for a loan made under section 1078 or 1078–8 of this title, in accordance with subsection (c) of this section, for any new borrower on or after Oct. 1, 1998, who—

(1) has been employed as a full-time teacher for 5 consecutive complete school years—

(1) has been employed as a full-time teacher for 5 consecutive complete school years—
(A) in a school or location that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such schools or locations; and

(B) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 7801 of this title,1 or meets the requirements of subsection (g)(3); and

(2) is not in default on a loan for which the borrower seeks forgiveness.

(c) Qualified loans amount

(1) In general

The Secretary shall repay not more than $5,000 in the aggregate of the loan obligation on a loan made under section 1078 or 1078–8 of this title that is outstanding after the completion of the fifth complete school year of teaching described in subsection (b)(1) of this section. No borrower may receive a reduction of loan obligations under both this section and section 1087j of this title.

(2) Treatment of consolidation loans

A loan amount for a loan made under section 1078–3 of this title may be a qualified loan amount for the purposes of this subsection only to the extent that such loan amount was used to repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a loan made under section 1078 or 1078–8 of this title for a borrower who meets the requirements of subsection (b) of this section, as determined in accordance with regulations prescribed by the Secretary.

(3) Additional amounts for teachers in mathematics, science, or special education

Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall repay under this section shall be not more than $17,500 in the case of—

(A) a secondary school teacher—

(i) who meets the requirements of subsection (b) of this section; and

(ii) whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; and

(B) an elementary school or secondary school teacher—

(i) who meets the requirements of subsection (b) of this section; and

(ii) whose qualifying employment for purposes of such subsection is as a special education teacher whose primary responsibility is to provide special education to children with disabilities (as those terms are defined in section 1401 of this title); and

(iii) who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency, is teaching children with disabilities that correspond with the borrower’s special education training and has demonstrated knowledge and teaching skills in the content areas of the elementary school or secondary school curricula that the borrower is teaching.

(d) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

(e) Construction

Nothing in this section shall be construed to authorize any refunding of any repayment of a loan.

(f) List

If the list of schools in which a teacher may perform service pursuant to subsection (b) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make such service determination.

(g) Additional eligibility provisions

(1) Continued eligibility

Any teacher who performs service in a school that—

(A) meets the requirements of subsection (b)(1)(A) of this section in any year during such service; and

(B) in a subsequent year fails to meet the requirements of such subsection, may continue to teach in such school and shall be eligible for loan forgiveness pursuant to subsection (b) of this section.

(2) Prevention of double benefits

No borrower may, for the same service, receive a benefit under both this section and—

(A) section 1078–11 of this title;

(B) section 1087e(m) of this title; or

(C) subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.).

(3) Private school teachers

An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 7801 of this title, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.

(h) "Year" defined

For purposes of this section, the term ‘‘year’’, where applied to service as a teacher, means an academic year as defined by the Secretary.

1 See References in Text note below.

REFERENCES IN TEXT

Section 7801 of this title, referred to in subsec. (b)(1)(B), was in the original “section 9101 of the Elementary Secondary Education Act of 1965”, which was translated as meaning section 9101 of the Elementary and Secondary Education Act of 1965, to reflect the probable intent of Congress.


Amendments

2009—Subsec. (c)(1). Pub. L. 111–39, §402(f)(6)(A), inserted at end “No borrower may receive a reduction of loan obligations under both this section and section 1087l of this title.”

Subsec. (g)(2)(B) to (D). Pub. L. 111–39, §402(f)(6)(B), inserted “or” at end of subpar. (B), redesignated subpar. (D) as (C) and substituted “12601” for “12571”, and struck out former subpar. (C) which read as follows: “section 1087l of this title; or”.

2008—Subsec. (b)(1)(A). Pub. L. 110–315, §429(1), inserted “or location” after “a school” and “or locations” after “schools”.

Subsec. (c)(1). Pub. L. 110–315, §429(2), struck out at end “No borrower may receive a reduction of loan obligations under both this section and section 1087l of this title.”

Subsec. (c)(3)(B)(iii). Pub. L. 110–315, §429(3), inserted “or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency,” after “borrower is employed,”.

Subsec. (g)(2). Pub. L. 110–315, §429(4), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “No borrower may, for the same service, receive a benefit under both this subsection and title II of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.) of chapter 129 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

2006—Subsec. (b)(1)(B). Pub. L. 109–171, §8013(e)(1)(A), inserted “or, or meets the requirements of subsection (g)(3)” after “section 7801 of this title”.


2004—Subsec. (b)(1). Pub. L. 108–109, §3(a)(1)(A), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows: “B if employed as a secondary school teacher, is teaching a subject area that is relevant to the borrower’s academic major as certified by the chief administrative officer of the public or nonprofit private secondary school in which the borrower is employed; and” “C if employed as an elementary school teacher, has teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum; and”


Subsec. (b)(1)(B). Pub. L. 103–208, §2(c)(48), substituted “serves as a full-time volunteer” for “agrees in writing to volunteer for service”.

Subsec. (c)(1). Pub. L. 103–208, §2(c)(49), substituted “year of service” for “academic year” wherever appearing.

Subsec. (c)(5). Pub. L. 103–82, §102(c)(2)(B), added par. (5).


Sub. (e). Pub. L. 103–208, §2(c)(51), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Each eligible individual desiring loan repayment under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.”

Effective Date of 2009 Amendment


Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8013(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 2004 Amendment; Transition Rule


“(A) RULE.—The amendments made by paragraph (1) of this subsection to sections 428J(b)(1) and 460(b)(1)(A) of the Higher Education Act of 1965 [sections 1078–10(b)(1) and 1087j(b)(1)(A) of this title] shall not be applied to disqualify any individual who, before the date of enactment of this Act [Oct. 30, 2004], commenced service that met and continues to meet the requirements of such sections as such sections were in effect on the day before the date of enactment of this Act.

“(B) RULE NOT APPLICABLE TO INCREASED QUALIFIED LOAN AMOUNTS.—Subparagraph (A) of this paragraph shall not apply for purposes of obtaining increased qualified loan amounts under sections 428J(c)(3) and 460(c)(3) of the Higher Education Act of 1965 [sections 1078–10(c)(3) and 1087j(c)(3) of this title] as added by subsection (b) of this section.”


[Amendment by Pub. L. 109–150 effective as if enacted on Oct. 1, 2005, see section 2(d)(2) of Pub. L. 109–150, set out as an Effective Date of 2005 Amendment note under section 1087–1 of this title.]

[Amendment by Pub. L. 109–171, §8013(c)(2), effective as if enacted on Oct. 1, 2005, and as if amendment by section 2(c)(1) of Pub. L. 109–150 had not been enacted, see section 8013(c)(3), (d)(2) of Pub. L. 109–171, set out as notes under section 1087–1 of this title.]
§ 1078–11

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§ 1078–11. Loan forgiveness for service in areas of national need

(a) Program authorized

(1) Loan forgiveness authorized

The Secretary shall forgive, in accordance with this section, the qualified loan amount described in subsection (c) of the student loan obligation of a borrower who—

(A) is employed full-time in an area of national need, as described in subsection (b); and

(B) is not in default on a loan for which the borrower seeks forgiveness.

(2) Method of loan forgiveness

To provide loan forgiveness under paragraph (1), the Secretary is authorized to carry out a program—

(A) through the holder of the loan, to assume the obligation to repay a qualified loan amount for a loan made, insured, or guaranteed under this part (other than an excepted PLUS loan or an excepted consolidation loan (as such terms are defined in section 1098e(a) of this title)); and

(B) to cancel a qualified loan amount for a loan made under part C of this subchapter (other than an excepted PLUS loan or an excepted consolidation loan).

(3) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out this section.

(b) Areas of national need

For purposes of this section, an individual is employed in an area of national need if the individual meets the requirements of one of the following:

(1) Early childhood educators

The individual is employed full-time as an early childhood educator.

(2) Nurses

The individual is employed full-time—

(A) as a nurse in a clinical setting; or

(B) as a member of the nursing faculty at an accredited school of nursing (as those terms are defined in section 296 of title 42).

(3) Foreign language specialists

The individual—

(A) has obtained a baccalaureate or advanced degree in a critical foreign language; and

(B) is employed full-time—

(i) in an elementary school or secondary school as a teacher of a critical foreign language;

(ii) in an agency of the United States Government in a position that regularly requires the use of such critical foreign language; or

(iii) in an institution of higher education as a faculty member or instructor teaching a critical foreign language.

(4) Librarians

The individual is employed full-time as a librarian in—

(A) a public library that serves a geographic area within which the public schools have a combined average of 30 percent or more of the schools’ total student enrollments composed of children meeting a measure of poverty under section 6313(a)(5) of this title; or

(B) a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(5) Highly qualified teachers serving students who are limited English proficient, low-income communities, and underrepresented populations

The individual—

(A) is highly qualified, as such term is defined in section 7801 of this title; and

(B) is employed full-time—

(i) as a teacher educating students who are limited English proficient;

(ii) as a teacher in a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school;

(iii) as a teacher and is an individual from an underrepresented population in the teaching profession, as determined by the Secretary; or

(iv) as a teacher in an educational service agency, as such term is defined in section 7801 of this title.

(6) Child welfare workers

The individual—

(A) has obtained a degree in social work or a related field with a focus on serving children and families; and

(B) is employed full-time in public or private child welfare services.

(7) Speech-language pathologists and audiologists

The individual—
(A) is employed full-time as a speech-language pathologist or audiologist in an eligible preschool program or a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school; and
(B) has, at a minimum, a graduate degree in speech-language pathology, audiology, or communication sciences and disorders.

(8) School counselors
The individual is employed full-time as a school counselor (as such term is defined in section 7245(e) of this title), in a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(9) Public sector employees
The individual is employed full-time in—
(A) public safety (including as a first responder, firefighter, police officer, or other law enforcement or public safety officer);
(B) emergency management (including as an emergency medical technician);
(C) public health (including full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics); or
(D) public interest legal services (including prosecution, public defense, or legal advocacy in low-income communities at a nonprofit organization).

(10) Nutrition professionals
The individual—
(A) is a licensed, certified, or registered dietician who has completed a degree in a relevant field; and
(B) is employed full-time as a dietician with an agency of the special supplemental nutrition program for women, infants, and children under section 1786 of title 42.

(11) Medical specialists
The individual—
(A) has received a degree from a medical school at an institution of higher education; and
(B) has been accepted to, or currently participates in, a full-time graduate medical education training program or fellowship (or both) to provide health care services (as recognized by the Accreditation Council for Graduate Medical Education) that—
(i) requires more than five years of total graduate medical training; and
(ii) has fewer United States medical school graduate applicants than the total number of positions available in such program or fellowship.

(12) Mental health professionals
The individual—
(A) has not less than a master’s degree in social work, psychology, or psychiatry; and
(B) is employed full-time providing mental health services to children, adolescents, or veterans.

(13) Dentists
The individual—
(A)(i) has received a degree from an accredited dental school (as accredited by the Commission on Dental Accreditation);
(ii) has completed residency training in pediatric dentistry, general dentistry, or dental public health; and
(iii) is employed full-time as a dentist; or
(B) is employed full-time as a member of the faculty at a program or school accredited by the Commission on Dental Accreditation.

(14) STEM employees
The individual is employed full-time in applied sciences, technology, engineering, or mathematics.

(15) Physical therapists
The individual—
(A) is a physical therapist; and
(B) is employed full-time providing physical therapy services to children, adolescents, or veterans.

(16) Superintendents, principals, and other administrators
The individual is employed full-time as a school superintendent, principal, or other administrator in a local educational agency, including in an educational service agency, in which 30 percent or more of the schools are schools that qualify under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(17) Occupational therapists
The individual is an occupational therapist and is employed full-time providing occupational therapy services to children, adolescents, or veterans.

(18) Allied health professionals
The individual is employed full-time as an allied health professional—
(A) in a Federal, State, local, or tribal public health agency; or
(B) in a setting where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings located in health professional shortage areas, medically underserved areas, or medically underserved populations, as recognized by the Secretary of Health and Human Services.

c) Qualified loan amount

(1) In general
Subject to paragraph (2), for each school, academic, or calendar year of full-time employment in an area of national need described in subsection (b) that a borrower completes on or after August 14, 2008, the Secretary shall forgive not more than $2,000 of the student loan obligation of the borrower that is outstanding after the completion of each such school, academic, or calendar year of employment, respectively.

(2) Maximum amount
The Secretary shall not forgive more than $10,000 in the aggregate for any borrower under
this section, and no borrower shall receive loan forgiveness under this section for more than five years of service.

(d) Priority
The Secretary shall grant loan forgiveness under this section on a first-come, first-served basis, and subject to the availability of appropriations.

(e) Rule of construction
Nothing in this section shall be construed to authorize the refunding of any repayment of a loan.

(f) Ineligibility for double benefits
No borrower may, for the same service, receive a reduction of loan obligations under both this section and section 1078–10, 1078–12, 1087e(m), or 1087j of this title.

(g) Definitions
In this section:

(1) Allied health professional
The term “allied health professional” means an allied health professional as defined in section 295p(5) of title 42 who—
(A) has graduated and received an allied health professions degree or certificate from an institution of higher education; and
(B) is employed with a Federal, State, local or tribal public health agency, or in a setting where patients might require health care services, including acute care facilities, ambulatory care facilities, personal residences and other settings located in health professional shortage areas, medically underserved areas, or medically underserved populations, as recognized by the Secretary of Health and Human Services.

(2) Audiologist
The term “audiologist” means an individual who—
(A) has received, at a minimum, a graduate degree in audiology from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and
(B)(i) provides audiology services under subsection (l)(2) of section 1395x of title 42; or
(ii) meets or exceeds the qualifications for a qualified audiologist under subsection (l)(4) of such section.

(3) Early childhood educator
The term “early childhood educator” means an individual who—
(A) works directly with children in an eligible preschool program or eligible early childhood education program in a low-income community;
(B) is involved directly in the care, development, and education of infants, toddlers, or young children age five and under;
(C) is operated by—
(i) a public or private school that is supported, sponsored, supervised, or administered by a local educational agency;
(ii) a Head Start agency serving as a grantee designated under the Head Start Act (42 U.S.C. 9831 et seq.);
(iii) a nonprofit or community based organization; or
(iv) a child care program, including a home.

(4) Eligible preschool program
The term “eligible preschool program” means a program that—
(A) provides for the care, development, and education of infants, toddlers, or young children age five and under;
(B) meets any applicable State or local government licensing, certification, approval, and registration requirements, and
(C) is operated by—
(i) a public or private school that is supported, sponsored, supervised, or administered by a local educational agency;
(ii) a Head Start agency serving as a grantee designated under the Head Start Act (42 U.S.C. 9831 et seq.);
(iii) a nonprofit or community based organization; or
(iv) a child care program, including a home.

(5) Eligible early childhood education program
The term “eligible early childhood education program” means—
(A) a family child care program, center-based child care program, State prekindergarten program, school program, or other out-of-home early childhood development care program, that—
(i) is licensed or regulated by the State; and
(ii) serves two or more unrelated children who are not old enough to attend kindergarten;
(B) a Head Start Program carried out under the Head Start Act (42 U.S.C. 9831 et seq.); or
(C) an Early Head Start Program carried out under section 645A of the Head Start Act (42 U.S.C. 9904a).

(6) Low-income community
The term “low-income community” means a school attendance area (as defined in section 6313(a)(2)(A) of this title)—
(A) in which 70 percent of households earn less than 85 percent of the State median household income; or
(B) that includes a school that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such a school.

(7) Nurse
The term “nurse” means a nurse who meets all of the following:
(A) The nurse graduated from—
(i) an accredited school of nursing (as those terms are defined in section 296 of title 42);
(ii) a nursing center; or
(iii) an academic health center that provides nurse training.
(B) The nurse holds a valid and unrestricted license to practice nursing in the State in which the nurse practices in a clinical setting.
(C) The nurse holds one or more of the following:
(i) A graduate degree in nursing, or an equivalent degree.
(ii) A nursing degree from a collegiate school of nursing (as defined in section 296 of title 42).
(iii) A nursing degree from an associate degree school of nursing (as defined in such section).
(iv) A nursing degree from a diploma school of nursing (as defined in such section).

(8) Occupational therapist
The term “occupational therapist” means an individual who—
(A) has received, at a minimum, a baccalaureate degree in occupational therapy from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and
(B)(i) provides occupational therapy services under section 1395x(g) of title 42; or
(ii) meets or exceeds the qualifications for a qualified occupational therapist, as determined by State law.

(9) Physical therapist
The term “physical therapist” means an individual who—
(A) has received, at a minimum, a graduate degree in physical therapy from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and
(B)(i) provides physical therapy services under section 1395x(p) of title 42; or
(ii) meets or exceeds the qualifications for a qualified physical therapist, as determined by State law.

(10) Speech-language pathologist
The term “speech-language pathologist” means a speech-language pathologist who—
(A) has received, at a minimum, a graduate degree in speech-language pathology or communication sciences and disorders from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 1099b(a) of this title; and
(B) provides speech-language pathology services under section 1395x(l)(1) of title 42, or meets or exceeds the qualifications for a qualified speech-language pathologist under subsection (l)(4) of such section.

(h) Authorization of appropriations
There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years to provide loan forgiveness in accordance with this section.

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(II) section 732 or 794e of title 29;  
(III) part A of title I of the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.);  
(IV) section 3004 of title 29;  
(V) section 1320b–21 of title 42;  
(VI) section 3004–53 of title 42; or  
(VII) section 15461 of title 42;  
(B) as such employee, provides civil legal assistance as described in subparagraph (A) on a full-time basis; and  
(C) is continually licensed to practice law.  

(2) Student loan  
(A) In general  
Except as provided in subparagraph (B), the term “student loan” means—  
(i) subject to clause (ii), a loan made, insured, or guaranteed under this part, part C, or part D; and  
(ii) a loan made under section 1078–3 or 1087e(g) of this title, to the extent that such loan was used to repay—  
(I) a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct PLUS Loan;  
(II) a loan made under section 1078, 1078–2, or 1078–8 of this title; or  
(III) a loan made under part D.  
(B) Exclusion of parent plus loans  
The term “student loan” does not include any of the following loans:  
(i) A loan made to the parents of a dependent student under section 1078–2 of this title.  
(ii) A Federal Direct PLUS Loan made to the parents of a dependent student.  
(iii) A loan made under section 1078–3 or 1087e(g) of this title, to the extent that such loan was used to repay—  
(I) a loan made to the parents of a dependent student under section 1078–2 of this title; or  
(II) a Federal Direct PLUS Loan made to the parents of a dependent student.  
(c) Program authorized  
From amounts appropriated under subsection (d), for any borrower half of a borrower to the holder of such loan, in accordance with subsection (d), for any borrower who—  
(1) is employed as a civil legal assistance attorney; and  
(2) is not in default on a loan for which the borrower seeks repayment.  
(d) Terms of agreement  
(1) In general  
To be eligible to receive repayment benefits under subsection (c), a borrower shall enter into a written agreement with the Secretary that specifies that—  
(A) the borrower will remain employed as a civil legal assistance attorney for a required period of service of not less than three years, unless involuntarily separated from that employment;  
(B) if the borrower is involuntarily separated from employment on account of misconduct, or voluntarily separates from employment, before the end of the period specified in the agreement, the borrower will repay the Secretary the amount of any benefits received by such employee under this agreement;  
(C) if the borrower is required to repay an amount to the Secretary under subparagraph (B) and fails to repay such amount, a sum equal to that amount shall be recoverable by the Federal Government from the employee by such methods as are provided by law for the recovery of amounts owed to the Federal Government;  
(D) the Secretary may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be contrary to the public interest; and  
(E) the Secretary shall make student loan payments under this section for the period of the agreement, subject to the availability of appropriations.  
(2) Repayments  
(A) In general  
Any amount repaid by, or recovered from, an individual under this subsection shall be credited to the appropriation account from which the amount involved was originally paid.  
(B) Merger  
Any amount credited under subparagraph (A) shall be merged with other sums in such account and shall be available for the same purposes and period, and subject to the same limitations, if any, as the sums with which the amount was merged.  
(3) Limitations  
(A) Student loan payment amount  
Student loan repayments made by the Secretary under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed upon by the borrower and the Secretary in an agreement under paragraph (1), except that the amount paid by the Secretary under this section shall not exceed—  
(i) $6,000 for any borrower in any calendar year; or  
(ii) an aggregate total of $40,000 in the case of any borrower.  
(B) Beginning of payments  
Nothing in this section shall authorize the Secretary to pay any amount to reimburse a borrower for any repayments made by such borrower prior to the date on which the Secretary entered into an agreement with the borrower under this subsection.  
(e) Additional agreements  
(1) In general  
On completion of the required period of service under an agreement under subsection (d), the borrower and the Secretary may, subject to paragraph (2), enter into an additional agreement in accordance with subsection (d).  
(2) Term  
An agreement entered into under paragraph (1) may require the borrower to remain em-
employed as a civil legal assistance attorney for less than three years.

(f) Award basis; priority

(1) Award basis

Subject to paragraph (2), the Secretary shall provide repayment benefits under this section on a first-come, first-served basis, and subject to the availability of appropriations.

(2) Priority

The Secretary shall give priority in providing repayment benefits under this section in any fiscal year to a borrower who—

(A) has practiced law for five years or less and, for not less than 90 percent of the time in such practice, has served as a civil legal assistance attorney;

(B) received repayment benefits under this section during the preceding fiscal year; and

(C) has completed less than three years of the first required period of service specified for the borrower in an agreement entered into under subsection (d).

(g) Ineligibility for double benefits

No borrower may, for the same service, receive a reduction of loan obligations under both this section and section 1078–11 or 1087e(m) of this title.

(h) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out this section.

(i) Authorization of appropriations

There are authorized to be appropriated to this Act to the Code, see Short Title note set out under section 10801 of Title 42 and Tables.

REFERENCES IN TEXT


§ 1079. Certificate of Federal loan insurance—effective date of insurance

(a) Loan-by-loan insurance

(1) Authority to issue certificates on application

If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible student which is insurable under the provisions of this part, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Effectiveness of certificate

Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) of this section shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) of this section by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance was made. Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to subsection (c) of this section.

(3) Contents of applications

An application submitted pursuant to subsection (a)(1) of this section shall contain (A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to subsection (c) of this section, and (B) an agreement by the applicant that if the loan is covered by insurance the applicant will submit such supplementary reports and statement during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

(b) Comprehensive insurance coverage certificate

(1) Establishment of system by regulation

In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each student loan made by an eligible lender as provided in subsection (a) of this section, the Secretary may, in accordance with regulations consistent with section 1074 of this title, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the United States from the risk of unreasonable loss and promoting the objectives of this part, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto.
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to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) Uncovered loans

If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a student a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 1074 of this title, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) of this section or by inclusion of such insurance on comprehensive coverage under the subsection for the period or periods in which such future loans or payments are made.

(c) Charges for Federal insurance

The Secretary shall, pursuant to regulations, charge for insurance on each loan under this part a premium in an amount not to exceed one-fourth of 1 percent per year of the unpaid principal amount of such loan (excluding interest added to principal), payable in advance, at such times and in such manner as may be prescribed by the Secretary. Such regulations may provide that such premium shall not be payable, or if paid shall be refundable, with respect to any period after default in the payment of principal or interest or after the borrower has died or becomes totally and permanently disabled, if (1) notice of such default or other event has been duly given, and (2) requests for payment of the loss insured against has been made or the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation; if they are covered by a single comprehensive certificate issued under subsection (b) of this section, the Secretary may amend that certificate accordingly.


PRIOR PROVISIONS


§ 1080. Default of student under Federal loan insurance program

(a) Notice to Secretary and payment of loss

Upon default by the student borrower on any loan covered by Federal loan insurance pursuant to this part, and prior to the commencement of suit or other enforcement proceedings upon security for that loan, the insurance beneficiary shall promptly notify the Secretary, and the Secretary shall if requested (at that time or after further collection efforts) by the beneficiary, or may on the Secretary’s own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined. The “amount of the loss” on any loan shall, for the purposes of this subsection and subsection (b) of this section, be deemed to be an amount equal to the unpaid balance of the principal amount and accrued interest, including interest accruing from the date of submission of a valid default claim (as determined by the Secretary) to the date on which payment is authorized by the Secretary, reduced to the extent required by section 1075(b) of this title. Such beneficiary shall be required to meet the standards of due diligence in the collection of the loan and shall be required to submit proof that the institution was contacted and other reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known). The Secretary shall make the determination required to carry out the provisions of this section not later than 90 days after the notification by the insurance beneficiary and shall make payment in full on the amount of the beneficiary’s loss pending completion of the due diligence investigation.

(b) Effect of payment of loss

Upon payment of the amount of the loss pursuant to subsection (a) of this section, the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (including reasonable administrative costs and collection costs, to the extent set forth in regulations issued by the Secretary) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may, in attempt-
ing to make recovery on such loans, contract with private business concerns, State student loan insurance agencies, or State guaranty agencies, for payment for services rendered by such concerns or agencies in assisting the Secretary in making such recovery. Any contract under this subsection entered into by the Secretary shall provide that attempts to make recovery on such loans shall be fair and reasonable, and do not involve harassment, intimidation, false or misleading representations, or unnecessary communications concerning the existence of any such loan to persons other than the student borrower.

(c) Forbearance not precluded

Nothing in this section or in this part shall be construed to preclude any forbearance for the benefit of the student borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary, or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance. Any forbearance which is approved by the Secretary under this subsection with respect to the repayment of a loan, including a forbearance during default, shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and due diligence in the collection of the loan.

(d) Care and diligence required of holders

Nothing in this section or in this part shall be construed to excuse the holder of a federally insured loan from exercising reasonable care and diligence in the making and collection of loans under the provisions of this part. If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that it has substantially failed to exercise such care and diligence or to make the reports and statements required under section 1078(a)(4) of this title and section 1079(a)(3) of this title, or to pay the required Federal loan insurance premiums, the Secretary shall disqualify that lender for further Federal insurance on loans granted pursuant to this part until the Secretary is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence or comply with such requirements, as the case may be.

(e) Default rate of lenders, holders, and guaranty agencies

(1) In general

The Secretary shall annually publish a list indicating the cohort default rate (determined in accordance with section 1085(m) of this title) for each originating lender, subsequent holder, and guaranty agency participating in the program assisted under this part and an average cohort default rate for all institutions of higher education within each State.

(2) Regulations

The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a cohort default rate through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.

(3) Rate establishment and correction

The Secretary shall establish a cohort default rate for lenders, holders, and guaranty agencies (determined consistent with section 1085(m) of this title), except that the rate for lenders, holders, and guaranty agencies shall not reflect any loans issued in accordance with section 1078(j) of this title. The Secretary shall allow institutions, lenders, holders, and guaranty agencies the opportunity to correct such cohort default rate information.


Prior Provisions


Amendments

1998—Subsec. (a). Pub. L. 105–244 inserted “the institution was contacted and other” after “submit proof that” in third sentence. 

Effective Date of 1998 Amendment


Study of Fraud-Based Defenses


§ 1080a. Reports to consumer reporting agencies and institutions of higher education

(a) Agreements to exchange information

For the purpose of promoting responsible reparation of loans covered by Federal loan insurance pursuant to this part or covered by a guaranty agreement pursuant to section 1078 of this title, the Secretary and each guaranty agency, eligible lender, and subsequent holder shall enter into an agreement with each consumer reporting agency to exchange information concerning student borrowers, in accordance with the requirements of this section. For the purpose of assisting such consumer reporting agencies in complying with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], such agreements may provide for timely response by the Secretary (concerning loans covered by Federal loan insurance) or by a guaranty agency, eligible lender, or subsequent holder (concerning loans covered by a guaranty agreement), or to
requests from such consumer reporting agencies for responses to objections raised by borrowers. Subject to the requirements of subsection (c) of this section, such agreements shall require the Secretary or the guaranty agency, eligible lender, or subsequent holder, as appropriate, to disclose to such consumer reporting agencies, with respect to any loan under this part that has not been repaid by the borrower—

(1) that the loan is an education loan (as such term is defined in section 1019 of this title);

(2) the total amount of loans made to any borrower under this part and the remaining balance of the loans;

(3) information concerning the repayment status of the loan for inclusion in the file of the borrower, except that nothing in this subsection shall be construed to affect any otherwise applicable provision of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(4) information concerning the date of any default on the loan and the collection of the loan, including information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 1080(a) of this title or the guaranty agency has made a payment to the previous holder of the loan; and

(5) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 1087 of this title.

(b) Additional information

Such agreements may also provide for the disclosure by such consumer reporting agencies to the Secretary or a guaranty agency, whichever insures or guarantees a loan, upon receipt of a notice under subsection (a)(4) of this section that such a loan is in default, of information concerning the borrower’s location or other information which may assist the Secretary, the guaranty agency, the eligible lender, or the subsequent holder in collecting the loan.

(c) Contents of agreements

Agreements entered into pursuant to this section shall contain such provisions as may be necessary to ensure that—

(1) no information is disclosed by the Secretary or the guaranty agency, eligible lender, or subsequent holder unless its accuracy and completeness have been verified and the Secretary or the guaranty agency has determined that disclosure would accomplish the purpose of this section;

(2) as to any information so disclosed, such consumer reporting agencies will be promptly notified of, and will promptly record, any change submitted by the Secretary, the guaranty agency, eligible lender, or subsequent holder with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i);

(3) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

(4) with regard to notices of default under subsection (a)(4) of this section, except for disclosures made to obtain the borrower’s location, the Secretary, or the guaranty agency, eligible lender, or subsequent holder whichever is applicable (A) shall not disclose any such information until the borrower has been notified that such information will be disclosed to consumer reporting agencies unless the borrower enters into repayment of his or her loan, but (B) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than 30 days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

(d) Contractor status of participants

A guaranty agency, eligible lender, or subsequent holder or consumer reporting agency which discloses or receives information under this section shall not be considered a Government contractor within the meaning of section 502a of title 5.

(e) Disclosure to institutions

The Secretary and each guaranty agency, eligible lender, and subsequent holder of a loan are authorized to disclose information described in subsections (a) and (b) of this section concerning student borrowers to the eligible institutions such borrowers attend or previously attended. To further the purpose of this section, an eligible institution may enter into an arrangement with any or all of the holders of delinquent loans made to borrowers who attend or previously attended such institution for the purpose of providing current information regarding the borrower’s location or employment or for the purpose of assisting the holder in contacting and influencing borrowers to avoid default.

(f) Duration of authority

Notwithstanding paragraphs (4) and (5) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(4), (a)(5)), a consumer reporting agency may make a report containing information received from the Secretary or a guaranty agency, eligible lender, or subsequent holder regarding the status of a borrower’s defaulted account on a loan guaranteed under this part until—

(1) 7 years from the date on which the Secretary or the agency paid a claim to the holder on the guaranty;

(2) 7 years from the date the Secretary, guaranty agency, eligible lender, or subsequent holder first reported the account to the consumer reporting agency; or

(3) in the case of a borrower who reenters repayment after defaulting on a loan and subsequently goes into default on such loan, 7 years from the date the loan entered default such subsequent time.


REFERENCES IN TEXT
The Fair Credit Reporting Act, referred to in subsec. (a), is title VI of Pub. L. 90–521, as added by Pub. L. 91–556, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

PRIOR PROVISIONS

AMENDMENTS


Subsec. (a). Pub. L. 110–315, §432(a)(2)(B)–(D), added paras. (1) and (3) and redesignated former paras. (1), (2), (4) and (5) respectively.

Pub. L. 110–315, §432(a)(2)(A), in introductory provisions, substituted “the Secretary and” for “the Secretary or” in third sentence.


Subsec. (d). Pub. L. 110–315, §432(a)(5), substituted “consumer reporting agency” for “credit bureau organization”.


1982—Subsec. (d). Pub. L. 97–325 struck out “or” at end of par. (1), added paras. (2) and (3), and struck out former par. (2) which read as follows: “with regard to an account on a loan on which the Secretary or the guaranty agency has paid a claim but not reported the account to a consumer reporting agency on or before October 1, 1985, 7 years from that date.”

1977—Subsec. (e). Pub. L. 100–50 inserted sentence at end setting an eligible institution to enter into arrangements with holders of delinquent loans made to borrowers for purpose of providing current information on borrower’s location or employment or to assist holder in contacting and influencing borrower to avoid default.


effective date of 2009 Amendment


effective date of 1993 Amendment
Amendment by Pub. L. 103–308 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–308, set out as a note under section 1051 of this title.


effective date of 1987 Amendment

§1081. Insurance fund

(a) Establishment
There is hereby established a student loan insurance fund (hereinafter in this section called the “fund”) which shall be available without fiscal year limitation to the Secretary for making payments in connection with the default of loans insured by the Secretary under this part, or in connection with payments under a guaranty agreement under section 1078(c) of this title. All amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with operations under this part, any excess advances under section 1072 of this title, and any other moneys, property, or assets derived by the Secretary from operations in connection with this section, shall be deposited in the fund. All payments in connection with the default of loans insured by the Secretary under this part, or in connection with such guaranty agreements shall be paid from the fund. Moneys in the fund not needed for current operations under this section may be invested in bonds or other obligations guaranteed as to principal and interest by the United States.

(b) Borrowing authority
If at any time the moneys in the fund are insufficient to make payments in connection with the default of any loan insured by the Secretary under this part, or in connection with any guaranty agreement made under section 1078(c) of this title, the Secretary is authorized, to the extent provided in advance by appropriations Acts, to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell
any of the notes or other obligations acquired under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under the subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.


**Codification**

In subsec. (b), “chapter 31 of title 31” and “that chapter” substituted for “the Second Liberty Bond Act, as amended” and “that Act, as amended”, respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

**Prior Provisions**


**Amendments**

1987—Subsec. (a). Pub. L. 100–50 substituted “section 1072 of this title” for “section 1072(a)(4)(C) of this title”.

**Effective Date of 1987 Amendment**


**Federal Family Education Loan Insurance Fund**

Pub. L. 105–244, title IV, § 494, Oct. 7, 1998, 112 Stat. 1711, provided that: “Any funds in the insurance fund, as established under section 431 of the Higher Education Act of 1965 (20 U.S.C. 1081), on the date of enactment of this Act [Oct. 7, 1998] shall be transferred to and deposited in the Treasury. All funds received by the Secretary of Education under subsection (a) of such section after the date of enactment of this Act shall be deposited into the fund in accordance with such subsection.”

**Transfer of Assets and Liabilities of the Vocational Student Loan Insurance Fund**

All assets and liabilities of the vocational student loan insurance fund transferred to the student loan insurance fund, see section 116(c)(2) of Pub. L. 90–375, set out as a note under former section 961 et seq. of this title.

§ 1082. Legal powers and responsibilities

(a) General powers

In the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may—

(1) prescribe such regulations as may be necessary to carry out the purposes of this part, including regulations applicable to third party servicers (including regulations concerning financial responsibility standards for, and the assessment of liabilities for program violations against, such servicers) to establish minimum standards with respect to sound management and accountability of programs under this part, except that in no case shall damages be assessed against the United States for the actions or inactions of such servicers;

(2) sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under the Secretary’s control and nothing herein shall be construed to except litigation arising out of activities under this part from the application of sections 509, 517, 547, and 2679 of title 28;

(3) include in any contract for Federal loan insurance such terms, conditions, and covenants relating to repayment of principal and payment of interest, relating to the Secretary’s obligations and rights to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this part will be achieved; and any term, condition, and covenant made pursuant to this paragraph or pursuant to any other provision of this part may be modified by the Secretary, after notice and opportunity for a hearing, if the Secretary finds that the modification is necessary to protect the United States from the risk of unreasonable loss;

(4) subject to the specific limitations in this part, consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note or other instrument evidencing a loan which has been insured by the Secretary under this part;

(5) enforce, pay, or compromise, any claim on, or arising because of, any such insurance or any guaranty agreement under section 1078(c) of this title; and

(6) enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.

(b) Financial operations responsibilities

The Secretary shall, with respect to the financial operations arising by reason of this part prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31. The transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related to payments made by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and officers of the Government. The Secretary may not enter into any set-
tlement of any claim under this subchapter and part C of subchapter I of chapter 34 of title 42 that exceeds $1,000,000 unless—

(1) the Secretary requests a review of the proposed settlement of such claim by the Attorney General; and

(2) the Attorney General responds to such request, which may include, at the Attorney General’s discretion, a written opinion related to such proposed settlement.

d) Delegation

(1) Regional offices

The functions of the Secretary under this part listed in paragraph (2) of this subsection may be delegated to employees in the regional office of the Department.

(2) Delegable functions

The functions which may be delegated pursuant to this subsection are—

(A) reviewing applications for loan insurance under section 1079 of this title and issuing contracts for Federal loan insurance, certificates of insurance, and certificates of comprehensive insurance coverage to eligible lenders which are financial or credit institutions subject to examination and supervision by an agency of the United States or of any State;

(B) receiving claims for payments under section 1080(a) of this title, examining those claims, and pursuant to regulations of the Secretary, approving claims for payment, or requiring lenders to take additional collection action as a condition for payment of claims; and

(C) certifying to the central office when collection of defaulted loans has been completed, compromising or agreeing to the modification of any Federal claim against a borrower (pursuant to regulations of the Secretary issued under subsection (a) of this section), and recommending litigation with respect to any such claim.

e) Use of information on borrowers

Notwithstanding any other provision of law, the Secretary may provide to eligible lenders, and to any guaranty agency having a guaranty agreement under section 1078(c)(1) of this title, any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived.

(f) Audit of financial transactions

(1) Comptroller General and Inspector General authority

The Comptroller General and the Inspector General of the Department of Education shall each have the authority to conduct an audit of the financial transactions of—

(A) any guaranty agency operating under an agreement with the Secretary pursuant to section 1078(b) of this title;

(B) any eligible lender as defined in section 1085(d)(1) of this title;

(C) a representative sample of eligible lenders under this part, upon the request of either of the authorizing committees, with respect to the payment of the special allowance under section 1067-1 of this title in order to evaluate the program authorized by this part.

(2) Access to records

For the purpose of carrying out this subsection, the records of any entity described in subparagraph (A), (B), (C), or (D) of paragraph (1) shall be available to the Comptroller General and the Inspector General of the Department of Education. For the purpose of section 716(c) of title 31, such records shall be considered to be records to which the Comptroller General has access by law, and for the purpose

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1 See References in Text note below.
of section 6(a)(4) of the Inspector General Act of 1978, such records shall be considered to be records necessary in the performance of functions assigned by that Act to the Inspector General.

(3) “Record” defined

For the purpose of this subsection, the term “record” includes any information, document, report, answer, account, paper, or other data or documentary evidence.

(4) Audit procedures

In conducting audits pursuant to this subsection, the Comptroller General and the Inspector General of the Department of Education shall audit the records to determine the extent to which they, at a minimum, comply with Federal statutes, and rules and regulations prescribed by the Secretary, in effect at the time that the record was made, and in no case shall the Comptroller General or the Inspector General apply subsequently determined standards, procedures, or regulations to the records of such agency, lender, or Authority.

(g) Civil penalties

(1) Authority to impose penalties

Upon determination, after reasonable notice and opportunity for a hearing, that a lender or a guaranty agency—

(A) has violated or failed to carry out any provision of this part or any regulation prescribed under this part, or

(B) has engaged in substantial misrepresentation of the nature of its financial charges,

the Secretary may impose a civil penalty upon such lender or agency of not to exceed $25,000 for each violation, failure, or misrepresentation.

(2) Limitations

No civil penalty may be imposed under paragraph (1) of this subsection unless the Secretary determines that—

(A) the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from a violation, failure, or misrepresentation that is material; and

(B) the lender or guaranty agency knew or should have known that its actions violated or failed to carry out the provisions of this part or the regulations thereunder.

(3) Correction of failure

A lender or guaranty agency has no liability under paragraph (1) of this subsection unless the Secretary determines that—

(i) the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from a violation, failure, or misrepresentation that is material; and

(ii) the lender or guaranty agency knew or should have known that its actions violated or failed to carry out the provisions of this part or the regulations thereunder.

(4) Consideration as single violation

For the purpose of paragraph (1) of this subsection, violations, failures, or substantial misrepresentations arising from a specific practice of a lender or guaranty agency, and occurring prior to notification by the Secretary under that paragraph, shall be deemed to be a single violation, failure, or substantial misrepresentation even if the violation, failure, or substantial misrepresentation affects more than one loan or more than one borrower, or both. The Secretary may only impose a single civil penalty for each such violation, failure, or substantial misrepresentation.

(5) Assignees not liable for violations by others

If a loan affected by a violation, failure, or substantial misrepresentation is assigned to another holder, the lender or guaranty agency responsible for the violation, failure, or substantial misrepresentation shall remain liable for any civil money penalty provided for under paragraph (1) of this subsection, but the assignee shall not be liable for any such civil money penalty.

(6) Compromise

Until a matter is referred to the Attorney General, any civil penalty under paragraph (1) of this subsection may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the Secretary shall consider the appropriateness of the penalty to the resources of the lender or guaranty agency subject to the determination; the gravity of the violation, failure, or substantial misrepresentation; the frequency and persistence of the violation, failure, or substantial misrepresentation; and the amount of any losses resulting from the violation, failure, or substantial misrepresentation.

The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or agency charged, unless the lender or agency has, in the case of a final agency determination, commenced proceedings for judicial review within 90 days of the determination, in which case the deduction may not be made during the pendency of the proceeding.

(h) Authority of the Secretary to impose and enforce limitations, suspensions, and terminations

(1) Imposition of sanctions

(A) If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that the eligible lender—

(i) has substantially failed to comply with—

(I) to exercise reasonable care and diligence in the making and collecting of loans under the provisions of this part,

(II) to make the reports or statements under section 1078(a)(4) of this title, or

(III) to pay the required loan insurance premiums to any guaranty agency, or

(ii) has engaged in—

(I) fraudulent or misleading advertising or in solicitations that have resulted in the making of loans insured or guaranteed under this part to borrowers who are ineligible; or

(II) the practice of making loans that violate the certification for eligibility provided in section 1078 of this title,

the Secretary shall limit, suspend, or terminate that lender from participation in the in-
(B) The Secretary shall not lift any such limitation, suspension, or termination until the Secretary is satisfied that the lender’s failure under subparagraph (A)(i) of this paragraph or practice under subparagraph (A)(ii) of this paragraph has ceased and finds that there are reasonable assurances that the lender will—

(i) exercise the necessary care and diligence,

(ii) comply with the requirements described in subparagraph (A)(i), or

(iii) cease to engage in the practices described in subparagraph (A)(ii),

as the case may be.

(2) Review of sanctions on lenders

(A) The Secretary shall review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 1078(b)(1)(U) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the institution. The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanctions—

(i) if such review is waived; or

(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

(B) The Secretary’s review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 1078(b)(1)(T) of this title shall be limited to—

(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanction; and

(ii) a determination as to whether the guaranty agency complied with section 1078(b)(1)(T) of this title and any notice and hearing requirements prescribed in regulations of the Secretary under this part.

(C) The Secretary shall not lift any such sanction until the Secretary is satisfied that the institution has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the institution will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such sanction.

(3) Review of sanctions on eligible institutions

(A) The Secretary shall review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 1078(b)(1)(T) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless

the right to such review is waived in writing by the institution. The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanctions—

(i) if such review is waived; or

(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

(B) The Secretary’s review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 1078(b)(1)(T) of this title shall be limited to—

(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanction; and

(ii) a determination as to whether the guaranty agency complied with section 1078(b)(1)(T) of this title and any notice and hearing requirements prescribed in regulations of the Secretary under this part.

(C) The Secretary shall not lift any such sanction until the Secretary is satisfied that the institution has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the institution will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such sanction.

(i) Authority to sell defaulted loans

In the event that all other collection efforts have failed, the Secretary is authorized to sell defaulted student loans assigned to the United States under this part to collection agencies, eligible lenders, guaranty agencies, or other qualified purchaser on such terms as the Secretary determines are in the best financial interests of the United States. A loan may not be sold pursuant to this subsection if such loan is in repayment status.

(j) Authority of Secretary to take emergency actions against lenders

(1) Imposition of sanctions

If the Secretary—

(A) receives information, determined by the Secretary to be reliable, that a lender is violating any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation;

(B) determines that immediate action is necessary to prevent misuse of Federal funds; and

(C) determines that the likelihood of loss outweighs the importance of following the limitation, suspension, or termination procedures authorized in subsection (h) of this section;

the Secretary shall, effective on the date on which a notice and statement of the basis of
the action is mailed to the lender (by registered mail, return receipt requested), take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance to the lender.

(2) Length of emergency action

An emergency action under this subsection may not exceed 30 days unless a limitation, suspension, or termination proceeding is initiated against the lender under subsection (h) of this section before the expiration of that period.

(3) Opportunity to show cause

The Secretary shall provide the lender, if it so requests, an opportunity to show cause that the emergency action is unwarranted.

(k) Program of assistance for borrowers

(1) In general

The Secretary shall undertake a program to encourage corporations and other private and public employers, including the Federal Government, to assist borrowers in repaying loans received under this subchapter and part C of subchapter I of chapter 34 of title 42, including providing employers with options for payroll deduction of loan payments and offering loan repayment matching provisions as part of employee benefit packages.

(2) Publication

The Secretary shall publicize models for providing the repayment assistance described in paragraph (1) and each year select entities that deserve recognition, through means devised by the Secretary, for the development of innovative plans for providing such assistance to employees.

(3) Recommendation

The Secretary shall recommend to the appropriate committees in the Senate and House of Representatives changes to statutes that could be made in order to further encourage such efforts.

(l) Uniform administrative and claims procedures

(1) In general

The Secretary shall, by regulation developed in consultation with guaranty agencies, lenders, institutions of higher education, secondary markets, students, third party servicers and other organizations involved in providing loans under this part, prescribe standardized forms and procedures regarding—

(A) origination of loans;
(B) electronic funds transfer;
(C) guaranty of loans;
(D) deferments;
(E) forbearance;
(F) servicing;
(G) claims filing;
(H) borrower status change and anticipated graduation date; and
(I) cures.

(2) Special rules

(A) The forms and procedures described in paragraph (1) shall include all aspects of the loan process as such process involves eligible lenders and guaranty agencies and shall be designed to minimize administrative costs and burdens (other than the costs and burdens involved in the transition to new forms and procedures) involved in exchanges of data to and from borrowers, schools, lenders, secondary markets, and the Department.

(B) Nothing in this paragraph shall be construed to limit the development of electronic forms and procedures.

(3) Simplification requirements

Such regulations shall include—

(A) standardization of computer formats, forms design, and guaranty agency procedures relating to the origination, servicing, and collection of loans made under this part;

(B) authorization of alternate means of document retention, including the use of microfilm, microfiche, laser disc, compact disc, and other methods allowing the production of a facsimile of the original documents;

(C) authorization of the use of computer or similar electronic methods of maintaining records relating to the performance of servicing, collection, and other regulatory requirements under this chapter and part C of subchapter I of chapter 34 of title 42; and

(D) authorization and implementation of electronic data linkages for the exchange of information to and from lenders, guarantors, institutions of higher education, third party servicers, and the Department of Education for student status confirmation reports, claim filing, interest and special allowance billing, deferment processing, and all other administrative steps relating to loans made pursuant to this part where using electronic data linkage is feasible.

(4) Additional recommendations

The Secretary shall review regulations prescribed pursuant to paragraph (1) and seek additional recommendations from guaranty agencies, lenders, institutions of higher education, students, secondary markets, third party servicers and other organizations involved in providing loans under this part, not less frequently than annually, for additional methods of simplifying and standardizing the administration of the programs authorized by this part.

(m) Common forms and formats

(1) Common guaranteed student loan application form and promissory note

(A) In general

The Secretary, in cooperation with representatives of guaranty agencies, eligible lenders, and organizations involved in student financial assistance, shall prescribe common application forms and promissory notes, or master promissory notes, to be used for applying for loans under this part.

(B) Requirements

The forms prescribed by the Secretary shall—

(i) use clear, concise, and simple language to facilitate understanding of loan terms and conditions by applicants; and
(ii) be formatted to require the applicant to clearly indicate a choice of lender.

(C) Free application form

For academic year 1999–2000 and succeeding academic years, the Secretary shall prescribe the form developed under section 1090 of this title as the application form under this part, other than for loans under sections 1078–2 and 1078–3 of this title.

(D) Master promissory note

(i) In general

The Secretary shall develop and require the use of master promissory note forms for loans made under this part and part C of this subchapter. Such forms shall be available for periods of enrollment beginning not later than July 1, 2000. Each form shall allow eligible borrowers to receive, in addition to initial loans, additional loans for the same or subsequent periods of enrollment through a student confirmation process approved by the Secretary. Such forms shall be used for loans made under this part or part C of this subchapter as directed by the Secretary. Unless otherwise notified by the Secretary, each institution of higher education that participates in the program under this part or part C may use a master promissory note for loans under this part and part C.

(ii) Consultation

In developing the master promissory note under this subsection, the Secretary shall consult with representatives of guaranty agencies, eligible lenders, institutions of higher education, and organizations involved in student financial assistance.

(iii) Sale; assignment; enforceability

Notwithstanding any other provision of law, each loan made under a master promissory note under this subsection may be sold or assigned independently of any other loan made under the same promissory note and each such loan shall be separately enforceable in all Federal and State courts on the basis of an original or copy of the master promissory note in accordance with the terms of the master promissory note.

(E) Perfection of security interests in student loans

(i) In general

Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in loans made under this part, on behalf of any eligible lender (as defined in section 1085(d) of this title) shall attach, be perfected, and be assigned priority in the manner provided by the applicable State’s law for perfection of security interests in accounts, as such law may be amended from time to time (including applicable transition provisions). If any such State’s law provides for a statutory lien to be created in such loans, such statutory lien may be created by the entity or entities governed by such State law in accordance with the applicable statutory provisions that created such a statutory lien.

(ii) Collateral description

In addition to any other method for describing collateral in a legally sufficient manner permitted under the laws of the State, the description of collateral in any financing statement filed pursuant to this subparagraph shall be deemed legally sufficient if it lists such loans, or refers to records (identifying such loans) retained by the secured party or any designee of the secured party identified in such financing statement, including the debtor or any loan servicer.

(iii) Sales

Notwithstanding clauses (i) and (ii) and any provisions of any State law to the contrary, other than any such State’s law providing for creation of a statutory lien, an outright sale of loans made under this part shall be effective and perfected automatically upon attachment as defined in the Uniform Commercial Code of such State.

(2) Common deferment form

The Secretary, in cooperation with representatives of guaranty agencies, institutions of higher education, and lenders involved in loans made under this part, shall prescribe a common deferment reporting form to be used for the processing of deferments of loans made under this subchapter and part C of subchapter I of chapter 34 of title 42.

(3) Common reporting formats

The Secretary shall promulgate standards including necessary rules, regulations (including the definitions of all relevant terms), and procedures so as to require all lenders and guaranty agencies to report information on all aspects of loans made under this part in uniform formats, so as to permit the direct comparison of data submitted by individual lenders, servicers, or guaranty agencies.

(4) Electronic forms

Nothing in this section shall be construed to limit the development and use of electronic forms and procedures.

(n) Default reduction management

(1) Authorization

There are authorized to be appropriated $25,000,000 for fiscal year 1999 and each of the four succeeding fiscal years, for the Secretary to expend for default reduction management activities for the purposes of establishing a performance measure that will reduce defaults by 5 percent relative to the prior fiscal year. Such funds shall be in addition to, and not in lieu of, other appropriations made for such purposes.

(2) Allowable activities

Allowable activities for which such funds shall be expended by the Secretary shall include the following: (A) program reviews; (B)
audits; (D) debt management programs; (D) training activities; and (E) such other management improvement activities approved by the Secretary.

(3) Plan for use required

The Secretary shall submit a plan, for inclusion in the materials accompanying the President's budget each fiscal year, detailing the expenditure of funds authorized by this section to accomplish the 5 percent reduction in defaults. At the conclusion of the fiscal year, the Secretary shall report the Secretary's findings and activities concerning the expenditure of funds and whether the performance measure was met. If the performance measure was not met, the Secretary shall report the following:

(A) why the goal was not met, including an indication of any managerial deficiencies or of any legal obstacles;

(B) plans and a schedule for achieving the established performance goal;

(C) recommended legislative or regulatory changes necessary to achieve the goal; and

(D) if the performance standard or goal is impractical or infeasible, why that is the case and what action is recommended, including whether the goal should be changed or the program altered or eliminated.

This report shall be submitted to the Appropriations Committees of the House of Representatives and the Senate and to the authorizing committees.

(o) Consequences of guaranty agency insolvency

In the event that the Secretary has determined that a guaranty agency is unable to meet its insurance obligations under this part, the holder of loans insured by the guaranty agency may submit insurance claims directly to the Secretary. The Secretary, in such manner and at such time as the Secretary shall require, on any financial interest which such individual may hold in any other entity participating in any program assisted under subchapter and part C of subchapter 1 of chapter 34 of title 42, may submit insurance claims directly to the Secretary. In the event that the Secretary has determined that a guaranty agency is unable to meet its insurance obligations under this part, the holder of loans insured by the guaranty agency, in accordance with insurance requirements, may not enter into any settlement of any claim under this subchapter and part C of subchapter I of chapter 34 of title 42 or as to the eligibility of any claim under this subchapter and part C of subchapter I of chapter 34 of title 42.
taking of possession of such loans (which can be through taking possession of an original or copy of the master promissory note) or by the filing of notice of such security interest in such loans in the manner provided by such State law for perfection of security interests in accounts."


1998—Subsec. (f)(1)(B). Pub. L. 105–244, §427(a)(1), substituted "section 1085(d)(1)" for "section 1085(d)(1)(D), (F), or (H)."


Subsec. (f)(1)(D). Pub. L. 105–244, §427(a)(3), struck out subpar. (D) which read as follows: "any Authority required to file a plan for doing business under section 1087–1(d) of this title."

Subsec. (k)(3). Pub. L. 105–244, §427(b), substituted "The Secretary" for "Within 1 year after July 1, 1992, the Secretary".

Subsec. (m)(1)(A). Pub. L. 105–244, §427(c)(1)(A), substituted "common application forms and promissory notes, or master promissory notes," for "a common application form and promissory note".

Subsec. (m)(1)(B). Pub. L. 105–244, §427(c)(1)(B), substituted "The forms" for "The form" in introductory provisions and struck out cl. (iii) which read as follows: "permit, to the maximum extent practicable, application for any loan under this part."

Subsec. (m)(1)(C). Pub. L. 105–244, §427(c)(1)(C), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "The Secretary shall approve a form for use not later than 360 days after July 23, 1992."

Subsec. (m)(1)(D). Pub. L. 105–244, §427(c)(1)(D), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "Nothing in this section shall be construed to limit the development of electronic forms and procedures."


Subsec. (p). Pub. L. 105–244, §427(e), struck out "State postsecondary reviewing entities designated under subpart 1 of part G of this subchapter," after "agencies or boards."

1995—Subsec. (b). Pub. L. 104–66 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "The Secretary shall, with respect to the financial operations arising by reason of this part—"(1) prepare annually and submit a budget program as provided for wholly owned Government corporations under title 31; and

"(2) maintain with respect to insurance under this part an integral set of accounts and prepare financial statements in accordance with generally accepted accounting principles, which shall be audited annually by the General Accounting Office in conformity with generally accepted Government auditing standards except that the transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions shall be final and conclusive upon all accounting and other officers of the Government."


1992—Subsec. (a)(1). Pub. L. 102–325, §425(a), inserted before semicolon at end "— including regulations applicable to third party servicers (including regulations concerning financial responsibility standards for, and the assessment of liabilities for program violations against, such servicers) to establish minimum standards with respect to sound management and accountability of programs under this part, except that in no case shall damages be assessed against the United States for the actions of any entity of such servicers."


Subsec. (g)(2). Pub. L. 102–325, §425(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "No civil penalty may be imposed under paragraph (1) of this subsection unless it is determined that the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from—"

"(A)(i) a clear and consistent pattern or practice of violations, failures, or substantial misrepresentations in which the lender or guaranty agency did not maintain procedures reasonably adapted to avoid the violation, failure, or substantial misrepresentation;"

"(ii) gross negligence; or

"(iii) willful actions on the part of the lender or guaranty agency; and

"(B) the violation, failure, or substantial misrepresentation is material."

Subsec. (g)(3). Pub. L. 102–325, §425(c)(2), substituted "notification by the Secretary under that paragraph" for "the institution of an action under that paragraph."

Subsec. (g)(4). Pub. L. 102–325, §425(c)(3). Inserted "and occurring prior to notification by the Secretary under that paragraph," after "guaranty agency” and substituted "or both. The" for "or both, and the."

Subsec. (h)(2)(A). Pub. L. 102–325, §425(d)(1), as amended by Pub. L. 103–208, §21(k)(2), in second sentence substituted "The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanction" for "The Secretary shall disqualify such lender from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification”.

Pub. L. 102–325, §425(b)(3), in first sentence struck out "... in accordance with sections 556 and 557 of title 5, after “The Secretary shall”.

Subsec. (h)(2)(B). Pub. L. 102–325, §425(d)(2), (3), added subpar. (B), redesignated former subpar. (B) as (C), and substituted "sanction" for "disqualification" in two places.

Subsec. (h)(3)(A). Pub. L. 102–325, §425(d)(4), as amended by Pub. L. 103–208, §21(k)(3), in second sentence substituted "The Secretary shall uphold the imposition of such limitation, suspension, or termination in the student loan insurance program of each of the guaranty agencies under this part, and shall notify such guaranty agencies of such sanctions" for "The Secretary shall disqualify such institution from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification”.

Pub. L. 102–325, §425(b)(4), in first sentence struck out "... in accordance with sections 556 and 557 of title 5, after “The Secretary shall”.

Subsec. (h)(3)(B). Pub. L. 102–325, §425(d)(5), (6), added subpar. (B), redesignated former subpar. (B) as (C), and substituted "sanction" for "disqualification" in two places.

Subsecs. (k) to (p). Pub. L. 102–325, §425(e), added subsecs. (k) to (p).


Subsec. (g)(2)(A)(1), (B). Pub. L. 100–50, §10(y), substituted "misrepresentation" for "representation."
§ 1083. Student loan information by eligible lenders

(a) Required disclosure before disbursement

Each eligible lender, at or prior to the time such lender disburses a loan that is insured or guaranteed under this part (other than a loan made under section 1078–3 of this title), shall provide thorough and accurate loan information on such loan to the borrower in simple and understandable terms. Any disclosure required by this subsection may be made by an eligible lender by written or electronic means, including as part of the application material provided to the borrower, as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. Each lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained. The disclosure shall include—

(1) a statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid;

(2) the name of the eligible lender, and the address to which communications and payments should be sent;

(3) the principal amount of the loan;

(4) the amount of any charges, such as the origination fee and Federal default fee, and whether those fees will be—

(A) collected by the lender at or prior to the disbursement of the loan;

(B) deducted from the proceeds of the loan;

(C) paid separately by the borrower; or

(D) paid by the lender;

(5) the stated interest rate on the loan;

(6) for loans made under section 1078–8 of this title or to a student borrower under section 1078–2 of this title, an explanation—

(A) that the borrower has the option to pay the interest that accrues on the loan while the borrower is a student at an institution of higher education; and

(B) if the borrower does not pay such interest while attending an institution, when and how often interest on the loan will be capitalized;

(7) for loans made to a parent borrower on behalf of a student under section 1078–2 of this title, an explanation—

(A) that the parent has the option to defer payment on the loan while the student is enrolled on at least a half-time basis in an institution of higher education;

(B) if the parent does not pay the interest on the loan while the student is enrolled in an institution, when and how often interest on the loan will be capitalized; and

(C) that the parent may be eligible for a deferment on the loan if the parent is enrolled on at least a half-time basis in an institution of higher education;

(8) the yearly and cumulative maximum amounts that may be borrowed;

(9) a statement of the total cumulative balance, including the loan being disbursed, owed by the borrower to that lender, and an estimate of the projected monthly payment, given such cumulative balance;

(10) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

(11) a description of the types of repayment plans that are available for the loan;

(12) a statement as to the minimum and maximum repayment terms which the lender may impose, and the minimum annual payment required by law;

(13) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(14) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty;

(15) a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred;

(16) a statement summarizing the circumstances in which a borrower may obtain forbearance on the loan;

(17) a description of the options available for forgiveness of the loan, and the requirements to obtain loan forgiveness;

(18) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default will be reported to a consumer reporting agency; and

(19) an explanation of any cost the borrower may incur during repayment or in the collection of the loan, including fees that the borrower may be charged, such as late payment fees and collection costs.

(b) Required disclosure before repayment

Each eligible lender shall, at or prior to the start of the repayment period on a loan made, insured, or guaranteed under section 1078, 1078–2, or 1078–8 of this title, disclose to the borrower by written or electronic means the information required under this subsection in simple and understandable terms. Each eligible lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained. The disclosure required by this subsection shall be made not less than 30 days nor
more than 150 days before the first payment on the loan is due from the borrower. The disclosure shall include—

(1) the name of the eligible lender or loan servicer, and the address to which communications and payments should be sent;

(2) the scheduled date upon which the repayment period is to begin or the deferment period under section 1078–2(d)(1) of this title is to end, as applicable;

(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure (including, if applicable, the estimated amount of interest to be capitalized) as of the scheduled date on which the repayment period is to begin or the deferment period under 1078–2(d)(1) of this title is to end, as applicable;

(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

(5) information on loan repayment benefits offered for the loan or loans, including—

(A) whether the lender offers any benefits that are contingent on the repayment behavior of the borrower, such as—

(i) a reduction in interest rate if the borrower repays the loan by automatic payroll or checking account deduction;

(ii) a reduction in interest rate if the borrower makes a specified number of on-time payments; and

(iii) other loan repayment benefits for which the borrower could be eligible that would reduce the amount of repayment or the length of the repayment period;

(B) if the lender provides a loan repayment benefit—

(i) any limitations on such benefit;

(ii) explicit information on the reasons a borrower may lose eligibility for such benefit;

(iii) for a loan repayment benefit that reduces the borrower’s interest rate—

(I) examples of the impact the interest rate reduction would have on the length of the borrower’s repayment period and the amount of repayment; and

(II) upon the request of the borrower, the effect the reduction in interest rate would have with respect to the borrower’s payoff amount and time for repayment; and

(iv) whether and how the borrower can regain eligibility for a benefit if a borrower loses a benefit;

(6) a description of all the repayment plans that are available to the borrower and a statement that the borrower may change from one plan to another during the period of repayment;

(7) the repayment schedule for all loans covered by the disclosure, including—

(A) the date the first installment is due; and

(B) the number, amount, and frequency of required payments, which shall be based on a standard repayment plan or, in the case of a borrower who has selected another repayment plan, on the repayment plan selected by the borrower;

(8) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and of the availability and terms of such other options;

(9) except as provided in subsection (d)—

(A) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

(B) if the borrower has already paid interest on the loan or loans, the amount of interest paid;

(10) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

(11) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty;

(12) a description of the options by which the borrower may avoid or be removed from default, including any relevant fees associated with such options; and

(13) additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department) of which the lender is aware, where borrowers may receive advice and assistance on loan repayment.

d) Special disclosure rules on PLUS loans, and unsubsidized loans

Loans made under sections 1078–2 and 1078–8 of this title shall not be subject to the disclosure of projected monthly payment amounts required under subsection (b)(7) if the lender, in lieu of such disclosure, provides the borrower with sample projections of monthly repayment amounts, assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower, or the student on whose behalf the loan is made, is in school, in simple and understandable terms. Such sample projections shall disclose the cost to the borrower of—

(1) capitalizing the interest; and

(2) paying the interest as the interest accrues.

e) Required disclosures during repayment

(1) Pertinent information about a loan provided on a periodic basis

Each eligible lender shall provide the borrower of a loan made, insured, or guaranteed under this part with a bill or statement (as ap-
applicable) that corresponds to each payment installment time period in which a payment is due and that includes, in simple and understandable terms—

(A) the original principal amount of the borrower’s loan;
(B) the borrower’s current balance, as of the time of the bill or statement, as applicable;
(C) the interest rate on such loan;
(D) the total amount the borrower has paid in interest on the loan;
(E) the aggregate amount the borrower has paid for the loan, including the amount the borrower has paid in interest, the amount the borrower has paid in fees, and the amount the borrower has paid against the balance;
(F) a description of each fee the borrower has been charged for the most recently preceding installment time period;
(G) the date by which the borrower needs to make a payment in order to avoid additional fees and the amount of such payment and the amount of such fees;
(H) the lender’s or loan servicer’s address and toll-free phone number for payment and billing error purposes; and
(I) a reminder that the borrower has the option to change repayment plans, a list of the names of the repayment plans available to the borrower, a link to the appropriate page of the Department’s website to obtain a more detailed description of the repayment plans, and directions for the borrower to request a change in repayment plan.

(2) Information provided to a borrower having difficulty making payments

Each eligible lender shall provide to a borrower who has notified the lender that the borrower is having difficulty making payments on a loan made, insured, or guaranteed under this part with the following information in simple and understandable terms:

(A) A description of the repayment plans available to the borrower, including how the borrower should request a change in repayment plan.

(B) A description of the requirements for obtaining forbearance on a loan, including expected costs associated with forbearance.

(C) A description of the options available to the borrower to avoid defaulting on the loan, and any relevant fees or costs associated with such options.

(3) Required disclosures during delinquency

Each eligible lender shall provide to a borrower who is 60 days delinquent in making payments on a loan made, insured, or guaranteed under this part with the following information in simple and understandable terms, of the following:

(A) The date on which the loan will default if no payment is made.

(B) The minimum payment the borrower must make to avoid default.

(C) A description of the options available to the borrower to avoid default, and any relevant fees or costs associated with such options, including a description of deferment and forbearance and the requirements to obtain each.

(D) Discharge options to which the borrower may be entitled.

(E) Additional resources, including non-profit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department), of which the lender is aware, where the borrower can receive advice and assistance on loan repayment.

(f) Cost of disclosure and consequences of non-disclosure

(1) No cost to borrowers

The information required under this section shall be available without cost to the borrower.

(2) Consequences of nondisclosure

The failure of an eligible lender to provide information as required by this section shall not—

(A) relieve a borrower of the obligation to repay a loan in accordance with the loan’s terms; or

(B) provide a basis for a claim for civil damages.

(3) Rule of construction

Nothing in this section shall be construed as subjecting the lender to the Truth in Lending Act [15 U.S.C. 1601 et seq.] with regard to loans made under this part.

(4) Actions by the Secretary

The Secretary may limit, suspend, or terminate the continued participation of an eligible lender in making loans under this part for failure by that lender to comply with this section.

References in Text

The Truth in Lending Act, referred to in subsec. (b)(3), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.
amendment, introductory provisions read as follows: “Each eligible lender shall, at or prior to the time such lender disburses a loan which is insured or guaranteed under this part (other than a loan made under section 1078-3 of this title), provide thorough and accurate loan information on such loan to the borrower. Any disclosure required by this subsection may be made by an eligible lender as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosure shall include—

Subsec. (b). Pub. L. 105–244, § 428(b), amended heading and introductory provisions generally. Prior to amendment, introductory provisions read as follows: “Each eligible lender shall, at or prior to the start of the repayment period of the student borrower on loans made, insured, or guaranteed under this part, disclose to the borrower the information required under this subsection. For any loan made, insured, or guaranteed under this part, other than a loan made under section 1078–2 or 1078–3 of this title, such disclosure required by this subsection shall be made not less than 30 days nor more than 240 days before the first payment on the loan is due from the borrower. The disclosure shall include—

1993—Subsec. (b). Pub. L. 102–325, § 426(b), substituted “30 days” for “60 days” in introductory provisions.


Pub. L. 103–208, § 2(c)(54), substituted “sections” for “section” before “1078–1”.

1992—Subsec. (a). Pub. L. 102–325, § 426(a), added par. (1) and redesignated former pars. (1) to (13) as (2) to (14), respectively.

Subsec. (b). Pub. L. 102–325, § 426(b)(1), in introductory provisions, inserted second sentence and struck out former second sentence which read as follows: “Any disclosure required by this subsection may be made by an eligible lender either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower.”

Subsec. (b)(2). Pub. L. 102–325, § 426(b)(2), inserted “except as provided in subsection (e) of this section.” before “the projected.”


Subsec. (a)(8). Pub. L. 100–50, § 10(z)(2), added par. (8) and struck out former par. (8) which read as follows: “a statement of the total cumulative balance, including the loan applied for, owed by the student to that lender, the projected level of indebtedness of the student based on a 4-year college career, and an estimate of the projected monthly repayment given the level of indebtedness over a 4- or 5-year college career;”

Subsec. (b)(7). Pub. L. 100–50, § 10(z)(3), inserted “except that such explanation is not required when the loan being made is a consolidation loan under section 1083a–3 of this title before semicolon at end.

Subsec. (d). Pub. L. 100–50, § 10(z)(4), substituted “notifies a borrower of approval of a loan” for “makes the first disbursement of a loan with respect to a borrower.”

Effective Date of 2008 Amendment

“(1) REGULAR DISCLOSURE REQUIREMENTS AND DISCLOSURE REQUIREMENTS TO BORROWERS HAVING DIFFICULTY MAKING PAYMENTS.—Paragraphs (1) and (2) of section 433(e) of the Higher Education Act of 1965 (20 U.S.C. 1083e(e)(1), (2)), as amended by subsection (a), shall apply with respect to loans for which the first payment is due on or after July 1, 2009.

“(2) DISCLOSURE REQUIREMENTS FOR BORROWERS WITH DELINQUENT LOANS.—Section 433(e)(3) of the Higher Education Act of 1965 (20 U.S.C. 1083e(e)(3)), as amended by subsection (a), shall apply with respect to loans that become delinquent on or after July 1, 2009.”

Effective Date of 1998 Amendment

Effective Date of 1993 Amendment

Effective Date of 1987 Amendment
Amendment by Pub. L. 100–50 effective as if enacted after Jan. 1, 1987, or made to cover the costs of using high interest loans to pay for postsecondary education, particularly as budgeting and financial management relates to student loan programs authorized by this subchapter and part C of subchapter I of chapter 41 of title 42. Such programs and materials shall be in formats that are simple and understandable to students and families, and shall be made available before, during, and after the students’ enrollment in an institution of higher education. The activities described in this section shall be considered default reduction activities for the purposes of section 1072 of this title.

§ 1083a. Consumer education information
(a) In general
Each guaranty agency participating in a program under this part, working with the institutions of higher education served by such guaranty agency, shall develop and make available high-quality educational programs and materials to provide training for students and families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high interest loans to pay for postsecondary education, particularly as budgeting and financial management relates to student loan programs authorized by this subchapter and part C of subchapter I of chapter 41 of title 42. Such programs and materials shall be in formats that are simple and understandable to students and families, and shall be provided before, during, and after the students’ enrollment in an institution of higher education. The activities described in this section shall be considered default reduction activities for the purposes of section 1072 of this title.

(b) Rule of construction
Nothing in this section shall be construed to prohibit—

(1) a guaranty agency from using existing activities, programs, and materials in meeting the requirements of this section;

(2) a guaranty agency from providing programs or materials similar to the programs or materials described in subsection (a) to an institution of higher education that provides loans exclusively through part C; or

(3) a lender or loan servicer from providing outreach or financial aid literacy information in accordance with subsection (a).
§ 1084 Participation by Federal credit unions in Federal, State, and private student loan insurance programs

Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regulations of the National Credit Union Administration, have power to make insured loans to student members in accordance with the provisions of this part relating to federally insured loans, or in accordance with the provisions of any State or nonprofit private student loan insurance program which meets the requirements of section 1078(a)(1)(B) of this title.


PRIOR PROVISIONS


§ 1085 Definitions for student loan insurance program

As used in this part:

(a) Eligible institution

(1) In general

Except as provided in paragraph (2), the term "eligible institution" means an institution of higher education, as defined in section 1002 of this title, except that, for the purposes of sections 1077(a)(2)(C)(i) and 1078(b)(1)(M)(i) of this title, an eligible institution includes any institution that is within this definition without regard to whether such institution is participating in any program under this subchapter and part C of chapter I of chapter 34 of title 42 and includes any institution ineligible for participation in any program under this part pursuant to paragraph (2) of this sub-section.

(2) Ineligibility based on high default rates

(A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if—

(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B);

(ii) there are exceptional mitigating circumstances within the meaning of paragraph (5); or

(iii) the institution is in the judgment of the Secretary, other exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During such appeal, the Secretary may permit the institution to continue to participate in a program under this part. If an institution continues to participate in a program under this part, and the institution's appeal of the loss of eligibility is unsuccessful, the institution shall be required to pay to the Secretary an amount equal to the amount of interest, special allowance, reinsurance, and any related payments made by the Secretary (or which the Secretary is obligated to make) with respect to loans made under this part to students attending, or planning to attend, that institution during the pendency of such appeal.

(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

(i) 35 percent for fiscal year 1991 and 1992;

(ii) 30 percent for fiscal year 1993;

(iii) 25 percent for fiscal year 1994 through fiscal year 2011; and

(iv) 30 percent for fiscal year 2012 and any succeeding fiscal year.

(C) Until July 1, 1999, this paragraph shall not apply to any institution that is—

(i) a part B institution within the meaning of section 1061(2) of this title;

(ii) a tribally controlled college or university, as defined in section 1801(a)(4) of title 25; or

(iii) a Navajo Community College under the Navajo Community College Act [25 U.S.C. 640a et seq.].

(D) Notwithstanding the first sentence of subparagraph (A), the Secretary shall restore the eligibility to participate in a program under subpart 1 of part A, part B, or part D of this subchapter of an institution that did not appeal its loss of eligibility within 30 days of receiving notification if the Secretary determines, on a case-by-case basis, that the institution's failure to appeal was substantially justified under the circumstances, and that—

(i) the institution made a timely request that the appropriate guaranty agency cor-
rect errors in the draft data used to calculate the institution’s cohort default rate;
(ii) the guaranty agency did not correct the erroneous data in a timely fashion; and
(iii) the institution would have been eligible if the erroneous data had been corrected by the guaranty agency.

(3) Appeals for regulatory relief
An institution whose cohort default rate, calculated in accordance with subsection (m), is equal to or greater than the threshold percentage specified in paragraph (2)(B)(iv) for any two consecutive fiscal years, may appeal the decision of the Secretary to provisionally certify based solely on the institution’s cohort default rate.

(4) Appeals based upon allegations of improper loan servicing
An institution that—
(A) is subject to loss of eligibility for the Federal Family Education Loan Program pursuant to paragraph (2)(A) of this subchapter; or
(B) is subject to loss of eligibility for the Federal Supplemental Loans for Students pursuant to section 1078–1(a)(2)1 of this title; or
(C) is an institution whose cohort default rate equals or exceeds 20 percent for the most recent year for which data are available; may include in its appeal of such loss or rate a defense based on improper loan servicing (in addition to other defenses). In such an appeal, the Secretary shall take whatever steps are necessary to ensure that such institution has access for a reasonable period of time, not to exceed 30 days, to a representative sample (as determined by the Secretary) of the relevant loan servicing and collection records used by a guaranty agency in determining whether to pay a claim on a defaulted loan or by the Department in determining an institution’s default rate in the loan program under part C of this subchapter. The Secretary shall reduce the institution’s cohort default rate to reflect the percentage of defaulted loans in the representative sample that are required to be excluded pursuant to subsection (m)(1)(B) of this section.

(5) Definition of mitigating circumstances
(A) For purposes of this subsection, an institution of higher education shall be treated as having exceptional mitigating circumstances that make application of paragraph (2) inequitable, and that provide for regulatory relief under paragraph (3), if such institution, in the opinion of an independent auditor, meets the following criteria:
(i) For a 12-month period that ended during the 6 months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution’s cohort default rate is determined, at least two-thirds of the students enrolled on at least a half-time basis at the institution—
   (I) are eligible to receive a Federal Pell Grant award that is at least equal to one-half the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student would be eligible based on the student’s enrollment status; or
   (II) have an adjusted gross income that when added with the adjusted gross income of the student’s parents (unless the student is an independent student), of less than the poverty level, as determined by the Department of Health and Human Services.
(ii) In the case of an institution of higher education that offers an associate, baccalaureate, graduate or professional degree, 70 percent or more of the institution’s regular students who were initially enrolled on a full-time basis and were scheduled to complete their programs during the same 12-month period described in clause (i)—
   (I) completed the educational programs in which the students were enrolled;
   (II) transferred from the institution to a higher level educational program;
   (III) at the end of the 12-month period, remained enrolled and making satisfactory progress toward completion of the student’s educational programs; or
   (IV) entered active duty in the Armed Forces of the United States.
(iii)(I) In the case of an institution of higher education that does not award a degree described in clause (ii), had a placement rate of 44 percent or more with respect to the institution’s former regular students who—
   (aa) remained in the program beyond the point the students would have received a 100 percent tuition refund from the institution;
   (bb) were initially enrolled on at least a half-time basis; and
   (cc) were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period described in clause (i).
   (II) The placement rate shall not include students who are still enrolled and making satisfactory progress in the educational programs in which the students were originally enrolled on the date following 12 months after the date of the student’s last date of attendance at the institution.
   (III) The placement rate is calculated by determining the percentage of all those former regular students who—
   (aa) are employed, in an occupation for which the institution provided training, on the date following 12 months after the date of their last day of attendance at the institution;

1 See References in Text note below.
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(b) were employed, in an occupation for which the institution provided training, for at least 13 weeks before the date following 12 months after the date of their last day of attendance at the institution; or

(c) entered active duty in the Armed Forces of the United States.

(IV) The placement rate shall not include as placements a student or former student for whom the institution is the employer.

(B) For purposes of determining a rate of completion and a placement rate under this paragraph, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The amount of time normally required to complete the program for a student who is initially enrolled full-time is the period of time specified in the institution’s enrollment contract, catalog, or other materials, for completion of the program by a full-time student. For a student who is initially enrolled less than full-time, the period is the amount of time it would take the student to complete the program if the student remained enrolled at that level of enrollment throughout the program.

(6) Reduction of default rates at certain minority institutions

(A) Beneficiaries of exception required to establish management plan

After July 1, 1999, any institution that has a cohort default rate that equals or exceeds 25 percent for each of the three most recent fiscal years for which data are available and that relies on the exception in subparagraph (B) to continue to be an eligible institution shall—

(i) submit to the Secretary a default management plan which the Secretary, in the Secretary’s discretion, after consideration of the institution’s history, resources, dollars in default, and targets for default reduction, determines is acceptable and provides reasonable assurance that the institution will, by July 1, 2004, have a cohort default rate that is less than 25 percent;

(ii) engage an independent third party (which may be paid with funds received under section 1059d of this title or part B of subchapter III of this chapter) to provide technical assistance in implementing such default management plan; and

(iii) provide to the Secretary, on an annual basis or at such other intervals as the Secretary may require, evidence of cohort default rate improvement and successful implementation of such default management plan.

(B) Discretionary eligibility conditioned on improvement

Notwithstanding the expiration of the exception in paragraph (2)(C), the Secretary may, in the Secretary’s discretion, continue to treat an institution described in subparagraph (A) of this paragraph as an eligible institution for each of the 1-year periods beginning on July 1 of 1999 through 2003, only if the institution submits by the beginning of such period evidence satisfactory to the Secretary that—

(i) such institution has complied and is continuing to comply with the requirements of subparagraph (A); and

(ii) such institution has made substantial improvement, during each of the preceding 1-year periods, in the institution’s cohort default rate.

(7) Default prevention and assessment of eligibility based on high default rates

(A) First year

(i) In general

An institution whose cohort default rate is equal to or greater than the threshold percentage specified in paragraph (2)(B)(iv) in any fiscal year shall establish a default prevention task force to prepare a plan to—

(I) identify the factors causing the institution’s cohort default rate to exceed such threshold;

(II) establish measurable objectives and the steps to be taken to improve the institution’s cohort default rate; and

(III) specify actions that the institution can take to improve student loan repayment, including appropriate counseling regarding loan repayment options.

(ii) Technical assistance

Each institution subject to this subparagraph shall submit the plan under clause (i) to the Secretary, who shall review the plan and offer technical assistance to the institution to promote improved student loan repayment.

(B) Second consecutive year

(i) In general

An institution whose cohort default rate is equal to or greater than the threshold percentage specified in paragraph (2)(B)(iv) for two consecutive fiscal years, shall require the institution’s default prevention task force established under subparagraph (A) to review and revise the plan required under such subparagraph, and shall submit such revised plan to the Secretary.

(ii) Review by the Secretary

The Secretary shall review each revised plan submitted in accordance with this subparagraph, and may direct that such plan be amended to include actions, with measurable objectives, that the Secretary determines, based on available data and analyses of student loan defaults, will promote student loan repayment.

(8) Participation rate index

(A) In general

An institution that demonstrates to the Secretary that the institution’s participation rate index is equal to or less than 0.0625
for any of the 3 most recent fiscal years for which data is available shall not be subject to paragraph (2). The participation rate index shall be determined by multiplying the institution's cohort default rate for loans under this part or part C of this subchapter, or weighted average cohort default rate for loans under this part and part C of this subchapter, by the percentage of the institution's regular students, enrolled on at least a half-time basis, who received a loan made under this part or part C of this subchapter for a 12-month period ending during the 6 months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's cohort default rate is determined.

(B) Data

An institution shall provide the Secretary with sufficient data to determine the institution's participation rate index within 30 days after receiving an initial notification of the institution's compliance or noncompliance with subparagraph (A).

(C) Notification

Prior to publication of a final cohort default rate for an institution that provides the data described in subparagraph (B), the Secretary shall notify the institution of the institution's compliance or noncompliance with subparagraph (A).

(b), (c) Repealed. Pub. L. 102–325, title IV, §427(b)(1), (c), July 23, 1992, 106 Stat. 549

(d) Eligible lender

(1) In general

Except as provided in paragraphs (2) through (6), the term "eligible lender" means—

(A) a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union which—

(i) is subject to examination and supervision by an agency of the United States or of the State in which its principal place of operation is established, and

(ii) does not have as its primary consumer credit function the making or holding of loans made to students under this part unless (I) it is a bank which is wholly owned by a State, or a bank which is subject to examination and supervision by an agency of the United States, makes student loans as a trustee pursuant to an express trust, operated as a lender under this part prior to January 1, 1975, and which meets the requirements of this provision prior to July 23, 1992, (II) it is a single wholly owned subsidiary of a bank holding company which does not have as its primary consumer credit function the making or holding of loans made to students under this part, (III) it is a bank (as defined in section 1813(a)(1) of title 12) that is a wholly owned subsidiary of a nonprofit foundation, the foundation is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title, and the bank makes loans under this part only to undergraduate students who are age 22 or younger and has a portfolio of such loans that is not more than $5,000,000, or (IV) it is a National or State chartered bank, or a credit union, with assets of less than $1,000,000,000;

(B) a pension fund as defined in the Employee Retirement Income Security Act [29 U.S.C. 1001 et seq.];

(C) an insurance company which is subject to examination and supervision by an agency of the United States or a State;

(D) in any State, a single agency of the State or a single nonprofit private agency designated by the State;

(E) an eligible institution which meets the requirements of paragraphs (2) through (5) of this subsection;

(F) for purposes only of purchasing and holding loans made by other lenders under this part, the Student Loan Marketing Association or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title, or an agency of any State functioning as a secondary market;

(G) for purposes of making loans under sections 1078–2(d) and 1078–3 of this title, the Student Loan Marketing Association or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 1087–3 of this title;

(H) for purposes of making loans under sections 1078(h)1 and 1078(j) of this title, a guaranty agency;

(I) a Rural Rehabilitation Corporation, or its successor agency, which has received Federal funds under Public Law 499, Eighty-first Congress (64 Stat. 98 (1950));

(J) for purpose of making loans under section 1078–3 of this title, any nonprofit private agency functioning in any State as a secondary market; and

(K) a consumer finance company subsidiary of a national bank which, as of October 7, 1998, through one or more subsidiaries: (i) acts as a small business lending company, as determined under regulations of the Small Business Administration under section 120.470 of title 13, Code of Federal Regulations (as such section is in effect on October 7, 1998); and (ii) participates in the program authorized by this part pursuant to subparagraph (C), provided the national bank and all of the bank's direct and indirect subsidiaries taken together as a whole, do not have, as their primary consumer credit function, the making or holding of loans made to students under this part.

(2) Requirements for eligible institutions

(A) In general

To be an eligible lender under this part, an eligible institution—

(i) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

(ii) shall not be a home study school;
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(3) Disqualification for high default rates
The term "eligible lender" does not include any eligible institution in any fiscal year immediately after the fiscal year in which the Secretary determines, after notice and opportunity for a hearing, that any eligible institution in any fiscal year immediately after the fiscal year in which the Secretary determines, after notice and opportunity for a hearing, that for each of 2 consecutive years, 15 percent or more of the total amount of such loans as are described in section 1078(a)(1) of this title made by the institution with respect to students at that institution and repayable in each such year, are in default, as defined in subsection (m).

(4) Waiver of disqualification
Whenever the Secretary determines that—

(A) there is reasonable possibility that an eligible institution may, within 1 year after a determination is made under paragraph (3), improve the collection of loans described in section 1078(a)(1) of this title, so that the application of paragraph (3) would be a hardship to that institution, or

(B) the termination of the lender's status under paragraph (3) would be a hardship to the present or for prospective students of the eligible institution, after considering the management of that institution, the ability of that institution to improve the collection of loans, the opportunities that institution offers to economically disadvantaged students, and other related factors, the Secretary shall waive the provisions of paragraph (3) with respect to that institution.

Any determination required under this paragraph shall be made by the Secretary prior to the termination of an eligible institution as a lender under the exception of paragraph (3). Whenever the Secretary grants a waiver pursuant to this paragraph, the Secretary shall provide technical assistance to the institution concerned in order to improve the collection rate of such loans.

(5) Disqualification for use of certain incentives
The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing, has—

(A) offered, directly or indirectly, points, premiums, payments (including payments for referrals and for processing or finder fees), prizes, stock or other securities, travel, entertainment expenses, tuition payment or reimbursement, the provision of information technology equipment at below-market value, additional financial aid funds, or other inducements, to any institution of higher education, any employee of an institution of higher education, or any individual or entity in order to secure applicants for loans under this part;

(B) conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions, or to family members of such students, except that applications may be mailed, by postal or electronic means, to students or borrowers who have previously received loans under this part from such lender;

(C) entered into any type of consulting arrangement, or other contract to provide services to a lender, with an employee who is employed in the financial aid office of an institution of higher education, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution;

(D) compensated an employee who is employed in the financial aid office of an institution of higher education, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution, and who is serving on an advisory committee, or who is employed in the financial aid office of an institution of higher education, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution.
board, commission, or group established by a lender or group of lenders for providing such service, except that the eligible lender may reimburse such employee for reasonable expenses incurred in providing such service;

(5) performed for an institution of higher education any function that such institution of higher education is required to perform under this title, except that a lender shall be permitted to perform functions on behalf of such institution in accordance with section 1085(b) or 1085(l) of this title;

(F) paid, on behalf of an institution of higher education, another person to perform any function that such institution of higher education is required to perform under this subchapter and part C of subchapter I of chapter 34 of title 42, except that a lender shall be permitted to perform functions on behalf of such institution in accordance with section 1085(b) or 1085(l) of this title;

(G) provided payments or other benefits to a student at an institution of higher education to act as the lender’s representative to secure applications under this subchapter and part C of subchapter I of chapter 34 of title 42 from individual prospective borrowers, unless such student—

(i) is also employed by the lender for other purposes; and

(ii) made all appropriate disclosures regarding such employment;

(H) offered, directly or indirectly, loans under this part as an inducement to a prospective borrower to purchase a policy of insurance or other product; or

(I) engaged in fraudulent or misleading advertising.

It shall not be a violation of this paragraph for a lender to provide technical assistance to institutions of higher education comparable to the kinds of technical assistance provided to institutions of higher education by the Department.

(7) Eligible lender trustees

Notwithstanding any other provision of this subsection, an eligible lender may not make or hold a loan under this part as trustee for an institution of higher education, or for an organization affiliated with an institution of higher education, unless—

(A) the eligible lender is serving as trustee for that institution or organization as of September 30, 2006, under a contract that was originally entered into before September 30, 2006, and that continues in effect or is renewed after September 30, 2006; and

(B) the institution or organization, and the eligible lender, with respect to its duties as trustee, each comply on and after January 1, 2007, with the requirements of paragraph (2), except that—

(i) the requirements of clauses (i), (ii), (vi), and (viii) of paragraph (2)(A) shall, subject to clause (ii) of this subparagraph, only apply to the institution (including both an institution for which the lender serves as trustee and an institution affiliated with an organization for which the lender serves as trustee); (ii) in the case of an organization affiliated with an institution—

(I) the requirements of clauses (iii) and (v) of paragraph (2)(A) shall apply to the organization; and

(II) the requirements of clause (viii) of paragraph (2)(A) shall apply to the institution or the organization (or both), if the institution or organization receives (directly or indirectly) the proceeds described in such clause;

(iii) the requirements of clauses (iv) and (ix) of paragraph (2)(A) shall not apply to the eligible lender, institution, or organization; and

(iv) the eligible lender, institution, and organization shall ensure that the loans made or held by the eligible lender as trustee for the institution or organization, as the case may be, are included in a compliance audit in accordance with clause (vii) of paragraph (2)(A).

(8) School as lender program audit

Each institution serving as an eligible lender under paragraph (1)(E), and each eligible lender serving as a trustee for an institution of higher education or an organization affiliated with an institution of higher education, shall annually complete and submit to the Secretary a compliance audit to determine whether—

(A) the institution or lender is using all proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the Department, and any proceeds from the sale or other disposition of loans, for need-based grant programs, in accordance with paragraph (2)(A)(viii);

(B) the institution or lender is using not more than a reasonable portion of the proceeds described in paragraph (2)(A)(viii) for direct administrative expenses; and

(C) the institution or lender is ensuring that the proceeds described in paragraph (2)(A)(viii) are being used to supplement, and not to supplant, Federal and non-Federal funds that would otherwise be used for need-based grant programs.

(e) Line of credit

The term “line of credit” means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

(f) Due diligence

The term “due diligence” requires the utilization by a lender, in the servicing and collection of loans insured under this part, of servicing and collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans.

(i) Holder
The term “holder” means an eligible lender who owns a loan.

(j) Guaranty agency
The term “guaranty agency” means any State or nonprofit private institution or organization with which the Secretary has an agreement under section 1078(b) of this title.

(k) Insurance beneficiary
The term “insurance beneficiary” means the insured or its authorized representative assigned in accordance with section 1079(d) of this title.

(l) Default
Except as provided in subsection (m) of this section, the term “default” includes only such defaults as have existed for (1) 270 days in the case of a loan which is repayable in monthly installments, or (2) 360 days in the case of a loan which is repayable in less frequent installments.

(m) Cohort default rate
(1) In general
(A) Except as provided in paragraph (2), the term “cohort default rate” means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on loans under section 1078, 1078–1, 1078–3, or 1078–8 of this title received for attendance at the institution, the percentage of those current and former students who enter repayment on such loans (or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans) received for attendance at that institution in that fiscal year who default before the end of the second fiscal year following the fiscal year in which the students entered repayment. The Secretary shall require that each guaranty agency that has insured loans for current or former students of the institution afford such institution a reasonable opportunity (as specified by the Secretary) to review and correct errors in the information required to be provided to the Secretary by the guaranty agency for the purpose of calculating a cohort default rate for such institution, prior to the calculation of such rate.

(B) In determining the number of students who default before the end of such second fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance. In considering appeals with respect to cohort default rates pursuant to subsection (a)(3) of this section, the Secretary shall exclude, from the calculation of the number of students who entered repayment and from the calculation of the number of students who default, any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution’s timely appeal to the Secretary, result in an inaccurate or incomplete calculation of such cohort default rate.

(C) For any fiscal year in which fewer than 30 of the institution’s current and former students enter repayment, the term “cohort default rate” means the percentage of such current and former students who entered repayment on such loans (or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans) in any of the three most recent fiscal years, who default before the end of the second fiscal year following the year in which they entered repayment.

(2) Special rules
(A) In the case of a student who has attended and borrowed at more than one school, the student (and such student’s subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the school, such school’s owner, agent, contractor, employee, or any other entity or individual affiliated with such school, in order to avoid default by the borrower, is considered as in default for purposes of this subsection.

(C) Any loan which has been rehabilitated before the end of the second fiscal year following the year in which the loan entered repayment is not considered as in default for purposes of this subsection. The Secretary may require guaranty agencies to collect data with respect to defaulted loans in a manner that will permit the identification of any defaulted loan for which (i) the borrower is currently making payments and has made not less than 6 consecutive on-time payments by the end of such second fiscal year, and (ii) a guaranty agency has renewed the borrower’s title IV eligibility as provided in section 1078–6(b) of this title.

(D) For the purposes of this subsection, a loan made in accordance with section 1078–1 of this title (or the portion of a loan made under section 1078–3 of this title that is used to repay a loan made under section 1078–1 of this title) shall not be considered to enter repayment until after the borrower has ceased to be enrolled in a course of study leading to a degree or certificate at an eligible institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance based on such enrollment. Each eligible lender of a loan made under section 1078–1 of this title (or a loan made under section 1078–3 of this title a portion of which is used to repay a loan made under section 1078–1 of this title) shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this subsection, and the guaranty agency shall provide such information to the Secretary.

(3) Regulations to prevent evasions
The Secretary shall prescribe regulations designed to prevent an institution from evading the application to the institution of any of the cohort default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.
(4) Collection and reporting of cohort default rates and life of cohort default rates

(A) The Secretary shall publish not less often than once every fiscal year a report showing cohort default data and life of cohort default rates for each category of institution, including: (i) four-year public institutions; (ii) four-year private nonprofit institutions; (iii) two-year public institutions; (iv) two-year private nonprofit institutions; (v) four-year proprietary institutions; (vi) two-year proprietary institutions; and (vii) less than two-year proprietary institutions. For purposes of this subparagraph, for any fiscal year in which one or more current and former students at an institution enter repayment on loans under section 1078, 1078–2, or 1078–8 of this title, received for attendance at the institution, the Secretary shall publish the percentage of those current and former students who enter repayment on such loans (or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans) received for attendance at the institution in that fiscal year who default before the end of each succeeding fiscal year.

(B) The Secretary may designate such additional subcategories within the categories specified in subparagraph (A) as the Secretary deems appropriate.

(C) The Secretary shall publish not less often than once every fiscal year a report showing default data for each institution for which a cohort default rate is calculated under this subsection.

(D) The Secretary shall publish the report described in subparagraph (C) by September 30 of each year.


(o) Economic hardship

(1) In general

For purposes of this part and part D of this chapter, a borrower shall be considered to have an economic hardship if—

(A) such borrower is working full-time and is earning an amount which does not exceed the greater of—

(i) the minimum wage rate described in section 206 of title 29; or

(ii) an amount equal to 150 percent of the poverty line applicable to the borrower’s family size as determined in accordance with section 9902(2) of title 42; or

(B) such borrower meets such other criteria as are established by the Secretary by regulation in accordance with paragraph (2).

(2) Considerations

In establishing criteria for purposes of paragraph (1)(B), the Secretary shall consider the borrower’s income and debt-to-income ratio as primary factors.

(p) Eligible not-for-profit holder

(1) Definition

Subject to the limitations in paragraph (2) and the prohibition in paragraph (3), the term “eligible not-for-profit holder” means an eligible lender under subsection (d) (other than an eligible lender described in subsection (d)(1)(E)) that requests a special allowance (except for an eligible lender described in subsection (d)(1)(E)) that requests a special allowance payment under section 1087–1(b)(2)(I)(vi)(II) of this title or a payment under section 1141 of this title.

(A) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in section 1.103–1 of title 26, Code of Federal Regulations, or section 144(b) of title 26;

(B) an entity described in section 150(d)(2) of such title that has not made the election described in section 150(d)(3) of such title;

(C) an entity described in section 501(c)(3) of such title; or

(D) acting as a trustee on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d).

(2) Limitations

(A) Existing on September 27, 2007

(i) In general

An eligible lender shall not be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 unless such lender—

(I) was a State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) that was, on September 27, 2007, an eligible lender under subsection (d) (other than an eligible lender described in subsection (d)(1)(E)); or

(II) is acting as a trustee on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), and such State, political subdivision, authority, agency, instrumentality, or other entity, on September 27, 2007, was the sole beneficial owner of a loan eligible for any special allowance payment under section 1087–1 of this title.

(ii) Exception

Notwithstanding clause (i), a State may elect, in accordance with regulations of the Secretary, to waive the requirements of this subparagraph for a new not-for-profit holder determined by the State to be necessary to carry out a public purpose of such State, except that a State may not make such election with respect the requirements of clause (i)(II).
(B) No for-profit ownership or control

   (i) In general

   No State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 if such State, political subdivision, authority, agency, instrumentality, or other entity is owned or controlled, in whole or in part, by a for-profit entity.

   (ii) Trustees

   A trustee described in paragraph (1)(D) shall not be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 with respect to any loan, or income from any loan, or by such State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), shall not—
   (i) be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or
   (ii) lose its status as the sole owner of a beneficial interest in a loan and the income from such loan,

   (C) Sole ownership of loans and income

   No State, political subdivision, authority, agency, instrumentality, trustor, or other entity described in paragraph (1)(A), (B), (C), or (D) shall be an eligible not-for-profit holder under this chapter and part C of subchapter I of chapter 34 of title 42 with respect to any loan, or income from any loan, unless—

   (i) such State, political subdivision, authority, agency, instrumentality, or other entity is the sole beneficial owner of such loan and the income from such loan; or
   (ii) such trustee holds the loan on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), and such State, political subdivision, authority, agency, instrumentality, or other entity is the sole beneficial owner of such loan and the income from such loan.

   (D) Trustee compensation limitations

   A trustee described in paragraph (1)(D) shall not receive compensation as consideration for acting as an eligible lender on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), in excess of reasonable and customary fees.

   (E) Rule of construction

   For purposes of subparagraphs (A), (B), (C), and (D) of this paragraph, a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d), shall not—

   (i) be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or
   (ii) lose its status as the sole owner of a beneficial interest in a loan and the income from such loan,
Subsec. (m)(4)(A). Pub. L. 110–315, § 436(e)(1)(C)(i), amended subpar. (A) generally. Prior to amendment, text read as follows: “The Secretary shall collect data from all insurers under this part and shall publish not less often than once every fiscal year a report showing default data for each category of institution, including (I) 4-year public institutions, (ii) 4-year private institutions, (iii) 2-year public institutions, (iv) 2-year private institutions, (v) 4-year proprietary institutions, (vi) 2-year proprietary institutions, and (vii) less than 2-year proprietary institutions.”

Subsec. (o)(1)(B), (C). Pub. L. 110–84, § 304(1)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “such borrower is working in an occupation involving professional or technical debt burden that equals or exceeds 20 percent of such borrower’s adjusted gross income, and the difference between such borrower’s adjusted gross income minus such burden is less than 20 percent.”

“(i) the annual earnings of an individual earning the minimum wage under section 206 of title 29; or

“(ii) the income official poverty lines (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42 applicable to a family of two); or”.


Subsec. (p)(1)(D). Pub. L. 110–109, § 4(1), added subpar. (D) and struck out former subpar. (D) which read as follows: “a trustee acting as an eligible lender on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C)”. Subsec. (p)(2)(A)(i)(II). Pub. L. 110–109, § 4(2)(A), added subcl. (II) and struck out former subcl. (II) which read as follows: “an eligible lender under this chapter on behalf of such a State, political subdivision, authority, agency, instrumentality, or other entity described in clause (i) of this clause.”


Subsec. (p)(2)(C). Pub. L. 110–109, § 4(2)(C), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: “No political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall be an eligible not-for-profit holder under this chapter if such entity is not-for-profit, in whole or in part, by a for-profit entity.”

Subsec. (p)(2)(C). Pub. L. 110–109, § 4(2)(D), reenacted heading without change and amended text of subpar. (C) generally. Prior to amendment, text read as follows: “No State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall be an eligible not-for-profit holder under this chapter with respect to any loan, or income from any loan, unless the State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) is the sole owner of the beneficial interest in such loan and the income from such loan.”

Subsec. (p)(2)(D). Pub. L. 110–109, § 4(2)(E), substituted “a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (A), (B), or (C) of paragraph (1), regardless of whether such State, political subdivision, authority, agency, instrumentality, or other entity is an eligible lender under subsection (d)” for “an eligible lender described in paragraph (1)(A), (B), or (C)”.

Subsec. (p)(2)(E). Pub. L. 110–109, § 4(2)(F), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: “For purposes of subparagraphs (B), (C), and (D) of this paragraph, a State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C) shall not—

“(i) be deemed to be owned or controlled, in whole or in part, by a for-profit entity, if—

“(A) it is a State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (1)(A), (B), or (C); or

“(B) it holds, directly or indirectly, any shares or other ownership interest in such entity that equals or exceeds 20 percent of such entity’s adjusted gross income, and the difference between such entity’s adjusted gross income minus such burden is less than 20 percent; or

“(C) it is a for-profit entity, or

“(D) it is a for-profit entity, if—

“(i) the annual earnings of an individual earning the minimum wage under section 206 of title 29; or

“(ii) the income official poverty lines (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42 applicable to a family of two); or”.


Subsec. (p)(3). Pub. L. 110–84, § 304(3), added subpar. (B) and struck out former subpar. (B) which read as follows: “For purposes of subparagraphs (B), (C), and (D) of paragraph (1), regardless of whether to pay a claim on a defaulted loan or by the Secretary or the guaranty agency.”

Subsec. (p)(4)(A). Pub. L. 110–84, § 304(4)(A), added subpar. (A) generally. Prior to amendment, text read as follows: “As used by a guaranty agency in determining eligibility is unsuccessful, the institution shall be required to pay to the Secretary an amount equal to the amount of interest, special allowance, reimbursement, and any related payments made by the Secretary (or which the Secretary is obligated to make) with respect to loans made under this part to students attending, or planning to attend, that institution during the pendency of such appeal.”


Subsec. (p)(5). Pub. L. 105–244, § 429(a)(2), in concluding provisions, inserted “for a reasonable period of time, not to exceed 30 days,” after “access” and substituted “used by a guaranty agency in determining whether to pay a claim on a defaulted loan or by the Department in determining an institution’s default rate in the loan program under part C of this subchapter” for “of the affected guaranty agencies and
loan servicers for a reasonable period of time, not to exceed 30 days’.


Subsec. (i). Pub. L. 105–244, § 429(c)(1), substituted “270 days” for “180 days” and “330 days” for “240 days”.

Subsec. (m)(1)(B). Pub. L. 105–244, § 429(d)(1), substituted “insurance. In considering appeals with respect to cohort default rates pursuant to subsection (a)(3) of this section, the Secretary shall exclude, from the calculation of the number of students who entered repayment and from the calculation of the number of students who default,” for “insurance, and, in considering appeals with respect to cohort default rates pursuant to subsection (a)(3) of this section, exclude”.

Subsec. (m)(2)(C). Pub. L. 105–244, § 429(d)(2), inserted “(or on the portion of a loan made under section 1078–3 of this title that is used to repay any such loans)” after “on such loans”.

Subsec. (m)(1)(B). Pub. L. 103–208, § 2(c)(61), inserted “(or the portion of a loan made under section 1078–3 of this title that is used to repay a loan made under section 1078–1 of this title)” after “applied to a loan made under section 1078–1, or 1078–8”.


1992—Subsec. (a)(1). Pub. L. 102–325, § 427(a)(1), added par. (1) and struck out former par. (1) which read as follows: ‘‘Subject to subsection (n) of this section, the term ‘eligible institution’ means—

(A) an institution of higher education;

(B) a vocational school; or

(C) with respect to students who are nationals of the United States, an institution outside the United States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Secretary for the purpose of this part, except that such term does not include any such institution or school which employs or uses commissioned salesmen to promote the availability of any loan program described in section 1078(a)(1), 1078–1, or 1078–2 of this title at that institution or school’’.


Pub. L. 102–325, § 427(a)(2), redesignated par. (3) as (2) and struck out former par. (2) which required Secretary to establish criteria for qualifying foreign medical schools as ‘‘eligible institutions’’.


Subsec. (b). Pub. L. 102–325, § 427(b)(1), struck out subsec. (b) which defined ‘‘institution of higher education’’.

Subsec. (c).Pub. L. 102–325, § 427(c), struck out subsec. (c) which defined ‘‘vocational school”.

Subsec. (d)(1)(A). Pub. L. 102–325, § 427(d)(1), in introductory provisions, struck out “a trust company,” after “stock savings bank,” and in cl. (ii), inserted at end of subcl. (I) “or a bank which is subject to examination and supervision by an agency of the United States, makes student loans as a trustee pursuant to an express trust, operated as a lender under this part prior to January 1, 1975, and which meets the requirements of this provision prior to July 23, 1992, or” and substituted a semicolon for “or (III) it is a trust company which makes student loans as a trustee pursuant to an express trust, operated as a lender under this part prior to January 1, 1975, and which meets the requirements of this provision prior to July 23, 1992,”.
press trust and which operated as a lender under this part prior to January 1, 1981.”


Subsec. (f). Pub. L. 102–325, § 427(e), inserted “servicing and” before “collection practices.”

Subsecs. (g), (h). Pub. L. 102–325, § 427(f), struck out subsect. (g) which defined “temporarily totally disabled” and subsect. (h) which defined “parental leave”.

Subsec. (m). Pub. L. 102–325, § 427(g), amended subsec. (m) generally, revising and restating as pars. (1) to (3) provisions formerly contained in a single paragraph.

Subsec. (n). Pub. L. 102–325, § 427(f), struck out subsec. (n) which related to impact of loss of accreditation on certification or recertification as an eligible institution.


1991—Subsec. (c)(1). Pub. L. 102–26 substituted “or who are beyond the age of compulsory school attendance in the State in which the institution is located” for “and who have the ability to benefit (as determined by the institution under section 1088(d) of this title) from the training offered by such institution;”.


Subsec. (l). Pub. L. 101–542, § 301(1), substituted “Except as provided in subsection (m) of this section, the term” for “The term”.

Subsec. (m). Pub. L. 101–542, § 301(2), inserted after first sentence “In determining the number of students who default before the end of such fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance, and, in calculating the cohort default rate, exclude any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.”

1989—Subsec. (a)(1). Pub. L. 101–239, § 2007(a)(1), substituted “Subject to subsection (n) of this section, the term” for “The term”.


1987—Subsec. (b)(3). Pub. L. 100–50, § 10(aa)(1), inserted “, or in the case of a hospital or health care facility, which provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of such training” before semicolon at end.


Subsec. (d)(2). Pub. L. 100–50, § 10(aa)(3), added subpars. (C) and (D) and inserted concluding provision that the requirements of subpars. (C) and (D) not apply with respect to loans made, and loan commitments made, after Oct. 17, 1986, and prior to July 1, 1987.

Subsec. (g)(2). Pub. L. 100–50, § 10(aa)(4), added par. (2) and struck out former par. (2) which read as follows: “Such term when used with respect to the disabled dependent of a single parent borrower means a dependent who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during a period of injury or illness of not less than 3 months and who during such period requires continuous nursing or similar services.”


Effective Date of 2008 Amendment


“(A) EFFECTIVE DATE.—The amendments made by paragraph (1) [amending this section] shall take effect for purposes of calculating cohort default rates for fiscal year 2009 and succeeding fiscal years.

“(B) TRANSITION.—Notwithstanding subparagraph (A), the method of calculating cohort default rates under section 435(m) of the Higher Education Act of 1965 [20 U.S.C. 1085(m)] as in effect on the day before the date of enactment of this Act [Aug. 14, 2008] shall continue in effect, and the rates so calculated shall be the basis for any sanctions imposed on institutions of higher education because of their cohort default rates, until three consecutive years of cohort default rates calculated in accordance with the amendments made by paragraph (1) are available.”

Effective Date of 2007 Amendment

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

Effective Date of 2006 Amendment


Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 2000 Amendment

Pub. L. 106–554, § 1(a)(1) [title III, § 3(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–45, provided that: “The amendment made by subsection (a) of this section [amending this subsection] shall be effective for cohort default rate calculations for fiscal years 1997 and 1998.”

Effective Date of 1998 Amendment

Amendment by sections 102(b)(2) and 429(a), (b), (d) of Pub. L. 105–244 applicable with respect to loans for which the first day of delinquency occurs on or after the date of enactment of this Act (Oct. 7, 1998).

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–208 effective on reorganization effective date as defined in section 1087–3(b) of this title, see section 101(e) [title VI, § 602(b)(1)(B) of Pub. L. 104–208, set out as a note under section 1078–3 of this title.

Effective Date of 1993 Amendments

Amendment by section 2(c)(55), (60)(B) of Pub. L. 103–208 applicable with respect to determination (and appeals from determinations) of cohort default rates for fiscal year 1989 and any succeeding fiscal year, amendments by section 2(c)(56)–(58), (61) of Pub. L. 103–208 effective, except as otherwise provided, as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, amendment by section 2(c)(59) of Pub. L. 103–208 effective on and after 30 days after Dec. 20, 1993, amendment by section 2(c)(60)(A) of Pub. L. 103–208
effective on and after Oct. 1, 1994, and amendment by section 2(c)(62) effective on and after Dec. 20, 1993, see section 5(a), (b)(2), (3), (7), (8) of Pub. L. 103–208, set out as a note under section 1031 of this title.

Amendment by section 4046(b)(1) of Pub. L. 103–66 effective July 1, 1994, see section 4046(c) of Pub. L. 103–66, set out as a note under section 1078–3 of this title.

**Effective Date of 1991 Amendment**

Section 2(d)(1) of Pub. L. 102–26 provided that: "The amendments made by this section [amending this section and sections 1078–1, 1086, 1091, 1094, and 1141 of this title] shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991."

**Effective Date of 1990 Amendment**

Section 3004(d) of Pub. L. 101–508 provided that: "The amendments made by this section [amending this section, section 1076 of this title, and provisions set out as a note under section 1078–1 of this title] shall be effective July 1, 1991, except that the amendment made by subsection (b) [amending section 1078 of this title] shall be effective upon enactment."

**Effective Date of 1987 Amendment**


**Effective Date**

Section effective Oct. 17, 1986, with subsec. (d)(5) of this section effective 30 days after Oct. 17, 1986, see section 402(b) of Pub. L. 99–498, set out as a note under section 402(b) of the Act [former 20 U.S.C. 1088(a)].

**Definition of Institution of Higher Education**

Section 427(b)(2) of Pub. L. 102–325 provided that: "With respect to reference in any other provision of law to the definition of institution of higher education contained in section 435(b) of the Act [former 20 U.S.C. 1088(b)], such provision shall be deemed to refer to section 481(a) of the Act [former 20 U.S.C. 1088(a)]."

§ 1086. Delegation of functions

(a) In general

An eligible lender or guaranty agency that contracts with another entity to perform any of the lender’s or agency’s functions under this subchapter and part C of subchapter I of chapter 34 of title 42, or otherwise delegates the performance of such functions to such other entity—

(1) shall not be relieved of the lender’s or agency’s duty to comply with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42; and

(2) shall monitor the activities of such other entity for compliance with such requirements.

(b) Special rule

A lender that holds a loan made under this part in the lender’s capacity as a trustee is responsible for complying with all statutory and regulatory requirements imposed on any other holder of a loan made under this part.


Prior Provisions


**Amendments**


**Effective Date of 1998 Amendment**


§ 1087. Repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers; treatment of borrowers attending schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow

(a) Repayment in full for death and disability

(1) In general

If a student borrower who has received a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months then the Secretary shall discharge the borrower’s liability on the loan by repaying the amount owed on the loan. The Secretary may develop such safeguards as the Secretary determines necessary to prevent fraud and abuse in the discharge of liability under this subsection. Notwithstanding any other provision of this subsection, the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection in any case in which—

(A) a borrower received a discharge of liability under this subsection and after the discharge the borrower—

(i) receives a loan made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42; or

(ii) has earned income in excess of the poverty line; or

(B) the Secretary determines the reinstatement and resumption to be necessary.

(2) Disability determinations

A borrower who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provides documentation of such determination to the Secretary of Education, shall be considered permanently and totally disabled for the purpose of discharging such bor-
(b) Payment of claims on loans in bankruptcy

The Secretary shall pay to the holder of a loan described in section 1078(a)(1)(A) or (B), 1078–1, 2, 3, or 1078–8 of this title, the amount of the unpaid balance of principal and interest owed on such loan—

(1) when the borrower files for relief under chapter 12 or 13 of title 11;

(2) when the holder who has filed for relief under chapter 7 or 11 of such title commences an action for a determination of dischargeability under section 523(a)(8)(B) of such title; or

(3) for loans described in section 523(a)(8)(A) of such title, when the borrower files for relief under chapter 7 or 11 of such title.

(c) Discharge

(1) In general

If a borrower who received, on or after January 1, 1996, a loan made, insured, or guaranteed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student’s eligibility to borrow under this part was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft, or if the institution failed to make a refund of loan proceeds which the institution owed to such student’s lender, then the Secretary shall discharge the borrower’s liability on the loan (including interest and collection fees) by repaying the amount owed on the loan. The period of a student’s attendance at an institution at which the student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student’s period of eligibility for additional assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(4) Special rule

A borrower whose loan has been discharged pursuant to this subsection shall not be precluded from receiving additional grants, loans, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for which the borrower would be otherwise eligible (but for the default on such discharged loan). The amount discharged under this subsection shall be treated the same as loans under section 1087ee(a)(5) of this title.

(5) Reporting

The Secretary shall report to consumer reporting agencies with respect to loans which have been discharged pursuant to this subsection.

(d) Repayment of loans to parents

If a student on whose behalf a parent has received a loan described in section 1078–2 of this title dies, then the Secretary shall discharge the borrower’s liability on the loan by repaying the amount owed on the loan. The period of a student’s attendance at an institution to which the student is enrolled due to the closure of the institution or if such student’s eligibility to borrow under this part was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft, or if the institution failed to make a refund of loan proceeds which the institution owed to such student’s lender, then the Secretary shall discharge the borrower’s liability on the loan (including interest and collection fees) by repaying the amount owed on the loan. The period of a student’s attendance at an institution at which the student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student’s period of eligibility for additional assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.
“(ii) has earned income in excess of the poverty line; or

(B) the Secretary determines necessary.”

at the end of subsec. (a), was executed by making the insertion at the end of par. (1) to reflect the probable intent of Congress, notwithstanding the addition of par. (2) prior to the effective date of this amendment.

Pub. L. 110–315, § 437(a)(1), (2), designated existing provisions as par. (1), inserted par. (1) heading, and inserted “or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months” after “of the Secretary.”


Subsec. (c)(1). Pub. L. 110–315, § 103(b)(7), substituted “authorizing committees” for “Committee on Education and the Workforce of the House of Representa-
tives and the Committee on Labor and Human Resources of the Senate”.

Subsec. (c)(3). Pub. L. 110–315, § 432(b)(4), substituted “consumer reporting agencies” for “credit bureaus”.

2006—Pub. L. 109–171, § 8012(1), in section catchline, substituted “schools that fail to provide a refund, attending closed schools, or falsely certified as eligible to borrow” for “closed schools or falsely certified as eligible to borrow”.

Subsec. (c)(1). Pub. L. 109–171, § 8012(2), inserted “or if the institution failed to make a refund of loan proceeds which the institution owed to such student’s lender,” after “falsely certified by the eligible institution,” and inserted at end “In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall report to the Commi-
tee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate annually as to the dol-
lar amount of loan discharges attributable to failures to make refunds.”

1993—Subsec. (b). Pub. L. 103–208, § 2(c)(63), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “If the collection of a loan described in subparagraph (A) or (B) of section 1078(a)(1) of this title or sections 1078–1, 1078–2, 1078–3, or 1078–4 of this title is stayed in any action under title 11, the entity that has failed to repay the unpaid balance of principal and interest owed on the loan.”

Subsec. (c)(1). Pub. L. 103–208, § 2(c)(64), substituted “student borrower” for “student borrower’s”, “under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable” for “under this part is unable”, and “in which such student is en-
rolled” for “in which the borrower is enrolled”.

Subsec. (c)(4). Pub. L. 103–208, § 2(c)(65), inserted at end “The amount discharged under this subsection shall be treated the same as loans under section 1076(e)(a)(5) of this title.”

1992—Pub. L. 102–325 amended section generally, sub-
tituting subsecs. (a) to (d) for former subsecs. (a) and (b) which related to repayment by Secretary of loans of bankrupt, deceased, or disabled borrowers.

Effective Date of 2009 Amendment

Effective Date of 1998 Amendment


Effective Date of Repeal
Repeal effective Oct. 1, 1998, except as otherwise pro-
vided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

$1087–1. Special allowances

(a) Findings

In order to assure (1) that the limitation on interest payments or other conditions (or both) on loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to es-

(t) quarterly payment based on unpaid bal-

A special allowance shall be paid for each of the 3-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any 3-month period shall be a percentage of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by such holder during such period.

(2) Rate of special allowance

(A) Subject to subparagraphs (B), (C), (D), (E), (F), (G), (H), and (I) and paragraph (4), the special allowance paid pursuant to this sub-

ineffective to the extent provided for in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.


Effective Date of Repeal
Repeal effective Oct. 1, 1998, except as otherwise pro-
vided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

$1087–1. Special allowances

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(2) Rate of special allowance

(A) Subject to subparagraphs (B), (C), (D), (E), (F), (G), (H), and (I) and paragraph (4), the special allowance paid pursuant to this sub-


section on loans shall be computed (i) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period, (ii) by subtracting the applicable interest rate on such loans from such average, (iii) by adding 3.10 percent to the resultant percent, and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 1077a(i) of this title. 

(B)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under title 26 shall be one-half the quarterly rate of the special allowance established under subparagraph (A), except that, in determining the rate for the purpose of this clause, subparagraph (A)(iii) shall be applied by substituting “3.5 percent” for “3.10 percent”. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds. This subparagraph shall not apply to loans which were made or insured prior to October 1, 1980.

(ii) The quarterly rate of the special allowance set under clause (i) of this subparagraph shall not be less than 9.5 percent minus the applicable interest rate on such loans, divided by 4.

(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with subsection (d) of this section.

(iv) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance for holders of loans which are financed with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, or refunded after September 30, 2004, the income from which is excluded from gross income under title 26, shall be the rate determined for any 12-month period under section 1077a(c)(4) of this title, a special allowance shall not be paid unless the rate determined for any 12-month period under subparagraph (B) of such section exceeds 12 percent.

(v) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, or paragraph (4), as the case may be, for a holder of loans that—

(I) were made or purchased with funds—

(aa) obtained from the issuance of obligations the income from which is excluded from gross income under title 26 and which obligations were originally issued before October 1, 1993; or

(bb) obtained from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in division (aa), or from income on the investment of such funds; and

(II) are—

(aa) financed by such an obligation that, after September 30, 2004, has matured or been retired or defeased;

(bb) refinanced after September 30, 2004, with funds obtained from a source other than funds described in subclause (I) of this clause; or

(cc) sold or transferred to any other holder after September 30, 2004.

(vi) Notwithstanding clauses (i), (ii), and (v), but subject to clause (vii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, as the case may be, for a holder of loans—

(I) that were made or purchased on or after February 8, 2006; or

(II) that were not earning a quarterly rate of special allowance determined under clauses (i) or (ii) of subparagraph (B) of this paragraph as of February 8, 2006.

(vii) Clause (vi) shall be applied by substituting “December 31, 2010” for “February 8, 2006” in the case of a holder of loans that—

(I) was, as of February 8, 2006, and during the quarter for which the special allowance is paid, a unit of State or local government or a nonprofit private entity;

(II) was, as of February 8, 2006, and during such quarter, not owned or controlled by, or under common ownership or control with, a for-profit entity; and

(III) held, directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than $100,000,000 on loans for which special allowances were paid under this subparagraph in the most recent quarterly payment prior to September 30, 2005.

(C)(i) In the case of loans made before October 1, 1992, pursuant to section 1078–1 or 1078–2 of this title for which the interest rate is determined under section 1077a(c)(4) of this title, a special allowance shall not be paid unless the rate determined for any 12-month period under subparagraph (B) of such section exceeds 12 percent.

(ii) Subject to subparagraphs (G), (H), and (I), in the case of loans disbursed on or after October 1, 1992, pursuant to section 1078–1 or 1078–2 of this title for which the interest rate is determined under section 1077a(c)(4) of this title, a special allowance shall not be paid unless the rate determined for any 12-month period under section 1077a(c)(4)(B) of this title exceeds—

(I) 11 percent in the case of a loan under section 1078–1 of this title; or

(II) 10 percent in the case of a loan under section 1078–2 of this title.

1 See References in Text note below.
(D)(i) In the case of loans made or purchased directly from funds loaned or advanced pursuant to a qualified State obligation, subparagraph (A)(iii) shall be applied by substituting “3.5 percent” for “3.10 percent”.

(II) Loans for which the applicable rate of interest is determined under section 1077a(h) of this title shall be computed (i) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period; (ii) by subtracting the applicable interest rates on such loans from such average bond equivalent rate; (iii) by adding 2.8 percent to the resultant percent; and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 1077a(i) of this title.

(G) LOANS DISBURSED BETWEEN JULY 1, 1998, AND OCTOBER 1, 1998.—

(i) IN GENERAL.—Subject to paragraph (4) and clauses (ii), (iii), and (iv) of this subparagraph, and except as provided in subparagraph (B), the special allowance paid pursuant to this subsection on loans for which the applicable rate of interest is determined under section 1077a(h) of this title shall be computed (i) by determining the applicable bond equivalent rate of the security with a comparable maturity, as established by the Secretary, (ii) by subtracting the applicable interest rates on such loans from such applicable bond equivalent rate, (iii) by adding 1.0 percent to the resultant percent, and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 1077a(i) of this title.

(H) LOANS DISBURSED ON OR AFTER OCTOBER 1, 1998, AND BEFORE JANUARY 1, 2000.—

(i) IN GENERAL.—Subject to paragraph (4) and clauses (ii), (iii), and (iv) of this subparagraph, and except as provided in subparagraph (B), the special allowance paid pursuant to this subsection on loans for which the first disbursement is made on or after October 1, 1998, and before January 1, 2000, shall be computed—

(I) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period;

(II) by subtracting the applicable interest rates on such loans from such average bond equivalent rate;

(III) by adding 2.8 percent to the resultant percent; and

(IV) by dividing the resultant percent by 4.

(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan for which the first disbursement is made on or after October 1, 1998, and before January 1, 2000, and for which the applicable rate of interest is determined under section 1077a(k)(2) of this title, clause (i)(III) of this subparagraph shall be applied by substituting “2.2 percent” for “2.8 percent”.

(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after October 1, 1998, and before January 1, 2000, and for which the applicable rate of interest is determined under section 1077a(k)(2) of this title, clause (i)(III) of this subparagraph shall be applied by substituting “3.1 percent” for “2.8 percent”, subject to clause (v) of this subparagraph.

(iv) CONSOLIDATION LOANS.—In the case of any consolidation loan for which the application is received by an eligible lender on or after October 1, 1998, and before January 1, 2000, and for which the applicable interest rate is determined under section 1077a(k)(4) of this title, clause (i)(III) of this subparagraph shall be applied by substituting “3.1 percent” for “2.8 percent”, subject to clause (v) of this subparagraph.

(v) LIMITATION ON SPECIAL ALLOWANCES FOR PLUS LOANS.—In the case of PLUS loans made under section 1078-2 of this title and...
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first disbursed on or after October 1, 1998, and before January 1, 2000, for which the interest rate is determined under section 1077a(k)(3) of this title, a special allowance shall not be paid for such loan during any 12-month period beginning on July 1 and ending on June 30 unless, on the June 1 preceding such July 1—

(1) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1 (as determined by the Secretary for purposes of such section); plus

(II) 3.1 percent,

exceeds 9.0 percent.

(vi) LIMITATION ON SPECIAL ALLOWANCES FOR CONSOLIDATION LOANS.—In the case of consolidation loans made under section 1078–3 of this title and for which the application is received on or after October 1, 1998, and before January 1, 2000, for which the interest rate is determined under section 1077a(k)(4) of this title, a special allowance shall not be paid for such loan during any 3-month period ending March 31, June 30, September 30, or December 31 unless—

(I) the average of the bond equivalent rate of 91-day Treasury bills auctioned for such 3-month period; plus

(II) 3.1 percent,

exceeds the rate determined under section 1077a(k)(4) of this title.

(II) LOANS DISBURSED ON OR AFTER JANUARY 1, 2000, AND BEFORE JULY 1, 2010.—

(i) IN GENERAL.—Notwithstanding subparagraphs (G) and (H), but subject to paragraph (4) and the following clauses of this subparagraph, the special allowance paid pursuant to this subsection on loans for which the first disbursement is made on or after January 1, 2000, and before July 1, 2010, shall be computed—

(I) by determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for any quarter shall be equal to—

(aa) the applicable interest rate minus the special allowance support level determined under this subparagraph; multiplied by

(bb) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(cc) four.

(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan—

(I) for which the first disbursement is made on or after January 1, 2000, and before July 1, 2006, and for which the applicable rate of interest is described in section 1077a(k)(1) or (k)(4) of this title, but only with respect to (aa) periods prior to the beginning of the repayment period of the loan; or

(bb) during the periods in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1077(a)(2)(C) or 1078(b)(1)(M) of this title; clause (i)(III) of this subparagraph shall be applied by substituting “1.74 percent” for “2.34 percent”.

(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, and before July 1, 2010, and for which the applicable interest rate is described in section 1077a(k)(3) or (k)(2) of this title, clause (i)(III) of this subparagraph shall be applied by substituting “2.64 percent” for “2.34 percent”.

(iv) CONSOLIDATION LOANS.—In the case of any consolidation loan for which the application is received by an eligible lender on or after January 1, 2000, that is disbursed before July 1, 2010, and for which the applicable interest rate is determined under section 1077a(k)(4) or (k)(3) of this title, clause (i)(III) of this subparagraph shall be applied by substituting “2.64 percent” for “2.34 percent”.

(v) RECAPTURE OF EXCESS INTEREST.—

(I) EXCESS CREDITED.—With respect to a loan on which the applicable interest rate is determined under subsection (k) or (l) of section 1077a of this title and for which the first disbursement of principal is made on or after April 1, 2006, and before July 1, 2010, if the applicable interest rate for any 3-month period exceeds the special allowance support level applicable to such loan under this subparagraph for such period, then an adjustment shall be made by calculating the excess interest in the amount computed under subclause (II) of this clause, and by crediting the excess interest to the Government not less often than annually.

(II) CALCULATION OF EXCESS.—The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

(aa) the applicable interest rate minus the special allowance support level determined under this subparagraph; multiplied by

(bb) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(cc) four.

(iii) SPECIAL ALLOWANCE SUPPORT LEVEL.—For purposes of this clause, the term “special allowance support level” means, for any loan, a number expressed as a percentage equal to the sum of the rates determined under subclauses (I) and (II) of clause (i), and applying any substitution rules applicable to such loan under clauses (ii), (iii), (iv), (vi), and (vii) in determining such sum.

(vi) REDUCTION FOR LOANS DISBURSED ON OR AFTER OCTOBER 1, 2007, AND BEFORE JULY 1,
2007. With respect to a loan on which the applicable interest rate is determined under section 1077a(l) of this title and for which the first disbursement of principal is made on or after October 1, 2007, and before July 1, 2010, the special allowance payment computed pursuant to this subparagraph shall be computed—

(I) for loans held by an eligible lender not described in subclause (II)—

(aa) by substituting “1.79 percent” for “2.34 percent” ’ each place the term appears in this subparagraph;

(bb) by substituting “1.19 percent” for “1.74 percent” in clause (ii);

(cc) by substituting “2.09 percent” for “2.64 percent” in clause (ii); and

(dd) by substituting “2.09 percent” for “2.64 percent” in clause (iv);

(II) for loans held by an eligible not-for-profit holder—

(aa) by substituting “1.94 percent” for “2.34 percent” ’ each place the term appears in this subparagraph;

(bb) by substituting “1.34 percent” for “1.74 percent” in clause (ii);

(cc) by substituting “1.94 percent” for “2.64 percent” in clause (iii); and

(dd) by substituting “2.21 percent” for “2.64 percent” in clause (iv).

(vii) Revised calculation rule to reflect financial market conditions.—

(I) Calculation based on Libor.—For the calendar quarter beginning on April 1, 2012 and each subsequent calendar quarter, in computing the special allowance paid pursuant to this subsection with respect to loans described in subclause (II), clause (i)(I) of this subparagraph shall be applied by substituting “of the 1-month London Inter Bank Offered Rate (Libor) for United States dollars in effect for each of the days in such quarter as compiled and released by the British Bankers Association” for “of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as presented by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period”.

(II) Loans eligible for Libor-based calculation.—The special allowance payment pursuant to this subsection shall be calculated as described in subclause (I) with respect to special allowance payments for the 3-month period ending June 30, 2012, and each succeeding 3-month period, on loans for which the first disbursement is made on or after January 1, 2000, and before July 1, 2010, if, not later than April 1, 2012, the holder of the loan (or, if the holder acts as eligible lender trustee for the beneficial owner of the loan, the beneficial owner of the loan), affirmatively and permanently waives all contractual, statutory, or other legal rights to a special allowance paid pursuant to this subsection that is calculated using the formula in effect at the time the loans were first disbursed.

(III) Terms of waiver.—

(aa) in general.—A waiver pursuant to subclause (II) shall be in a form (printed or electronic) prescribed by the Secretary, and shall be applicable to—

(AA) all loans described in such subclause that the lender holds solely in its own right under any lender identification number associated with the holder (pursuant to section 1084b of this title);

(BB) all loans described in such subclause for which the beneficial owner has the authority to make an election of a waiver under such subclause, regardless of the lender identification number associated with the loan or the lender that holds the loan as eligible lender trustee on behalf of such beneficial owner; and

(CC) all future calculations of the special allowance on loans that, on the date of such waiver, are loans described in subitem (AA) or (BB), or that, after such date, become loans described in subitem (AA) or (BB).

(bb) Exceptions.—Any waiver pursuant to subclause (II) that is elected for loans described in subitem (AA) or (BB) of item (aa) shall not apply to any loan described in such subitem for which the lender or beneficial owner of the loan demonstrates to the satisfaction of the Secretary that—

(AA) in accordance with an agreement entered into before the date of enactment of this section by which such lender or owner is governed and that applies to such loans, such lender or owner is not legally permitted to make an election of such waiver with respect to such loans without the approval of one or more third parties with an interest in the loans, and that the lender or owner followed all available options under such agreement to obtain such approval, and was unable to do so; or

(BB) such lender or beneficial owner presented the proposal of electing such a waiver applicable to such loans associated with an obligation rated by a nationally recognized statistical rating organization (as defined in section 78c(a)(62) of title 15), and such rating organization provided a written opinion that the agency would downgrade the rating applicable to such obligation if the lender or owner elected such a waiver.

(3) Contractual right of holders to special allowance

The holder of an eligible loan shall be deemed to have a contractual right against the United States, during the life of such loan, to receive the special allowance according to the provisions of this section. The special allowance determined for any such 3-month pe-
riod shall be paid promptly after the close of such period, and without administrative delay after receipt of an accurate and complete request for payment, pursuant to procedures established by regulations promulgated under this section.

(4) Penalty for late payment

(A) If payments of the special allowances payable under this section or of interest payments under section 1078(a) of this title with respect to a loan have not been made within 30 days after the Secretary has received an accurate, timely, and complete request for payment thereof, the special allowance payable to such holder shall be increased by an amount equal to the daily interest accruing on the special allowance and interest benefits payments due the holder.

(B) Such daily interest shall be computed at the daily equivalent rate of the sum of the special allowance rate computed pursuant to paragraph (2) and the interest rate applicable to the loan and shall be paid for the later of (i) the 31st day after the receipt of such request for payment from the holder, or (ii) the 31st day after the final day of the period or periods covered by such request, and shall be paid for each succeeding day until, and including, the date on which the Secretary authorizes payment.

(C) For purposes of reporting to the Congress the amounts of special allowances paid under this section, amounts of special allowances paid pursuant to this paragraph shall be segregated and reported separately.

(5) “Eligible loan” defined

As used in this section, the term “eligible loan” means a loan—

(A)(i) on which a portion of the interest is paid on behalf of the student and for the student’s account to the holder of the loan under section 1078(a) of this title;

(ii) which is made under section 1078-1, 1078-2, 1078-3, 1078-8, or 1087-2(o) of this title; or

(iii) which was made prior to October 1, 1981; and

(B) which is insured under this part, or made under a program covered by an agreement under section 1078(b) of this title.

(6) Regulation of time and manner of payment

The Secretary shall pay the holder of an eligible loan, at such time or times and in such a manner as are specified in regulations, a special allowance prescribed pursuant to this subsection subject to the condition that such holder shall submit to the Secretary, at such time or times and in such a manner as the Secretary may deem proper, such information as may be required by regulation for the purpose of enabling the Secretary to carry out his functions under this section and to carry out the purposes of this section.

(7) Use of average quarterly balance

The Secretary shall permit lenders to calculate interest benefits and special allowance through the use of the average quarterly balance method until July 1, 1988.

(c) Origination fees from students

(1) Deduction from interest and special allowance subsidies

(A) Notwithstanding subsection (b) of this section, the Secretary shall collect the amount the lender is authorized to charge as an origination fee in accordance with paragraph (2) of this subsection—

(i) by reducing the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder; or

(ii) directly from the holder of the loan, if the lender fails or is not required to bill the Secretary for interest and special allowance or withdraws from the program with unpaid loan origination fees.

(B) If the Secretary collects the origination fee under this subsection through the reduction of interest and special allowance, and the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount the lender was authorized to charge borrowers for origination fees in that quarter, the Secretary shall deduct the excess amount from the subsequent quarters’ payments until the total amount has been deducted.

(2) Amount of origination fees

(A) In general

Subject to paragraph (6) of this subsection, with respect to any loan (including loans made under sections 1078–3 and 1087–2(o) of this title) for which a completed note or other written evidence of the loan was sent or delivered to the borrower for signing on or after 10 days after August 13, 1981, each eligible lender under this part is authorized to charge the borrower an origination fee in an amount not to exceed 3.0 percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payment to the borrower. Except as provided in paragraph (8), a lender that charges an origination fee under this paragraph shall assess the same fee to all student borrowers.

(B) Subsequent reductions

Subparagraph (A) shall be applied to loans made under this part (other than loans made under sections 1078–3 and 1087–2(o) of this title)—

(i) by substituting “2.0 percent” for “3.0 percent” with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

(ii) by substituting “1.5 percent” for “3.0 percent” with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

(iii) by substituting “1.0 percent” for “3.0 percent” with respect to loans for
which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009; and
(iv) by substituting “0.5 percent” for “3.0 percent” with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010.

(3) Relation to applicable interest
Such origination fee shall not be taken into account for purposes of determining compliance with section 1077a of this title.

(4) Disclosure required
The lender shall disclose to the borrower the amount and method of calculating the origination fee.

(5) Prohibition on department compelling origination fee collections by lenders
Nothing in this subsection shall be construed to permit the Secretary to require any lender that is making loans that are insured or guaranteed under this part, but for which no amount will be payable for interest under section 1078(a)(3)(A) of this title or for special allowances under subsection (b) of this section, to collect any origination fee or to submit the sums collected as origination fees to the United States. The Secretary shall, not later than January 1, 1987, return to any such lender any such sums collected before October 1, 1986, together with interest thereon.

(6) SLS and PLUS loans
With respect to any loans made under section 1078–1 or 1078–2 of this title on or after October 1, 1992, and first disbursed before July 1, 2010, each eligible lender under this part shall charge the borrower an origination fee of 3.0 percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payments to the borrower.

(7) Distribution of origination fees
All origination fees collected pursuant to this section on loans authorized under section 1078–1 or 1078–2 of this title shall be paid to the Secretary by the lender and deposited in the fund authorized under section 1081 of this title.

(8) Exception
Notwithstanding paragraph (2), a lender may assess a lesser origination fee for a borrower demonstrating greater financial need as determined by such borrower’s adjusted gross family income.

(d) Loan fees from lenders
(1) Deduction from interest and special allowance subsidies
(A) In general
Notwithstanding subsection (b) of this section, the Secretary shall collect a loan fee in an amount determined in accordance with paragraph (2).
(i) by reducing the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder of a loan; or
(ii) directly from the holder of the loan, if the lender—
(I) fails or is not required to bill the Secretary for interest and special allowance payments; or
(II) withdraws from the program with unpaid loan fees.

(B) Special rule
If the Secretary collects loan fees under this subsection through the reduction of interest and special allowance payments, and the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount of such loan fees, then the Secretary shall deduct the amount of the loan fee balance from the amount of interest and special allowance payments that would otherwise be payable, in subsequent quarterly increments until the balance has been deducted.

(2) Amount of loan fees
The amount of the loan fee which shall be deducted under paragraph (1), but which may not be collected from the borrower, shall be equal to—
(A) except as provided in subparagraph (B), 0.50 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 1993; and
(B) 1.0 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 2007, and before July 1, 2010.

(3) Distribution of loan fees
The Secretary shall deposit all fees collected pursuant to paragraph (3) into the insurance fund established in section 1081 of this title.

(e) Nondiscrimination
In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under title 26, to be eligible to receive a special allowance under subsection (b)(2) of this section on any such loans, the Authority shall not engage in any pattern or practice which results in a denial of a borrower’s access to loans under this part because of the borrower’s race, sex, color, religion, national origin, age, disability status, income, attendance at a particular eligible institution within the area served by the Authority, length of the borrower’s educational program, or the borrower’s academic year in school.

(f) Regulations to prevent denial of loans to eligible students
The Secretary shall adopt or amend appropriate regulations pertaining to programs carried out under this part to prevent, where practicable, any practices which the Secretary finds have denied loans to a substantial number of eligible students.

(g) Special Rule
With respect to any loan made under this part for which the interest rate is determined under
the Servicemembers Civil Relief Act (50 U.S.C. App. 527), the applicable interest rate to be subtracted in calculating the special allowance for such loan under this section shall be the interest rate determined under that Act for such loan.


REFERENCES IN TEXT


The Servicemembers Civil Relief Act, referred to in subsec. (g), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, which was classified to section 501 et seq. of Title 50, App. 527, the applicable interest rate to be substituted for “such average bond equivalent rate”.

The Servicemembers Civil Relief Act, referred to in subsec. (h), is Pub. L. 99–498, which enacted subsec. (h). For purposes of section 1087–1, the applicable interest rate to be substituted for “such average bond equivalent rate”.


The Servicemembers Civil Relief Act, referred to in subsec. (j), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, which was classified to section 501 et seq. of Title 50, App. 527.

The Servicemembers Civil Relief Act, referred to in subsec. (k), is Pub. L. 99–498, which enacted subsec. (k).

The Servicemembers Civil Relief Act, referred to in subsec. (l), is Pub. L. 108–183, which enacted subsec. (l).

The Servicemembers Civil Relief Act, referred to in subsec. (m), is Pub. L. 99–498, which enacted subsec. (m).

The Servicemembers Civil Relief Act, referred to in subsec. (n), is Pub. L. 99–498, which enacted subsec. (n).

The Servicemembers Civil Relief Act, referred to in subsec. (o), is Pub. L. 99–498, which enacted subsec. (o).

The Servicemembers Civil Relief Act, referred to in subsec. (p), is Pub. L. 99–498, which enacted subsec. (p).

The Servicemembers Civil Relief Act, referred to in subsec. (q), is Pub. L. 99–498, which enacted subsec. (q).

The Servicemembers Civil Relief Act, referred to in subsec. (r), is Pub. L. 99–498, which enacted subsec. (r).

The Servicemembers Civil Relief Act, referred to in subsec. (s), is Pub. L. 99–498, which enacted subsec. (s).

The Servicemembers Civil Relief Act, referred to in subsec. (t), is Pub. L. 99–498, which enacted subsec. (t).

The Servicemembers Civil Relief Act, referred to in subsec. (u), is Pub. L. 99–498, which enacted subsec. (u).

The Servicemembers Civil Relief Act, referred to in subsec. (v), is Pub. L. 99–498, which enacted subsec. (v).

The Servicemembers Civil Relief Act, referred to in subsec. (w), is Pub. L. 99–498, which enacted subsec. (w).

The Servicemembers Civil Relief Act, referred to in subsec. (x), is Pub. L. 99–498, which enacted subsec. (x).

The Servicemembers Civil Relief Act, referred to in subsec. (y), is Pub. L. 99–498, which enacted subsec. (y).

The Servicemembers Civil Relief Act, referred to in subsec. (z), is Pub. L. 99–498, which enacted subsec. (z).


Subsec. (b)(2)(C)(ii). Pub. L. 106–170, §409(a)(3), substituted “(G), (H), and (I)” for “(G) and (H)” in introductory provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 106–170, §409(a)(3), substituted “(G), (H), and (I)” for “(G) and (H)” in introductory provisions.


Subsec. (b)(2)(A). Pub. L. 105–244, §416(b)(3)(A), substituted “(F), (G), and (H)” for “(F), (G), and (H)” in introductory provisions.

Subsec. (b)(2)(B)(i)(v). Pub. L. 105–244, §416(b)(3)(B), substituted “(F), (G), or (H)” for “(F), (G), or (H)” in introductory provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 105–244, §416(b)(3)(C), substituted “(G), or (H)” for “(G), (H), or (I)” in introductory provisions.

Subsec. (b)(2)(D). Pub. L. 105–178, §8301(b)(2)(C), substituted “Subject to subparagraph (G), in the case for “In the case”.

Subsec. (c)(1). Pub. L. 105–244, §433(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “Notwithstanding subsection (b) of this section, the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder shall be reduced by the Secretary by the amount which the lender is authorized to charge as an origination fee in accordance with paragraph (2) of this subsection. If the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount the lender was authorized to charge borrowers for origination fees in that quarter, the Secretary shall deduct the excess amount from the subsequent quarters’ payments until the total amount has been deducted.”

Subsec. (c)(2). Pub. L. 105–244, §433(b)(1), substituted including loans made under section 1078–8 of this title, but excluding” for “(other than” and inserted at end “Except as provided in paragraph (b), a lender that charges an origination fee under this paragraph shall assess the same fee to all student borrowers.”

Subsec. (c)(8). Pub. L. 105–244, §433(b)(2), added par. (8).

Subsec. (d)(1). Pub. L. 105–244, §433(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “Notwithstanding subsection (b) of this section, the Secretary shall reduce the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, to any holder of a loan by a loan fee in an amount determined in accordance with paragraph (2) of this subsection. If the total amount of interest and special allowance payable under section 1078(a)(3)(A) of this title and subsection (b) of this section, respectively, is less than the amount of such loan fee, then the Secretary shall deduct such excess amount from subsequent quarters’ payments until the total amount has been deducted.”

Subsec. (e). Pub. L. 105–244, §433(d)(1), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) related to lending from proceeds of tax exempt obligations.

1993—Subsec. (b)(2)(A). Pub. L. 103–66, §4111(i), substituted “subparagraphs (B), (C), (D), (E), and (F)” for “subparagraphs (B), (C), (D), and (E)” and “section 1077a(f)” for “section 1077a(e).”


Subsec. (b)(2)(E). (F). Pub. L. 103–66, §4111(i)2, added subpars. (E) and (F).

Subsec. (c). Pub. L. 103–66, §4102a(1), inserted “from students” after “origination fees” in heading.
Subsec. (c)(2). Pub. L. 103–66, § 4102(a)(2)(A), substituted “sections 1078–3 and 1087–2(o)” for “sections 1078–1, 1078–2, 1078–3, and 1087–2(o)” and “3.0 percent” for “5 percent”.

Subsec. (c)(6). Pub. L. 103–66, § 4102(a)(2)(B), substituted “3.0 percent” for “5 percent”.

Subsecs. (d) to (f), Pub. L. 103–66, § 4103, added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1992—Subsec. (b)(2)(A). Pub. L. 102–325, § 430(a)(1), (2), substituted “3.10” for “3.25” and inserted at end “If such computation produces a number less than zero, such loans shall be subject to section 1079a(e) of this title.”

Subsec. (b)(2)(B)(i). Pub. L. 102–325, § 430(a)(4), added cl. (ii) and struck out former cl. (i) which read as follows: “The rate set under division (i) shall not be less than (I) 2.5 percent per year in the case of loans for which the applicable interest rate is 7 percent per year, (II) 1.5 percent per year in the case of loans for which the applicable interest rate is 8 percent per year, or (III) 0.5 percent in the case of loans for which the applicable rate is 9 percent per year.”


Subsec. (b)(5). Pub. L. 102–325, § 430(c), inserted closing provision which defined “eligible loan” as used in this section to include all loans subject to section 1078–9 of this title.


Subsec. (c)(2). Pub. L. 102–325, § 430(d)(1), substituted “Subject to paragraph (6) of this subsection, with” for “With”.


Subsec. (d)(2)(C). Pub. L. 102–325, § 430(e), struck out “or discount” after “premium”.


Subsec. (c)(2). Pub. L. 100–50, § 10(b)(b)(1), substituted “1078–10” for “1078–9”.

PUB. L. 100–50, § 10(b)(b)(2), substituted “12 percent” for “12.5 percent”.


Subsec. (d)(4)(C). Pub. L. 100–50, § 10(d)(2), substituted “as evidenced by the information submitted under paragraph (2)(G) of this subsection” after “fiscal year”.

EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–315 effective for loans for which the first disbursement is made on or after July 1, 2008, see section 422(g)(3) of Pub. L. 110–315, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by sections 201(a)(2) and 305 of Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1078a of this title.


EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.


Pub. L. 109–171, title VIII, § 8013(c)(3), Feb. 6, 2006, 120 Stat. 167, provided that: “The amendment made by paragraph (1) [amending this section] shall be effective as if enacted on October 30, 2004, and the amendment made by paragraph (2) [amending provisions set out as a note under section 1078–10 of this title] shall be effective as if enacted on October 1, 2005.”

Pub. L. 109–171, § 2(d), Feb. 6, 2006, 120 Stat. 167, provided that: “The amendments made by subsections (a) and (c) of this section [amending this section and provisions set out as a note under section 1078–10 of this title] had not been enacted.”

EFFECTIVE DATE OF 2005 AMENDMENT


“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and provisions set out as notes under sections 1001 and 1078–10 of this title] are effective upon enactment [Dec. 30, 2005].

“(2) EXCEPTION.—The amendment made by subsection (c)(1) [amending provisions set out as a note under section 1078–10 of this title] shall take effect as if enacted on October 1, 2005.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 409(b), Dec. 17, 1999, 113 Stat. 1916, provided that: “Subparagraph (1) of section 438(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)) as added by subsection (a) of this section shall apply with respect to any payment pursuant to such section with respect to any 3-month period beginning on or after January 1, 2000, for loans for which the first disbursement is made after such date.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 415(b)(1) and (3) of Pub. L. 105–244 applicable with respect to any loan made, insured, or guaranteed under this part for which application is received by an eligible lender on or after July 1, 2003, except that such amendment is applicable with respect to any loan made under section 1078–3 of this title for which application is received by an eligible lender on or after Oct. 1, 1998, and before July 1, 2003, see section 415(c) of Pub. L. 105–244, set out as a note under section 1077a of this title.


Pub. L. 105–244, title IV, § 433(d)(2), Oct. 7, 1998, 112 Stat. 2711, provided that: “The amendment made by paragraph (1) [amending this section] shall be effective as of the date the plan required by section 433(e)(1) [subsec. (e)(1) of this section] (as such section was in effect prior to such amendment) was approved by the Secretary or the Governor (whichever was the case). No Authority shall have a right or cause of action against the Secretary for any amounts paid to or offset by the Secretary pursuant to a final settlement agreement entered into prior to July 1, 1998, resolving any audit or program review findings alleging violations of any provision of section 433(e) (as in effect prior to such amendment).”
§ 1087–2. Student Loan Marketing Association

(a) Purpose

The Congress hereby declares that it is the purpose of this section (1) to establish a private corporation which will be financed by private capital and which will serve as a secondary market and warehousing facility for student loans, including loans which are insured by the Secretary under this title, and which will provide liquidity for student loan transactions involving student loans, to provide for perfection of security interests in student loans either through the taking of possession or by notice filing; and (3) to assure nationwide the establishment of adequate loan insurance programs for students, to provide for an additional program of loan insurance to be covered by agreements with the Secretary.

(b) Establishment

(1) In general

There is hereby created a body corporate to be known as the Student Loan Marketing Association (hereinafter referred to as the “Association”). The Association shall have succession until dissolved. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof. Offices may be established by the Association in such other place or places as it may deem necessary or appropriate for the conduct of its business.

(2) Exemption from State and local taxes

The Association, including its franchise, capital, reserves, surplus, mortgages, or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by any State, territory, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(3) Appropriations authorized for establishment

There is hereby authorized to be appropriated to the Secretary $5,000,000 for making advances for the purpose of helping to establish the Association. Such advances shall be repaid within such period as the Secretary may deem to be appropriate in light of the maturity and solvency of the Association. Such advances shall bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the maturity of such advances, adjusted to the nearest one-eighth of 1 percent, plus (B) an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses. Repayments of such advances shall be deposited into miscellaneous receipts of the Treasury.

(c) Board of Directors

(1) Composition of Board; Chairman

(A) The Association shall have a Board of Directors which shall consist of 21 persons, 7 of whom shall be appointed by the President and shall be representative of the general public. The remaining 14 directors shall be elected by the common stockholders of the Association entitled to vote pursuant to subsection (f) of this section. Commencing with the annual shareholders meeting to be held in 1993—

(i) 7 of the elected directors shall be affiliated with an eligible institution; and

(ii) 7 of the elected directors shall be affiliated with an eligible lender.

(B) The President shall designate 1 of the directors to serve as Chairman.

(2) Terms of appointed and elected members

The directors appointed by the President shall serve at the pleasure of the President and until their successors have been appointed and have qualified. The remaining directors shall each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Association, and shall serve until their successors have been elected and have qualified. Any appointive seat on the Board which becomes vacant shall be filled by appointment of the President. Any elective seat on the Board which becomes vacant after the annual election of the directors shall be filled by the Board, but only for the unexpired portion of the term.

(3) Affiliated members

For the purpose of this subsection, the references to a director “affiliated with the eligible institution” or a director “affiliated with an eligible lender” means an individual who is, or within 5 years of election to the Board has been, an employee, officer, director, or similar official of—

(A) an eligible institution or an eligible lender;
(B) an association whose members consist primarily of eligible institutions or eligible lenders; or
(C) a State agency, authority, instrumentality, commission, or similar institution, the primary purpose of which relates to educational matters or banking matters.

(4) Meetings and functions of the Board

The Board of Directors shall meet at the call of its Chairman, but at least semiannually. The Board shall determine the general policies which shall govern the operations of the Association. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Association and shall discharge all such functions, powers, and duties.

(d) Authority of Association

(1) In general

The Association is authorized, subject to the provisions of this section—

(A) pursuant to commitments or otherwise to make advances on the security of, purchase, or repurchase, service, sell or resell, offer participations, or pooled interests or otherwise deal in, at prices and on terms and conditions determined by the Association, student loans which are insured by the Secretary under this part or by a guaranty agency;
(B) to buy, sell, hold, underwrite, and otherwise deal in obligations, if such obligations are issued, for the purpose of making or purchasing insured loans, by a guaranty agency or by an eligible lender in a State described in section 1085(d)(1)(D) or (F) of this title;
(C) to buy, sell, hold, insure, underwrite, and otherwise deal in obligations issued for the purpose of financing or refinancing the construction, reconstruction, renovation, improvement, or purchase at institutions of higher education of any of the following facilities (including the underlying property) and materials (including related equipment, instrumentation, and furnishings) at an eligible institution of higher education:
(i) educational and training facilities;
(ii) housing for students and faculties, dining halls, student unions, and facilities specifically designed to promote fitness and health for students, faculty, and staff or for physical education courses; and
(iii) library facilities, including the acquisition of library materials at institutions of higher education;
except that not more than 30 percent of the value of transactions entered into under this subparagraph shall involve transactions of the types described in clause (i);
(D) to undertake a program of loan insurance pursuant to agreements with the Secretary under section 1078 of this title, and except with respect to loans under subsection (c) of this section or under section 1078-3 of this title, the Secretary may enter into an agreement with the Association for such purpose only if the Secretary determines that (i) eligible borrowers are seeking and unable to obtain loans under this part, and (ii) no guaranty agency is capable of or willing to provide a program of loan insurance for such borrowers; and
(E) to undertake any other activity which the Board of Directors of the Association determines to be in furtherance of the programs of insured student loans authorized under this part or will otherwise support the credit needs of students, except that—
(i) in carrying out all such activities the purpose shall always be to provide secondary market and other support for lending programs offered by other organizations and not to replace or compete with such other programs;
(ii) nothing in this subparagraph (E) shall be deemed to authorize the Association to acquire, own, operate, or control any bank, savings and loan association, savings bank or credit union; and
(iii) not later than 30 days prior to the initial implementation of a program undertaken pursuant to this subparagraph (E), the Association shall advise the Chairman and the Ranking Member on the Committee on Education and Labor and the Ranking Member of the Committee on Labor and Human Resources of the Senate and the Chairman and the Ranking Member of the Committee on Education and Labor of the House of Representatives in writing of its plans to offer such program and shall provide information relating to the general terms and conditions of such program.

The Association is further authorized to undertake any activity with regard to student loans which are not insured or guaranteed as provided for in this subsection as it may undertake with regard to insured or guaranteed student loans. Any warehousing advance made on the security of such loans shall be subject to the provisions of paragraph (3) of this subsection to the same extent as a warehousing advance made on the security of insured loans.

(2) Warehousing advances

Any warehousing advance made under paragraph (1)(A) of this subsection shall be made on the security of (A) insured loans, (B) marketable obligations and securities issued, guaranteed, or insured by the United States, (ii) for which the full faith and credit of the United States is pledged for the repayment of principal and interest thereof, or (C) marketable obligations issued, guaranteed, or insured by any agency, instrumentality, or corporation of the United States for which the credit of such agency, instrumentality, or corporation is pledged for the repayment of principal and interest thereof, in an amount equal to the amount of such advance. The proceeds of any such advance secured by insured loans shall either be invested in additional insured loans or the lender shall provide assurances to the Association that during the period of the borrowing it will maintain a level of insured loans in its portfolio not less than the agree-
gate outstanding balance of such loans held at the
time of the borrowing. The proceeds from
any such advance secured by collateral de-
scribed in clauses (B) and (C) shall be invested in
additional insured student loans.

(3) Perfection of security interests in student
loans
Notwithstanding the provisions of any State
law to the contrary, including the Uniform
Commercial Code as in effect in any State, a
security interest in insured student loans cre-
ated on behalf of the Association or any eligi-
ble lender as defined in section 1085(a) of this
title may be perfected either through the tak-
ing of possession of such loans or by the filing
of notice of such security interest in such
loans in the manner provided by such State
law for perfection of security interests in ac-
counts.

(4) Form of securities
Securities issued pursuant to the offering of
participations or pooled interests under para-
graph (1) of this subsection may be in the form
of debt obligations, or trust certificates of
beneficial ownership, or both. Student loans
set aside pursuant to the offering of participa-
tions or pooled interests shall at all times be
adequate to ensure the timely principal and
interest payments on such securities.

(5) Restrictions on facilities and housing activi-
ties
Not less than 75 percent of the aggregate
-dollar amount of obligations bought, sold,
held, insured, underwritten, and otherwise
supported in accordance with the authority
contained in paragraph (1)(C) shall be obliga-
tions which are listed by a nationally recog-
nized statistical rating organization at a rat-
ing below the second highest rating of such or-
ganization.

(e) Advances to lenders that do not discriminate
The Association, pursuant to such criteria as
the Board of Directors may prescribe, shall
make advances on security or purchase student
loans pursuant to subsection (d) of this section
only after the Association is assured that the
lender (1) does not discriminate by pattern or
practice against any particular class or category
of students by requiring that, as a condition to
the receipt of a loan, the student or his family
maintain a business relationship with the lend-
er, except that this clause shall not apply in the
case of a loan made by a credit union, savings
and loan association, mutual savings bank, in-
stitution of higher education, or any other lend-
er with less than $75,000,000 in deposits, and (2)
does not discriminate on the basis of race, sex,
color, creed, or national origin.

(f) Stock of the Association
(1) Voting common stock
The Association shall have voting common
stock having such par value as may be fixed
by its Board of Directors from time to time.
Each share of voting common stock shall be
titled to one vote with rights of cumulative
voting at all elections of directors.

(2) Number of shares; transferability
The maximum number of shares of voting
common stock that the Association may issue
and have outstanding at any one time shall be
fixed by the Board of Directors from time to
time. Any voting common stock issued shall
be fully transferable, except that, as to the As-
sociation, it shall be transferred only on the
books of the Association.

(3) Dividends
To the extent that net income is earned and
realized, subject to subsection (g)(2) of this
section, dividends may be declared on voting
common stock by the Board of Directors. Such
dividends as may be declared by the Board of
Directors shall be paid to the holders of out-
standing shares of voting common stock, ex-
cept that no such dividends shall be payable
with respect to any share which has been
called for redemption past the effective date of
such call.

(4) Single class of voting common stock
As of the effective date of the Higher Edu-
cation Amendments of 1992, all of the pre-
viously authorized shares of voting common
stock and nonvoting common stock of the As-
sociation shall be converted to shares of a sin-
gle class of voting common stock on a share-
for-share basis, without any further action on
the part of the Association or any holder.
Each outstanding certificate for voting or
nonvoting common stock shall evidence own-
ership of the same number of shares of voting
stock into which it is converted. All preexist-
ig rights and obligations with respect to any
class of common stock of the Association shall
be deemed to be rights and obligations with
respect to such converted shares.

(g) Preferred stock
(1) Authority of Board
The Association is authorized to issue non-
voting preferred stock having such par value
as may be fixed by its Board of Directors from
time to time. Any preferred share issued shall
be freely transferable, except that, as to the
Association, it shall be transferred only on the
books of the Association.

(2) Rights of preferred stock
The holders of the preferred shares shall be
entitled to such rate of cumulative dividends
and such shares shall be subject to such re-
demption or other conversion provisions as
may be provided for at the time of issuance.
No dividends shall be payable on any share of
common stock at any time when any dividend
is due on any share of preferred stock and has
not been paid.

(3) Preference on termination of business
In the event of any liquidation, dissolution,
or winding up of the Association’s business,
the holders of the preferred shares shall be
paid in full at par value thereof, plus all ac-
rued dividends, before the holders of the com-
mon shares receive any payment.

(h) Debt obligations
(1) Approval by Secretaries of Education and
the Treasury
The Association is authorized with the ap-

ization Amendments of 1992, all of the pre-

uccession of notice of such security interest in

<thead>
<tr><th>Clause</th><th>Description</th></tr>
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<tbody>
<tr><td>(1)</td><td>Voting common stock</td>
<tr><td>(2)</td><td>Number of shares; transferability</td>
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loans</td>
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<tr><td>(f)</td><td>Stock of the Association</td>
<tr><td>(g)</td><td>Preferred stock</td>
<tr><td>(h)</td><td>Debt obligations</td>
</tbody>
Secretary of the Treasury to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association. The authority of the Secretary of Education to approve the issuance of such obligations is limited to obligations issued by the Association and guaranteed by the Secretary pursuant to paragraph (2) of this subsection. Such obligations may be redeemable at the option of the Association before maturity in such manner as may be stipulated therein. The Secretary of the Treasury may not direct as a condition of his approval that such issuance of obligations by the Association be made or sold to the Federal Financing Bank. To the extent that the average outstanding amount of the obligations owned by the Association pursuant to the authority contained in subsection (d)(1)(B) and (C) of this section and as to which the income is exempt from taxation under title 26 does not exceed the average stockholders' equity of the Association, the interest on obligations issued under this paragraph shall not be deemed to be interest on indebtedness incurred or continued to purchase or carry obligations for the purpose of section 265 of title 26.

(2) Guarantee of debt

The Secretary is authorized, prior to October 1, 1984, to guarantee payment when due of principal and interest on obligations issued by the Association in an aggregate amount determined by the Secretary in consultation with the Secretary of the Treasury. The Secretary may at any time sell any of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There is authorized to be appropriated to the Secretary such sums as may be necessary to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

(4) Action on request for guarantees

Upon receipt of a request from the Association under this subsection requiring approvals by the Secretary of Education or the Secretary of the Treasury, the Secretary of Education or the Secretary of the Treasury shall act promptly either to grant approval or to advise the Association of the reasons for withholding approval. In no case shall such an approval be withheld for a period longer than 60 days unless, prior to the end of such period, the Secretary of Education and the Secretary of the Treasury submit to the Congress a detailed explanation of reasons for doing so.

(5) Authority of Treasury to purchase debt

The Secretary of the Treasury is authorized to purchase any obligations issued by the Association pursuant to this subsection as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $1,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(6) Sale of debt to Federal Financing Bank

Notwithstanding any other provision of law the Association is authorized to sell or issue obligations on the security of student loans, the payment of interest or principal of which has at any time been guaranteed under section 1078 or 1079 of this title, to the Federal Financing Bank.
(7) Offset fee

(A) The Association shall pay to the Secretary, on a monthly basis, an offset fee calculated on an annual basis in an amount equal to 0.30 percent of the principal amount of each loan made, insured or guaranteed under this part that the Association holds (except for loans made pursuant to section 1078–3 of this title, subsection (o) of this section, or subsection (q) of this section) and that was acquired on or after August 10, 1993.

(B) If the Secretary determines that the Association has substantially failed to comply with subsection (q) of this section, subparagraph (A) shall be applied by substituting “1.0 percent” for “0.3 percent”.

(C) The Secretary shall deposit all fees collected pursuant to this paragraph into the insurance fund established in section 1081 of this title.

(i) General corporate powers

The Association shall have power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Association;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(j) Accounting, auditing, and reporting

The accounts of the Association shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States, except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who, although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest standards prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975. A report of each such audit shall be furnished to the Secretary of the Treasury. The audit shall be conducted at the place or places where the accounts are normally kept. The representatives of the Secretary shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Association and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

(k) Report on audits by Treasury

A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Association, together with such recommendations with respect thereto as the Secretary may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit. A copy of each report shall be furnished to the Secretary, and to the Association.

(l) Lawful investment instruments; effect of and exemptions from other laws

All obligations issued by the Association including those made under subsection (d)(4) of this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Association pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The obligations of the Association shall be deemed to be obligations of the United States for the purpose of sections 3214 of title 31. For the purpose of the distribution of its property pursuant to section 726 of title 11, the Association shall be deemed a person within the meaning of such title. The priority established in favor of the United States by section 3713 of title 31 shall
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not establish a priority over the indebtedness of the Association issued or incurred on or before September 30, 1992. The Federal Reserve Banks are authorized to act as depositaries, custodians, or fiscal agents, or a combination thereof, for the Association in the general performance of its powers under this section.

(m) Preparation of obligations

In order to furnish obligations for delivery by the Association, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Board of Directors may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Association. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations. The Secretary of the Treasury is authorized to promulgate regulations on behalf of the Association so that the Association may utilize the book-entry system of the Federal Reserve Banks.

(n) Report on operations and activities

The Association shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress a report of the Association’s operations and activities, including a report with respect to all facilities transactions, during each year.

(o) Loan consolidations

(1) In general

The Association or its designated agent may, upon request of a borrower, consolidate loans received under this subchapter and part C of subchapter I of chapter 42 of title 1078–3 of this title.

(2) Use of existing agencies as agent

The Association in making loans pursuant to this subsection in any State served by a guaranty agency or an eligible lender in a State described in section 1085(d)(1)(D) or (F) of this title may designate as its agent such agency or lender to perform such functions as the Association determines appropriate. Any agreements made pursuant to this subparagraph shall be on such terms and conditions as agreed upon by the Association and such agency or lender.

(p) Advances for direct loans by guaranty agencies

(1) In general

The Association shall make advances in each fiscal year from amounts available to it to each guaranty agency and eligible lender described in section 1078(h)(1) of this title and on terms and conditions as agreed upon by the Association and such agency or lender.

(q) Lender-of-last-resort

(1) Action at request of Secretary

(A) Whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part, the Association or its designated agent shall, not later than 90 days after August 10, 1993, begin making loans to such eligible borrowers in accordance with this subsection at the request of the Secretary. The Secretary may request that the Association make loans to borrowers within a geographic area or for the benefit of students attending institutions of higher education that certify, in accordance with standards established by the Secretary, that their students are seeking and unable to obtain loans.

(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 1079 of this title with a certificate of comprehensive insurance coverage provided for under section 1079(b)(1) of this title or by a guaranty agency under paragraph (2)(A) of this subsection.

(2) Issuance and coverage of loans

(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 1085(d)(1)(D) of this title, determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and unable to obtain loans under this part, the Association or its designated agent shall begin making such loans to borrowers in such State or within an area of such State in accordance with this subsection at the request of the Secretary.

(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pursuant to section 1078(b) of this title. For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

(3) Termination of lending

The Association or its designated agent shall cease making loans under this subsection at such time as the Secretary determines that the conditions which caused the implementation of this subsection have ceased to exist.

1 See References in Text note below.
(r) Safety and soundness of Association

(1) Reports by the Association

The Association shall promptly furnish to the Secretary of Education and Secretary of the Treasury copies of all—
(A) periodic financial reports publicly distributed by the Association;
(B) reports concerning the Association that are received by the Association and prepared by nationally recognized statistical rating organizations; and
(C)(i) financial statements of the Association within 45 days of the end of each fiscal quarter; and
(ii) reports setting forth the calculation of the capital ratio of the Association within 45 days of the end of each fiscal quarter.

(2) Audit by Secretary of the Treasury

(A) The Secretary of the Treasury may—
(i) appoint and fix the compensation of such auditors and examiners as may be necessary to conduct audits of the Association from time to time to determine the condition of the Association for the purpose of assessing the Association's financial safety and soundness and to determine whether the requirements of this section and section 1087–3 of this title are being met; and
(ii) obtain the services of such experts as the Secretary of the Treasury determines necessary and appropriate, as authorized by section 3109 of title 5, to assist in determining the condition of the Association for the purpose of assessing the Association's financial safety and soundness, and to determine whether the requirements of this section and section 1087–3 of this title are being met.

(B) Each auditor appointed under this paragraph shall conduct an audit of the Association to the extent requested by the Secretary of the Treasury and shall prepare and submit a report to the Secretary of the Treasury concerning the results of such audit. A copy of such report shall be furnished to the Association and the Secretary of Education on the date on which it is delivered to the Secretary of the Treasury.

(C) The Association shall provide full and prompt access to the Secretary of the Treasury to its books and records and other information requested by the Secretary of the Treasury.

(D) ANNUAL ASSESSMENT.

(i) In general.—For each fiscal year beginning on or after October 1, 1996, the Secretary of the Treasury may establish and collect from the Association an assessment (or assessments) in amounts sufficient to provide for reasonable costs and expenses of carrying out the duties of the Secretary of the Treasury under this section and section 1087–3 of this title during such fiscal year. In no event may the total amount so assessed exceed, for any fiscal year, $800,000, adjusted for each fiscal year ending after September 30, 1997, by the ratio of the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) for the final month of the fiscal year preceding the fiscal year for which the assessment is made to the Consumer Price Index for All Urban Consumers for September 1997.

(ii) Deposit.—Amounts collected from assessments under this subparagraph shall be deposited in an account within the Treasury of the United States as designated by the Secretary of the Treasury for that purpose. The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account the reasonable costs and expenses of carrying out the duties of the Secretary of the Treasury under this section and section 1087–3 of this title. None of the funds deposited into such account shall be available for any purpose other than making payments for such costs and expenses.

(E) OBLIGATION TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—

(i) In general.—The Association shall obtain such information and make and keep such records as the Secretary of the Treasury may from time to time prescribe concerning—
(I) the financial risk to the Association resulting from the activities of any associated person, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including the Association's capital ratio, the Association's liquidity, or the Association's ability to conduct and finance the Association's operations; and
(II) the Association's policies, procedures, and systems for monitoring and controlling any such financial risk.

(ii) SUMMARY REPORTS.—The Secretary of the Treasury may require summary reports of such information to be filed no more frequently than quarterly. If, as a result of adverse market conditions or based on reports provided pursuant to this subparagraph or other available information, the Secretary of the Treasury has concerns regarding the financial or operational condition of the Association, the Secretary of the Treasury may, notwithstanding the preceding sentence and clause (I), require the Association to make reports concerning the activities of any associated person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Association.

(F) COMPENSATION OF AUDITORS AND EXAMINERS.

(i) RATES OF PAY.—Rates of basic pay for all auditors and examiners appointed pursuant to subparagraph (A) may be set and adjusted by the Secretary of the Treasury without regard to the provisions of chapter 51 or subchapter III of chapter 59 of title 5.

(ii) COMPARABILITY.—

(I) In general.—Subject to section 5373 of title 5, the Secretary of the Treasury
may provide additional compensation and benefits to auditors and examiners appointed pursuant to subparagraph (A) if the same type of compensation or benefits are then being provided by any agency referred to in section 1833b of title 12 or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation.

(II) Consultation.—In setting and adjusting the total amount of compensation and benefits for auditors and examiners appointed pursuant to subparagraph (A), the Secretary of the Treasury shall consult with, and seek to maintain comparability with, the agencies referred to in section 1833b of title 12.

(3) Monitoring of safety and soundness

The Secretary of the Treasury shall conduct such studies as may be necessary to monitor the financial safety and soundness of the Association. In the event that the Secretary determines that the financial safety and soundness of the Association is at risk, the Secretary of the Treasury shall inform the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives, and the Secretary of Education of such determination and identify any corrective actions that should be taken to ensure the safety and soundness of the Association.

(4) Capital standard

If the capital ratio is less than 2 percent and is greater than or equal to 1.75 percent at the end of the Association’s most recent calendar quarter the Association shall, within 60 days of such occurrence, submit to the Secretary of the Treasury a capital restoration plan, in reasonable detail, that the Association believes is adequate to cause the capital ratio to equal or exceed 2 percent within 36 months.

(5) Capital restoration plan

(A) Submission, approval, and implementation

The Secretary of the Treasury and the Association shall consult with respect to any capital restoration plan submitted pursuant to paragraph (4) and the Secretary of the Treasury shall approve such plan (or a modification thereof accepted by the Association) or disapprove such plan within 30 days after such plan is first submitted to the Secretary of the Treasury by the Association, unless the Association and Secretary of the Treasury mutually agree to a longer consideration period. If the Secretary of the Treasury approves a capital restoration plan (including a modification of a plan accepted by the Association), the Association shall forthwith proceed with diligence to implement such plan to the best of its ability.

(B) Disapproval

If the Secretary of the Treasury does not approve a capital restoration plan as provided in subparagraph (A), then not later than the earlier of the date the Secretary of the Treasury disapproves of such plan by written notice to the Association or the expiration of the 30-day consideration period referred to in subparagraph (A) (as such period may have been extended by mutual agreement), the Secretary of the Treasury shall submit the Association’s capital restoration plan, in the form most recently proposed to the Secretary of the Treasury by the Association, together with a report on the Secretary of the Treasury’s reasons for disapproval of such plan and an alternative capital restoration plan, to the Chairman and ranking minority member of the Senate Committee on Labor and Human Resources and to the Chairman and ranking minority member of the House Committee on Education and Labor. A copy of such submission simultaneously shall be sent to the Association and the Secretary of Education by the Secretary of the Treasury.

(C) Association implementation and response

Upon receipt of the submission by the Association, the Association shall forthwith proceed with diligence to implement the most recently proposed capital restoration plan of the Association. The Association, within 30 days after receipt from the Secretary of the Treasury of such submission, shall submit to such Chairmen and ranking minority members a written response to such submission, setting out fully the nature and extent of the Association’s agreement or the disagreement with the Secretary of the Treasury with respect to the capital restoration plan submitted to the Secretary of the Treasury and any findings of the Secretary of the Treasury.

(6) Substantial capital ratio reduction

(A) Additional plan required

If the capital ratio is less than 1.75 percent and is greater than or equal to 1 percent at the end of the Association’s most recent calendar quarter, the Association shall submit to the Secretary of the Treasury a capital restoration plan within 60 days after such occurrence a capital restoration plan (or an appropriate modification of any plan previously submitted or approved under paragraph (4)) to increase promptly its capital ratio to equal or exceed 1.75 percent. The Secretary of the Treasury and the Association shall consult with respect to any plan or modified plan submitted pursuant to this paragraph. The Secretary of the Treasury shall approve such plan or modified plan (or a modification thereof accepted by the Association) or disapprove such plan or modified plan within 30 days after such plan or modified plan is first submitted to the Secretary of the Treasury by the Association, unless the Secretary and Secretary of the Treasury mutually agree to a longer consideration period. If the Secretary of the Treasury approves a plan or modified plan (including a modification of a plan accepted by the Association), the Association shall forthwith proceed with diligence to implement such plan or modified plan to the best of the Association’s ability.
(B) Disapproval
If the Secretary of the Treasury disapproves a capital restoration plan or modified plan submitted pursuant to subparagraph (A), then, not later than the earlier of the date the Secretary of the Treasury disapproves of such plan or modified plan (by written notice to the Association) or the expiration of the 30-day consideration period described in subparagraph (A) (as such period may have been extended by mutual agreement), the Secretary of the Treasury shall prepare and submit an alternative capital restoration plan, together with a report on his reasons for disapproval of the Association’s plan or modified plan, to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate and to the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives. A copy of such submission simultaneously shall be sent to the Association and the Secretary of Education by the Secretary of the Treasury. The Association, within 5 days after receipt from the Secretary of the Treasury of such submission, shall submit to the Chairmen and ranking minority members of such Committees, and the Secretary of the Treasury, a written response to such submission, setting out fully the nature and extent of the Association’s agreement or disagreement with the Secretary of the Treasury with respect to the disapproved plan and the alternative plan of the Secretary of the Treasury and any findings of the Secretary of the Treasury.

(C) Review by Congress; Association implementation
Congress shall have 60 legislative days after the date on which Congress receives the alternative plan under subparagraph (B) from the Secretary of the Treasury to review such plan. If Congress does not take statutory action with respect to any such plan within such 60-day period, the Association shall immediately proceed with diligence to implement the alternative capital restoration plan of the Secretary of the Treasury under subparagraph (B). If Congress is out of session when such alternative plan is received, such 60-day period shall begin on the first day of the next session of Congress.

(7) Actions by Secretary of the Treasury
If the capital ratio of the Association does not equal or exceed 1.75 percent at the end of the Association’s most recent calendar quarter, the Secretary of the Treasury may, until the capital ratio equals or exceeds 1.75 percent, take any one or more of the following actions:

(A) Limit increase in liabilities
Limit any increase in, or order the reduction of, any liabilities of the Association, except as necessary to fund student loan purchases and warehousing advances.

(B) Restrict growth
Restrict or eliminate growth of the Association’s assets, other than student loans purchases and warehousing advances.

(C) Restrict distributions
Restrict the Association from making any capital distribution.

(D) Require issuance of new capital
Require the Association to issue new capital in any form and in any amount sufficient to restore at least a 1.75 percent capital ratio.

(E) Limit executive compensation
Prohibit the Association from increasing for any executive officer any compensation including bonuses at a rate exceeding that officer’s average rate of compensation during the previous 12 calendar months and prohibiting the Board from adopting any new employment severance contracts.

(8) Critical capital standard
(A) If the capital ratio is less than 1 percent at the end of the Association’s most recent calendar quarter and the Association has already submitted a capital restoration plan to the Secretary of the Treasury pursuant to paragraph (4) or (6)(A), the Association shall forthwith proceed with diligence to implement the most recently proposed plan with such modifications as the Secretary of the Treasury determines are necessary to cause the capital ratio to equal or exceed 2 percent within 60 months.

(B) If the capital ratio is less than 1 percent at the end of the Association’s most recent calendar quarter and the Association has not submitted a capital restoration plan to the Secretary of the Treasury pursuant to paragraph (4) or (6)(A), the Association shall—

(i) within 14 days of such occurrence submit a capital restoration plan to the Secretary of the Treasury which the Association believes is adequate to cause the capital ratio to equal or exceed 2 percent within 60 months; and

(ii) forthwith proceed with diligence to implement such plan with such modifications as the Secretary of the Treasury determines are necessary to cause the capital ratio to equal or exceed 2 percent within 60 months.

(C) Immediately upon a determination under subparagraph (A) or (B) to implement a capital restoration plan, the Secretary of the Treasury shall submit the capital restoration plan to be implemented to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives, and the Secretary of Education.

(9) Additional reports to committees
The Association shall submit a copy of its capital restoration plan, modifications proposed to the Secretary of the Treasury, and proposed modifications received from the Secretary of the Treasury to the Congressional
Budget Office and Government Accountability Office upon their submission to the Secretary of the Treasury or receipt from the Secretary of the Treasury. Notwithstanding any other provision of law, the Congressional Budget Office and Government Accountability Office shall maintain the confidentiality of information received pursuant to the previous sentence. In the event that the Secretary of the Treasury does not approve a capital restoration plan as provided in paragraph (5)(A) or (6)(A), or in the event that a capital restoration plan is modified by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8), the Congressional Budget Office and Government Accountability Office shall each submit a report within 30 days of the Secretary of the Treasury’s submission to the Chairmen and ranking minority members as required in paragraphs (5)(B), (6)(B), and (8)(C) to such Chairmen and ranking members—

(A) analyzing the financial condition of the Association;

(B) analyzing the capital restoration plan and reasons for disapproval of the plan contained in the Secretary of the Treasury’s submission made pursuant to paragraph (5)(B), or the capital restoration plan proposed by the Association and the modifications made by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8);

(C) analyzing the impact of the capital restoration plan and reasons for disapproval of the plan contained in the Secretary of the Treasury’s submission made pursuant to paragraph (5)(B), or the impact of the capital restoration plan proposed by the Association and the modifications made by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8), and analyzing the impact of the recommendations made pursuant to subparagraph (D) of this paragraph, on—

(i) the ability of the Association to fulfill its purpose and authorized activities as provided in this section, and

(ii) the operation of the student loan programs; and

(D) recommending steps which the Association should take to increase its capital ratio without impairing its ability to perform its purpose and authorized activities as provided in this section.

(10) Review by Secretary of Education

The Secretary of Education shall review the Secretary of the Treasury’s submission required pursuant to paragraph (5)(B), (6)(B), or (8) and shall submit a report within 30 days to the Chairman and ranking minority member of the Senate Committee on Labor and Human Resources and to the Chairman and ranking minority member of the House Committee on Education and Labor—

(A) describing any administrative or legislative provisions governing the student loan programs which contributed to the decline in the Association’s capital ratio; and

(B) recommending administrative and legislative changes in the student loan programs to maintain the orderly operation of such programs and to enable the Association to fulfill its purpose and authorized activities consistent with the capital ratio specified in paragraph (4).

(11) Safe harbor

The Association shall be deemed in compliance with the capital ratios described in paragraphs (4) and (6)(A) if the Association is rated in 1 of the 2 highest full rating categories (such categories to be determined without regard to designations within categories) by 2 nationally recognized statistical rating organizations, determined without regard to the Association’s status as a federally chartered corporation.

(12) Treatment of confidential information

Notwithstanding any other provision of law, the Secretary of the Treasury, the Secretary of Education, the Congressional Budget Office, and the Government Accountability Office shall not disclose any information treated as confidential by the Association or the Association’s associated persons and obtained pursuant to this subsection. Nothing in this paragraph shall authorize the Secretary of the Treasury, the Secretary of Education, the Congressional Budget Office, and the Government Accountability Office to withhold information from Congress, or prevent the Secretary of Education, the Congressional Budget Office, and the Government Accountability Office from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3) of such section 552.

(13) Enforcement of safety and soundness requirements

The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of this section, or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with this section.

(14) Actions by Secretary

(A) In general

For any fiscal quarter ending after January 1, 2000, the Association shall have a capital ratio of at least 2.25 percent. The Secretary of the Treasury may, whenever such capital ratio is not met, take any one or more of the actions described in paragraph (7), except that—

(i) the capital ratio to be restored pursuant to paragraph (7)(D) shall be 2.25 percent; and

(ii) if the relevant capital ratio is in excess of or equal to 2 percent for such quarter, the Secretary of the Treasury shall defer taking any of the actions set forth in

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paragraph (7) until the next succeeding quarter and may then proceed with any such action only if the capital ratio of the Association remains below 2.25 percent.

(B) Applicability

The provisions of paragraphs (4), (5), (6), (8), (9), (10), and (11) shall be of no further application to the Association for any period after January 1, 2000.

(15) Definitions

As used in this subsection:

(A) The term “nationally recognized statistical rating organization” means any nationally recognized statistical rating organization, as that term is defined in section 78c(a) of title 15.

(B) The term “capital ratio” means the ratio of total stockholders’ equity, as shown on the Association’s most recent quarterly consolidated balance sheet prepared in the ordinary course of its business, to the sum of—

(i) the total assets of the Association, as shown on the balance sheet prepared in the ordinary course of its business; and

(ii) 50 percent of the credit equivalent amount of the following off-balance sheet items of the Association as of the date of such balance sheet—

(I) all financial standby letters of credit and other irrevocable guarantees of the repayment of financial obligations of others; and

(II) all interest rate contracts and exchange rate contracts, including interest exchange agreements, floor, cap, and collar agreements and similar arrangements.

For purposes of this subparagraph, the calculation of the credit equivalent amount of the items set forth in clause (ii) of this subparagraph, the netting of such items and eliminations for the purpose of avoidance of double-counting of such items shall be made in accordance with the measures for computing credit conversion factors for off-balance sheet items for capital maintenance purposes established for commercial banks from time to time by the Federal Reserve Board, but without regard to any risk weighting provisions in such measures.

(C) The term “legislative days” means only days on which either House of Congress is in session.

(16) Dividends

The Association may pay dividends in the form of cash or noncash distributions so long as at the time of the declaration of such dividends, after giving effect to the payment of such dividends as of the date of such declaration by the Board of Directors of the Association, the Association’s capital would be in compliance with the capital standards set forth in this section.

(17) Certification prior to payment of dividend

Prior to the payment of any dividend under paragraph (16), the Association shall certify to the Secretary of the Treasury that the payment of the dividend will be made in compliance with paragraph (16) and shall provide copies of all calculations needed to make such certification.

(s) Charter sunset

(1) Application of provisions

This subsection applies beginning 18 months and one day after September 30, 1996, if no reorganization of the Association occurs in accordance with the provisions of section 1087-3 of this title.

(2) Sunset plan

(A) Plan submission by the Association

Not later than July 1, 2007, the Association shall submit to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Labor and Human Resources of the Senate and the Chairman and Ranking Member of the Committee on Economic and Educational Opportunities of the House of Representatives, a detailed plan for the orderly winding up, by July 1, 2013, of business activities conducted pursuant to the charter set forth in this section. Such plan shall—

(i) ensure that the Association will have adequate assets to transfer to a trust, as provided in this subsection, to ensure full payment of remaining obligations of the Association in accordance with the terms of such obligations;

(ii) provide that all assets not used to pay liabilities shall be distributed to shareholders as provided in this subsection; and

(iii) provide that the operations of the Association shall remain separate and distinct from that of any entity to which the assets of the Association are transferred.

(B) Amendment of the plan by the Association

The Association shall from time to time amend such plan to reflect changed circumstances, and submit such amendments to the Secretary of the Treasury and to the Chairman and Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and Chairman and Ranking Minority Member of the Committee on Economic and Educational Opportunities of the House of Representatives. In no case may any amendment extend the date for full implementation of the plan beyond the dissolution date provided in paragraph (3).

(C) Plan monitoring

The Secretary of the Treasury shall monitor the Association’s compliance with the plan and shall continue to review the plan (including any amendments thereto).

(D) Amendment of the plan by the Secretary of the Treasury

The Secretary of the Treasury may require the Association to amend the plan (including any amendments to the plan), if the Secretary of the Treasury deems such amendments necessary to ensure full payment of all obligations of the Association.
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(4) Restrictions relating to winding up

(A) Restrictions on new business activity or acquisition of assets by the Association

(i) In general

Beginning on July 1, 2009, the Association shall not engage in any new business activities or acquire any additional program assets (including acquiring assets pursuant to contractual commitments) described in subsection (d) of this section other than in connection with the Association—

(I) serving as a lender of last resort pursuant to subsection (q) of this section; and

(II) purchasing loans insured under this part, if the Secretary, with the approval of the Secretary of the Treasury, enters into an agreement with the Association for the continuation or resumption of the Association’s secondary market purchase program because the Secretary determines there is inadequate liquidity for loans made under this part.

(ii) Agreement

The Secretary is authorized to enter into an agreement described in subclause (II) of clause (i) with the Association covering such secondary market activities. Any agreement entered into under such subclause shall cover a period of 12 months, but may be renewed if the Secretary determines that liquidity remains inadequate. The fee provided under subsection (b)(7) of this section shall not apply to loans acquired under any such agreement with the Secretary.

(B) Issuance of debt obligations during the wind up period; attributes of debt obligations

The Association shall not issue debt obligations which mature later than July 1, 2013, except in connection with serving as a lender of last resort pursuant to subsection (q) of this section or with purchasing loans under an agreement with the Secretary as described in subparagraph (A). Nothing in this subsection shall modify the attributes accorded the debt obligations of the Association by this section, regardless of whether such debt obligations are transferred to a trust in accordance with paragraph (3).

(C) Use of Association name

The Association may not transfer or permit the use of the name “Student Loan Marketing Association”, “Sallie Mae”, or any variation thereof, to or by any entity other than a subsidiary of the Association.

Pub. L. 103–208, §2(c)(69), Dec. 20, 1993, 107 Stat. 2470; Pub. L. 103–382, title III, §385, Oct. 20, 1994, 108 Stat. 3096; Pub. L. 104–208, div. A, title I, §101(e) [title VI, §602(d)(ii)], Sept. 30, 1996, 108 Stat. 3009–233, 3009–289, provided that this section is repealed effective one year after date on which all obligations of trust established under section 1087–3(d)(1) of this title have been extinguished, if reorganization occurs in accordance with section 1087–3 of this title; or date on which all obligations of trust established under section 1087–3(d)(3)(A) of this section have been extinguished, if reorganization does not occur in accordance with section 1087–3 of this title.

REFERENCES IN TEXT


REPEAL OF SECTION

Pub. L. 104–208, div. A, title I, §101(e) [title VI, §602(d)(ii)], Sept. 30, 1996, 108 Stat. 3009–233, 3009–289, provided that this section is repealed effective one year after date on which all obligations of trust established under section 1087–3(d)(1) of this title have been extinguished, if reorganization occurs in accordance with section 1087–3 of this title; or date on which all obligations of trust established under section 1087–3(d)(3)(A) of this section have been extinguished, if reorganization does not occur in accordance with section 1087–3 of this title.

CODIFICATION


Prior Provisions


In subsec. (c), the following provisions consisting of pars. (1) to (4) for former provisions which provided for: in par. (1), Board membership; in par. (2), for the purposes of assessing its financial safety and soundness; and “(ii) enter into contracts to obtain the services of such technical experts as the Secretary of the Treasury determines necessary and appropriate to provide technical assistance to any auditor appointed under this paragraph.”

In subsec. (d)(1)(i)(C), Pub. L. 103–382, §358(1)(A), (D), inserted “(including related equipment, instrumentation, and furnishings)” after “materials” in introductory provisions and substituted “30 percent” for “15 percent” and “types” for “type” in concluding provisions.

In subsec. (d)(1)(i)(C)(i), Pub. L. 103–382, §358(1)(B), substituted “(includes halls, student unions, and facilities specifically designed to promote fitness and health for students, faculty, and staff or for physical education courses; and” for the semicolon.

In subsec. (d)(1)(i)(C)(ii), Pub. L. 103–382, §358(1)(C), substituted “(includes halls, student unions, and facilities specifically designed to promote fitness and health for students, faculty, and staff or for physical education courses; and” for the semicolon.

In subsec. (d)(1)(i)(C)(iii), Pub. L. 103–382, §358(1)(D), (E), struck out “and” after the semicolon in cl. (i)(a) and struck out cl. (iv) which read as follows: “related equipment, instrumentation, and furnishings for facilities and materials described in clause (i) or (iii)”.

In subsec. (e), Pub. L. 103–382, §358(2), substituted “a report of the Association’s operations and activities, including a report with respect to all facilities transactions, during each year” for “a report of its operations and activities during each year”. In subsec. (f), Pub. L. 103–66, §4041(c), amended subsec. (q) generally, substituting present provisions for substantially similar former provisions.

In subsec. (g), Pub. L. 103–382 substituted “section 522” for “section 522”.

In subsec. (h), Pub. L. 102–325, §431(a), amended subsec. (c) generally, substituting present provisions consisting of pars. (1) to (4) for former provisions which provided for: in par. (1), Board membership; in par. (2), interim Board; in par. (3), regular Board; in par. (4), succession of regular Board; in par. (5), terms of appointed and elected members; and in par. (6), meetings and functions of Board.

In subsec. (i)(C), Pub. L. 102–325, §431(b), amended subpar. (C) generally, Prior to amendment, subpar. (C) read as follows: “to buy, sell, hold, insure, underwrite, and otherwise deal in obligations issued for the purpose of financing or refinancing the construction, reconstruction, renovation, or purchase of educational and training facilities and housing for students and facilities (including the underlying real property), and related equipment, instrumentation, and furnishings;”.

In subsec. (j), Pub. L. 102–325, §431(c), substituted “second highest rating” for “third highest rating”.

In subsec. (k), Pub. L. 102–325, §431(d), amended subsec. (f) generally, substituting present provisions consisting...
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of pars. (1) to (4) for former provisions which provided for: in par. (1), common stock to insured lenders and eligi-

ble institutions only; in par. (2), voting rights; in par. (3), number of shares and transferability; in par. (4), dividends; and in par. (5), nonvoting common stock.

cation was translated as “title 26” thus requiring no change in text.


CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representives changed to Committee on Education and the Workforce of House of Representives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(e) [title VI, § 602(d)(2)] of div. A of Pub. L. 104–208 provided that: “The repeals made by paragraph (3) [repealing this section and section 1087–3 of this title] shall be effective one year after—

“(a) the date on which all of the obligations of the trust established under section 440(d)(1) of the Higher Education Act of 1965 (20 U.S.C. 1087–3(d)(1)) (as added by subsection (a)) have been extinguished, if a reorga-
nization occurs in accordance with section 440 of such Act; or

“(b) the date on which all of the obligations of the trust established under subsection [sic] 439(e)(3)(A) of such Act (20 U.S.C. 1087–2(e)(3)(A)) (as added by sub-
section (c)) have been extinguished, if a reorganiza-
tion does not occur in accordance with section 440 of such Act.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes in subsec. (d)(1), relating to facili-
ties loans, applicable with respect to applications re-
ceived on or after July 1, 1992, see section 432 of Pub. L. 102–325, set out as a note under section 1078 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) and (b) of this section relating to trans-
mitting annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under sec-

USE OF ASSOCIATION NAMES UPON DISSOLUTION; ENFORCEMENT

Section 101(e) [title VI, § 602(e), (f)] of div. A of Pub. L. 104–208 provided that:

“(e) ASSOCIATION NAMES.—Upon dissolution in accord-
ance with section 439(e) of the Higher Education Act of

1965 (20 U.S.C. 1087–2(e)), the names ‘Student Loan Marketing Association’, ‘Sallie Mae’, and any vari-
ations thereof may not be used by any entity engaged in any business similar to the business conducted pur-
suant to section 439 of such Act (as such section was in effect on the date of enactment of this Act [Sept. 30, 1996]) without the approval of the Secretary of the Treasury.

“(f) RIGHT TO ENFORCE.—The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Co-
lumbia for the enforcement of any provision of sub-
section (e), or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with subsection (e).”

§ 1087-3. Reorganization of Student Loan Marketing Association through formation of Holding Company

(a) Actions by Association’s Board of Directors

The Board of Directors of the Association shall take or cause to be taken all such action as the Board of Directors deems necessary or appro-

priate to effect, upon the shareholder approval described in subsection (b) of this section, a restructur-
ing of the common stock ownership of the Association, as set forth in a plan of reor-

ganization adopted by the Board of Directors (the terms of which shall be consistent with this section) so that all of the outstanding common

shares of the Association shall be directly owned by a Holding Company. Such actions may in-

clude, in the Board of Director’s discretion, a merger of a wholly owned subsidiary of the Holding Company with and into the Association, which would have the effect provided in the plan of reorganization and the law of the jurisdiction in which such subsidiary is incorporated. As part of the restructuring, the Board of Directors may cause—

(1) the common shares of the Association to be converted, on the reorganization effective date, to common shares of the Holding Com-
pany on a one for one basis, consistent with applicable State or District of Columbia law; and

(2) Holding Company common shares to be registered with the Securities and Exchange Commission.

(b) Shareholder approval

The plan of reorganization adopted by the Board of Directors pursuant to subsection (a) of this section shall be submitted to common

shareholders of the Association for their approval. The reorganization shall occur on the re-

organization effective date, provided that the plan of reorganization has been approved by the affirmative votes, cast in person or by proxy, of the holders of a majority of the issued and out-

standing shares of the Association common stock.

(c) Transition

In the event the shareholders of the Association approve the plan of reorganization under subsection (b) of this section, the following provi-

sions shall apply beginning on the reorganization effective date:

(1) In general

Except as specifically provided in this sec-

tion, until the dissolution date the Associa-
tion shall continue to have all of the rights, privileges and obligations set forth in, and shall be subject to all of the limitations and restrictions of, section 1087–2 of this title, and the Association shall continue to carry out the purposes of such section. The Holding Company and any subsidiary of the Holding Company (other than the Association) shall not be entitled to any of the rights, privileges, and obligations, and shall not be subject to the limitations and restrictions, applicable to the Association under section 1087–2 of this title, except as specifically provided in this section. The Holding Company and any subsidiary of the Holding Company (other than the Association or a subsidiary of the Association) shall not purchase loans insured under this chapter and part C of subchapter I of chapter 34 of title 42 until such time as the Association ceases acquiring such loans, except that the Holding Company may purchase such loans if the Association is merely continuing to acquire loans as a lender of last resort pursuant to section 1087–2(q) of this title or under an agreement with the Secretary described in paragraph (6).

(2) Transfer of certain property

(A) In general

Except as provided in this section, on the reorganization effective date or as soon as practicable thereafter, the Association shall use the Association’s best efforts to transfer to the Holding Company or any subsidiary of the Holding Company (or both), as directed by the Holding Company, all real and personal property of the Association (both tangible and intangible) other than the remaining property. Subject to the preceding sentence, such transferred property shall include all right, title, and interest in—

(i) direct or indirect subsidiaries of the Association (excluding special purpose funding companies in existence on September 30, 1996, and any interest in any government-sponsored enterprise);

(ii) contracts, leases, and other agreements of the Association;

(iii) licenses and other intellectual property of the Association; and

(iv) any other property of the Association.

(B) Construction

Nothing in this paragraph shall be construed to prohibit the Association from transferring remaining property from time to time to the Holding Company or any subsidiary of the Holding Company, subject to the provisions of paragraph (4).

(3) Transfer of personnel

On the reorganization effective date, employees of the Association shall become employees of the Holding Company (or any subsidiary of the Holding Company), and the Holding Company (or any subsidiary of the Holding Company) shall provide all necessary and appropriate management and operational support (including loan servicing) to the Association, as requested by the Association. The Association, however, may obtain such management and operational support from persons or entities not associated with the Holding Company.

(4) Dividends

The Association may pay dividends in the form of cash or noncash distributions so long as at the time of the declaration of such dividends, after giving effect to the payment of such dividends as of the date of such declaration by the Board of Directors of the Association, the Association’s capital would be in compliance with the capital standards and requirements set forth in section 1087–2(r) of this title. If, at any time after the reorganization effective date, the Association fails to comply with such capital standards, the Holding Company shall transfer with due diligence to the Association additional capital in such amounts as are necessary to ensure that the Association again complies with the capital standards.

(5) Certification prior to dividend

Prior to the payment of any dividend under paragraph (4), the Association shall certify to the Secretary of the Treasury that the payment of the dividend will be made in compliance with paragraph (4) and shall provide copies of all calculations needed to make such certification.

(6) Restrictions on new business activity or acquisition of assets by Association

(A) In general

After the reorganization effective date, the Association shall not engage in any new business activities or acquire any additional program assets described in section 1087–2(d) of this title other than in connection with—

(i) student loan purchases through September 30, 2007;

(ii) contractual commitments for future warehousing advances, or pursuant to letters of credit or standby bond purchase agreements, which are outstanding as of the reorganization effective date;

(iii) the Association serving as a lender-of-last-resort pursuant to section 1087–2(q) of this title; and

(iv) the Association’s purchase of loans insured under this part, if the Secretary, with the approval of the Secretary of the Treasury, enters into an agreement with the Association for the continuation or resumption of the Association’s secondary market purchase program because the Secretary determines there is inadequate liquidity for loans made under this part.

(B) Agreement

The Secretary is authorized to enter into an agreement described in clause (iv) of subparagraph (A) with the Association covering such secondary market activities. Any agreement entered into under such clause shall cover a period of 12 months, but may be renewed if the Secretary determines that liquidity remains inadequate. The fee provided under section 1087–2(h)(7) of this title shall not apply to loans acquired under any such agreement with the Secretary.
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(7) Issuance of debt obligations during the transition period; attributes of debt obligations

After the reorganization effective date, the Association shall not issue debt obligations which mature later than September 30, 2008, except in connection with serving as a lender-of-last-resort pursuant to section 1087–2(q) of this title or with purchasing loans under an agreement with the Secretary as described in paragraph (6). Nothing in this section shall modify the attributes accorded the debt obligations of the Association by section 1087–2 of this title, regardless of whether such debt obligations are incurred prior to, or at any time following, the reorganization effective date or are transferred to a trust in accordance with subsection (d) of this section.

(8) Monitoring of safety and soundness

(A) Obligation to obtain, maintain, and report information

The Association shall obtain such information and make and keep such records as the Secretary of the Treasury may from time to time prescribe concerning—

(i) the financial risk to the Association resulting from the activities of any associated person, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including the Association’s capital ratio, the Association’s liquidity, or the Association’s ability to conduct and finance the Association’s operations; and

(ii) the Association’s policies, procedures, and systems for monitoring and controlling any such financial risk.

(B) Summary reports

The Secretary of the Treasury may require summary reports of the information described in subparagraph (A) to be filed no more frequently than quarterly. If, as a result of adverse market conditions or based on reports provided pursuant to this subparagraph or other available information, the Secretary of the Treasury has concerns regarding the financial or operational condition of the Association, the Secretary of the Treasury may, notwithstanding the preceding sentence and subparagraph (A), require the Association to make reports concerning the activities of any associated person whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Association.

(C) Separate operation of corporations

(i) In general

The funds and assets of the Association shall at all times be maintained separately from the funds and assets of the Holding Company or any subsidiary of the Holding Company and may be used by the Association solely to carry out the Association’s purposes and to fulfill the Association’s obligations.

(ii) Books and records

The Association shall maintain books and records that clearly reflect the assets and liabilities of the Association, separate from the assets and liabilities of the Holding Company or any subsidiary of the Holding Company.

(iii) Corporate office

The Association shall maintain a corporate office that is physically separate from any office of the Holding Company or any subsidiary of the Holding Company.

(iv) Director

No director of the Association who is appointed by the President pursuant to section 1087–2(c)(1)(A) of this title may serve as a director of the Holding Company.

(v) One officer requirement

At least one officer of the Association shall be an officer solely of the Association.

(vi) Transactions

Transactions between the Association and the Holding Company or any subsidiary of the Holding Company, including any loan servicing arrangements, shall be on terms no less favorable to the Association than the Association could obtain from an unrelated third party offering comparable services.

(vii) Credit prohibition

The Association shall not extend credit to the Holding Company or any subsidiary of the Holding Company nor guarantee or provide any credit enhancement to any debt obligations of the Holding Company or any subsidiary of the Holding Company.

(viii) Amounts collected

Any amounts collected on behalf of the Association by the Holding Company or any subsidiary of the Holding Company with respect to the assets of the Association, pursuant to a servicing contract or other arrangement between the Association and the Holding Company or any subsidiary of the Holding Company, shall be collected solely for the benefit of the Association and shall be immediately deposited by the Holding Company or such subsidiary to an account under the sole control of the Association.

(D) Encumbrance of assets

Notwithstanding any Federal or State law, rule, or regulation, or legal or equitable principle, doctrine, or theory to the contrary, under no circumstances shall the assets of the Association be available or used to pay claims or debts of or incurred by the Holding Company. Nothing in this subparagraph shall be construed to limit the right of the Association to pay dividends not otherwise prohibited under this subparagraph or to limit any liability of the Holding Company explicitly provided for in this section.

(E) Holding Company activities

After the reorganization effective date and prior to the dissolution date, all business activities of the Holding Company shall be conducted through subsidiaries of the Holding Company.
(F) Confidentiality
Any information provided by the Association pursuant to this section shall be subject to the same confidentiality obligations contained in section 1087-2(r)(12) of this title.

(G) Definition
For purposes of this paragraph, the term “associated person” means any person, other than a natural person, who is directly or indirectly controlling, controlled by, or under common control with, the Association.

(9) Issuance of stock warrants

(A) In general
On the reorganization effective date, the Holding Company shall issue to the District of Columbia Financial Responsibility and Management Assistance Authority a number of stock warrants that is equal to one percent of the outstanding shares of the Association, determined as of the last day of the fiscal quarter preceding September 30, 1996, with each stock warrant entitling the holder of the stock warrant to purchase from the Holding Company one share of the registered common stock of the Holding Company or the Holding Company’s successors or assigns, at any time on or before September 30, 2008. The exercise price for such warrants shall be an amount equal to the average closing price of the common stock of the Association for the 20 business days prior to September 30, 1996, on the exchange or market which is then the primary exchange or market for the common stock of the Association. The number of shares of Holding Company common stock subject to each stock warrant and the exercise price of each stock warrant shall be adjusted as necessary to reflect—

(i) the conversion of Association common stock into Holding Company common stock as part of the plan of reorganization approved by the Association’s shareholders; and

(ii) any issuance or sale of stock (including issuance or sale of treasury stock), stock split, recapitalization, reorganization, or other corporate event, if agreed to by the Secretary of the Treasury and the Association.

(B) Authority to sell or exercise stock warrants; deposit of proceeds
The District of Columbia Financial Responsibility and Management Assistance Authority is authorized to sell or exercise the stock warrants described in subparagraph (A). The District of Columbia Financial Responsibility and Management Assistance Authority shall deposit into the account established under section 1155(e)1 of this title amounts collected from the sale and proceeds resulting from the exercise of the stock warrants pursuant to this subparagraph.

(10) Restrictions on transfer of Association shares and bankruptcy of Association
After the reorganization effective date, the Holding Company shall not sell, pledge, or otherwise transfer the outstanding shares of the Association, or agree to or cause the liquidation of the Association or cause the Association to file a petition for bankruptcy under title 11, without prior approval of the Secretary of the Treasury and the Secretary of Education.

(d) Termination of Association
In the event the shareholders of the Association approve a plan of reorganization under subsection (b) of this section, the Association shall dissolve, and the Association’s separate existence shall terminate on September 30, 2008, after discharge of all outstanding debt obligations and liquidation pursuant to this subsection. The Association may dissolve pursuant to this subsection prior to such date by notifying the Secretary of Education and the Secretary of the Treasury of the Association’s intention to dissolve, unless within 60 days after receipt of such notice the Secretary of Education notifies the Association that the Association continues to be needed to serve as a lender of last resort pursuant to section 1087-2(q) of this title or continues to be needed to purchase loans under an agreement with the Secretary described in subsection (c)(6) of this section. On the dissolution date, the Association shall take the following actions:

(1) Establishment of a trust
The Association shall, under the terms of an irrevocable trust agreement that is in form and substance satisfactory to the Secretary of the Treasury, the Association and the appointed trustee, irrevocably transfer all remaining obligations of the Association to the trust and irrevocably deposit or cause to be deposited into such trust, to be held as trust funds solely for the benefit of holders of the remaining obligations, money or direct non-callable obligations of the United States or any agency thereof for which payment the full faith and credit of the United States is pledged, maturing as to principal and interest in such amounts and at such times as are determined by the Secretary of the Treasury to be sufficient, without consideration of any significant reinvestment of such interest, to pay the principal of, and interest on, the remaining obligations in accordance with their terms. To the extent the Association cannot provide money or qualifying obligations in the amount required, the Holding Company shall be required to transfer money or qualifying obligations to the trust in the amount necessary to prevent any deficiency.

(2) Use of trust assets
All money, obligations, or financial assets deposited into the trust pursuant to this subsection shall be applied by the trustee to the payment of the remaining obligations assumed by the trust.

(3) Obligations not transferred to the trust
The Association shall make proper provision for all other obligations of the Association not

1 See References in Text note below.
transferred to the trust, including the repurchase or redemption, or the making of proper provision for the repurchase or redemption, of any preferred stock of the Association outstanding. Any obligations of the Association which cannot be fully satisfied shall become liabilities of the Holding Company as of the date of dissolution.

(4) Transfer of remaining assets

After compliance with paragraphs (1) and (3), any remaining assets of the trust shall be transferred to the Holding Company or any subsidiary of the Holding Company, as directed by the Holding Company.

(e) Operation of Holding Company

In the event the shareholders of the Association approve the plan of reorganization under subsection (b) of this section, the following provisions shall apply beginning on the reorganization effective date:

(1) Holding Company Board of Directors

The number of members and composition of the Board of Directors of the Holding Company shall be determined as set forth in the Holding Company’s charter or like instrument (as amended from time to time) or bylaws (as amended from time to time) and as permitted under the laws of the jurisdiction of the Holding Company’s incorporation.

(2) Holding Company name

The names of the Holding Company and any subsidiary of the Holding Company (other than the Association)—

(A) may not contain the name “Student Loan Marketing Association”; and

(B) may contain, to the extent permitted by applicable State or District of Columbia law, “Sallie Mae” or variations thereof, or such other names as the Board of Directors of the Association or the Holding Company deems appropriate.

(3) Use of Sallie Mae name

Subject to paragraph (2), the Association may assign to the Holding Company, or any subsidiary of the Holding Company, the “Sallie Mae” name as a trademark or service mark, except that neither the Holding Company nor any subsidiary of the Holding Company (other than the Association or any subsidiary of the Association) may use the “Sallie Mae” name on, or to identify the issuer of, any debt obligation or other security offered or sold by the Holding Company or any subsidiary of the Holding Company (other than a debt obligation or other security issued to and held by the Holding Company or any subsidiary of the Holding Company). The Association shall remit to the account established under section 1155(e) of this title, $5,000,000, within 60 days of the reorganization effective date as compensation for the right to assign the “Sallie Mae” name as a trademark or service mark.

(4) Disclosure required

Until 3 years after the dissolution date, the Holding Company, and any subsidiary of the Holding Company (other than the Association), shall prominently display—

(A) in any document offering the Holding Company’s securities, a statement that the obligations of the Holding Company and any subsidiary of the Holding Company are not guaranteed by the full faith and credit of the United States; and

(B) in any advertisement or promotional materials which use the “Sallie Mae” name or mark, a statement that neither the Holding Company nor any subsidiary of the Holding Company is a government-sponsored enterprise or instrumentality of the United States.

(f) Strict construction

Except as specifically set forth in this section, nothing in this section shall be construed to limit the authority of the Association as a federally chartered corporation, or of the Holding Company as a State or District of Columbia chartered corporation.

(g) Right to enforce

The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of this section, or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with this section.

(h) Deadline for reorganization effective date

This section shall be of no further force and effect in the event that the reorganization effective date does not occur on or before 18 months after September 30, 1996.

(i) Definitions

For purposes of this section:

(1) Association

The term “Association” means the Student Loan Marketing Association.

(2) Dissolution date

The term “dissolution date” means September 30, 2008, or such earlier date as the Secretary of Education permits the transfer of remaining obligations in accordance with subsection (d) of this section.

(3) Holding Company

The term “Holding Company” means the new business corporation established pursuant to this section by the Association under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring described in subsection (a) of this section.

(4) Remaining obligations

The term “remaining obligations” means the debt obligations of the Association outstanding as of the dissolution date.

(5) Remaining property

The term “remaining property” means the following assets and liabilities of the Association which are outstanding as of the reorganization effective date:

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2See References in Text note below.
(A) Debt obligations issued by the Association.
(B) Contracts relating to interest rate, currency, or commodity positions or protections.
(C) Investment securities owned by the Association.

(D) Any instruments, assets, or agreements described in section 1087–2(d) of this title (including, without limitation, all student loans and agreements relating to the purchase and sale of student loans, forward purchase and lending commitments, warehousing advances, academic facilities obligations, letters of credit, standby bond purchase agreements, liquidity agreements, and student loan revenue bonds or other loans).

(E) Except as specifically prohibited by this section or section 1087–2 of this title, any other nonmaterial assets or liabilities of the Association which the Association’s Board of Directors determines to be necessary or appropriate to the Association’s operations.

(6) Reorganization

The term “reorganization” means the restructuring event or events (including any merger event) giving effect to the Holding Company structure described in subsection (a) of this section.

(7) Reorganization effective date

The term “reorganization effective date” means the effective date of the reorganization as determined by the Board of Directors of the Association, which shall not be earlier than the date that shareholder approval is obtained pursuant to subsection (b) of this section and shall not be later than the date that is 18 months after September 30, 1996.

(8) Subsidiary

The term “subsidiary” means one or more direct or indirect subsidiaries.


REPEAL OF SECTION

Pub. L. 104–208, div. A, title I, §101(e) [title VI, §602(d)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–289, provided that this section is repealed effective one year after date on which all obligations of trust established under subsec. (d)(1) of this section have been extinguished, if reorganization occurs in accordance with this section, or date on which all obligations of trust established under section 1087–2(s)(3)(A) of this title have been extinguished, if reorganization does not occur in accordance with this section.

REFERENCES IN TEXT

Section 1155(e) of this title, referred to in subsecs. (c)(9)(B) and (e)(3), was in the original a reference to section 3(e) of the Student Loan Marketing Association Reorganization Act of 1996, and was translated as reading section 603(e) of that Act which is Pub. L. 104–208, div. A, title I, §101(e) [title VI, §603(e)], Sept. 30, 1996, 110 Stat. 3009–235, 3009–263, to reflect the probable intent of Congress, because that Act does not contain a section 3(e), but does contain a section 603(e) which establishes the account referred to in text.

PRIOR PROVISIONS


§ 1087–4. Discrimination in secondary markets prohibited

The Student Loan Marketing Association (and, if the Association is privatized under section 1087–3 of this title, any successor entity functioning as a secondary market for loans under this part, including the Holding Company described in such section) shall not engage directly or indirectly in any pattern or practice that results in a denial of a borrower’s access to loans under this part because of the borrower’s race, sex, color, religion, national origin, age, disability status, income, attendance at a particular eligible institution, length of the borrower’s educational program, or the borrower’s academic year at an eligible institution.


PRIOR PROVISIONS


PART C—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

CODIFICATION

This part was, in the original, part D of title IV of Pub. L. 89–329, the Higher Education Act of 1965. The letter designation was changed from “D” to “C” for codification purposes. Part C of title IV of Pub. L. 89–329, consisting of sections 441 to 447, as added by Pub. L. 96–498, title IV, §483(a), Oct. 17, 1980, 100 Stat. 1429, is set out as section 2751 et seq. of Title 42, The Public Health and Welfare, because sections 441 to 446 of Pub. L. 89–329 had originally been enacted as part C of title I of the Economic Opportunity Act of 1964, consisting of sections 121 to 126 of Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 513, prior to the transfer of such sections into Pub. L. 89–329, and had already been classified to section 2751 et seq. of Title 42 at the time of the transfer.

§ 1087a. Program authority

(a) In general

There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary (1) to make loans to all eligible students (and the eligible parents of such students) in attendance at participating institutions of higher education selected by the Secretary, to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994; and (2) for pur-
chasing loans under section 1087i–1 of this title. Loans made under this part shall be made by participating institutions, or consortia thereof, that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).

(b) Designation

(1) Program

The program established under this part shall be referred to as the “William D. Ford Federal Direct Loan Program”.

(2) Direct loans

Notwithstanding any other provision of this part, loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under section 1078 of this title, shall be known as “Federal Direct Stafford/Ford Loans”.

Sec. 1087b. Funds for origination of direct student loans

(a) In general

The Secretary shall provide, on the basis of the need and the eligibility of students at each participating institution, and parents of such students, for such loans, funds for student and parent loans under this part—

(1) directly to an institution of higher education that has an agreement with the Secretary under section 1087d(a) of this title to participate in the direct student loan programs under this part and that also has an agreement with the Secretary under section 1087d(b) of this title to originate loans under this part; or

(2) through an alternative originator designated by the Secretary to students (and parents of students) attending institutions of higher education that have an agreement with the Secretary under section 1087d(a) of this title but that do not have an agreement with the Secretary under section 1087d(b) of this title.

(b) No entitlement to participate or originate

No institution of higher education shall have a right to participate in the programs authorized by this part, to originate loans, or to perform any program function under this part.

(c) Delivery of loan funds

Loan funds shall be paid and delivered to an institution by the Secretary prior to the beginning of the payment period established by the Secretary in a manner that is consistent with payment and delivery of Federal Pell Grants under subpart 1 of part A of this subchapter.

(d) Institutions outside the United States

Loan funds for students (and parents of students) attending institutions outside the United States shall be disbursed through a financial institution located or operating in the United States and designated by the Secretary to serve as the agent of such institutions with respect to the receipt of the disbursements of such loan funds and the transfer of such funds to such in-
institutions. To be eligible to receive funds under this part, an institution outside the United States shall make arrangements with the agent designated by the Secretary under this subsection to receive funds under this part.


PRIOR PROVISIONS

AMENDMENTS
1999—Subsec. (c). Pub. L. 105–244 substituted Federal Grants” for “basic grants”.
1997—Subsecs. (b) to (d). Pub. L. 105–33 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which required the Secretary to pay fees to institutions of higher education and alternative loan originators to assist in meeting the cost of loan origination.
1995—Pub. L. 104–64 substituted “subchapter D” for “subchapter C of part 1 of subchapter I of chapter 34 of title 42, or part 1 or 3 of part A of this subchapter, part C of subchapter I of chapter 34 of title 42, or part D of this subchapter; (B) is not overdue on program or financial reports or audits required under this subchapter; (C) is not subject to an emergency action, or a limitation, suspension, or termination under section 1078(b)(1)(T), 1083(h), or 1094(c) of this title; (D) in the opinion of the Secretary, has not had severe performance deficiencies for any of the programs under this subchapter, including such deficiencies demonstrated by audits or program reviews submitted or conducted during the 5 calendar years immediately preceding the date of application; (E) provides an assurance that such institution has no delinquent outstanding debts to the Federal Government, unless such debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government, or the Secretary in the Secretary’s discretion determines that the existence or amount of such debts has not been finally determined by the cognizant Federal agency; and (F) meets such other criteria as the Secretary may establish to protect the financial interest of the United States and to promote the purposes of this part.

(d) Eligible institutions
The Secretary may not select an institution of higher education for participation under this part; and

(c) Selection criteria for origination
(1) In general
The Secretary may enter into a supplemental agreement with an institution (or a consortium of such institutions) that—
(A) has an agreement under subsection 1087d(a) of this title;
(B) desires to originate loans under this part; and
(C) meets the criteria described in paragraph (2).

(2) Selection criteria
The Secretary may approve an institution to originate loans only if such institution—
(A) is not on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A of this subchapter, part C of subchapter I of chapter 34 of title 42, or part D of this subchapter;
(B) is not overdue on program or financial reports or audits required under this subchapter;
(C) is not subject to an emergency action, or a limitation, suspension, or termination under section 1078(b)(1)(T), 1083(h), or 1094(c) of this title;
section unless such institution is an eligible institution under section 1085(a) of this title.

e) Consortia

Subject to such requirements as the Secretary may prescribe, eligible institutions of higher education (as determined under subsection (d) of this section) with agreements under section 1087d(a) of this title may apply to the Secretary as consortia to originate loans under this part for students in attendance at such institutions. Each such institution shall be required to meet the requirements of subsection (c) of this section with respect to loan origination.


CODIFICATION

Amendment by section 2 of Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed with part E of this subchapter in academic year 1993–1994 and did not exceed the applicable maximum default rate under section 1087b(g) of this title for the most recent fiscal year for which data are available;”

Subsec. (c)(2)(B) to (D), Pub. L. 105–244, § 451(c)(1)(E), redesignated subpars. (C), (D), and (F) as (B) to (D), respectively. Former subpar. (B) redesignated (A).

Subsec. (c)(2)(E), Pub. L. 105–244, § 451(c)(1)(E), redesignated subpar. (G) as (E).

Pub. L. 105–244, § 451(c)(1)(D), struck out subpar. (E) which read as follows: “in the opinion of the Secretary, has not had significant deficiencies identified by a State postsecondary review entity under subpart 1 of part G of this subchapter;”.

Subsec. (c)(2)(F) to (H), Pub. L. 105–244, § 461(c)(1)(E), redesignated subpars. (G) and (H) as (E) and (F), respectively. Former subpar. (F) redesignated (D).

Subsec. (c)(3), Pub. L. 105–244, § 451(c)(2), struck out “after transition” after “approval” in heading and subcitated “The Secretary” for “For academic year 1995–1996 and subsequent academic years, the Secretary” in text.

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to selection of institutions for participation and origination for former provisions relating to selection by Secretary.

Subsec. (b)(2)(B), Pub. L. 103–208 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “if the Secretary determines it necessary to carry out the purposes of this part, selecting additional institutions.” See Codification note above.

1992—Pub. L. 102–325 amended section generally, substituting provisions relating to selection by the Secretary for former provisions relating to agreements with institutions of higher education.

Effective Date of 2009 Amendment


Effective Date of 1998 Amendment


Effective Date of 1993 Amendment

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Effective Date of 1992 Amendment


§ 1087d. Agreements with institutions

(a) Participation agreements

An agreement with any institution of higher education for participation in the direct student loan program under this part shall—

(1) provide for the establishment and maintenance of a direct student loan program at the institution under which the institution will—

(A) identify eligible students who seek student financial assistance at such institution in accordance with section 1085(a) of this title;

(B) estimate the need of each such student as required by part E of this subchapter for an academic year, except that, any loan obtained by a student under this part with the
same terms as loans made under section 1078-8 of this title (except as otherwise provided in this part), or a loan obtained by a parent under this part with the same terms as loans made under section 1078-2 of this title (except as otherwise provided in this part), or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

(C) provide a statement that certifies the eligibility of any student to receive a loan under this part that is not in excess of the annual or aggregate limit applicable to such loan, except that the institution may, in exceptional circumstances identified by the Secretary, refuse to certify a statement that permits a student to receive a loan under this part, or certify a loan amount that is less than the student’s determination of need (as determined under part E of this subchapter), if the reason for such action is documented and provided in written form to such student;

(D) set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 1078-7 of this title; and

(E) provide timely and accurate information—

(i) concerning the status of student borrowers (and students on whose behalf parents borrow under this part) while such students are in attendance at the institution and concerning any new information of which the institution becomes aware for such students (or their parents) after such borrowers leave the institution, to the Secretary for the servicing and collecting of loans made under this part; and

(ii) if the institution does not have an agreement with the Secretary under subsection (b) of this section, concerning student eligibility and need, as determined under subparagraphs (A) and (B), to the Secretary as needed for the alternative origination of loans to eligible students and parents in accordance with this part; and

(2) provide assurances that the institution will comply with requirements established by the Secretary relating to student loan information with respect to loans made under this part;

(3) provide that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(4) provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives;

(5) provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan; and

(6) include such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.

(b) Origination

An agreement with any institution of higher education, or consortia thereof, for the origination of loans under this part shall—

(1) supplement the agreement entered into in accordance with subsection (a) of this section;

(2) include provisions established by the Secretary that are similar to the participation agreement provisions described in paragraphs (1)(E)(ii), (2), (3), (4), (5), and (6) of subsection (a) of this section, as modified to relate to the origination of loans by the institution or consortium;

(3) provide that the institution or consortium will originate loans to eligible students and parents in accordance with this part; and

(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary.

(c) Withdrawal and termination procedures

The Secretary shall establish procedures by which institutions or consortia may withdraw or be terminated from the program under this part.

AMENDMENTS

2010—Subsec. (a)(4) to (7). Pub. L. 111–152, § 2210(a)(1), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4), which read as follows: ‘‘provide that students at the institution and their parents (with respect to such students) will be eligible to participate in the programs under part B of this subchapter at the discretion of the Secretary for the period during which such institution participates in the direct student loan program under this part, except that a student or parent may not receive loans under both this part and part B of this subchapter for the same period of enrollment.’’.

Subsec. (b)(2). Pub. L. 111–152, § 2210(a)(2), substituted ‘‘(3), and (6)’’ for ‘‘(5), (6), and (7)’’.

1993—Pub. L. 103–66 amends section generally, substituting provisions relating to agreements with institutions, consisting of subsecs. (a) to (c), for former provisions relating to requirements of agreements, consisting of pars. (1) to (7).

1992—Pub. L. 102–325 amends section generally, substituting provisions relating to requirements of agreements with respect to loans under pilot program.

1987—Subsec. (a)(4). Pub. L. 100–50 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ‘‘The interest rate on all such loans shall be the rate equal to the rate obtained for each calendar year (A) by computing the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period preceding such year, and (B) by adding 5 percent to the resulting percent.’’

Effective Date of 2010 Amendment

Pub. L. 111–152, title II, § 2210(b), Mar. 30, 2010, 124 Stat. 1078, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010.’’
§ 1087e. Terms and conditions of loans

(a) In general

(1) Parallel terms, conditions, benefits, and amounts

Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers, and first disbursed on June 30, 2010, under sections 1078, 1078–2, 1078–3, and 1078–8 of this title.

(2) Designation of loans

Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under—

(A) section 1078 of this title shall be known as “Federal Direct Stafford Loans”;

(B) section 1078–2 of this title shall be known as “Federal Direct PLUS Loans”;

(C) section 1078–3 of this title shall be known as “Federal Direct Consolidation Loans”; and

(D) section 1078–8 of this title shall be known as “Federal Direct Unsubsidized Stafford Loans”.

(3) Termination of authority to make interest subsidized loans to graduate and professional students

(A) In general

Subject to subparagraph (B) and notwithstanding any provision of this part or part B, for any period of instruction beginning on or after July 1, 2012—

(i) a graduate or professional student shall not be eligible to receive a Federal Direct Stafford loan under this part; and

(ii) the maximum annual amount of Federal Direct Unsubsidized Stafford loans such a student may borrow in any academic year (as defined in section 1088(a)(2) of this title) or its equivalent shall be the maximum annual amount for such student determined under section 1078–8 of this title, plus an amount equal to the amount of Federal Direct Stafford loans the student would have received in the absence of this subparagraph.

(B) Exception

Subparagraph (A) shall not apply to an individual enrolled in course work specified in paragraph (3)(B) or (4)(B) of section 1091(b) of this title.

(b) Interest rate

(1) Rates for FDSL and FDUSL

For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(B) 3.1 percent,

except that such rate shall not exceed 8.25 percent.

(2) In school and grace period rules

(A) Notwithstanding the provisions of paragraph (1), but subject to paragraph (3), with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues—

(i) prior to the beginning of the repayment period of the loan; or

(ii) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 1078(b)(1)(M) or 1077(a)(2)(C) of this title, shall not exceed the rate determined under subparagraph (B).

(B) For the purpose of subparagraph (A), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

(ii) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

(3) Out-year rule

Notwithstanding paragraphs (1) and (2), for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

(4) Rates for FDPLUS

(A)(i) For Federal Direct PLUS Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on or before June 30, 2001, be determined on the preceding June 1 and be equal to—

(I) the bond equivalent rate of 52-week Treasury bills auctioned at final auction held prior to such June 1; plus
(II) 3.1 percent, except that such rate shall not exceed 9 percent.

(ii) For any 12-month period beginning on July 1 of 2001 or any succeeding year, the applicable rate of interest determined under this subparagraph shall be determined on the preceding June 26 and be equal to—

(i) the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus

(II) 3.1 percent, except that such rate shall not exceed 9 percent.

(B) For Federal Direct PLUS loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

(ii) 2.1 percent, except that such rate shall not exceed 8.25 percent.

(5) Temporary interest rate provision

(A) Rates for FDSL and FDUSL

Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 2.3 percent, except that such rate shall not exceed 8.25 percent.

(B) In school and grace period rules

Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest determined under this subsection, any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(C) PLUS loans

Notwithstanding the preceding paragraphs of this subsection, with respect to Federal Direct PLUS Loan for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, the applicable rate of interest shall be determined under subparagraph (A)—

(i) by substituting “3.1 percent” for “2.3 percent”; and

(ii) by substituting “9.0 percent” for “8.25 percent”.

(6) Interest rate provision for new loans on or after October 1, 1998, and before July 1, 2006

(A) Rates for FDSL and FDUSL

Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 2.3 percent, except that such rate shall not exceed 8.25 percent.

(B) In school and grace period rules

Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after October 1, 1998, and before July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(C) PLUS loans

Notwithstanding the preceding paragraphs of this subsection, with respect to Federal Direct Consolidation loan for which the application is received on or after February 1, 1999, and before July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—
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(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or
(ii) 8.25 percent.

(E) Temporary rules for consolidation loans

Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after October 1, 1998, and before February 1, 1999, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus
(ii) 2.3 percent.

except that such rate shall not exceed 8.25 percent.

(7) Interest rate provision for new loans on or after July 1, 2006

(A) Rates for FDSL and FDUSL

Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

(B) PLUS loans

Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct PLUS loan for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 7.9 percent on the unpaid principal balance of the loan.

(C) Consolidation loans

Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or
(ii) 8.25 percent.

(D) Reduced rates for undergraduate FDSL

Notwithstanding the preceding paragraphs of this subsection and subparagraph (A) of this paragraph, for Federal Direct Stafford Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2006, and before July 1, 2009, 6.0 percent on the unpaid principal balance of the loan.

(iii) For a loan for which the first disbursement is made on or after July 1, 2006, and before July 1, 2010, 5.6 percent on the unpaid principal balance of the loan.

(iv) For a loan for which the first disbursement is made on or after July 1, 2010, and before July 1, 2011, 4.5 percent on the unpaid principal balance of the loan.

(v) For a loan for which the first disbursement is made on or after July 1, 2011, and before July 1, 2012, 3.4 percent on the unpaid principal balance of the loan.

(8) Repayment incentives

(A) Incentives for loans disbursed before July 1, 2012

Notwithstanding any other provision of this part with respect to loans for which the first disbursement of principal is made before July 1, 2012, the Secretary is authorized to prescribe by regulation such reductions in the interest rate or origination fee paid by a borrower of a loan made under this part as the Secretary determines appropriate to encourage on-time repayment of the loan. Such reductions may be offered only if the Secretary determines the reductions are cost neutral and in the best financial interest of the Federal Government. Any increase in subsidy costs resulting from such reductions shall be completely offset by corresponding savings in funds available for the William D. Ford Federal Direct Loan Program in that fiscal year from section 1087h of this title and other administrative accounts.

(B) Accountability

Prior to publishing regulations proposing repayment incentives with respect to loans for which the first disbursement of principal is made before July 1, 2012, the Secretary shall ensure the cost neutrality of such reductions. The Secretary shall not prescribe such regulations in final form unless an official report from the Director of the Office of Management and Budget to the Secretary and a comparable report from the Director of the Congressional Budget Office to the Congress each certify that any such reductions will be completely cost neutral. Such reports shall be transmitted to the authorizing committees not less than 60 days prior to the publication of regulations proposing such reductions.

(C) No repayment incentives for new loans disbursed on or after July 1, 2012

Notwithstanding any other provision of this part, the Secretary is prohibited from authorizing or providing any repayment incentive not otherwise authorized under this part to encourage on-time repayment of a loan under this part for which the first disbursement of principal is made on or after July 1, 2012, including any reduction in the interest or origination fee rate paid by a borrower of such a loan, except that the Sec-
(c) Loan fee

(1) In general

The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.

(2) Subsequent reduction

Paragraph (1) shall be applied to loans made under this part, other than Federal Direct Consolidation loans and Federal Direct PLUS loans made on or before February 8, 2006, and after July 1, 2007:

(A) by substituting “3.0 percent” for “4.0 percent” with respect to loans for which the first disbursement of principal is made on or after February 8, 2006, and before July 1, 2007;

(B) by substituting “2.5 percent” for “4.0 percent” with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

(C) by substituting “2.0 percent” for “4.0 percent” with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

(D) by substituting “1.5 percent” for “4.0 percent” with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

(E) by substituting “1.0 percent” for “4.0 percent” with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.

(d) Repayment plans

(1) Design and selection

Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower’s loans under this part. The borrower may choose—

(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 1078(b)(9)(A)(i) of this title;

(B) a graduated repayment plan, consistent with section 1078(b)(9)(A)(i) of this title;

(C) an extended repayment plan, consistent with section 1078(b)(9)(A)(iv) of this title, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 1078(b)(1)(L) of this title;

(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan made on behalf of a dependent student; and

(E) beginning on July 1, 2009, an income-based repayment plan that enables borrowers who have a partial financial hardship to make a lower monthly payment in accordance with section 1098e of this title, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS Loan made on behalf of a dependent student or a Federal Direct Consolidation Loan, if the proceeds of such loan were used to discharge the liability on such Federal Direct PLUS Loan or a loan under section 1078–2 of this title made on behalf of a dependent student.

(2) Selection by Secretary

If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1).

(3) Changes in selections

The borrower of a loan made under this part may change the borrower’s selection of a repayment plan under paragraph (1), or the Secretary’s selection of a plan for the borrower under paragraph (2), as the case may be, under such terms and conditions as may be established by the Secretary.

(4) Alternative repayment plans

The Secretary may provide, on a case by case basis, an alternative repayment plan to a borrower of a loan made under this part who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (1) are not adequate to accommodate the borrower’s exceptional circumstances. In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (1).

(5) Repayment after default

The Secretary may require any borrower who has defaulted on a loan made under this part to—

(A) pay all reasonable collection costs associated with such loan; and

(B) repay the loan pursuant to an income contingent repayment plan.

(e) Income contingent repayment

(1) Information and procedures

The Secretary may obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower’s spouse, if applicable) of a loan made under this part that is, or may be, repaid pursuant to income contingent repayment, for the purpose of determining the annual repayment obligation of the borrower. Returns and return information (as defined in section 6103 of title 26) may be
obtained under the preceding sentence only to the extent authorized by section 6103(l)(13) of title 26. The Secretary shall establish procedures for determining the borrower’s repayment obligation on that loan for such year, and such other procedures as are necessary to implement effectively income contingent repayment.

(2) Repayment based on adjusted gross income

A repayment schedule for a loan made under this part and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of title 26) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower’s spouse, on the adjusted gross income of the borrower and the borrower’s spouse.

(3) Additional documents

A borrower who chooses, or is required, to repay a loan made under this part pursuant to income contingent repayment, and for whom adjusted gross income is unavailable or does not reasonably reflect the borrower’s current income, shall provide to the Secretary other documentation of income satisfactory to the Secretary, which documentation the Secretary may use to determine an appropriate repayment schedule.

(4) Repayment schedules

Income contingent repayment schedules shall be established by regulations promulgated by the Secretary and shall require payments that vary in relation to the appropriate portion of the annual income of the borrower (and the borrower’s spouse, if applicable) as determined by the Secretary.

(5) Calculation of balance due

The balance due on a loan made under this part that is repaid pursuant to income contingent repayment shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may promulgate regulations limiting the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

(6) Notification to borrowers

The Secretary shall establish procedures under which a borrower of a loan made under this part who chooses or is required to repay such loan pursuant to income contingent repayment is notified of the terms and conditions of such plan, including notification of such borrower—

(A) that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under section 6103(l)(13) of title 26; and

(B) that if a borrower considers that special circumstances, such as a loss of employment by the borrower or the borrower’s spouse, warrant an adjustment in the borrower’s loan repayment as determined using the information described in subparagraph (A), or the alternative documentation described in paragraph (3), the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.

(7) Maximum repayment period

In calculating the extended period of time for which an income contingent repayment plan under this subsection may be in effect for a borrower, the Secretary shall include all time periods during which a borrower of loans under part B, part C, or part D—

(A) is not in default on any loan that is included in the income contingent repayment plan; and

(B) is in deferment due to an economic hardship described in section 1085(e) of this title;

(ii) makes monthly payments under paragraph (1) or (6) of section 1086e(b) of this title;

(iii) makes monthly payments of not less than the monthly amount calculated under section 1078(b)(9)(A)(i) of this title or subsection (d)(1)(A), based on a 10-year repayment period, when the borrower first made the election described in section 1086e(b)(1) of this title;

(iv) makes payments of not less than the payments required under a standard repayment plan under section 1078(b)(9)(A)(i) of this title or subsection (d)(1)(A) with a repayment period of 10 years; or

(v) makes payments under an income contingent repayment plan under subsection (d)(1)(D).

(f) Deferment

(1) Effect on principal and interest

A borrower of a loan made under this part who meets the requirements described in paragraph (2) shall be eligible for a deferment, during which periodic installments of principal need not be paid, and interest—

(A) shall not accrue, in the case of a—

(i) Federal Direct Stafford Loan; or

(ii) a Federal Direct Consolidation Loan that consolidated only Federal Direct Stafford Loans, or a combination of such loans and Federal Stafford Loans for which the student borrower received an interest subsidy under section 1078 of this title; or

(B) shall accrue and be capitalized or paid by the borrower, in the case of a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan not described in subparagraph (A)(ii).

(2) Eligibility

A borrower of a loan made under this part shall be eligible for a deferment during any period—

(A) during which the borrower—

(i) is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible institution (as such term is defined in section 1085(a) of this title) the borrower is attending; or

(ii) is pursuing a course of study pursuant to a graduate fellowship program ap-
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(i) Loan disbursement

(1) In general

Proceeds of loans to students under this part shall be applied to the student’s account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.

(2) Payment periods

The Secretary shall establish periods for the payments described in paragraph (1) in a manner consistent with payment of Federal Pell Grants under subpart 1 of part A of this subchapter.

(k) Fiscal control and fund accountability

(1) In general

(A) An institution shall maintain financial records in a manner consistent with records maintained for other programs under this subchapter.

(B) Except as otherwise required by regulations of the Secretary, an institution may maintain loan funds under this part in the same account as other Federal student financial assistance.

(2) Payments and refunds

Payments and refunds shall be reconciled in a manner consistent with the manner set forth for the submission of a payment summary report required of institutions participating in the program under subpart 1 of part A of this subchapter, except that nothing in this paragraph shall prevent such reconciliations on a monthly basis.

(3) Transaction histories

All transaction histories under this part shall be maintained using the same system designated by the Secretary for the provision of Federal Pell Grants under subpart 1 of part A of this subchapter.

(l) Armed Forces student loan interest payment program

(1) Authority

Using funds received by transfer to the Secretary under section 2174 of title 10 for the payment of interest on a loan made under this part to a member of the Armed Forces, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

(2) Forbearance

During the period in which the Secretary is making payments on a loan under paragraph (1), the Secretary shall grant the borrower forbearance, in the form of a temporary cessation...
of all payments on the loan other than the payments of interest on the loan that are made under that paragraph.

(m) Repayment plan for public service employees

(1) In general

The Secretary shall cancel the balance of interest and principal due, in accordance with paragraph (2), on any eligible Federal Direct Loan not in default for a borrower who—

(A) has made 120 monthly payments on the eligible Federal Direct Loan after October 1, 2007, pursuant to any one or a combination of the following—

(i) payments under an income-based repayment plan under section 1098e of this title;

(ii) payments under a standard repayment plan under subsection (d)(1)(A), based on a 10-year repayment period;

(iii) monthly payments under a repayment plan under subsection (d)(1) or (g) of not less than the monthly amount calculated under subsection (d)(1)(A), based on a 10-year repayment period; or

(iv) payments under an income contingent repayment plan under subsection (d)(1)(D); and

(B) has made 120 monthly payments on the eligible Federal Direct Loan after October 1, 2007, pursuant to any one or a combination of the following—

(i) payments under an income-based repayment plan under section 1098e of this title;

(ii) payments under a standard repayment plan under subsection (d)(1)(A), based on a 10-year repayment period;

(iii) monthly payments under a repayment plan under subsection (d)(1) or (g) of not less than the monthly amount calculated under subsection (d)(1)(A), based on a 10-year repayment period; or

(iv) payments under an income contingent repayment plan under subsection (d)(1)(D); and

(B)(i) is employed in a public service job at the time of such forgiveness; and

(ii) has been employed in a public service job during the period in which the borrower makes each of the 120 payments described in subparagraph (A).

(2) Loan cancellation amount

After the conclusion of the employment period described in paragraph (1), the Secretary shall cancel the obligation to repay the balance of principal and interest due as of the time of such cancellation, on the eligible Federal Direct Loans made to the borrower under this part.

(3) Definitions

In this subsection:

(A) Eligible Federal Direct Loan

The term ‘‘eligible Federal Direct Loan’’ means a Federal Direct Stafford Loan, Federal Direct PLUS Loan, or Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan.

(B) Public service job

The term ‘‘public service job’’ means—

(i) a full-time job in emergency management, government (excluding time served as a member of Congress), military service, public safety, law enforcement, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy on behalf of low-income communities at a non-profit organization), early childhood education (including licensed or regulated childcare, Head Start, and State funded prekindergarten), public service for individuals with disabilities, public service for the elderly, public library sciences, school-based library sciences and other school-based services, or at an organization that is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title; or

(ii) teaching as a full-time faculty member at a Tribal College or University as defined in section 1059c(b) of this title and other faculty teaching in high-needs subject areas or areas of shortage (including nurse faculty, foreign language faculty, and part-time faculty at community colleges), as determined by the Secretary.

(4) Ineligibility for double benefits

No borrower may, for the same service, receive a reduction of loan obligations under both this subsection and section 1078–10, 1078–11, 1078–12, or 1087 of this title.

(n) Identity fraud protection

The Secretary shall take such steps as may be necessary to ensure that monthly Federal Direct Loan statements and other publications of the Department do not contain more than four digits of the Social Security number of any individual.

(o) No accrual of interest for active duty service members

(1) In general

Notwithstanding any other provision of this part and in accordance with paragraphs (2) and (4), interest shall not accrue for an eligible military borrower on a loan made under this part for which the first disbursement is made on or after October 1, 2008.

(2) Consolidation loans

In the case of any consolidation loan made under this part that is disbursed on or after October 1, 2008, interest shall not accrue pursuant to this subsection only on such portion of such loan as was used to repay a loan made under this part for which the first disbursement is made on or after October 1, 2008.

(3) Eligible military borrower

In this subsection, the term ‘‘eligible military borrower’’ means an individual who—

(A)(i) is serving on active duty during a war or other military operation or national emergency; or

(ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; and

(B) is serving in an area of hostilities in which service qualifies for special pay under section 310 of title 37.

(4) Limitation

An individual who qualifies as an eligible military borrower under this subsection may receive the benefit of this subsection for not more than 60 months.

(p) Disclosures

Each institution of higher education with which the Secretary has an agreement under
section 1087c of this title, and each contractor with which the Secretary has a contract under section 1087f of this title, shall, with respect to loans under this part and in accordance with such regulations as the Secretary shall prescribe, comply with each of the requirements under section 1083 of this title that apply to a lender with respect to a loan under part B.


REFERENCES IN TEXT


AMENDMENTS


Subsec. (g). Pub. L. 111–152, § 2211(a)(2), inserted “, including any loan made under part B and first disbursed before July 1, 2010,” after “section 1078–3a(a)(4) of this title” and struck out at the end “The Secretary, upon application for such a loan, shall comply with the requirements applicable to a lender under section 1078–3b(b)(1)(G) of this title.”


Subsec. (h). Pub. L. 110–315, § 404(b)(2), struck out “; or”, in a notice under section 1087e(a)(1) of this title, “the regulations of the Secretary”.

Subsec. (k)(1)(B). Pub. L. 111–39, § 404(b)(2)(C), struck out “; or”, in a notice under section 1087e(a)(1) of this title, “the regulations of the Secretary”.

To be eligible for a consolidation loan under this part, a borrower shall meet the eligibility criteria set forth in section 1078–3a(3) of this title. The Secretary, upon
application for such a loan, shall comply with the requirements applicable to a lender under section 1078-3(b)(1)(F) of this title," for "Loans made under this subsection shall be known as 'Federal Direct Consolidation Loans'."

2002—Subsec. (b)(6) to (9). Pub. L. 107–139, in par. (6) relating to interest rate provision for new loans substituted "2002" for "2003" in heading and "July 1, 2006," for "July 1, 2004," wherever appearing in text, added par. (7), redesignated former par. (7) as (8), and redesignated par. (6) relating to publication of rate in Federal Register as (9).


2000—Subsec. (b)(4)(A). Pub. L. 106–554 amended subparagraph (A) generally. Prior to amendment, subparagraph (A) read as follows: "For Federal Direct PLUS Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(i) the bond equivalent rate of 52-week Treasury bills auctioned at final auction held prior to such June 1; plus

"(ii) 3.1 percent, except that such rate shall not exceed 9 percent.""

1998—Subsec. (b)(5). Pub. L. 105–178, § 8301(c)(2), which directed amendment of section 455(b)(2) (20 U.S.C. 1087e(b)) by adding par. (5), was executed to this section, which is section 455(b) of Pub. L. 89–329, to reflect the probable intent of Congress. Former par. (5) redesignated (6).


Pub. L. 105–178, § 8301(c)(1), which directed amendment of section 455(b)(2) (20 U.S.C. 1087e(b)) by redesignating par. (5) as (6), was executed to this section, which is section 455(b) of Pub. L. 89–329, to reflect the probable intent of Congress.


Subsec. (g). Pub. L. 105–244, § 452(c), struck out "only under such terms and conditions as the Secretary shall establish pursuant to section 1076(f)(4) of this title or regulations promulgated under this part" after "section 1078–3(a)(4) of this title".

Subsecs. (j)(2), (k)(3). Pub. L. 105–244, § 401(g)(6), substituted "Federal Pell Grants" for "basic grants".


1993—Pub. L. 103–66 amended section generally, substituting provisions relating to terms and conditions of loans for former provisions relating to withdrawal and termination procedures.


Effective Date of 2010 Amendment

Effective Date of 2009 Amendment

Effective Date of 2007 Amendment
Amendment by sections 201(b), 202(b), 205, and 401 of Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1078a of this title.


Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.


Effective Date of 2002 Amendment
Amendment by Pub. L. 107–314 applicable with respect to interest, and any special allowance under section 1087–1 of this title, that accrue for months beginning on or after Oct. 1, 2003, on student loans described in section 2174(c) of Title 10, Armed Forces, that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of Title 10) on or after that date, see section 651(e) of Pub. L. 107–314, set out as an Effective Date note under section 2174 of Title 10.

Effective Date of 1998 Amendment
Amendment by sections 401(g)(6) and 452(b), (c) of Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

Pub. L. 105–244, title IV, § 452(d), Oct. 7, 1998, 112 Stat. 1717, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to any loan made under part D of title IV of the Higher Education Act of 1965 [this part] for which the first disbursement is made on or after October 1, 1998, and before July 1, 2003, except that such amendments shall apply with respect to a Federal Direct Consolidation Loan for which the application is received on or after October 1, 1998, and before July 1, 2003."

Effective Date of 1992 Amendment

Construction of 2006 Amendment
Nothing in amendment by section 8007(b) of Pub. L. 109–171 to be construed to authorize any refunding of any repayment of a loan, see section 8007(e) of Pub. L. 109–171, set out as a note under section 1078 of this title.

Limitation on Consolidation Loans During Temporary Interest Rate
Pub. L. 105–244, title IV, § 452(a)(2), Oct. 7, 1998, 112 Stat. 1716, provided that: "Notwithstanding section 458(g) of the Higher Education Act of 1965 [subsec. (g) of this section], a borrower who is enrolled or accepted for enrollment in an institution of higher education may not consolidate loans under such section during the period beginning October 1, 1998, and ending February 1, 1999, unless the borrower certifies that the borrower has no outstanding loans made, insured, or guaranteed under title IV of such Act [20 U.S.C. 1070 et seq.], other than loans made under part D of such title [this part]."

§ 1087f. Contracts
(a) Contracts for supplies and services
(1) In general
The Secretary shall, to the extent practicable, award contracts for origination, servicing, and collection described in subsection (b) of this section. In awarding such contracts, the Secretary shall ensure that such services
and supplies are provided at competitive prices.

(2) Entities

The entities with which the Secretary may enter into contracts shall include only entities which the Secretary determines are qualified to provide such services and supplies and will comply with the procedures applicable to the award of such contracts. In the case of awarding contracts for the origination, servicing, and collection of loans under this part, the Secretary shall enter into contracts only with entities that have extensive and relevant experience and demonstrated effectiveness. The entities with which the Secretary may enter into such contracts shall include, where practicable, agencies with agreements with the Secretary under sections 1078(b) and (c) of this title, if such agencies meet the qualifications as determined by the Secretary under this subsection and if those agencies have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies with a history of high quality performance to perform services for institutions of higher education within their State.

(3) Rule of construction

Nothing in this section shall be construed as a limitation of the authority of any State agency to enter into an agreement for the purposes of this section and if those agencies have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies with a history of high quality performance to perform services for institutions of higher education within their State.

(4) Servicing by eligible not-for-profit servicers

(A) Servicing contracts

(i) In general

The Secretary shall contract with each eligible not-for-profit servicer to service loans originated under this part, if the servicer—

(I) meets the standards for servicing Federal assets that apply to contracts awarded pursuant to paragraph (1); and

(II) has the capacity to service the applicable loan volume allocation described in subparagraph (B).

(ii) Competitive market rate determination for first 100,000 borrower accounts

The Secretary shall establish a separate pricing tier for each of the first 100,000 borrower loan accounts at a competitive market rate.

(iii) Ineligibility

An eligible not-for-profit servicer shall no longer be eligible for a contract under this paragraph after July 1, 2014, if—

(I) the servicer has not been awarded such a contract before that date; or

(II) the servicer’s contract was terminated, and the servicer had not reapplied for, and been awarded, a contract under this paragraph.

(B) Allocations

(i) In general

The Secretary shall (except as provided in clause (ii)) allocate to an eligible not-for-profit servicer, subject to the contract of such servicer described in subparagraph (A), the servicing rights for the loan accounts of 100,000 borrowers (including borrowers who borrowed loans in a prior year that were serviced by the servicer).

(ii) Servicer allocation

The Secretary may reallocate, increase, reduce, or terminate an eligible not-for-profit servicer’s allocation of servicing rights under clause (i) based on the performance of such servicer, on the same terms as loan allocations provided by contracts awarded pursuant to paragraph (1).

(b) Contracts for origination, servicing, and data systems

The Secretary may enter into contracts for—

(1) the alternative origination of loans to students attending institutions of higher education with agreements to participate in the program under this part (or their parents), if such institutions do not have agreements with the Secretary under section 1087d(b) of this title;

(2) the servicing and collection of loans made or purchased under this part;

(3) the establishment and operation of 1 or more data systems for the maintenance of records on all loans made or purchased under this part; and

(4) such other aspects of the direct student loan program as the Secretary determines are necessary to ensure the successful operation of the program.

(c) Definition of eligible not-for-profit servicer

In this section:

(1) In general

The term ‘eligible not-for-profit servicer’ means an entity—

(A) that is not owned or controlled in whole or in part by—

(i) a for-profit entity; or

(ii) a nonprofit entity having its principal place of business in another State; and

(B) that—

(i) as of July 1, 2009—

(I) meets the definition of an eligible not-for-profit holder under section 1085(p) of this title, except that such term does not include eligible lenders described in paragraph (1)(D) of such section; and

(II) was performing, or had entered into a contract with a third party servicer (as such term is defined in section 1088(c) of this title) who was performing, student loan servicing functions for loans made under part B of this subchapter;

(ii) notwithstanding clause (i), as of July 1, 2005—

(I) is the sole beneficial owner of a loan for which the special allowance rate is calculated under section 1087–1(b)(2)(I)(vi)(II) of this title because the loan is held by an eligible lender
trustee that is an eligible not-for-profit holder as defined under section 1085(p)(1)(D) of this title; and

(II) was performing, or had entered into a contract with a third party servicer (as such term is defined in section 1088(c) of this title) who was performing, student loan servicing functions for loans made under part B of this subchapter; or

(iii) is an affiliated entity of an eligible not-for-profit servicer described in clause (i) or (ii) that—

(I) directly employs, or will directly employ (on or before the date the entity begins servicing loans under a contract awarded by the Secretary pursuant to subsection (a)(3)(A)),¹ the majority of individuals who perform borrower-specific student loan servicing functions; and

(II) as of July 1, 2009, was performing, or had entered into a contract with a third party servicer (as such term is defined in section 1088(c) of this title) who was performing, student loan servicing functions for loans made under part B of this subchapter.

(2) Affiliated entity

For the purposes of paragraph (1), the term "affiliated entity"—

(A) means an entity contracted to perform services for an eligible not-for-profit servicer that—

(i) is a nonprofit entity or is wholly owned by a nonprofit entity; and

(ii) is not owned or controlled, in whole or in part, by—

(I) a for-profit entity; or

(II) an entity having its principal place of business in another State; and

(B) may include an affiliated entity that is established by an eligible not-for-profit servicer after March 30, 2010, if such affiliated entity is otherwise described in paragraph (1)(B)(iii)(I) and subparagraph (A) of this paragraph.

¹So in original. Probably should be "subsection (a)(4)(A))."

FOR THE YEARS 2007 THROUGH 2014

For each of the fiscal years 2007 through 2014, there are authorized to be appropriated such sums as may be necessary for administration of the direct student loan program authorized by part C, including the costs of the direct student loan programs under this part; and (b) account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c), not to exceed (from such funds not otherwise appropriated) $820,000,000 in fiscal year 2006.

(2) Mandatory funds for eligible not-for-profit servicers

For fiscal years 2010 through 2019, there shall be available to the Secretary, in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated, funds to be obligated for administrative costs of servicing contracts with eligible not-for-profit servicers as described in section 1087f of this title.

(3) Authorization for administrative costs beginning in fiscal years 2007 through 2014

For each of the fiscal years 2007 through 2014, there are authorized to be appropriated such sums as may be necessary for administrative costs under this part and part B, including the costs of the direct student loan programs under this part.
from funds not otherwise appropriated, funds to be obligated for account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsection (b).

(5) Account maintenance fees

Account maintenance fees under paragraph (3) \(^1\) shall be paid quarterly and deposited in the Agency Operating Fund established under section 1072b of this title.

(6) Technical assistance to institutions of higher education

(A) Provision of assistance

The Secretary shall provide institutions of higher education participating, or seeking to participate, in the loan programs under this part with technical assistance in establishing and administering such programs.

(B) Funds

There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), $50,000,000 for fiscal year 2010.

(C) Definition

In this paragraph, the term “assistance” means the provision of technical support, training, materials, technical assistance, and financial assistance.

(7) Additional payments

(A) Provision of assistance

The Secretary shall provide payments to loan servicers for retaining jobs at locations in the United States where such servicers were operating under part B on January 1, 2010.

(B) Funds

There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), $25,000,000 for each of the fiscal years 2010 and 2011.

(8) Carryover

The Secretary may carry over funds made available under this section to a subsequent fiscal year.

(b) Calculation basis

Account maintenance fees payable to guaranty agencies under subsection (a)(4) shall be calculated on the basis of 0.06 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

(c) Budget justification

No funds may be expended under this section unless the Secretary includes in the Department of Education’s annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.

(1) Technical assistance to institutions of higher education

(A) Provision of assistance

The Secretary shall provide institutions of higher education participating, or seeking to participate, in the loan programs under this part with technical assistance in establishing and administering such programs.

(B) Funds

There are authorized to be appropriated, and there are appropriated, to carry out this paragraph (in addition to any other amounts appropriated to carry out this paragraph and out of any money in the Treasury not otherwise appropriated), $25,000,000 for each of the fiscal years 2010 and 2011.

(2) Technical assistance to institutions of higher education

The Secretary shall provide institutions of higher education participating, or seeking to participate, in the loan programs under this part with technical assistance in establishing and administering such programs.

Amendments

2010—Subsec. (a)(2) to (8). Pub. L. 111–152, § 2212(b)(1), added pars. (2), (6), and (7) and redesignated former pars. (2), (3), (4), and (5) as (3), (4), (5), and (8), respectively.


2007—Subsec. (b). Pub. L. 110–84 substituted “0.06 percent” for “0.10 percent”.

2006—Pub. L. 109–171 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) relating to administrative expenses, calculation basis for account maintenance fees payable to guaranty agencies, special rules relating to caps on account maintenance fees and insufficient funding, and budget justification for funds expended, respectively.

Subsec. (b). Pub. L. 109–292 substituted “shall be calculated on” for “shall not exceed”.


Subsec. (b). Pub. L. 105–244, § 454(2), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Funds made available under subsection (a) of this section shall remain available until expended.”

Subsec. (c). Pub. L. 105–244, § 454(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–244, § 454(4), redesignated subsec. (c) as (d).

Pub. L. 105–244, § 454(3), struck out heading and text of subsec. (d). Text read as follows: “In the event the Secretary finds it necessary to use the authority provided to the Secretary under subsection (a) of this section to draw funds for administrative expenses from a future year’s funds, no funds may be expended under this section unless the Secretary immediately notifies the Committees on Appropriations of the Senate and of the House of Representatives, and the Labor and Human Resources Committee of the Senate and the Education and Labor Committees of the House of Representatives, of such action and explain the reasons for such action.”

1997—Subsec. (a). Pub. L. 105–33, as redesignated (d), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Each fiscal year, there shall be avail-

\(^1\) See References in Text note below.
able to the Secretary of Education from funds available pursuant to section 1072(g) of this title and from funds not otherwise appropriated, funds to be obligated for administrative costs under this part, including the costs of the transition from the loan programs under part B of this subchapter to the direct student loan programs under this part (including the costs of annually assessing the program under this part and the progress of the transition) and transition support (including administrative costs) for the expenses of guaranty agencies in servicing outstanding loans in their portfolios and in guaranteeing new loans, not to exceed (from such funds not otherwise appropriated) $260,000,000 in fiscal year 1994, $264,000,000 in fiscal year 1995, $550,000,000 in fiscal year 1996, $595,000,000 in fiscal year 1997, and $750,000,000 in fiscal year 1998. If in any fiscal year the Secretary determines that additional funds for administrative expenses are needed as a result of such transition or the expansion of the direct student loan programs under this part, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for such expenses, except that the total expenditures by the Secretary (from such funds not otherwise appropriated) shall not exceed $2,439,000,000 in fiscal years 1994 through 1998. The Secretary is also authorized to carry over funds available under this section to a subsequent fiscal year.


1995—Subsec. (a). Pub. L. 104–19 substituted "$381,000,000 in fiscal year 1995" for "$345,000,000 in fiscal year 1995" and "$2,439,000,000 in fiscal years 1994 through 1998" for "$2,500,000,000 in fiscal years 1994 through 1998".

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to funds for administrative expenses for former provisions relating to reports.

Effective Date of 2007 Amendment
Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 1998 Amendment

Effective Date
Section effective Sept. 30, 1996, 110 Stat. 3009–233, 3009–261, provided in part that: “Notwithstanding section 458 of the Higher Education Act [of 1965] [20 U.S.C. 1087h], the Secretary may not use funds available under that section or any other section for subsequent fiscal years for administrative expenses of the William D. Ford Direct Loan Program.”

Similar provisions were contained in the following prior appropriation acts:


§ 1087l. Authority to sell loans

The Secretary, in consultation with the Secretary of the Treasury, is authorized to sell loans made under this part on such terms as the Secretary determines are in the best interest of the United States, except that any such sale shall not result in any cost to the Federal Government. Notwithstanding any other provision of law, the proceeds of any such sale may be used by the Secretary to offer reductions in the interest rate paid by a borrower of a loan made under this part as the Secretary determines appropriate to encourage on-time repayment in accordance with section 422(g) of the Higher Education Act of 1965, as added by Pub. L. 89–329, title IV, § 459, as added Pub. L. 102–325, title IV, § 451, July 23, 1992, 106 Stat. 575, which related to schedule of regulatory activities by Secretary under Federal direct loan demonstration program, was omitted in the general amendment of this part by Pub. L. 103–66.

Effective Date

§ 1087l–1. Temporary authority to purchase student loans

(a) Authority to purchase

(1) Authority; determination required

Upon a determination by the Secretary that there is an inadequate availability of loan capital to meet the demand for loans under sections 1078, 1078–2, or 1078–8 of this title, whether as a result of inadequate liquidity for such loans or for other reasons, the Secretary, in consultation with the Secretary of the Treasury, is authorized to purchase, or enter into forward commitments to purchase, from any eligible lender, as defined by section 1085(d)(1) of this title, loans first disbursed under sections 1078, 1078–2, or 1078–8 of this title on or after October 1, 2003, and before July 1, 2010, on such terms as the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interest of the United States, except that any purchase under this section shall not result in any net cost to the Federal Government (including the cost of servicing the loans purchased), as determined jointly by the Secretary, the Secretary of the Treasury,
and the Director of the Office of Management and Budget.

(2) Federal Register notice

The Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall jointly publish a notice in the Federal Register prior to any purchase of loans under paragraph (1) that—

(A) establishes the terms and conditions governing the purchases authorized by paragraph (1);

(B) includes an outline of the methodology and factors that the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, will jointly consider in evaluating the price at which to purchase loans made under section 1078, 1078–2, or 1078–8 of this title; and

(C) describes how the use of such methodology and consideration of such factors used to determine purchase price will ensure that loan purchases do not result in any net cost to the Federal Government (including the cost of servicing the loans purchased).

(3) Temporary authority to purchase rehabilitated loans

(A) Authority

In addition to the authority described in paragraph (1), the Secretary, in consultation with the Secretary of the Treasury, is authorized to purchase, or enter into forward commitments to purchase, from any eligible lender (as defined in section 1085(d)(1) of this title), loans that such lender purchased under section 1078–6 of this title on or after October 1, 2003, and before July 1, 2010, that are not in default, on such terms as the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interest of the United States, except that any purchase under this paragraph shall not result in any net cost to the Federal Government (including the cost of servicing the loans purchased), as determined jointly by the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget.

(B) Federal Register notice

The Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget shall jointly publish a notice in the Federal Register prior to any purchase of loans under this paragraph that—

(i) establishes the terms and conditions governing the purchases authorized by this paragraph;

(ii) includes an outline of the methodology and factors that the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget will jointly consider in evaluating the price at which to purchase loans rehabilitated pursuant to section 1078–6(a) of this title; and

(iii) describes how the use of such methodology and consideration of such factors used to determine purchase price will ensure that loan purchases do not result in any net cost to the Federal Government (including the cost of servicing the loans purchased).

(b) Proceeds

The Secretary shall require, as a condition of any purchase under subsection (a), that the funds paid by the Secretary to any eligible lender under this section be used—

(1) to ensure continued participation of such lender in the Federal student loan programs authorized under part B of this subchapter; and

(2)(A) in the case of loans purchased pursuant to subsection (a)(1), to originate new Federal loans to students, as authorized under part B of this subchapter; or

(B) in the case of loans purchased pursuant to subsection (a)(3), to originate such new Federal loans to students, or to purchase loans in accordance with section 1078–6(a) of this title.

(c) Maintaining servicing arrangements

The Secretary may, if agreed upon by an eligible lender selling loans under this section, contract with such lender for the servicing of the loans purchased, provided that—

(1) the cost of such servicing arrangement does not exceed the cost the Federal Government would otherwise incur for the servicing of loans purchased, as determined under subsection (a); and

(2) such servicing arrangement is in the best interest of the borrowers whose loans are purchased.

(d) Guaranty agency responsibilities and payments

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, beginning on the date on which the Secretary purchases a loan under this section—

(1) the guaranty agency that insured such loan shall cease to have any obligations, responsibilities, or rights (including rights to any payment) under this chapter and part C of subchapter I of chapter 34 of title 42 for any activity related to the administration of such loan that is carried out or required to be carried out on or after the date of such purchase; and

(2) the insurance issued by such agency pursuant to section 1078(b)(1) of this title for such loan shall cease to be effective with respect to any default on such loan that occurs on or after the date of such purchase.

(e) Reports and cost estimates

The Secretary shall prepare, transmit to the authorizing committees, and make available to the public, the following:

(1) Quarterly reports

(A) Contents

Not later than 60 days after the end of each quarter during the period beginning July 1, 2006, and ending September 30, 2010, a quarterly report on—

(i) the number of loans the Secretary has agreed to purchase, or has purchased, using the authority provided under this
section, and the total amount of outstanding principal and accrued interest of such loans, during such period; and
(ii) the number of loans in which the Secretary has purchased a participation interest, and the total amount of outstanding principal and accrued interest of such loans, during such period.

(B) Disaggregated information

For each quarterly report, the information described in clauses (i) and (ii) of subparagraph (A) shall be disaggregated by lender and, for each lender, by category of institution (using the categories described in section 1015a(d) of this title) and type of loan.

(2) Estimates of purchase program costs

Not later than February 15, 2011, an estimate of the costs associated with the program of purchasing loans described in paragraph (1)(A)(i) during the period beginning July 1, 2008, and ending September 30, 2010, and an estimate of the costs associated with the program of purchasing a participation interest in loans described in paragraph (1)(A)(ii) during such period. Each such estimate shall—

(A) contain the same level of detail, and be reported in a similar manner, as the budget estimates provided for the loan program under part B and the direct student loan program under this part in the President’s annual budget submission to Congress, except that current and future administrative costs shall also be reported;

(B) include an estimate of the gross and net outlays that have been, or will be, incurred by the Federal Government (including subsidy and administrative costs, and any payments made by the Department to lenders, trusts, or other entities related to such activities) in purchasing such loans or purchasing a participation interest in such loans during such period (as applicable); and

(C) include a comparison of—

(i) the average amount of the gross and net outlays (including costs and payments) described in subparagraph (B) for each $100 of loans purchased or for which a participation interest was purchased (as applicable) during such period, disaggregated by type of loan; with

(ii) the average amount of such gross and net outlays (including costs and payments) to the Federal Government for each $100 of comparable loans made under this part and part B during such period, disaggregated by part and by type of loan.

(3) Annual cost estimates

Not later than February 15 of the fiscal year following each of the fiscal years 2008, 2009, 2010, and 2011, an annual estimate of the costs associated with the program of purchasing loans described in paragraph (1)(A)(i), and an annual estimate of the costs associated with the program of purchasing a participation interest in loans described in paragraph (1)(A)(ii), that includes the information described in paragraph (2) for such fiscal year.

(f) Expiration of authority

The Secretary’s authority to purchase loans under this section shall expire on July 1, 2010.

Amendments


Subsec. (b). Pub. L. 111–39, § 404(a)(2), amended subsec. (b) generally. Prior to amendment, text read as follows: “The Secretary shall require, as a condition of any purchase under subsection (a), that the funds paid by the Secretary to any eligible lender under this section shall be used: (1) to ensure continued participation of such lender in the Federal student loan programs authorized under part B of this subchapter; and (2) to originate new Federal loans to students, as authorized under part B of this subchapter.”


Subsecs. (d), (e), Pub. L. 110–315, § 452, added subsecs. (d) and (e). Former subsec. (d) redesignated (f).


Effective Date of 2009 Amendment


§ 1087i–2. Temporary loan consolidation authority

(a) Temporary loan consolidation authority

(1) In general

A borrower who has 1 or more loans in 2 or more of the categories described in paragraph (2), and who has not yet entered repayment on 1 or more of those loans in any of the categories, may consolidate all of the loans of the borrower that are described in paragraph (2) into a Federal Direct Consolidation Loan during the period described in paragraph (3).

(2) Categories of loans that may be consolidated

The categories of loans that may be consolidated under paragraph (1) are—

(A) loans made under this part;

(B) loans purchased by the Secretary pursuant to section 1087i–1 of this title; and

(C) loans made under part B that are held by an eligible lender, as such term is defined in section 1085(d) of this title.

(3) Time period in which loans may be consolidated

The Secretary may make a Federal Direct Consolidation Loan under this section to a
borrower whose application for such Federal Direct Consolidation Loan is received on or after July 1, 2010, and before July 1, 2011.

(b) Terms of loans

A Federal Direct Consolidation Loan made under this section shall have the same terms and conditions as a Federal Direct Consolidation Loan made under section 1087e(g) of this title, except that—

1. in determining the applicable rate of interest on the Federal Direct Consolidation Loan made under this section (other than on a Federal Direct Consolidation Loan described in paragraph (2)), section 1077a(l)(3) of this title shall be applied without rounding the weighted average of the interest rate on the loans consolidated to the nearest higher one-eighth of 1 percent as described in subparagraph (A) of section 1077a(l)(3) of this title; and

2. if a Federal Direct Consolidation Loan made under this section that repays a loan which is subject to an interest rate determined under section 1077a(g)(2), (j)(2), (k)(2), of this title, then the interest rate for such Federal Direct Consolidation Loan shall be calculated—

A. by using the applicable rate of interest described in section 1077a(g)(2), (j)(2), or (k)(2) of this title, respectively; and

B. in accordance with section 1077a(l)(3) of this title.

(Pub. L. 89–329, title IV, § 459B, as added Pub. L. 1075.)

§ 1087j. Loan cancellation for teachers

(a) Statement of purpose

It is the purpose of this section to encourage individuals to enter and continue in the teaching profession.

(b) Program authorized

The Secretary shall carry out a program of canceling the obligation to repay a qualified loan amount in accordance with subsection (c) for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made under this part for any new borrower on or after October 1, 1998, who—

1. has been employed as a full-time teacher for 5 consecutive complete school years—

A. in a school or location that qualifies under section 1087ee(a)(2)(A) of this title for loan cancellation for Perkins loan recipients who teach in such schools or locations; and

B. if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 7801 of this title, or meets the requirements of subsection (g)(3); and

2. is not in default on a loan for which the borrower seeks forgiveness.

(c) Qualified loan amounts

1. In general

The Secretary shall cancel not more than $5,000 in the aggregate of the loan obligation on a Federal Direct Stafford Loan or a Federal Direct Unsubsidized Stafford Loan that is outstanding after the completion of the fifth complete school year of teaching described in subsection (b)(1). No borrower may receive a reduction of loan obligations under both this section and section 1078–10 of this title.

2. Treatment of consolidation loans

A loan amount for a Federal Direct Consolidation Loan may be a qualified loan amount for the purposes of this subsection only to the extent that such loan amount was used to repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a loan made under section 1078 or 1078–8 of this title, for a borrower who meets the requirements of subsection (b), as determined in accordance with regulations prescribed by the Secretary.

3. Additional amounts for teachers in mathematics, science, or special education

Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall cancel under this section shall not be more than $17,500 in the case of—

A. a secondary school teacher—

i. who meets the requirements of subsection (b); and

ii. whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; and

B. an elementary school or secondary school teacher—

i. who meets the requirements of subsection (b); and

ii. whose qualifying employment for purposes of such subsection is as a special education teacher whose primary responsibility is to provide special education to children with disabilities (as those terms are defined in section 1401 of this title); and

iii. who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency, is teaching children with disabilities that correspond with the borrower’s special education training and has demonstrated knowledge and teaching skills in the content areas of the elementary school or secondary school curriculum that the borrower is teaching.

(d) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

(e) Construction

Nothing in this section shall be construed to authorize any refunding of any canceled loan.

(f) List

If the list of schools in which a teacher may perform service pursuant to subsection (b) is not available before May 1 of any year, the Secretary may use the list for the year preceding
the year for which the determination is made to make such service determination.

(g) Additional eligibility provisions

(1) Continued eligibility

Any teacher who performs service in a school that—

(A) meets the requirements of subsection (b)(1)(A) in any year during such service; and

(B) in a subsequent year fails to meet the requirements of such subsection, may continue to teach in such school and shall be eligible for loan cancellation pursuant to subsection (b).

(2) Prevention of double benefits

No borrower may, for the same voluntary service, receive a benefit under both this section and—

(A) section 1078–11 of this title; or

(B) section 12501 et seq. of chapter 129 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

(3) Private school teachers

An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 7801 of this title, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.

(h) "Year" defined

For the purpose of this section, the term "year" where applied to service as a teacher means an academic year as defined by the Secretary.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111–39, § 404(b)(4)(A), inserted at end "No borrower may receive a reduction of loan obligations under both this section and section 1078–10 of this title."

Subsec. (g)(2). Pub. L. 111–39, § 404(b)(4)(B), redesignated subpars. (B) to (D) as (A) to (C), respectively, substituted "12601" for "12971" in subpar. (C), and struck out former subpar. (A) which read as follows: "section 1078–10 of this title."

2006—Subsec. (b), Pub. L. 110–315, § 454(c), struck out "(1) In general" before "The Secretary shall", redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and cls. (i) and (1) of former subpar. (A) as subpars. (A) and (B), respectively, realigned margins, and struck out par. (2). Prior to amendment, text of par. (2) read as follows: "No borrower may obtain a reduction of loan obligations under both this section and section 1078–10 of this title."

Subsec. (b)(1)(A)(i). Pub. L. 110–315, § 454(a)(1), inserted "or location" after "a school" and "or locations" after "such schools".


Subsec. (c)(3)(B)(ii). Pub. L. 110–315, § 454(a)(2), inserted "or, in the case of a teacher who is employed by an educational service agency, as certified by the chief administrative officer of such agency," after "borrower is employed."

Subsec. (g)(2). Pub. L. 110–315, § 454(b), amended par. (2) generally. Prior to amendment, text read as follows: "No borrower may, for the same volunteer service, receive a benefit under both this section and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.)".


2004—Subsec. (b)(1)(A). Pub. L. 108–409, § 3(a)(1)(B), added cl. (i) and struck out former clis. (ii) and (iii) which read as follows: "(ii) if employed as a secondary school teacher, is teaching a subject area that is relevant to the borrower’s academic major as certified by the chief administrative officer of the public or non-profit private secondary school in which the borrower is employed; and

(iii) if employed as an elementary school teacher, has demonstrated, as certified by the chief administrative officer of the public or nonprofit private elementary school in which the borrower is employed, knowledge and teaching skills in reading, writing, mathematics and other areas of the elementary school curriculum; and".


EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8011(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 3(b)(2) of Pub. L. 108–409 applicable only with respect to eligible individuals who are
new borrowers (as defined in section 1003 of this title) on or after Oct. 1, 1998, as amended, set out as a note under section 1078-10 of this title.


**Effective Date**


**PART D—FEDERAL PERKINS LOANS**

**Codification**


Another prior section 461 of Pub. L. 89-329 amended former section 403 of this title.

**AMENDMENTS**

2008—Subsec. (b)(1). Pub. L. 110-315, §461(1), substituted "$300,000,000 for fiscal year 2009 and for each of the five succeeding fiscal years" for "$250,000,000 for fiscal year 2008 and such sums as may be necessary for each of the 4 succeeding fiscal years".


1992—Subsec. (a). Pub. L. 102-325, §461(a)(2), (b), inserted "or while engaged in programs of study abroad approved for credit by such institutions" after "in such institutions and substituted "Federal Perkins Loans" for "Perkins Loans".

Subsec. (b). Pub. L. 102-325, §461(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) For the purpose of the enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $286,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years.

"(2) In addition there are hereby authorized to be appropriated such sums for fiscal year 1991 and each of the five succeeding fiscal years as may be necessary to enable students who have received loans for academic years ending prior to October 1, 1991, to continue or complete courses of study."

**Effective Date of 1998 Amendment**

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

**§1087bb. Allocation of funds**

(a) Allocation based on previous allocation

(1) From the amount appropriated pursuant to section 1087aa(b) of this title for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to—

(A) 100 percent of the amount received under subsections (a) and (b) of this section for the fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year), multiplied by

(B) the institution’s default penalty, as determined under subsection (e) of this section, except that if the institution has a cohort default rate in excess of the applicable maximum...
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cohort default rate under subsection (f) of this section, the institution may not receive an allocation under this paragraph.

(2)(A) From the amount so appropriated, the Secretary shall—

(i) the amount of that institution is equal to—

(i) the amount of the institution's self-help need, as determined under subsection (c) of this section; minus

(ii) the amount determined under paragraph (1) of this section, the institution may not receive an allocation under this paragraph.

3(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

(i) the Secretary shall—

(iv) the Secretary shall next allocate to each eligible institution which—

(C) If additional amounts are appropriated for any fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

(b) Allocation of excess based on share of excess eligible amounts

(1) From the remainder of the amount appropriated pursuant to section 1087aa(b) of this title after making the allocations required by subsection (a) of this section, the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

(A) the amount determined under paragraph (3), divided by

(ii) the sum of the eligible amounts of all institutions (as so determined), multiplied by

(iii) the amount appropriated pursuant to section 1087aa(b) of this title for the fiscal year; exceeds

(B) the amount required to be allocated to that institution under subsection (a) of this section.

except that an eligible institution which has a cohort default rate in excess of the applicable maximum cohort default rate under subsection (f) of this section may not receive an allocation under this paragraph.

3 For any eligible institution, the eligible amount of that institution is equal to—

(A) the amount of the institution’s self-help need, as determined under subsection (c) of this section; minus

(B) the institution’s anticipated collections; multiplied by

(C) the institution’s default penalty, as determined under subsection (e) of this section; except that, if the institution has a cohort default rate in excess of the applicable maximum cohort default rate under subsection (f) of this section, the eligible amount of that institution is zero.

(c) Determination of institution's self-help need

1 The amount of an institution's self-help need is equal to the sum of the self-help need of the institution's eligible undergraduate students and the self-help need of the institution's eligible graduate and professional students.

2 To determine the self-help need of an institution's eligible undergraduate students, the Secretary shall—

(A) establish various income categories for dependent and independent undergraduate students;

(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected
family contribution (computed in accordance with part E of this subchapter) of a representative sample within each income category for the second preceding fiscal year;
(C) compute 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or
(D) multiply the number of eligible dependent students in each income category by the lesser of—
   (i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or
   (ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;
(E) add the amounts determined under subparagraph (D) for each income category of dependent students;
(F) multiply the number of eligible independent students in each income category by the lesser of—
   (i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or
   (ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;
(G) add the amounts determined under subparagraph (F) for each income category of independent students; and
(H) add the amounts determined under subparagraphs (E) and (G).
(3) To determine the self-help need of an institution’s eligible graduate and professional students, the Secretary shall—
(A) establish various income categories for graduate and professional students;
(B) establish an expected family contribution for each income category of graduate and professional students, determined on the basis of the average expected family contribution (computed in accordance with part E of this subchapter) of a representative sample within each income category for the second preceding fiscal year;
(C) determine the average cost of attendance for all graduate and professional students;
(D) subtract from the average cost of attendance for all graduate and professional students (determined under subparagraph (C)), the expected family contribution (determined under subparagraph (B)) for each income category, except that the amount computed by such subtraction for any income category shall not be less than zero;
(E) multiply the amounts determined under subparagraph (D) by the number of eligible students in each category;
(F) add the amounts determined under subparagraph (E) for each income category.
(4) (A) For purposes of paragraphs (2) and (3), the term “average cost of attendance” means the average of the attendance costs for undergraduate students and for graduate and professional students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).
(B) The average undergraduate and graduate and professional tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate and graduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution’s enrollment for such second preceding year.
(C) The standard living expense described in subparagraph (A)(ii) is equal to 150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college for a single independent student.
(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $600.
(d) Anticipated collections
(1) An institution’s anticipated collections are equal to the amount which was collected during the second year preceding the beginning of the award period, multiplied by 1.21.
(2) The Secretary shall establish an appeals process by which the anticipated collections required in paragraph (1) may be waived for institutions with low cohort default rates in the program assisted under this part.
(e) Default penalties
(1) Years preceding fiscal year 2000
For any fiscal year preceding fiscal year 2000, any institution with a cohort default rate that—
(A) equals or exceeds 15 percent, shall establish a default reduction plan pursuant to regulations prescribed by the Secretary, except that such plan shall not be required with respect to an institution that has a default rate of less than 20 percent and that has less than 100 students who have loans under this part in such academic year;
(B) equals or exceeds 20 percent, but is less than 25 percent, shall have a default penalty of 0.7; and
(C) equals or exceeds 25 percent, but is less than 30 percent, shall have a default penalty of 0.9;
(2) Years following fiscal year 2000
For fiscal year 2000 and any succeeding fiscal year, any institution with a cohort default rate (as defined under subsection (g) of this section) that equals or exceeds 25 percent shall have a default penalty of zero.
(3) Ineligibility
(A) In general
For fiscal year 2000 and any succeeding fiscal year, any institution with a cohort de-
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Title 20—Education

(1) Award years prior to 2000

For award years prior to award year 2000, the applicable maximum cohort default rate is 30 percent.

(2) Award year 2000 and succeeding award years

For award year 2000 and subsequent years, the applicable maximum cohort default rate is 25 percent.

(g) "Cohort default rate" defined

(1)(A) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on loans under this part (received for attendance at the institution), the percentage of those current and former students who enter repayment on such loans (received for attendance at that institution) in that award year who default before the end of the following award year.

(B) For any award year in which less than 30 of the institution's current and former students enter repayment, the term "cohort default rate" means the percentage of such current and former students who entered repayment on such loans in any of the three most recent award years and who default before the end of the award year immediately following the year in which they entered repayment.

(C) A loan on which a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with such institution, in order to avoid default by the borrower, is considered as in default for the purposes of this subsection.

(D) In the case of a student who has attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to the school for attendance at which the student received the loan that entered repayment in the award year.

(E) In determining the number of students who default before the end of such award year, the institution, in calculating the cohort default rate, shall exclude—

(i) any loan on which the borrower has, after the time periods specified in paragraph (2)—

(I) voluntarily made 6 consecutive payments;

(II) voluntarily made all payments currently due;

(III) repaid in full the amount due on the loan; or

(IV) received a deferment or forbearance, based on a condition that began prior to such time periods;

(ii) any loan which has, after the time periods specified in paragraph (2), been rehabilitated or canceled; and

(iii) any other loan that the Secretary determines should be excluded from such determination.

(F) The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a cohort default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control or other means as determined by the Secretary.

(2) For purposes of calculating the cohort default rate under this subsection, a loan shall be considered to be in default—

(A) 240 days (in the case of a loan repayable monthly), or
(B) 270 days (in the case of a loan repayable quarterly),

after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note.

(h) Filing deadlines

The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

(i) Reallocation of excess allocations

(1) In general

(A) If an institution of higher education returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year, the Secretary shall reallocate 80 percent of such returned portions to participating institutions in an amount not to exceed such participating institution's excess eligible amounts as determined under paragraph (2).

(B) For the purpose of this subsection, the term “participating institution” means an institution of higher education that—

(i) was a participant in the program assisted under this part in fiscal year 1999; and

(ii) did not receive an allocation under subsection (a) of this section in the fiscal year for which the reallocation determination is made.

(2) Excess eligible amount

For any participating institution, the excess eligible amount is the amount, if any, by which—

(A)(i) that institution’s eligible amount (as determined under subsection (b)(3) of this section), divided by (ii) the sum of the eligible amounts of all participating institutions (as determined under paragraph (3)), multiplied by (iii) the amount of funds available for reallocation under this subsection; exceeds

(B) the amount required to be allocated to that institution under subsection (b) of this section.

(3) Remainder

The Secretary shall reallocate the remainder of such returned portions in accordance with regulations of the Secretary.

(4) Allocation reductions

If under paragraph (1) of this subsection an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing it is contrary to the interest of the program.

year 1988–1989, shall use the procedures employed for academic year 1986–1987, and, for any subsequent academic years, after "professional students."

Pub. L. 102–244, § 462(a)(2)(E)(ii), substituted "subsection (f)" for "subsection (g)" in concluding provisions.


Pub. L. 105–244, § 462(d)(1), struck out par. (2) which read as follows: "For the purpose of paragraph (1)(A), the total principal amount of defaulted loans is equal to the total amount borrowed under loans that have reached repayment status and that are in default, minus—"

(A) amounts that have been repaid or cancelled on such loans;

(B) loans discharged in bankruptcy;

(C) loans referred or assigned to the Secretary for collection under paragraph (5)(A), (5)(B)(i), or (6) of section 1087c(c)(a) of this title; and

(D) loans that are in default but on which the borrowers have made satisfactory arrangements to resume payment."

Subsec. (g)(3). Pub. L. 105–244, § 462(d)(2), redesignated par. (3) as (1).

Subsec. (g)(4). Pub. L. 105–244, § 462(d)(4), struck out par. (4) which read as follows: "A loan shall be considered to be in default—"

(A) 240 days in the case of a loan repayable monthly, or

(B) 270 days (in the case of a loan repayable quarterly) after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note, after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note.

Subsec. (h). (1). Pub. L. 105–244, § 462(a)(2)(H), redesignated subsec. (i) and (j) as (h) and (i), respectively. Former subsec. (h) redesignated (g).


Subsec. (j)(2)(A)(i). Pub. L. 105–244, § 462(a)(2)(F), struck out paragraph (1) which read as follows: "For any fiscal year prior to fiscal year 1994, any fiscal year in the case of a loan repayable quarterly, after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note, after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note;" for "any fiscal year prior to fiscal year 1994, any fiscal year in the case of a loan repayable quarterly, after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note;"

Subsec. (j)(2)(B). Pub. L. 105–244, § 462(a)(2)(F), substituted "subparagraph (b)" for "paragraph (3) of subsection (g)".

Subsec. (g)(1)(C). Pub. L. 105–244, § 462(d)(3)(H), redesignated subpar. (D) as (C) and struck out former subpar. (C). Subsec. (k)(1)(E). Pub. L. 105–244, § 462(d)(3)(A), (C), added subpar. (E) and struck out former subpar. (E) which read as follows: "Any loan that is in default but on which the borrower has made satisfactory arrangements to resume payment or any loan which has been rehabilitated before the end of such following award year is not considered as in default for purposes of this subsection."

Subsec. (g)(1)(F). Pub. L. 105–244, § 462(d)(3)(B), (e)(4), redesignated subpar. (G) as (F) and inserted "cohort" before "default." Former subpar. (F) redesignated (D).


not exceed 7.5 percent, the institution's default penalty is equal to one.''

Subsec. (g), Pub. L. 102-325, § 462(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

"(1) For award years 1988, 1989, and 1990, the applicable maximum default rate is 20 percent.

"(2) For award year 1991 and subsequent years, the applicable maximum default rate is 15 percent."

Subsec. (h), Pub. L. 102-325, § 462(e), substituted "Definitions of default rate and cohort default rate" for "Definition of default rate" in heading, in par. (1) substituted "For any award year prior to award year 1994, for the purpose" for "For the purpose", added par. (3), redesignated former par. (3) as (4), substituted "240" for "120" in par. (4)(A), and amended par. (4)(B) generally. Prior to amendment, par. (4)(B) read as follows: "180 days (in the case of a loan repayable quarterly)."

Subsec. (j), Pub. L. 102-325, § 462(f), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall, in accordance with regulations, reallocate such excess to other institutions."

1987—Subsec. (a)(1)(A). Pub. L. 100-50, § 13(a), amended subpar. (A) generally, substituting "of Federal capital contribution such institution received" for "such institution expended".

Subsec. (d)(3), (4), Pub. L. 100-50, § 13(b), redesignated par. (3), defining "average cost of attendance" and calculating average undergraduate and graduate and professional tuition and fees, standard living expenses, and allowance for books and supplies, as (4).

Subsec. (e), Pub. L. 100-50, § 13(c), struck out "; cash on hand" after "collections" in heading.

Subsec. (f), Pub. L. 100-50, § 13(d), substituted "subsection (g) of this section" for "paragraph (2)".

**Effective Date of 2009 Amendment**


**Effective Date of 1998 Amendment**

Pub. L. 105-244, title IV, § 462(a)(5), Oct. 7, 1998, 112 Stat. 1721, provided that: "The amendments made by this subsection (amending this section) shall apply with respect to allocations of amounts appropriated pursuant to section 461(b) [20 U.S.C. 1087aa(b)] for fiscal year 2000 or any succeeding fiscal year."

Amendment by section 462(b)–(e) of Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1001 of this title.

**Effective Date of 1987 Amendment**


**Effective Date**

Section applicable with respect to academic year 1988-1989 and succeeding academic years, see section 405(b) of Pub. L. 99-498, as amended, set out as a note under section 1087dd of this title.

§ 1087cc. Agreements with institutions of higher education

(a) Contents of agreements

An agreement with any institution of higher education for the payment of Federal capital contributions under this part shall—

(1) provide for the establishment and maintenance of a student loan fund for the purpose of this part;

(2) provide for the deposit in such fund of—

(A) Federal capital contributions from funds appropriated under section 1087aa of this title;

(B) a capital contribution by an institution in an amount equal to one-third of the Federal capital contributions described in subparagraph (A);

(C) collections of principal and interest on student loans made from deposited funds;

(D) charges collected pursuant to regulations under section 1087dd(c)(1)(H) of this title; and

(E) any other earnings of the funds;

(3) provide that such student loan fund shall be used only for—

(A) loans to students, in accordance with the provisions of this part;

(B) administrative expenses, as provided in subsection (b) of this section;

(C) capital distributions, as provided in section 1087ff of this title; and

(D) costs of litigation, and other collection costs agreed to by the Secretary in connection with the collection of a loan from the fund (and interest thereon) or a charge assessed pursuant to regulations under section 1087dd(c)(1)(H) of this title;

(4) provide that where a note or written agreement evidencing a loan has been in default despite due diligence on the part of the institution in attempting collection thereon—

(A) if the institution has knowingly failed to maintain an acceptable collection record with respect to such loan, as determined by the Secretary in accordance with criteria established by regulation, the Secretary may—

(i) require the institution to assign such note or agreement to the Secretary, without recompense; and

(ii) apportion any sums collected on such a loan, less an amount not to exceed 30 percent of any sums collected to cover the Secretary’s collection costs, among other institutions in accordance with section 1087bb of this title; or

(B) if the institution is not one described in subparagraph (A), the Secretary may allow such institution to refer such note or agreement to the Secretary, without recompense, except that, once every six months, any sums collected on such a loan (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary’s collection costs) shall be repaid to such institution and treated as an additional capital contribution under section 1087bb of this title;

(5) provide that, if an institution of higher education determines not to service and col-
lect student loans made available from funds under this part, the institution will assign, at the beginning of the repayment period, notes or evidence of obligations of student loans made from such funds to the Secretary and the Secretary shall apportion any sums collected on such notes or obligations (less an amount not to exceed 30 percent of any such sums collected to cover that Secretary's collection costs) among other institutions in accordance with section 1087bb of this title: (6) provide that, notwithstanding any other provision of law, the Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived: (7) provide assurances that the institution will comply with the provisions of section 1087cc–1 of this title; (8) provide that the institution of higher education will make loans first to students with exceptional need; and (9) include such other reasonable provisions as may be necessary to protect the United States from unreasonable risk of loss and as are agreed to by the Secretary and the institution, except that nothing in this paragraph shall be construed to permit the Secretary to require the assignment of loans to the Secretary other than as is provided for in paragraphs (4) and (5).

(b) Administrative expenses

An institution which has entered into an agreement under subsection (a) of this section shall be entitled, for each fiscal year during which it makes student loans from a student loan fund established under such agreement, to a payment in lieu of reimbursement for its expenses in administering its student loan program under this part during such year. Such payment shall be made in accordance with section 1086 of this title.

(c) Cooperative agreements with consumer reporting agencies

(1) For the purpose of promoting responsible repayment of loans made pursuant to this part, the Secretary and each institution of higher education participating in the program under this part shall enter into cooperative agreements with consumer reporting agencies to provide for the exchange of information concerning student borrowers concerning whom the Secretary has received a referral pursuant to section 1087cc–1 of this title and regarding loans held by the Secretary or an institution.

(2) Each cooperative agreement made pursuant to paragraph (1) shall be made in accordance with the requirements of section 1086a of this title except that such agreement shall provide for the disclosure by the Secretary or an institution, as the case may be, to such consumer reporting agencies, with respect to any loan held by the Secretary or the institution, respectively, of—

(A) the date of disbursement and the amount of such loans made to any borrower under this part at the time of disbursement of the loan; (B) information concerning the repayment and collection of any such loan, including information concerning the status of such loan; and (C) the date of cancellation of the note upon completion of repayment by the borrower of any such loan, or upon cancellation or discharge of the borrower's obligation on the loan for any reason.

(3) Notwithstanding paragraphs (4) and (5) of subsection (a) of section 1681c of title 15, a consumer reporting agency may make a report containing information received from the Secretary or an institution regarding the status of a borrower's account on a loan made under this part until the loan is paid in full.

(4)(A) Except as provided in subparagraph (B), an institution of higher education, after consultation with the Secretary and pursuant to the agreements entered into under paragraph (1), shall disclose at least annually to any consumer reporting agency with which the Secretary has such an agreement the information set forth in paragraph (2), and shall disclose promptly to such consumer reporting agency any changes to the information previously disclosed.

(B) The Secretary may promulgate regulations establishing criteria under which an institution of higher education may cease reporting the information described in paragraph (2) before a loan is paid in full.

(5) Each institution of higher education shall notify the appropriate consumer reporting agencies whenever a borrower of a loan that is made and held by the institution and that is in default makes 6 consecutive monthly payments on such loan, for the purpose of encouraging such consumer reporting agencies to update the status of information maintained with respect to that borrower.

(d) Limitation on use of interest bearing accounts

In carrying out the provisions of subsection (a)(9) of this section, the Secretary may not require that any collection agency, collection attorney, or loan servicer collecting loans made under this part deposit amounts collected on such loans in interest bearing accounts, unless such agency, attorney, or servicer holds such amounts for more than 45 days.

(e) Special due diligence rule

In carrying out the provisions of subsection (a)(5) of this section relating to due diligence, the Secretary shall make every effort to ensure that institutions of higher education may use Internal Revenue Service skip-tracing collection procedures on loans made under this part.

References in Text

Subsection (a)(5) of this section relating to due diligence, referred to in subsec. (e), was redesignated sub-

PRIOR PROVISIONS


AMENDMENTS


Subsec. (c)(3). Pub. L. 111–39, § 405(2)(B), substituted “and (5)” for “and (6)” and made technical amendment to reference in original act which appears in text as reference to section 1087c of title 20.

2006—Subpar. (a)(4)(B). Pub. L. 110–315, § 432(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “if the institution is not described in subparagraph (A), the Secretary may—

“(i) allow such institution to transfer its interest in such loan to the Secretary, for collection, and the Secretary may use any collections thereon (less an amount collected to cover the Secretary’s collection costs) to make allocations to institutions of additional capital contributions in accordance with section 1087b of this title; or

“(ii) allow such institution to refer such note or agreement to the Secretary, without recompense, except that any amounts collected on such a loan (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary’s collection costs) shall be repaid to such institution no later than 180 days after collection by the Secretary and treated as an additional capital contribution;”.

Subsec. (a)(9). Pub. L. 110–315, § 463(b), inserted “known,” before existing paragraph shall be construed to permit the Secretary to require the assignment of any loan to the Secretary other than as is provided for in paragraphs (4) and (5) before period.”


Subsec. (c)(1). Pub. L. 110–315, § 432(b)(5)(B), substituted “consumer reporting agencies” for “credit bureau organizations”.

Subsec. (c)(2). Pub. L. 110–315, § 432(b)(5)(C), substituted “consumer reporting agencies” for “such organizations”.


Subsec. (c)(5). Pub. L. 110–315, § 432(b)(5)(E), substituted “consumer reporting agencies” for “credit bureau organizations” and “such consumer reporting agencies” for “such organizations”.

1996—Subsec. (a)(2)(B). Pub. L. 105–244, § 463(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “(i) by an institution that—

“(I) is granted permission by the Secretary to participate in an Expanded Lending Option under the program; and

“(II) has a default rate which does not exceed 7.5 percent for award year 1996–1998 and has a cohort default rate which does not exceed 15 percent for award year 1998–1999 and for any succeeding award year,”

in an amount not less than the amount of the Federal capital contributions described in subparagraph (A); or

“(ii) by any other institution, in an amount not less than three-seventeenths of such Federal capital contribution in fiscal year 1993, and one-third of such Federal capital contribution in each of the succeeding fiscal years of the amount of the Federal capital contributions described in subparagraph (A);”.

Subsec. (a)(4) to (10). Pub. L. 105–244, § 463(a)(2), (3), redesignated pars. (5) to (10) as (4) to (9), respectively, and struck out former par. (4) which read as follows: “provide that where a note or written agreement evidencing a note has been in default for (A) 120 days, in the case of a loan which is repayable in monthly installments, or (B) 180 days, in the case of a loan which is repayable in less frequent installments, notice of such default shall be given to the Secretary in an annual report describing the total number of loans from such fund which are in such default;”.

Subsec. (c)(1). Pub. L. 105–244, § 463(b)(1), substituted “the Secretary and each institution of higher education participating in the program under this part shall” for “the Secretary shall” and inserted “and regarding loans held by the Secretary or an institution” after “section 1087c of this title.”

Subsec. (c)(2). Pub. L. 105–244, § 463(b)(2)(A), in introductory provisions, substituted “by the Secretary or an institution” for “the Secretary, or an institution,” as the case may be, to such organizations, with respect to any loan held by the Secretary or the institution, respectively, of—” for “by the Secretary to such organizations, with respect to any loan for which the Secretary is responsible,” by—”.

Subsec. (c)(3). Pub. L. 105–244, § 463(b)(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the date of disbursement and the amount of any such loan;”

Subsec. (c)(2)(C). Pub. L. 105–244, § 463(b)(2)(C), inserted “the repayment and after “concerning” the first place appearing and substituted “status of such” for “status of any defaulted”.

Subsec. (c)(2)(C). Pub. L. 105–244, § 463(b)(2)(D), inserted “, or upon cancellation or discharge of the borrower’s obligation on the loan for any reason” before period at end.

Subsec. (c)(3). Pub. L. 105–244, § 463(b)(3)(A), in introductory provisions, inserted “or institution” after “from the Secretary” and substituted “until the loan is paid in full” for “until—”.

Subsec. (c)(3)(A). (B). Pub. L. 105–244, § 463(b)(3)(B), struck out subpars. (A) and (B) which read as follows: “(A) 7 years from the date on which the Secretary accepted an assignment or referral of a loan; or

“(B) 7 years from the date the Secretary first reports the account to a consumer reporting agency.”

Subsec. (c)(4). Pub. L. 105–244, § 463(b)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Each institution of higher education, after consultation with the Secretary and pursuant to the agreements entered into under paragraph (1), shall disclose at least annually to any credit bureau organization with which the Secretary has such an agreement—

“(A) the amount of loans made to any borrower under this part at the time of the disbursement of the loan; and

“(B) the information set forth in section 1080a(a) of this title.”


Subsec. (d). Pub. L. 105–244, § 463(c), substituted “section (a)(9)” for “subsection (a)(10)”.


Subsec. (c)(4). Pub. L. 103–208, § 2(f)(6), substituted “shall disclose at least annually” for “shall disclose in multi-installment” not exceed 15 percent for

Subsecs. (d), (e). Pub. L. 103–208, § 2(f)(7), added subsec. (d) and (e).
1992—Subsec. (a)(2)(B). Pub. L. 102–325, § 463(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “a capital contribution by such institution in an amount equal to not less than one-ninth of the amount of the Federal capital contributions described in subparagraph (A)’’.

Subsec. (c)(3)(B). Pub. L. 102–325, § 463(b)(1), struck out ‘‘if the account has not been previously reported by any other holder of the note’’ after ‘‘agency’’.


1987—Subsec. (a)(4). Pub. L. 100–50, § 13(e), substituted ‘‘in an annual report’’ for ‘‘for a report’’ and struck out ‘‘and made to the Secretary at least semiannually’’ after ‘‘in such default’’.

Subsec. (b). Pub. L. 100–50, § 13(f), substituted ‘‘section 1096 of this title’’ for ‘‘section 1092 of this title’’.

**Effective Date of 2009 Amendment**


**Effective Date of 1998 Amendment**


**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1982, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.

**Effective Date of 1992 Amendment**

Amendment by Pub. L. 102–325 effective July 23, 1992, except that changes made in subsec. (a)(2)(B), relating to the matching of Federal capital contributions, applicable to funds provided for such program for award years beginning on or after July 1, 1993, see section 468 of Pub. L. 102–325, set out as a note under section 1087dd of this title.

**Effective Date of 1987 Amendment**


**Effective Date**

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Subsection (a)(9) of this section applicable only to loans made for periods of enrollment beginning on or after July 1, 1987, see section 405(b) of Pub. L. 99–498, set out as a note under section 1087dd of this title.

§ 1087ce–1. Student loan information by eligible institutions

(a) Disclosure required prior to disbursement

Each institution of higher education shall, at or prior to the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on such loan to the student borrower. Any disclosure required by this subsection may be made by an institution of higher education as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosures shall include—

(1) the name of the institution of higher education, and the address to which communications and payments should be sent;

(2) the principal amount of the loan;

(3) the amount of any charges collected by the institution at or prior to the disbursement of the loan and whether such charges are deducted from the proceeds of the loan or paid separately by the borrower;

(4) the stated interest rate on the loan;

(5) the yearly and cumulative maximum amounts that may be borrowed;

(6) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

(7) a statement as to the minimum and maximum repayment term which the institution may impose, and the minimum monthly payment required by law and a description of any penalty imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or institutions to collect on a loan;

(8) a statement of the total cumulative balance, including the loan applied for, owed by the student to that lender, and an estimate of the projected monthly payment, given such cumulative balance;

(9) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(10) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty, a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred, and a brief notice of the program for repayment of loans, on the basis of military service, pursuant to the Department of Defense educational loan repayment program (10 U.S.C. 16302);

(11) a definition of default and the consequences to the borrower if the borrower defaults, together with a statement that the disbursement of, and the default on, a loan under this part, shall be reported to a consumer reporting agency;

(12) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(13) an explanation of any cost the borrower may incur in the making or collection of the loan.

(b) Disclosure required prior to repayment

Each institution of higher education shall enter into an agreement with the Secretary under which the institution will, prior to the start of the repayment period of the student borrower on loans made under this part, disclose to the student borrower the information required under this subsection. Any disclosure required by this subsection may be made by an institution of higher education either in a promissory note evidencing the loan or loans or in a written statement provided by the borrower. The disclosures shall include—

(1) the name of the institution of higher education, and the address to which communications and payments should be sent;
(2) the scheduled date upon which the repayment period is to begin;
(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure as of the scheduled date on which the repayment period is to begin (including, if applicable, the estimated amount of interest to be capitalized);
(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;
(5) the nature of any fees which may accrue or be charged to the borrower during the repayment period;
(6) the repayment schedule for all loans covered by the disclosure including the date the first installment is due, and the number, amount, and frequency of required payments;
(7) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;
(8) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and
(9) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty.

(c) Costs and effects of disclosures

Such information shall be available without cost to the borrower. The failure of an eligible institution to provide information as required by this section shall not (1) relieve a borrower of the obligation to repay a loan in accordance with its terms, (2) provide a basis for a claim for civil damages, or (3) be deemed to abrogate the obligation of the Secretary to make payments with respect to such loan.


(prior provisions)


AMENDMENTS

2008—Subsec. (a)(11). Pub. L. 110–315 substituted “consumer” for “credit bureau or credit”.
1993—Subsecs. (d), (e). Pub. L. 103–208 struck out subsecs. (d) and (e), which read as follows:

“(d) LIMITATION ON USE OF INTEREST BEARING ACCOUNTS.—In carrying out the provisions of subsection (a)(10) of this section, the Secretary may not require that any collection agency, collection attorney, or loan servicer collecting loans made under this part deposit amounts collected on such loans in interest bearing accounts, unless such agency, attorney, or servicer holds such amounts for more than 45 days.

“(e) SPECIAL DUE DILIGENCE RULE.—In carrying out the provisions of subsection (a)(5) of this section relating to due diligence, the Secretary shall make every effort to ensure that institutions of higher education may use internal Revenue Service skip-tracing collection procedures on loans made under this part.”

1992—Subsec. (a)(11). Pub. L. 102–325, § 463(c)(1), substituted “together with a statement that the disbursement of, and the default on, a loan under this part, shall be for” including a statement that the default may be.

Subsecs. (d), (e). Pub. L. 102–325, § 463(c)(2), added subsecs. (d) and (e).
1987—Subsec. (a)(8). Pub. L. 100–50, § 13(g), added par. (8) and struck out former par. (8) which read as follows: “(8) a statement of the total cumulative balance owed by the student to that institution, the projected level of indebtedness of the student based on a 2- or 4-year college career, and an estimate of the projected monthly repayment given the level of indebtedness over a 2-, 4-, or 5-year college career.”.


Effective Date of 2009 Amendment


Effective Date of 1996 Amendment


Effective Date of 1993 Amendment

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1101 of this title.

Effective Date of 1987 Amendment


Effective Date

Section applicable only to loans made for periods of enrollment beginning on or after July 1, 1987, see section 408(b) of Pub. L. 99–498, as amended, set out as a note under section 1087dd of this title.

§ 1087dd. Terms of loans

(a) Terms and conditions

(1) Loans from any student loan fund established pursuant to an agreement under section 1067cc of this title to any student by any institution shall, subject to such conditions, limitations, and requirements as the Secretary shall prescribe by regulation, be made on such terms and conditions as the institution may determine.
(2)(A) Except as provided in paragraph (4), the total of loans made to a student in any academic year or its equivalent by an institution of higher education from a loan fund established pursuant to an agreement under this part shall not exceed—
   (i) $5,500, in the case of a student who has not successfully completed a program of undergraduate education; or
   (ii) $8,000, in the case of a graduate or professional student (as defined in regulations issued by the Secretary).

(B) Except as provided in paragraph (4), the aggregate unpaid principal amount for all loans made to a student by institutions of higher education from loan funds established pursuant to agreements under this part may not exceed—
   (i) $60,000, in the case of any graduate or professional student (as defined by regulations issued by the Secretary, and including any loans from such funds made to such person before such person became a graduate or professional student);
   (ii) $27,500, in the case of a student who has successfully completed 2 years of a program of education leading to a bachelor's degree but who has not completed the work necessary for such a degree (determined under regulations issued by the Secretary), and including any loans from such funds made to such person before such person became such a student; and
   (iii) $11,000, in the case of any other student.

(3) Regulations of the Secretary under paragraph (1) shall be designed to prevent the impairment of the capital student loan funds to the maximum extent practicable and with a view toward the objective of enabling the student to complete his course of study.

(4) In the case of a program of study abroad that is approved for credit by the home institution at which a student is enrolled and that has reasonable costs in excess of the home institution's budget, the annual and aggregate loan limits for the student may exceed the amounts described in paragraphs (2)(A) and (2)(B) by 20 percent.

(b) Demonstration of need and eligibility required

(1) A loan from a student loan fund assisted under this part may be made only to a student who demonstrates financial need in accordance with part E of this subchapter, who meets the requirements of section 1091 of this title, and who provides the institution with the student's driver's license number, if any, at the time of application for the loan. A student who is in default on a loan under this part shall not be eligible for an additional loan under this part unless such loan meets one of the conditions for exclusion under section 1087bb(g)(1)(E) of this title.

(2) If the institution's capital contribution under section 1087bb of this title is directly or indirectly based in part on the financial need demonstrated by students who are (A) attending the institution less than full time, or (B) independent students, then a reasonable portion of the loans made from the institution's student loan fund containing the contribution shall be made available to such students.

(c) Contents of loan agreement

(1) Any agreement between an institution and a student for a loan from a student loan fund assisted under this part—
   (A) shall be evidenced by note or other written instrument which, except as provided in paragraph (2), provides for repayment of the principal amount of the loan, together with interest thereon, in equal installments (or, if the borrower so requests, in graduated periodic installments determined in accordance with such schedules as may be approved by the Secretary) payable quarterly, bimonthly, or monthly, at the option of the institution, over a period beginning nine months after the date on which the student ceases to carry, at an institution of higher education or a comparable institution outside the United States approved for this purpose by the Secretary, at least one-half the normal full-time academic workload, and ending 10 years and 9 months after such date except that such period may begin earlier than 9 months after such date upon the request of the borrower;
   (B) shall include provision for acceleration of repayment of the whole, or any part, of such loan, at the option of the borrower;
   (C)(i) may provide, at the option of the institution, in accordance with regulations of the Secretary, that during the repayment period of the loan, payments of principal and interest by the borrower with respect to all outstanding loans made to the student from a student loan fund assisted under this part shall be at a rate equal to not less than $40 per month, except that the institution may, subject to such regulations, permit a borrower to pay less than $40 per month for a period of not more than one year where necessary to avoid hardship to the borrower, but without extending the 10-year maximum repayment period provided for in subparagraph (A) of this paragraph; and
   (ii) may provide that the total payments by a borrower for a monthly or similar payment period with respect to the aggregate of all loans held by the institution may, when the amount of a monthly or other similar payment period is not a multiple of $5, be rounded to the next highest whole dollar amount that is a multiple of $5;
   (D) shall provide that the loan shall bear interest, on the unpaid balance of the loan, at the rate of 5 percent per year in the case of any loan made on or after October 1, 1981, except that no interest shall accrue (i) prior to the beginning date of repayment determined under paragraph (2)(A)(i), or (ii) during any period in which repayment is suspended by reason of paragraph (2)(E);
   (E) shall provide that the loan shall be made without security and without endorsement;
   (F) shall provide that the liability to repay the loan shall be cancelled—
      (i) upon the death of the borrower;
      (ii) if the borrower becomes permanently and totally disabled as determined in accordance with regulations of the Secretary;
      (iii) if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or
mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months; or

(ii) if the borrower is determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability;

(G) shall provide that no note or evidence of obligation may be assigned by the lender, except upon the transfer of the borrower to another institution participating under this part (or, if not so participating, is eligible to do so and is approved by the Secretary for such purpose), to such institution, and except as necessary to carry out section 1087cc(a)(6) of this title;

(H) pursuant to regulations of the Secretary, shall provide for an assessment of a charge with respect to the loan for failure of the borrower to pay all or part of an installment when due, which shall include the expenses reasonably incurred in attempting collection of the loan, to the extent permitted by the Secretary, except that no charge imposed under this subparagraph shall exceed 20 percent of the amount of the monthly payment of the borrower; and

(I) shall contain a notice of the system of disclosure of information concerning default on such loan to consumer reporting agencies under section 1087cc(c) of this title.

(2)(A) No repayment of principal of, or interest on, any loan from a student loan fund assisted under this part shall be required during any period—

(i) during which the borrower—

(I) is pursuing at least a half-time course of study as determined by an eligible institution; or

(II) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary, except that no borrower shall be eligible for a deferment under this clause, or loan made under this part while serving in a medical internship or residency program;

(ii) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment;

(iii) during which the borrower—

(I) is serving on active duty during a war or other military operation or national emergency; or

(II) is performing qualifying National Guard duty during a war or other military operation or national emergency, and for the 180-day period following the demobilization date for the service described in subclause (I) or (II);

(iv) not in excess of 3 years for any reason which the lender determines, in accordance with regulations prescribed by the Secretary under section 1085(o) of this title, has caused or will cause the borrower to have an economic hardship; or

(v) during which the borrower is engaged in service described in section 1087eea(a)(2) of this title;

and provides that any such period shall not be included in determining the 10-year period described in subparagraph (A) of paragraph (1).

(B) No repayment of principal of, or interest on, any loan for any period described in subparagraph (A) shall begin until 6 months after the completion of such period.

(C) An individual with an outstanding loan balance who meets the eligibility criteria for a deferment described in subparagraph (A) as in effect on October 7, 1998, shall be eligible for deferment under this paragraph notwithstanding any contrary provision of the promissory note under which the loan or loans were made, and notwithstanding any amendment (or effective date provision relating to any amendment) to this section made prior to the date of such deferment.

(3)(A) The Secretary is authorized, when good cause is shown, to extend, in accordance with regulations, the 10-year maximum repayment period provided for in subparagraph (A) of paragraph (1) with respect to individual loans.

(B) Pursuant to uniform criteria established by the Secretary, the repayment period for any student borrower who during the repayment period is a low-income individual may be extended for a period not to exceed 10 years and the repayment schedule may be adjusted to reflect the income of that individual.

(4) The repayment period for a loan made under this part shall begin on the day immediately following the expiration of the period, specified in paragraph (1)(A), after the student ceases to carry the required academic workload, unless the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier point in time, and shall exclude any period of authorized deferment, forbearance, or cancellation.

(5) The institution may elect—

(A) to add the amount of any charge imposed under paragraph (1)(H) to the principal amount of the loan as of the first day after the day on which the installment was due and to notify the borrower of the assessment of the charge; or

(B) to make the amount of the charge payable to the institution not later than the due date of the next installment.

(6) Requests for deferment of repayment of loans under this part by students engaged in graduate or post-graduate fellowship-supported study (such as pursuant to a Fulbright grant) outside the United States shall be approved until completion of the period of the fellowship.

(7) There shall be excluded from the 9-month period that begins on the date on which a student ceases to carry at least one-half the normal full-time academic workload (as described in paragraph (1)(A)) any period not to exceed 3 years during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10 is called or ordered to active duty for a period of more than 30

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1 See References in Text note below.
days (as defined in section 101(d)(2) of such title). Such period of exclusion shall include the period necessary to resume enrollment at the borrower’s next available regular enrollment period.

(d) Availability of loan fund to all eligible students

An agreement under this part for payment of Federal capital contributions shall include provisions designed to make loans from the student loan fund established pursuant to such agreement reasonably available (to the extent of the available funds in such fund) to all eligible students in such institutions in need thereof.

(e) Forbearance

(1) The Secretary shall ensure that, as documented in accordance with paragraph (2), an institution of higher education shall grant a borrower forbearance of principal and interest or principal only, renewable at 12-month intervals for a period not to exceed 3 years, on such terms as are otherwise consistent with the regulations issued by the Secretary and agreed upon in writing by the parties to the loan, if:

(A) the borrower’s debt burden equals or exceeds 20 percent of such borrower’s gross income;

(B) the institution determines that the borrower should qualify for forbearance for other reasons;

(C) the borrower is eligible for interest payments to be made on such loan for service in the Armed Forces under section 2174 of title 10 and, pursuant to that eligibility, the interest on such loan is being paid under subsection (j) of this section, except that the form of a forbearance under this paragraph shall be a temporary cessation of all payments on the loan other than payments of interest on the loan that are made under subsection (j) of this section.

(2) For the purpose of paragraph (1), the terms of forbearance agreed to by the parties shall be documented by—

(A) confirming the agreement of the borrower by notice to the borrower from the institution of higher education; and

(B) recording the terms in the borrower’s file.

(f) Special repayment rule authority

(1) Subject to such restrictions as the Secretary may prescribe to protect the interest of the United States, in order to encourage repayment of loans made under this part which are in default, the Secretary may, in the agreement entered into under this part, authorize an institution of higher education to compromise on the repayment of such defaulted loans in accordance with paragraph (2). The Federal share of the compromise repayment shall bear the same relation to the institution’s share of such compromise repayment as the Federal capital contribution to the institution’s loan fund under this part bears to the institution’s capital contribution to such fund.

(2) No compromise repayment of a defaulted loan as authorized by paragraph (1) may be made unless the student borrower pays—

(A) 90 percent of the loan under this part;

(B) the interest due on such loan; and

(C) any collection fees due on such loan;

in a lump sum payment.

(g) Discharge

(1) In general

If a student borrower who received a loan made under this part on or after January 1, 1986, is unable to complete the program in which such student is enrolled due to the closure of the institution, then the Secretary shall discharge the borrower’s liability on the loan (including the interest and collection fees) and shall subsequently pursue any claim available to such borrower against the institution and the institution’s affiliates and principals, or settle the loan obligation pursuant to the financial responsibility standards described in section 1089c(c) of this title.

(2) Assignment

A borrower whose loan has been discharged pursuant to this subsection shall be deemed to have assigned to the United States the right to a loan refund in an amount that does not exceed the amount discharged against the institution and the institution’s affiliates and principals.

(3) Eligibility for additional assistance

The period during which a student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student’s period of eligibility for additional assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(4) Special rule

A borrower whose loan has been discharged pursuant to this subsection shall not be precluded, because of that discharge, from receiving additional grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for which the borrower would be otherwise eligible (but for the default on the discharged loan). The amount discharged under this subsection shall be treated as an amount canceled under section 1087ee(a) of this title.

(5) Reporting

The Secretary or institution, as the case may be, shall report to consumer reporting agencies with respect to loans that have been discharged pursuant to this subsection.

(h) Rehabilitation of loans

(1) Rehabilitation

(A) In general

If the borrower of a loan made under this part who has defaulted on the loan makes 9 on-time, consecutive, monthly payments of amounts owed on the loan, as determined by the institution, or by the Secretary in the case of a loan held by the Secretary, the loan shall be considered rehabilitated, and the institution that made that loan (or the Secretary, in the case of a loan held by the Secretary) shall request that any consumer reporting agency to which the default was reported remove the default from the borrower’s credit history.
(B) Comparable conditions
As long as the borrower continues to make scheduled repayments on a loan rehabilitated under this paragraph, the rehabilitated loan shall be subject to the same terms and conditions, and qualify for the same benefits and privileges, as other loans made under this part.

(C) Additional assistance
The borrower of a rehabilitated loan shall not be precluded by section 1091 of this title from receiving additional grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 (for which the borrower is otherwise eligible) on the basis of defaulting on the loan prior to such rehabilitation.

(D) Limitations
A borrower only once may obtain the benefit of this paragraph with respect to rehabilitation of a loan under this part.

(2) Restoration of eligibility
If the borrower of a loan made under this part who has defaulted on that loan makes 6 ontime, consecutive, monthly payments of amounts owed on such loan, the borrower’s eligibility for grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be restored to the extent that the borrower is otherwise eligible. A borrower only once may obtain the benefit of this paragraph with respect to restored eligibility.

(i) Incentive repayment program

(1) In general
Each institution of higher education may establish, with the approval of the Secretary, an incentive repayment program designed to reduce default and to replenish student loan funds established under this part. Each such incentive repayment program may—
(A) offer a reduction of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments, but in no event may the rate be reduced by more than 1 percent;
(B) provide for a discount on the balance owed on a loan on which the borrower pays the principal and interest in full prior to the end of the applicable repayment period, but in no event may the discount exceed 5 percent of the unpaid principal balance due on the loan at the time the early repayment is made; and
(C) include such other incentive repayment options as the institution determines will carry out the objectives of this subsection.

(2) Limitation
No incentive repayment option under an incentive repayment program authorized by this subsection may be paid for with Federal funds, including any Federal funds from the student loan fund, or with institutional funds from the student loan fund.

(j) Armed Forces student loan interest payment program

(1) Authority
Using funds received by transfer to the Secretary under section 2174 of title 10 for the payment of interest on a loan made under this part to a member of the Armed Forces, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

(2) Forbearance
During the period in which the Secretary is making payments on a loan under paragraph (1), the institution of higher education shall grant the borrower forbearance in accordance with subsection (e)(1)(C).

(k) Additional safeguards
The Secretary may develop such additional safeguards as the Secretary determines necessary to prevent fraud and abuse in the cancellation of liability under subsection (c)(1)(F). Notwithstanding subsection (c)(1)(F), the Secretary may promulgate regulations to resume collection on loans cancelled under subsection (c)(1)(F) in any case in which—
(1) a borrower received a cancellation of liability under subsection (c)(1)(F) and after the cancellation the borrower—
(A) receives a loan made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42; or
(B) has earned income in excess of the poverty line; or
(2) the Secretary determines necessary.

References in Text
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$16028. Apr. 7, 1986, 100 Stat. 333, related to terms and conditions of loans, prior to the general revision of this part by Pub. L. 99–496.

AMENDMENTS


Subsec. (g)(5). Pub. L. 111–319, § 465(b)(B), substituted ‘‘consumer reporting agencies’’ for ‘‘credit bureaus’’.

2008—Subsec. (a)(2)(A). Pub. L. 110–315, § 464(a)(1), substituted ‘‘$5,000’’ for ‘‘$4,000’’ in cl. (i) and ‘‘$8,000’’ for ‘‘consumer reporting agencies’’ for ‘‘credit bureaus’’.

Subsec. (a)(5). Pub. L. 110–315, § 464(b)(4), substituted ‘‘consumer reporting agencies’’ for ‘‘credit bureaus’’.

2007—Subsec. (a)(2)(A)(ii). Pub. L. 110–315, § 464(a)(2), substituted ‘‘(i) 3 percent per year, (ii) 4 percent per year in the case of any loan made on or after July 1, 1981, or (iii)’’ after ‘‘the rate of’’ and substituted ‘‘paragraph (2)(A)(i)’’ for ‘‘subparagraph (A)(i)’’.


Subsecs. (g) to (i). Pub. L. 105–224, § 464(d), added subsecs. (g) to (i).


‘‘(A) $18,000 in the case of any graduate or professional student (as defined by regulations of the Secretary, and including any loans from such funds made to such person before he became a graduate or professional student);

‘‘(B) $9,000 in the case of a student who has successfully completed 2 years of a program of education leading to a bachelor’s degree, but who has not completed the work necessary for such a degree (determined under regulations of the Secretary, and including any loans from such funds made to such person before he became such a student); and

‘‘(C) $4,500 in the case of any other student. ’’


Subsec. (b)(1). Pub. L. 102–325, § 464(c)(1), substituted ‘‘this subchapter, who meets the requirements of section 1091 of this title, and who provides the institution with the student’s drivers license number, if any, at the time of application for the loan’’ for ‘‘this subchapter and who meets the requirements of section 1091 of this title’’.

Subsec. (b)(2). Pub. L. 102–325, § 464(c)(2), amended par. (2). Generally. Prior to amendment, par. (2) read as follows—

‘‘(A) $4,500 in the case of any other student. ’’

Subsec. (c)(2). Pub. L. 101–239, § 464(e), struck out ‘‘unless the borrower is a minor and the note or other evidence of obligation executed by him would under applicable law, create a binding obligation’’ before ‘‘shall provide’’.

Subsec. (c)(2)(A). Pub. L. 101–239, § 464(f), amended subpar. (A) generally, revising and restating as cl. (i) to (iv) provisions formerly contained in cls. (i) to (ix).

Subsec. (c)(2)(B), (C). Pub. L. 101–239, § 464(g)(1), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows—

‘‘(B) Any period during which repayment is deferred under subparagraph (A) shall not be included in computing the 10-year maximum period provided for in subparagraph (A) of paragraph (1).’’

‘‘(C) No repayment of principal of, or interest on, any loan for any period of study, service, or disability described in subparagraph (A) or any combination thereof shall begin until 6 months after the completion of such period of study, service, disability, or combination thereof.’’

Subsec. (c)(4) to (6). Pub. L. 101–239, § 464(g)(2)–(4), added par. (4), redesignated former par. (4) as (5), and added par. (6).

Subsecs. (e) and (f). Pub. L. 102–325, § 464(h), added subsecs. (e) and (f).


‘‘except that no borrower shall be eligible for a deferment under this clause, or a loan made under this part (other than a loan made under section 1078–2 or 1078–3 of this title), while serving in a medical internship or residency program’’.

1987—Subsec. (c)(2)(A)(vi). Pub. L. 100–50 inserted “or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training” before semicolon at end.

**Effective Date of 2009 Amendment**

**Effective Date of 2008 Amendment**

**Effective Date of 2007 Amendment**

**Effective Date of 2006 Amendment**
Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.


**Effective Date of 2002 Amendment**
Amendment by Pub. L. 107–314 applicable with respect to interest, and any special allowance under section 1087–1 of this title, that accrue for months beginning on or after Oct. 1, 2003, on student loans described in section 1070a of title IV of the Act; Armed Forces, that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 2174 of title 10, Armed Forces, that were made before, on, or after such date) and were awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training shall be applied as well to loans made after such date in the same manner.

**Effective Date of 1998 Amendment**

**Effective Date of 1993 Amendment**

**Effective Date of 1992 Amendment**
Section 468 of Pub. L. 102–235, as amended by Pub. L. 102–235, title III, § 307(a), Oct. 6, 1992, 106 Stat. 1820, provided that: “The changes made in section 464(c)(1)(C) [20 U.S.C. 1087dd(c)(1)(C)], relating to minimum monthly payments shall apply with respect to loans for which the first disbursement is made on or after October 1, 1992, to an individual who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under part E of title IV of the Act; “(3) the changes made in section 464(c)(2)(A), relating to deferments, shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993; “(4) the changes made in section 467 [20 U.S.C. 1087ff], relating to the creation of a Perkins Loan Revolving Fund, shall take effect on September 15, 1997; and “(5) the changes made in section 464(a)(2)(A) (B) and (C) shall not apply to any loan made for the award year beginning July 1, 1992 provided that the loan does not result in a violation of section 464(a)(2)(A), (B) and (C) as in effect prior to such date of enactment.”

**Effective Date of 1989 Amendment**
Amendment by Pub. L. 101–229 applicable to any loan made, insured, or guaranteed under this part or part B of this subchapter, including a loan made before Dec. 19, 1989, and amendment effective Jan. 1, 1990, but inapplicable with respect to any portion of a period of deferment granted to a borrower under section 1077(a)(2)(C)(i), 1078(b)(1)(M)(i), or 1087dd(c)(2)(A)(i) of this title for service in a medical internship or residency program completed prior to Dec. 19, 1989, see section 2002(a)(4) of Pub. L. 101–229, set out as a note under section 1077 of this title.

**Effective Date of 1987 Amendment**

**Effective Date**
Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

**Section effective Oct. 17, 1986, except as otherwise provided,** see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

**Section effective Oct. 17, 1986, except as otherwise provided,** see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

**Construction of 2006 Amendment**
Nothing in amendment by Pub. L. 109–171 to be construed to authorize any refunding of any repayment of a loan, see section 8007(e) of Pub. L. 109–171, set out as a note under section 1078 of this title.
§ 1087ee. Cancellation of loans for certain public service

(a) Cancellation of percentage of debt based on years of qualifying service

(1) The percent specified in paragraph (3) of this subsection of the total amount of any loan made after June 30, 1972, from a student loan fund assisted under this part shall be canceled for each complete year of service after such date by the borrower under circumstances described in paragraph (2).

(2) Loans shall be canceled under paragraph (1) for service—

(A) as a full-time teacher for service in an academic year (including such a teacher employed by an educational service agency)—

(i) in a public or other nonprofit private elementary school or secondary school, which, for the purpose of this paragraph and for that year—

(I) has been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the school is located) to be a school in which the number of children meeting a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a)(5)], exceeds 30 percent of the total number of children enrolled in such school; and

(II) is in the school district of a local educational agency which is eligible in such year for assistance pursuant to part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; or

(ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a)(5)], exceeds 30 percent of the total number of children taught at such school or location;

(B) as a full-time staff member in a preschool program carried on under the Head Start Act [42 U.S.C. 9831 et seq.], or in a pre-kindergarten or child care program that is licensed or regulated by the State, that is operated for a period which is comparable to a full school year in the locality if the salary of such staff member is not more than the salary of a comparable employee of the local educational agency;

(C) as a full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, including a system administered by an educational service agency, or as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 1435(a)(10) of this title;

(D) as a member of the Armed Forces of the United States, for service that qualifies for special pay under section 310 of title 37 as an area of hostilities;

(E) as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.] or a volunteer under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.];

(F) as a full-time law enforcement officer or corrections officer for service to local, State, or Federal law enforcement or corrections agencies, or as a full-time attorney employed in a defender organization established in accordance with section 3006A(g)(2) of title 18;

(G) as a full-time teacher of mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State educational agency determines there is a shortage of qualified teachers;

(H) as a full-time nurse or medical technician providing health care services;

(i) as a full-time employee of a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children;

(J) as a full-time fire fighter for service to a local, State, or Federal fire department or fire district;

(K) as a full-time faculty member at a Tribal College or University, as that term is defined in section 1059c of this title;

(L) as a librarian, if the librarian has a master’s degree in library science and is employed in—

(i) an elementary school or secondary school that is eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; or

(ii) a public library that serves a geographic area that contains one or more schools eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965;

(M) as a full-time speech language pathologist, if the pathologist has a masters degree and is working exclusively with schools that are eligible for assistance under title I of the Elementary and Secondary Education Act of 1965; or

For the purpose of this paragraph, the term “children with disabilities” has the meaning set forth in section 1401 of this title.

(3)(A) The percent of a loan which shall be canceled under paragraph (1) of this subsection is—

(i) in the case of service described in subparagraph (A), (C), (D), (F), (G), (H), (I), (J), (K), (L), or (M) of paragraph (2), at the rate of 15 percent for the first or second year of such service, 20 percent for the third or fourth year of such service, and 30 percent for the fifth year of such service;

(ii) in the case of service described in subparagraph (B) of paragraph (2), at the rate of 15 percent for each year of such service; or
may continue to teach in such school and shall be eligible for loan cancellation pursuant to subsection (a)(1) of this section such 1 subsequent years.


REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A)(i), (L), (M), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of this title. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of this title. Part A of title I of the Act is classified generally to part A (§ 6311 et seq.) of subchapter I of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

The Head Start Act, referred to in subsec. (a)(2)(B), is subchapter B (§§ 636 to 657) of chapter 8 of subtitle A of part A (§ 6311 et seq.) of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.


CITATION

Amendment by section 2(f)(14) of Pub. L. 103–208 (which was effective as if included in Pub. L. 102–325) was executed to this section as amended by Pub. L. 102–325 and Pub. L. 103–82, to reflect the probable intent of Congress.

PRIOR PROVISIONS


1 So in original. Probably should be “in such”. 

subsection not later than 3 months after the institution files an institutional application for campus-based assistance under such chapter 1.


2008—Subsec. (a)(2)(A). Pub. L. 110–315, § 465(a)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: “as a full-time teacher for service in an academic year in a public or other nonprofit private elementary or secondary school which is in the school district of a local educational agency which is eligible in such year for assistance pursuant to title I of the Elementary and Secondary Education Act of 1965, and which for the purpose of this paragraph and for that year has been determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under section 111(c) of the Elementary and Secondary Education Act of 1965 exceeds 30 percent of the total enrollment of such school.”

Subsec. (a)(2)(B). Pub. L. 110–315, § 465(c), substituted “Head Start Act, or in a prekindergarten or child care program that is licensed or regulated by the State, that for that year has been determined by the Secretary to be a school in which the enrollment of children counted under section 111(c) of the Elementary and Secondary Education Act of 1965 exceeds 30 percent of the total enrollment of such school,” for “Head Start Act or in a prekindergarten or child care program which is licensed or regulated by the Secretary,” and struck out former subpar. (B) which read as follows: “as a full-time teacher of children with disabilities,” for “as a full-time teacher for service,” and struck out “in an academic year in an elementary or secondary school system;”.

Subsec. (a)(2)(C) to (M). Pub. L. 110–315, § 465(e), added subpars. (J) to (M). Pub. L. 110–315, § 465(e)(1), added subpars. (J) to (M) for “or (I).”

Subsec. (a)(3)(A)(i). Pub. L. 110–315, § 465(a)(1), inserted “(D),” after “(C),” and added “(I), (J), (K), (L), (M),” and “or (J)” for “or (I).”

Subsec. (a)(3)(A)(ii). Pub. L. 110–315, § 465(c)(1), redesignated cl. (iv) as (iii). Pub. L. 110–315, § 465(c)(2), struck out cl. (iii) and struck out former cl. (iv) which read as follows: “in the case of service described in subparagraph (D) of paragraph (2), not to exceed a total of 50 percent of such loan at the rate of 12½ percent for each year of qualifying service; or”.


Subsec. (b). Pub. L. 105–244, § 465(2), inserted at end “To the extent feasible, the Secretary shall pay the amounts for which any institution qualifies under this subsection not later than 3 months after the institution files an institutional application for campus-based funds.”


Pub. L. 103–82 added par. (6).

1992—Subsec. (a)(2)(A). Pub. L. 102–325, § 465(a)(1), as amended by Pub. L. 103–208, § 2(a)(7), struck out before semicolon at end “and such determination shall not be made with respect to more than 50 percent of the total number of schools in the State receiving assistance under such chapter 1.”

Subsec. (a)(2)(C). Pub. L. 102–325, § 465(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “as a full-time teacher of children with disabilities in a public or other nonprofit elementary or secondary school system;”.


Subsec. (a)(3)(A)(i). Pub. L. 102–325, § 465(b), substituted “(A), (C), (F), (G), (H), or (J)” for “(A), (C), or (F)”.

Subsec. (c). Pub. L. 102–325, § 465(c), added subsec. (c).

1991—Subsec. (a)(2). Pub. L. 102–139 substituted “1401(a)(1)” for “1401(1)” in last sentence. The references to section 1401 include the substitution of “Individuals with Disabilities Education Act” for “Education of the Handicapped Act” in the original.


Subsec. (a)(2)(F). Pub. L. 101–647, § 2101(a), which directed amendment of subsec. (a)(2) by adding at the end a new subpar. (F), was executed by adding subpar. (F) after subpar. (E) and before last sentence to reflect the probable intent of Congress.

Subsec. (a)(3)(A)(i). Pub. L. 101–647, § 2101(b), which directed amendment of subsec. (a)(3)(i) by substituting “(A), (C), or (F)” for “(A) or (C)”, was executed by making the substitution in subsec. (a)(3)(A)(i) to reflect the probable intent of Congress.


EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 2101(c) of Pub. L. 101–647 provided that: “The amendments made by this section [amending this section] shall apply only to loans made on or after the date of enactment of this Act [Nov. 29, 1990] under part E of title IV of the Higher Education Act of 1965 [this part].”

Section 1001 of Pub. L. 101–476 provided that: “The amendments made by this Act [see Short Title of 1990
Amendment note set out under section 1400 of this title shall take effect October 1, 1990.''

**Effective Date of 1987 Amendment**


**Effective Date**

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99–498, set out as a note under section 1001 of this title.

Subsection (a)(2)(E) of this section applicable only to loans made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, to individuals who are new borrowers on that date, see section 405(b) of Pub. L. 99–498, set out as a note under section 1087dd of this title.

§ 1087ff. Distribution of assets from student loan funds

(a) In general

After September 30, 2003, and not later than March 31, 2004, there shall be a capital distribution of the balance of the student loan fund established under this part by each institution of higher education as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to the balance in such fund at the close of September 30, 2003, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to the sum of such Federal capital contributions and the institution’s capital contributions to such fund.

(2) The remainder of such balance shall be paid to the institution.

(b) Distribution of late collections

After October 1, 2012, each institution with which the Secretary has made an agreement under this part, shall pay to the Secretary the same proportionate share of amounts received by this institution after September 30, 2003, in payment of principal and interest on student loans made from the student loan fund established pursuant to such agreement (which amount shall be determined after deduction of any costs of litigation incurred in collection of the principal or interest on loans from the fund and not already reimbursed from the fund or from such payments of principal or interest), as was determined for the Secretary under subsection (a) of this section.

(c) Distribution of excess capital

(1) Upon a finding by the institution or the Secretary prior to October 1, 2004, that the liquid assets of a student loan fund established pursuant to an agreement under this part exceed the amount required for loans or otherwise in the foreseeable future, and upon notice to such institution or to the Secretary, as the case may be, there shall be, subject to such limitations as may be included in regulations of the Secretary or in such agreement, a capital distribution from such fund. Such capital distribution shall be made as follows:

A. The Secretary shall first be paid an amount which bears the same ratio to the total to be distributed as the Federal capital contributions by the Secretary to the student loan fund prior to such distribution bear to the sum of such Federal capital contributions and the capital contributions to the fund made by the institution.

B. The remainder of the capital distribution shall be paid to the institution.

(2) No finding that the liquid assets of a student loan fund established under this part exceed the amount required under paragraph (1) may be made prior to a date which is 2 years after the date on which the institution of higher education received the funds from such institution’s allocation under section 1087bb of this title.


**Prior Provisions**


**AMENDMENTS**


1993—Subsec. (c)(2). Pub. L. 102–255, § 466(2), designated existing provisions as pars. (1), redesignated former pars. (1) and (2) as subs. (A) and (B), respectively, and added par. (2).

**Effective Date of 2007 Amendment**

Amendment by Pub. L. 110–84 effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as a note under section 1070a of this title.

**Effective Date of 1998 Amendment**


**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

§ 1087gg. Collection of defaulted loans: Perkins Loan Revolving Fund

(a) Authority of Secretary to collect referred, transferred, or assigned loans

With respect to any loan—
(1) which was made under this part, and
(2) which is referred, transferred, or assigned to the Secretary by an institution with an agreement under section 1087cc(a) of this title, the Secretary is authorized to attempt to collect such loan by any means authorized by law for collecting claims of the United States (including referral to the Attorney General for litigation) and under such terms and conditions as the Secretary may prescribe, including reimbursement for expenses reasonably incurred in attempting such collection.

(b) Collection of referred, transferred, or assigned loans

The Secretary shall continue to attempt to collect any loan referred, transferred, or assigned under paragraph (4) or (5) of section 1087cc(a) of this title until all appropriate collection efforts, as determined by the Secretary, have been expended.


PRIOR PROVISIONS


§ 1087ii. Definitions

(a) Low-income communities

For the purposes of this part, the term ‘‘low-income communities’’ means communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(b) High-risk children

For the purposes of this part, the term ‘‘high-risk children’’ means individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(c) Infants, toddlers, children, and youth with disabilities

For purposes of this part, the term ‘‘infants, toddlers, children, and youth with disabilities’’ means children with disabilities and infants and toddlers with disabilities as defined in sections 1401 and 1432 of this title, respectively, and the term ‘‘early intervention services’’ has the meaning given the term in section 1432 of this title.


REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a), is Pub. L. 89–10, Apr. 11,
1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–39 substituted “the term ‘early intervention services’ has the meaning given in section 1432 of this title.” for “and the term ‘qualified professional provider of early intervention services’ has the meaning specified in section 1472(2) of this title.”

2004—Subsec. (c). Pub. L. 108–446 substituted “sections 1401 and 1432” for “sections 1401(a)(1) and 1472(1)”.


EFFECTIVE DATE OF 2009 AMENDMENT


PART E—NEED ANALYSIS

CODIFICATION

This part was added as part F of title IV of Pub. L. 89–329 by Pub. L. 99–498, title IV, §406(a), Oct. 17, 1986, 100 Stat. 1454. The letter designation of this part was changed from “F” to “E” for codification purposes. See Codification note preceding section 1087a of this title.

§ 1087kk. Amount of need

Except as otherwise provided therein, the amount of need of any student for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 (except subparts 1 and 2 of part A of this subchapter) is equal to—

(1) the cost of attendance of such student, minus

(2) the expected family contribution for such student, minus

(3) estimated family contribution not received under this subchapter and part C of subchapter I of chapter 34 of title 42 (as defined in section 1087vv(j) of this title).


AMENDMENTS

1998—Pub. L. 105–244 substituted “or 2” for “or 4” in introductory provisions.

1992—Pub. L. 102–325 amended section generally. Prior to amendment, section read as follows: “Except as otherwise provided therein, the amount of need of any student for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 (except subparts 1 and 3 of part A of this subchapter) is equal to the cost of attendance of such student minus the expected family contribution for such student.”

EFFECTIVE DATE OF 1998 AMENDMENT


“(a) IN GENERAL.—Except as provided in subsection (b), this amendment made by this part (part F (§§471–480A) of title IV of Pub. L. 105–244, amending this section and sections 1087/l to 1087tt and 1087vv of this title] are effective on the date of enactment of this Act [Oct. 7, 1998].

“(b) PROVISIONS EFFECTIVE FOR ACADEMIC YEAR 2000–2001, AND THEREAFTER.—The amendments made by sections 472, 473, 474, and 475 (amending sections 1087mn to 1087qq of this title] shall apply with respect to determinations of need under part F of title IV of the Higher Education Act of 1965 [this part] for academic years beginning on or after July 1, 2000.”

EFFECTIVE DATE OF 1992 AMENDMENT

Section 471(b) of Pub. L. 102–325 provided that: “The changes made in part F of title IV of the Act [this part] by the amendment made by this section (amending sections 1087kk to 1087vv of this title] apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.”

EFFECTIVE DATE


“(1) Except as provided in paragraphs (2) through (4)—

“(A) part F of title IV of the Act [this part] shall apply with respect to determinations of need under such title for academic years beginning with academic year 1988–1989 and succeeding academic years; and

“(B) for any preceding academic year, determinations of need shall be made in accordance with regulations prescribed by the Secretary in accordance with the Student Financial Assistance Technical Amendments Act of 1982 [Pub. L. 97–301, see Short Title of 1982 Amendment note set out under section 1001 of this title].

“(2) With respect to an application filed after the date of enactment of this Act [Oct. 17, 1966] for a loan under part B of such title [part B of this subchapter] for any academic year preceding academic year 1988–1989, any determination of expected family contribution shall be made using the system of financial need analysis approved by the Secretary for use under subpart 2 of part A and parts C and E of such title [subpart 2 of part A of this subchapter and part C of subchapter I of chapter 34 of Title 42, The Public Health and Welfare, and part D of this subchapter].

“(3) For purposes of sections 413D(d)(2)(B) [now 413D(c)(2)(B)], 412(d)(2)(B) and 462(d)(2)(B) [20 U.S.C. 1087c–3(c)(2)(B), 42 U.S.C. 2752(d)(2)(B), 20 U.S.C. 1087bd(d)(2)(B)] for any academic year preceding academic year 1988–1989, the Secretary shall, in lieu of average expected family contribution, use the procedures for sampling expected family contribution within income categories that was employed for academic year 1986–1987, adjusted to reflect changes in data.

“(4) Section 479B of the Act [20 U.S.C. 1087tu] (as so added) shall apply with respect to financial assistance provided for any academic year beginning after such date of enactment [Oct. 17, 1986].”

[References to subpart 2 of part A of title IV of Pub. L. 89–329 deemed, after July 23, 1992, to refer to subpart 3 of such part, see section 402(b) of Pub. L. 102–325, set out as a note under section 1070a–11 of this title.]

SPECIAL STUDY OF SIMPLIFICATION OF NEED ANALYSIS AND APPLICATION FOR TITLE IV AID


“(a) STUDY REQUIRED.—The Advisory Committee on Student Financial Assistance established by section 491 of the Higher Education Act of 1965 (20 U.S.C. 1098), hereafter in this section referred to as ‘the Advisory Committee’, shall conduct a thorough study of the feasibility of simplifying the need analysis methodology for all Federal student financial assistance programs and the process of applying for such assistance.

“(b) REQUIRED SUBJECTS OF STUDY.—In performing the study, the Advisory Committee shall, at a minimum, examine the following:

1 So in original. Probably should be “subpart”.
"(1) whether the methodology used to calculate the expected family contribution can be simplified without significant adverse effects on program intent, costs, integrity, delivery, and distribution of awards;

"(2) whether the number of data elements, and, accordingly, the number and complexity of questions asked of students and families, used to calculate the expected family contribution can be reduced without significant adverse effects;

"(3) whether the procedures for determining such data elements, including determining and updating offsetting allowances, is the most efficient, effective, and fair means to determine a family's available income and assets;

"(4) whether the methodology used to calculate the expected family contribution, specifically the consideration of income earned by a dependent student and its effect on Pell grant eligibility, is an effective and fair means to determine a family's available income and a student's need;

"(5) whether the nature and timing of the application required in section 483(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1099(a)(1)), eligibility and award determination, financial aid processing, and funds delivery can be streamlined further for students and families, institutions, and States;

"(6) whether it is feasible to allow students to complete only those limited sections of the financial aid application that apply to their specific circumstances and the State in which they reside;

"(7) whether a widely disseminated printed form, or the use of an Internet or other electronic means, can be developed to notify individuals of an estimation of their average eligibility for grant, work-study, and loan assistance upon completion and verification of the simplified application form;

"(8) whether information provided on other Federal forms (such as the form applying for supplemental security income under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.], the form for applying for food stamps under the Food Stamp Act of 1977 [now the Food and Nutrition Act of 2006, 7 U.S.C. 2011 et seq.], and the schedule for applying for the earned income tax credit under section 32 of the Internal Revenue Code of 1986 (26 U.S.C. 32[1]) that are designed to determine eligibility for various Federal need-based assistance programs could be used to quality potential students for the simplified needs test; and

"(9) whether any proposed changes to data elements collected, in addition to those used to calculate expected family contribution, or any proposed changes to the form's design or the process of applying for aid, may have adverse effects on program costs, integrity, delivery, or distribution of awards, as well as, application development or application processing.

"(c) ADDITIONAL CONSIDERATIONS.—In conducting the feasibility study, the Advisory Committee's primary objective under this subsection shall be simplifying the financial aid application forms and process and obtaining a substantial reduction in the number of required data items. In carrying out that objective, the Advisory Committee shall pay special attention to the needs of low-income and moderate-income students and families.

"(d) CONSULTATION.—

"(1) IN GENERAL.—The Advisory Committee shall consult with a broad range of interested parties in higher education, including parents and students, high school counselors, financial aid and other campus administrators, appropriate State administrators, administrators of intervention and outreach programs, and appropriate officials from the Department of Education.

"(2) FORMS DESIGN EXPERT.—With the goal of making significant changes to the form to make the questions more easily understandable, the Advisory Committee shall consult a forms design expert to ensure that its recommendations for revision of the application form would assist in making the form easily readable and understood by parents, students, and other members of the public.

"(3) CONGRESSIONAL CONSULTATION.—The Advisory Committee shall consult on a regular basis with the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate in carrying out the feasibility study required by this subsection.

"(4) DEPARTMENTAL CONSULTATION.—The Secretary of Education shall provide such assistance to the Advisory Committee as is requested and practicable in conducting the study required by this subsection.

"(e) REPORTS.—

"(1) INTERIM REPORT.—The Advisory Committee shall, not later than 6 months after the date of enactment of this Act [Jan. 23, 2004], prepare and submit an interim report containing any such legislative changes as the Advisory Committee recommends to reform and simplify the needs analysis under part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk et seq.), forms and other requirements under such title to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Secretary of Education.

"(2) FINAL REPORT.—The Advisory Committee shall, not later than 1 year after the date of enactment of this Act, prepare and submit a final full report on the study, including recommendations for regulatory and administrative changes required by this section, to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Secretary of Education.

"(f) IMPLEMENTATION.—The Secretary of Education shall consult with the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate and shall subsequently initiate a redesign of the form required by section 483 of the Higher Education Act of 1965 (20 U.S.C. 1099). Such redesign shall include the testing of alternative simplified versions of the free Federal form. The Secretary shall keep the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate fully and currently informed on the progress of these efforts.

"(g) POSTPONEMENT OF TAX TABLE UPDATE PENDING REPORT AND IMPLEMENTATION.—The Secretary of Education shall not implement or enforce for the year 2004-2005 the annual update to the allowances for State and other taxes in the tables used in the Federal needs analysis methodology, as prescribed by the Secretary on May 30, 2003 (68 Fed. Reg. 32975).

§ 1087II. Cost of attendance

For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, the term "cost of attendance" means—

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the institution on at least a half-time basis, as determined by the institution; and

(3) an allowance (as determined by the institution) for room and board costs incurred by the student which—
(A) shall be an allowance determined by the institution for a student without dependents residing at home with parents;

(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(C) for students who live in housing located on a military base or for which a basic allowance is provided under section 403(b) of title 37, shall be an allowance based on the expenses reasonably incurred by such students for board but not for room; and

(D) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board;

(4) for less than half-time students (as determined by the institution), tuition and fees and an allowance for only—

(A) books, supplies, and transportation (as determined by the institution);

(B) dependent care expenses (determined in accordance with paragraph (8)); and

(C) room and board costs (determined in accordance with paragraph (3)), except that a student may receive an allowance for such costs under this subparagraph for not more than 3 semesters or the equivalent, of which not more than 2 semesters or the equivalent may be consecutive;

(5) for a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies; and

(6) for incarcerated students only tuition and fees and, if required, books and supplies;

(7) for a student enrolled in an academic program in a program of study abroad approved for credit by the student’s home institution, reasonable costs associated with such study (as determined by the institution at which such student is enrolled);

(8) for a student with one or more dependents an allowance based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that—

(A) such allowance shall not exceed the reasonable cost in the community in which such student resides for the kind of care provided; and

(B) the period for which dependent care is required includes, but is not limited to, class-time, study-time, field work, internships, and commuting time;

(9) for a student with a disability, an allowance (as determined by the institution) for those expenses related to the student’s disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;

(10) for a student receiving all or part of the student's instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs;

(11) for a student engaged in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the institution);

(12) for a student who receives a loan under this or any other Federal law, or, at the option of the institution, a conventional student loan incurred by the student to cover a student’s cost of attendance at the institution, an allowance for the actual cost of any loan fee, origination fee, or insurance premium charged to such student or such parent on such loan, or the average cost of any such fee or premium charged by the Secretary, lender, or guaranty agency making or insuring such loan, as the case may be; and

(13) at the option of the institution, for a student in a program requiring professional licensure or certification, the one-time cost of obtaining the first professional credentials (as determined by the institution).


AMENDMENTS

2008—Par. (3)(C), (D). Pub. L. 110–315 added subpar. (C) and redesignated former subpar. (C) as (D).

2006—Par. (4). Pub. L. 109–171, § 8016(1), added par. (4) and struck out former par. (4), which read as follows: "for less than half-time students (as determined by the institution) tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (8));":


1998—Par. (2). Pub. L. 105–244, § 471(1), inserted "including a reasonable allowance for the documented rental or purchase of a personal computer," after "personal expenses".

Par. (3)(A). Pub. L. 105–244, § 471(2)(A), substituted "determined by the institution" for "of not less than $1,500".

Par. (3)(C). Pub. L. 105–244, § 471(2)(B), struck out "except that the amount may not be less than $2,500" after "room and board".

Par. (10). Pub. L. 105–244, § 471(3), substituted a semicolon for ",", but this paragraph shall not be construed to permit including the cost of rental or purchase of equipment".

Par. (11). Pub. L. 105–244, § 471(4), substituted "engaged" for "placed".


Pub. L. 102–325 amended section generally, revising and restating as pars. (1) to (11) provisions formerly contained in pars. (1) to (9).

EFFECTIVE DATE OF 2008 AMENDMENT


EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.
§ 1087mm. Family contribution

(a) In general

For the purpose of this subchapter and part C of chapter 34 of title 42, other than subpart 2 of part A of this subchapter, and except as provided in subsection (b), the term ‘family contribution’ with respect to any student means the amount which the student and the student’s family may be reasonably expected to contribute toward the student’s postsecondary education for the academic year for which the determination is made, as determined in accordance with this part.

(b) Special rule

(1) In general

Notwithstanding any other provision of this subchapter and part C of chapter 34 of title 42, the family contribution of each student described in paragraph (2) shall be deemed to be zero for the academic year for which the determination is made.

(2) Applicability

Paragraph (1) shall apply to any dependent or independent student with respect to determinations of need for academic year 2009–2010 and succeeding academic years—

(A) who is eligible to receive a Federal Pell Grant for the academic year for which the determination is made;

(B) whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001; and

(C) who, at the time of the parent or guardian’s death, was—

(i) less than 24 years of age; or

(ii) enrolled at an institution of higher education on a part-time or full-time basis.

(3) Information

Notwithstanding any other provision of law, the Secretary of Veterans Affairs and the Secretary of Defense, as appropriate, shall provide the Secretary of Education with information necessary to determine which students meet the requirements of paragraph (2).

§ 1087nn. Determination of expected family contribution; data elements

(a) General rule for determination of expected family contribution

The expected family contribution—

(1) for a dependent student shall be determined in accordance with section 1087too of this title;

(2) for a single independent student or a married independent student without dependents (other than a spouse) shall be determined in accordance with section 1087tp of this title; and

(3) for an independent student with dependents other than a spouse shall be determined in accordance with section 1087tq of this title.

(b) Data elements

The following data elements are considered in determining the expected family contribution:

(1) the available income of (A) the student and the student’s spouse, or (B) the student and the student’s parents, in the case of a dependent student;
§ 1087oo. Family contribution for dependent students

(a) Computation of expected family contribution

For each dependent student, the expected family contribution is equal to the sum of—

(1) the parents’ contribution from adjusted available income (determined in accordance with subsection (b) of this section);

(2) the student contribution from available income (determined in accordance with subsection (g) of this section); and

(3) the student contribution from assets (determined in accordance with subsection (h) of this section).

(b) Parents’ contribution from adjusted available income

The parents’ contribution from adjusted available income is equal to the amount determined by—

(1) computing adjusted available income by adding—

(A) the parents’ available income (determined in accordance with subsection (c) of this section); and

(B) the parents’ contribution from assets (determined in accordance with subsection (d) of this section);

(2) assessing such adjusted available income in accordance with the assessment schedule set forth in subsection (e) of this section; and

(3) dividing the assessment resulting under paragraph (2) by the number of the family members, excluding the student’s parents, who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title during the award period for which assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 is requested;

except that the amount determined under this subsection shall not be less than zero.

(c) Parents’ available income

(1) In general

The parents’ available income is determined by deducting from total income (as defined in section 1087vv of this title)—

(A) Federal income taxes;

(B) an allowance for State and other taxes, determined in accordance with paragraph (2);

(C) an allowance for social security taxes, determined in accordance with paragraph (3);

(D) an income protection allowance, determined in accordance with paragraph (4);

(E) an employment expense allowance, determined in accordance with paragraph (5); and

(F) the amount of any tax credit taken by the parents under section 25A of title 26.

(2) Allowance for State and other taxes

The allowance for State and other taxes is equal to an amount determined by multiply-
ing total income (as defined in section 1087rv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Percentages for Computation of State and Other Tax Allowance

<table>
<thead>
<tr>
<th>If parents’ State or territory of residence is—</th>
<th>And parents’ total income is—</th>
<th>Then the percentage is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska, Puerto Rico, Wyoming</td>
<td>less than $15,000 or $15,000 or more</td>
<td>3 2</td>
</tr>
<tr>
<td>American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida, South Dakota, Tennessee, New Mexico</td>
<td>4 3</td>
<td></td>
</tr>
<tr>
<td>North Dakota, Washington</td>
<td>5 4</td>
<td></td>
</tr>
<tr>
<td>Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia</td>
<td>6 5</td>
<td></td>
</tr>
<tr>
<td>Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky</td>
<td>7 6</td>
<td></td>
</tr>
<tr>
<td>California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico</td>
<td>9 8</td>
<td></td>
</tr>
</tbody>
</table>

Percentages for Computation of State and Other Tax Allowance—Continued

<table>
<thead>
<tr>
<th>If parents’ State or territory of residence is—</th>
<th>And parents’ total income is—</th>
<th>Then the percentage is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine, New Jersey</td>
<td>less than $15,000 or $15,000 or more</td>
<td>10 9</td>
</tr>
<tr>
<td>District of Columbia, Hawaii, Maryland, Massachussetts, Oregon, Rhode Island</td>
<td>11 10</td>
<td></td>
</tr>
<tr>
<td>Michigan, Minnesota</td>
<td>12 11</td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>13 12</td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>14 13</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>9 8</td>
<td></td>
</tr>
</tbody>
</table>

(3) Allowance for social security taxes

The allowance for social security taxes is equal to the amount earned by each parent multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

(4) Income protection allowance

The income protection allowance is determined by the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

<table>
<thead>
<tr>
<th>Family Size (including student)</th>
<th>Number in College</th>
<th>For each additional add:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 2 3 4 5</td>
<td>$1,790</td>
</tr>
<tr>
<td>2</td>
<td>$10,520</td>
<td>$8,720</td>
</tr>
<tr>
<td>3</td>
<td>13,100</td>
<td>11,310</td>
</tr>
<tr>
<td>4</td>
<td>16,180</td>
<td>14,380</td>
</tr>
<tr>
<td>5</td>
<td>19,690</td>
<td>17,290</td>
</tr>
<tr>
<td></td>
<td>22,330</td>
<td>15,500</td>
</tr>
<tr>
<td>For each additional add:</td>
<td>2,520</td>
<td>2,520</td>
</tr>
</tbody>
</table>

(5) Employment expense allowance

The employment expense allowance is determined as follows (or using a successor provision prescribed by the Secretary under section 1087rr of this title):

(A) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the parent with the lesser earned income.

(B) If a parent qualifies as a surviving spouse or as a head of household as defined in section 2 of title 26, such allowance is equal to the lesser of $2,500 or 35 percent of such parent’s earned income.

(d) Parents’ contribution from assets

(1) In general

The parents’ contribution from assets is equal to—

(A) the parental net worth (determined in accordance with paragraph (2)); minus

(B) the education savings and asset protection allowance (determined in accordance with paragraph (3)); multiplied by

(C) the asset conversion rate (determined in accordance with paragraph (4)), except that the result shall not be less than zero.

(2) Parental net worth

The parental net worth is calculated by adding—

(A) the current balance of checking and savings accounts and cash on hand;

(B) the net value of investments and real estate, excluding the net value of the principal place of residence; and
(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter in this subsection referred to as “NW”), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 1087rr of this title), except as provided under section 1087vv(f) of this title:

### Adjusted Net Worth of a Business or Farm

<table>
<thead>
<tr>
<th>If the net worth of a business or farm is:</th>
<th>Then the adjusted net worth is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $1</td>
<td>$0</td>
</tr>
<tr>
<td>$1–$75,000</td>
<td>40 percent of NW</td>
</tr>
<tr>
<td>$75,001–$225,000</td>
<td>$30,000 plus 50 percent of NW over $75,000</td>
</tr>
<tr>
<td>$225,001–$375,000</td>
<td>$105,000 plus 60 percent of NW over $225,000</td>
</tr>
<tr>
<td>$375,001 or more</td>
<td>$195,000 plus 100 percent of NW over $375,000</td>
</tr>
</tbody>
</table>

### (3) Education savings and asset protection allowance

The education savings and asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

#### Education Savings and Asset Protection Allowances for Families and Students

<table>
<thead>
<tr>
<th>If the age of the oldest parent is:</th>
<th>And there are:</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 or less</td>
<td>two parents, one parent</td>
</tr>
<tr>
<td>26</td>
<td>$0, $0</td>
</tr>
<tr>
<td>27</td>
<td>2,200, 1,600</td>
</tr>
<tr>
<td>28</td>
<td>4,300, 3,200</td>
</tr>
<tr>
<td>29</td>
<td>6,500, 4,700</td>
</tr>
<tr>
<td>30</td>
<td>8,600, 6,300</td>
</tr>
<tr>
<td>31</td>
<td>10,800, 7,900</td>
</tr>
<tr>
<td>32</td>
<td>13,000, 9,500</td>
</tr>
<tr>
<td>33</td>
<td>15,100, 11,100</td>
</tr>
<tr>
<td>34</td>
<td>17,300, 12,600</td>
</tr>
<tr>
<td>35</td>
<td>19,400, 14,200</td>
</tr>
<tr>
<td>36</td>
<td>21,600, 15,800</td>
</tr>
<tr>
<td>37</td>
<td>23,800, 17,400</td>
</tr>
<tr>
<td>38</td>
<td>25,900, 19,000</td>
</tr>
<tr>
<td>39</td>
<td>28,100, 20,500</td>
</tr>
<tr>
<td>40</td>
<td>30,200, 22,100</td>
</tr>
<tr>
<td>41</td>
<td>32,400, 23,700</td>
</tr>
<tr>
<td>42</td>
<td>35,300, 24,100</td>
</tr>
<tr>
<td>43</td>
<td>34,100, 24,700</td>
</tr>
<tr>
<td>44</td>
<td>35,000, 25,200</td>
</tr>
<tr>
<td>45</td>
<td>35,700, 25,800</td>
</tr>
<tr>
<td>46</td>
<td>36,600, 26,300</td>
</tr>
<tr>
<td>47</td>
<td>37,600, 26,900</td>
</tr>
<tr>
<td>48</td>
<td>38,800, 27,600</td>
</tr>
<tr>
<td>49</td>
<td>39,800, 28,200</td>
</tr>
<tr>
<td>50</td>
<td>40,800, 28,800</td>
</tr>
<tr>
<td>51</td>
<td>41,800, 29,500</td>
</tr>
<tr>
<td>52</td>
<td>43,200, 30,200</td>
</tr>
<tr>
<td>53</td>
<td>44,300, 31,100</td>
</tr>
<tr>
<td>54</td>
<td>45,700, 31,800</td>
</tr>
<tr>
<td>55</td>
<td>47,100, 32,600</td>
</tr>
<tr>
<td>56</td>
<td>48,300, 33,400</td>
</tr>
<tr>
<td>57</td>
<td>49,800, 34,100</td>
</tr>
<tr>
<td>58</td>
<td>51,300, 35,200</td>
</tr>
<tr>
<td>59</td>
<td>52,900, 36,200</td>
</tr>
<tr>
<td>60</td>
<td>54,800, 37,200</td>
</tr>
<tr>
<td>61</td>
<td>56,500, 38,100</td>
</tr>
<tr>
<td>62</td>
<td>58,500, 39,200</td>
</tr>
<tr>
<td>63</td>
<td>60,300, 40,300</td>
</tr>
<tr>
<td>64</td>
<td>62,400, 41,500</td>
</tr>
<tr>
<td>65 or more</td>
<td>$64,600, $42,800</td>
</tr>
</tbody>
</table>

### (4) Asset conversion rate

The asset conversion rate is 12 percent.

#### (e) Assessment schedule

The adjusted available income (as determined under subsection (b)(1) of this section and hereafter in this subsection referred to as “AAI”) is assessed according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

#### Parents’ Assessment From Adjusted Available Income (AAI)

<table>
<thead>
<tr>
<th>If AAI is:</th>
<th>Then the assessment is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $3,409</td>
<td>$0</td>
</tr>
<tr>
<td>$3,409 to $9,400</td>
<td>22% of AAI</td>
</tr>
<tr>
<td>$9,401 to $11,800</td>
<td>$2,068 + 25% of AAI over $9,400</td>
</tr>
<tr>
<td>$11,801 to $19,000</td>
<td>$2,668 + 29% of AAI over $11,800</td>
</tr>
<tr>
<td>$19,01 to $24,200</td>
<td>$3,364 + 34% of AAI over $19,000</td>
</tr>
<tr>
<td>$24,201 to $29,400</td>
<td>$4,180 + 40% of AAI over $24,200</td>
</tr>
<tr>
<td>$29,401 or more</td>
<td>$5,04 + 47% of AAI over $29,400</td>
</tr>
</tbody>
</table>

#### (f) Computations in case of separation, divorce, remarriage, or death

##### (1) Divorced or separated parents

Parental income and assets for a student whose parents are divorced or separated is determined under the following procedures:

(A) Include only the income and assets of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

(B) If the preceding criterion does not apply, include only the income and assets of the parent who provided the greater portion of the student’s support for the 12-month period preceding the date of application.

(C) If neither of the preceding criteria apply, include only the income and assets of the parent who provided the greater support during the most recent calendar year for which parental support was provided.

##### (2) Death of a parent

Parental income and assets in the case of the death of any parent is determined as follows:

(A) If either of the parents has died, the student shall include only the income and assets of the surviving parent.

(B) If both parents have died, the student shall not report any parental income or assets.

##### (3) Remarried parents

If a parent whose income and assets are taken into account under paragraph (1) of this subsection, or if a parent who is a widow or widower and whose income is taken into account under paragraph (2) of this subsection, has remarried, the income of that parent’s
§ 1087oo

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spouse shall be included in determining the parent’s adjusted available income only if—
(A) the student’s parent and the step-parent are married as of the date of application for the award year concerned; and
(B) the student is not an independent student.

(g) Student contribution from available income

(1) In general

The student contribution from available income is equal to—
(A) the student’s total income (determined in accordance with section 1087vv of this title); minus
(B) the adjustment to student income (determined in accordance with paragraph (2)); multiplied by
(C) the assessment rate as determined in paragraph (5);
except that the amount determined under this subsection shall not be less than zero.

(2) Adjustment to student income

The adjustment to student income is equal to the sum of—
(A) Federal income taxes of the student;
(B) an allowance for State and other income taxes (determined in accordance with paragraph (3));
(C) an allowance for social security taxes determined in accordance with paragraph (4);
(D) an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 1087rr of this title)—
   (i) for academic year 2009–2010, $3,750;
   (ii) for academic year 2010–2011, $4,500;
   (iii) for academic year 2011–2012, $5,250;
   and
   (iv) for academic year 2012–2013, $6,000;
(E) the amount of any tax credit taken by the student under section 25A of title 26; and
(F) an allowance for parents’ negative available income, determined in accordance with paragraph (6).

(3) Allowance for State and other income taxes

The allowance for State and other income taxes is equal to an amount determined by multiplying total income (as defined in section 1087vv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Percentages for Computation of State and Other Tax Allowance—Continued

<table>
<thead>
<tr>
<th>If the students’ State or territory of residence is—</th>
<th>The percentage is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas, Georgia, Iowa, Kentucky, Maine, Pennsylvania, Utah, Vermont, Virginia, West Virginia, Canada, Mexico</td>
<td>4</td>
</tr>
<tr>
<td>California, Idaho, Massachusetts, North Carolina, Ohio, Rhode Island, South Carolina</td>
<td>5</td>
</tr>
<tr>
<td>Hawaii, Maryland, Michigan, Wisconsin</td>
<td>6</td>
</tr>
<tr>
<td>Delaware, District of Columbia, Minnesota, Oregon</td>
<td>7</td>
</tr>
<tr>
<td>New York</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
</tr>
</tbody>
</table>

(4) Allowance for social security taxes

The allowance for social security taxes is equal to the amount earned by the student multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

(5) Assessment of available income

The student’s available income (determined in accordance with paragraph (1) of this subsection) is assessed at 50 percent.

(6) Allowance for parents’ negative available income

The allowance for parents’ negative available income is the amount, if any, by which the sum of the amounts deducted under subparagraphs (A) through (F) of subsection (c) of this section exceeds the sum of the parents’ total income (as defined in section 1087vv of this title) and the parents’ contribution from assets (as determined in accordance with subsection (d) of this section).

(h) Student contribution from assets

The student contribution from assets is determined by calculating the net assets of the student and multiplying such amount by 20 percent, except that the result shall not be less than zero.

(i) Adjustments to parents’ contribution for enrollment periods other than 9 months for purposes other than subpart 2 of part A of this subchapter

For periods of enrollment other than 9 months, the parents’ contribution from adjusted available income (as determined under subsection (b) of this section) is determined as follows for purposes other than subpart 2 of part A of this subchapter:
(1) For periods of enrollment less than 9 months, the parents’ contribution from adjusted available income is divided by 9 and the result multiplied by the number of months enrolled.
(2) For periods of enrollment greater than 9 months—
   (A) the parents’ adjusted available income (determined in accordance with subsection (b)(i) of this section) is increased by the difference between the income protection allowance (determined in accordance with subsection (d)(i) of this section) and
   (B) the parents’ contribution from available income (determined in accordance with subsection (b)(ii) of this section) is increased by the difference between the income protection allowance and
   (C) the parents’ adjusted available income is divided by 9 and the result multiplied by the number of months enrolled.
section (c)(4) of this section) for a family of four and a family of five, each with one child in college;

(B) the resulting revised parents' adjusted available income is assessed according to subsection (g) of this section and adjusted according to subsection (b)(3) of this section to determine a revised parents' contribution from adjusted available income;

(C) the original parents' contribution from adjusted available income is subtracted from the revised parents' contribution from adjusted available income, and the result is divided by 12 to determine the monthly adjustment amount; and

(D) the original parents' contribution from adjusted available income is increased by the product of the monthly adjustment amount multiplied by the number of months greater than 9 for which the student will be enrolled.

(j) Adjustments to student's contribution for enrollment periods of less than nine months

For periods of enrollment of less than 9 months, the student's contribution from adjusted available income (as determined under subsection (g) of this section) is determined, for purposes other than subpart 2 of part A of this subchapter, by dividing the amount determined under such subsection by 9, and multiplying the result by the number of months in the period of enrollment.

(See L. 1987, 123 Stat. 1948.)

AMENDMENTS

2009—Subsec. (c)(5)(B). Pub. L. 111–39, title IV, § 406(a)(2), added subpar. (D). (D) generally. Prior to amendment, subpar. (D) read as follows: “an income protection allowance of $3,000 (or a successor amount prescribed by the Secretary under section 1087rr of this title)”.


Subsec. (g)(3), Pub. L. 103–208, § 2(g)(3), in introductory provisions, substituted “If a parent” for “Income in the case of a parent”, “(1) of this subsection, or if a parent” for “(1) of this subsection, or a parent”, and “the income” for “is determined as follows: The income”.

Subsec. (g)(1)(B), Pub. L. 103–208, § 2(g)(4), inserted closing parenthesis after “paragraph (2)”.

Subsec. (g)(3). Pub. L. 103–208, § 2(g)(5), in table added last item relating to Other.

1992—Pub. L. 102–325 amended section generally, making minor changes in subsecs. (a) to (c) and (e) to (g), in subsec. (d) substituting provisions relating to parents' contribution from assets for provisions relating to parents' income supplemental amount from assets, in subsec. (h) substituting provisions relating to student contribution from assets for provisions relating to student and spouse income supplemental amount from assets, and in subsec. (i) substituting provisions relating to adjustments to parents' contribution for enrollment periods other than 9 months for purpose of paragraph (2) of this subsection, or if a parent” for “Income in the paragraph (2) of this subsection, or if a parent” for “Income in the paragraph (2) of this subsection, or if a parent” for “Income in the paragraph (2) of this subsection, or if a parent”. The original parents' contribution from assets.

Subsec. (g)(1)(B), Pub. L. 100–50, § 14(3), substituted “dislocated homemaker” for “dislocated homemaker”.

Subsec. (g)(2)(C), Pub. L. 100–50, § 14(4), substituted “section 1087rr of this title” for “section 1087rr of this title,”.

Subsec. (b)(3), Pub. L. 100–50, § 14(5), inserted closing parenthesis after “paragraph (2)”.

Subsec. (d)(2)(B), Pub. L. 100–50, § 14(6), substituted “displaced homemaker” for “dislocated homemaker”.

Subsec. (d)(2)(C), Pub. L. 100–50, § 14(7), substituted “displaced homemaker” for “dislocated homemaker”.

Subsec. (g)(1)(D), Pub. L. 100–50, § 14(8), substituted “paragraph (2)” for “paragraph (3)”. The original parents' contribution from assets.

Subsec. (g)(3), Pub. L. 100–50, § 14(9), inserted “(or a successor table prescribed by the Secretary under section 1087rr of this title)” after “following table”.

Subsec. (h), Pub. L. 100–50, § 14(10), inserted closing parenthesis after “paragraph (2)” and struck out former subsec. (h) which read as follows: “The student and spouse income supplemental amount from assets is determined by multiplying by 35 percent the sum of—

(1) the current balance of checking and savings accounts and cash on hand; and

(2) the net value of investments and real estate, including the net value in the principal place of residence except in the case of a dislocated worker (certified in accordance with title III of the Job Training Partnership Act) or a displaced homemaker (as defined in section 1087vv(e) of this title).”
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Effective Date of 2009 Amendment

Effective Date of 2007 Amendment
Pub. L. 110–94, title VI, §601(e), Sept. 27, 2007, 121 Stat. 804, provided that: “The amendments made by this section [amending this section and sections 1087pp, 1087qq, and 1087rr of this title] shall be effective on July 1, 2009.”

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1001 of this title.

Effective Date of 2005 Amendment

Effective Date of 1998 Amendment
Amendment by Pub. L. 105–244 effective, Oct. 7, 1998, and applicable with respect to determinations of need under this part for academic years beginning on or after July 1, 2000, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

Effective Date of 1997 Amendment
Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Effective Date of 1992 Amendment
Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

Effective Date of 1987 Amendment

§1087pp. Family contribution for independent students without dependents other than a spouse

(a) Computation of expected family contribution

For each independent student without dependents other than a spouse, the expected family contribution is determined by—

(1) adding—

(A) the family’s contribution from available income (determined in accordance with subsection (b) of this section); and

(B) the family’s contribution from assets (determined in accordance with subsection (c) of this section);

(2) dividing the sum resulting under paragraph (1) by the number of students who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title during the award period for which assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 is requested; and

(3) for periods of enrollment of less than 9 months, for purposes other than subpart 2 of part A of this subchapter—

(A) dividing the quotient resulting under paragraph (2) by 9; and

(B) multiplying the result by the number of months in the period of enrollment;

except that the amount determined under this subsection shall not be less than zero.

(b) Family’s contribution from available income

(1) In general

The family’s contribution from income is determined by—

(A) deducting from total income (as defined in section 1087vv of this title)—

(i) Federal income taxes;

(ii) an allowance for State and other taxes, determined in accordance with paragraph (2);

(iii) an allowance for social security taxes, determined in accordance with paragraph (3);

(iv) an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 1087rr of this title)—

(I) for single or separated students, or married students where both are enrolled pursuant to subsection (a)(2)—

(aa) academic year 2009–2010, $7,000;

(bb) academic year 2010–2011, $7,780;

(cc) academic year 2011–2012, $8,550; and

(dd) academic year 2012–2013, $9,330; and

(ii) for married students where 1 is enrolled pursuant to subsection (a)(2)—

(aa) academic year 2009–2010, $11,220;

(bb) academic year 2010–2011, $12,460;

(cc) academic year 2011–2012, $13,710; and

(dd) academic year 2012–2013, $14,960;

(v) in the case where a spouse is present, an employment expense allowance, as determined in accordance with paragraph (4); and

(vi) the amount of any tax credit taken under section 25A of title 26; and

(B) assessing such available income in accordance with paragraph (5).

(2) Allowance for State and other taxes

The allowance for State and other taxes is equal to an amount determined by multiplying total income (as defined in section 1087vv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):
(3) Allowance for social security taxes

The allowance for social security taxes is equal to the amount earned by the student (and spouse, if appropriate), multiplied by the social security withholding rate appropriate to the tax year preceding the award year, up to the maximum statutory social security tax withholding amount for that same tax year.

(4) Employment expenses allowance

The employment expense allowance is determined as follows (or using a successor provision prescribed by the Secretary under section 1087rr of this title):

(A) If the student is married and the student’s spouse is employed in the year for which income is reported, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the student or spouse with the lesser earned income.

(B) If a student is not married, the employment expense allowance is zero.

(5) Assessment of available income

The family’s available income (determined in accordance with paragraph (1)(A) of this subsection) is assessed at 50 percent.

(c) Family contribution from assets

(1) In general

The family’s contribution from assets is equal to—

(A) the family’s net worth (determined in accordance with paragraph (2)); minus

(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

(C) the asset conversion rate (determined in accordance with paragraph (4));

except that the family’s contribution from assets shall not be less than zero.

(2) Family’s net worth

The family’s net worth is calculated by adding—

(A) the current balance of checking and savings accounts and cash on hand;

(B) the net value of investments and real estate, excluding the net value in the principal place of residence; and

(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as “NW”), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 1087rr of this title), except as provided under section 1087vv(f) of this title:

<table>
<thead>
<tr>
<th>Net Worth Range</th>
<th>Adjusted Net Worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $1</td>
<td>$0</td>
</tr>
<tr>
<td>$1–$25,000</td>
<td>$0</td>
</tr>
<tr>
<td>$25,001–$50,000</td>
<td>40% of NW</td>
</tr>
<tr>
<td>$50,001–$75,000</td>
<td>50% of NW over $50,000</td>
</tr>
<tr>
<td>$75,001–$100,000</td>
<td>60% of NW over $75,000</td>
</tr>
<tr>
<td>$100,001–$250,000</td>
<td>75% of NW over $100,000</td>
</tr>
<tr>
<td>$250,001–$500,000</td>
<td>90% of NW over $250,000</td>
</tr>
<tr>
<td>$500,001 or more</td>
<td>100% of NW over $500,000</td>
</tr>
</tbody>
</table>

(3) Asset protection allowance

The asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

<table>
<thead>
<tr>
<th>Age of the Student</th>
<th>Allowance for Families and Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 or less</td>
<td>$0</td>
</tr>
<tr>
<td>26–29</td>
<td>5% of NW</td>
</tr>
<tr>
<td>30–39</td>
<td>15% of NW</td>
</tr>
<tr>
<td>40–49</td>
<td>25% of NW</td>
</tr>
<tr>
<td>50–59</td>
<td>35% of NW</td>
</tr>
<tr>
<td>60–69</td>
<td>45% of NW</td>
</tr>
<tr>
<td>70+</td>
<td>55% of NW</td>
</tr>
</tbody>
</table>

If the age of the student is—

then the allowance is—

<table>
<thead>
<tr>
<th>Age of the Student</th>
<th>Allowance for Families and Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 or less</td>
<td>$0</td>
</tr>
<tr>
<td>26–29</td>
<td>5% of NW</td>
</tr>
<tr>
<td>30–39</td>
<td>15% of NW</td>
</tr>
<tr>
<td>40–49</td>
<td>25% of NW</td>
</tr>
<tr>
<td>50–59</td>
<td>35% of NW</td>
</tr>
<tr>
<td>60–69</td>
<td>45% of NW</td>
</tr>
<tr>
<td>70+</td>
<td>55% of NW</td>
</tr>
</tbody>
</table>
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Asset Protection Allowances for Families and Students—Continued

If the age of the student is—

<table>
<thead>
<tr>
<th>Age</th>
<th>Student is</th>
<th>Then the allowance is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>married</td>
<td>60,300</td>
</tr>
<tr>
<td>63</td>
<td>married</td>
<td>62,400</td>
</tr>
<tr>
<td>64</td>
<td>married</td>
<td>64,600</td>
</tr>
<tr>
<td>65+</td>
<td>single</td>
<td>66,800</td>
</tr>
</tbody>
</table>

(4) Asset conversion rate

The asset conversion rate is 20 percent.

(d) Computations in case of separation, divorce, or death

In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income and assets shall not be considered in determining the family's contribution from income or assets.


AMENDMENTS

2007—Subsec. (b)(1)(A)(iv). Pub. L. 110–84 amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 1087rr of this title)—

“(I) $6,050 for single students;

“(II) $6,050 for married students where both are enrolled pursuant to subsection (a)(2) of this section; and

“(III) $9,700 for married students where one is enrolled pursuant to subsection (a)(2) of this section”;

2006—Subsec. (b)(1)(A)(iv). Pub. L. 109–171, § 8017(b)(1), substituted “$6,050” for “$5,000” in subcls. (I) and (II) and “$9,700” for “$8,000” in subcl. (III).


Subsec. (b)(1)(A)(iv). Pub. L. 105–244, § 474(b), substituted “$4,000” for “$3,000” in in introductory provisions, substituted “$8,000” for “$6,000”.


Subsec. (b)(1)(A)(iv)(VI). Pub. L. 105–244, § 474(b)(3), substituted “$8,000” for “$6,000”.


1995—Pub. L. 103–325 amended section generally, substituting provisions relating to family contribution for independent students without dependents other than a spouse for provisions relating to family contribution for independent students without dependents (including a spouse).

1987—Subsec. (b)(1)(A), (B). Pub. L. 100–50, § 14(13)(B), substituted subpar. (A) and introductory provisions of subpar. (B) for introductory provisions of former subpar. (A) which read as follows: “computing the student’s available taxable income by deducting from the student’s adjusted gross income—”. Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 100–50, § 14(13)(B), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 100–50, § 14(15), which directed that subsec. (b)(1)(C) be amended by inserting “plus the amount of veterans’ benefits paid during the award period under chapters 32, 34, and 35 of title 28”, was executed to subpar. (D) to reflect the probable intent of Congress and the intervening redesignation of subpar. (C) as (D) by section 14(13)(B) of Pub. L. 100–50. Pub. L. 100–50, § 14(13)(A), (B), redesignated subpar. (C) as (D) and substituted “subparagraph (C)” for “subparagraph (B)”.

Subsec. (b)(2). Pub. L. 100–50, § 14(1), (14), substituted “total income” for “‘total taxable income’” and “section 1087rr of this title” for “‘section 1087ss of this title’”.

Subsec. (b)(4)(A). Pub. L. 100–50, § 14(16)(A), substituted “$8,000” for “$9,000”.

Subsec. (b)(4)(B). Pub. L. 100–50, § 14(16)(B), substituted “$8,600” for “$8,300” in two places and “$6,230”.

Subsec. (c)(1). Pub. L. 100–50, § 14(17), substituted a semicolon for a period at end of subpar. (C) and inserted, after subpar. (C), provision that the student’s income supplemental amount from assets not be less than zero.

Subsec. (c)(2)(B). Pub. L. 100–50, § 14(13), substituted “displaced homemaker” for “‘dislocated homemaker’”.

Subsec. (c)(2)(C). Pub. L. 100–50, § 14(14), added table and struck out former table which read as follows:

<table>
<thead>
<tr>
<th>Adjusted Net Worth of a Business or Farm</th>
<th>If the net worth of a business or farm is—</th>
<th>Then the adjusted net worth is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $1</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>$1–$45,000</td>
<td>$45,000 plus 40 percent of NW</td>
<td>$0</td>
</tr>
<tr>
<td>$45,001–$185,000</td>
<td>$185,000 plus 30 percent of NW over $45,000</td>
<td>$0</td>
</tr>
<tr>
<td>$185,001–$525,000</td>
<td>$525,000 plus 60 percent of NW over $185,000</td>
<td>$0</td>
</tr>
<tr>
<td>$525,001 or more</td>
<td>$525,000 plus 100 percent of NW over $525,000</td>
<td>$0</td>
</tr>
</tbody>
</table>

Pub. L. 100–50, § 14(1), substituted “section 1087rr of this title” for “section 1087ss of this title”.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–84 effective July 1, 2009, see section 601(e) of Pub. L. 110–84, set out as a note under section 1087oo of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.


EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244, effective Oct. 7, 1998, and applicable with respect to determinations of need under this part for academic years beginning on or after July 1, 2000, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of...
§ 1087qq. Family contribution for independent students with dependents other than a spouse

(a) Computation of expected family contribution

For each independent student with dependents other than a spouse, the expected family contribution is equal to the amount determined by—

(1) computing adjusted available income by adding—

(A) the family’s available income (determined in accordance with subsection (b) of this section); and

(B) the family’s contribution from assets (determined in accordance with subsection (c) of this section);

(2) assessing such adjusted available income in accordance with an assessment schedule set forth in subsection (d) of this section;

(3) dividing the assessment resulting under paragraph (2) by the number of family members who are enrolled or accepted for enrollment, or at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title during the award period for which assistance under this subchapter and part C of subchapter I of chapter 34 of title 20 is requested; and

(4) for periods of enrollment of less than 9 months, for purposes other than subpart 2 of part A of this subchapter—

(A) dividing the quotient resulting under paragraph (3) by 9; and

(B) multiplying the result by the number of months in the period of enrollment;

except that the amount determined under this subsection shall not be less than zero.

(b) Family’s available income

(1) In general

The family’s available income is determined by deducting from total income (as defined in section 1087vv of this title)—

(A) Federal income taxes;

(B) an allowance for State and other taxes, determined in accordance with paragraph (2);

(C) an allowance for social security taxes, determined in accordance with paragraph (3);

(D) an income protection allowance, determined in accordance with paragraph (4);

(E) an employment expense allowance, determined in accordance with paragraph (5); and

(F) the amount of any tax credit taken under section 25A of title 26.

(2) Allowance for State and other taxes

The allowance for State and other taxes is equal to an amount determined by multiplying total income (as defined in section 1087vv of this title) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

Percentages for Computation of State and Other Tax Allowance


<table>
<thead>
<tr>
<th>State or territory of residence is—</th>
<th>less than $15,000</th>
<th>$15,000 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska, Puerto Rico, Wyoming</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>American Samoa, Guam, Louisiana,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nevada, Texas, Trust Territory,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virgin Islands</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Florida, South Dakota, Tennessee,</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>New Mexico</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>North Dakota, Washington</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Alabama, Arizona, Arkansas,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indiana, Mississippi, Montana,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Hampshire, Oklahoma, West</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Virginia</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>California, Delaware,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Idaho, Iowa, Nebraska, North</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Carolina, Ohio, Pennsylvania,</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>South Carolina, Utah, Vermont,</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Virginia, Canada, Mexico</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Maine, New Jersey</td>
<td>13</td>
<td>12</td>
</tr>
<tr>
<td>District of Columbia, Hawaii,</td>
<td>14</td>
<td>13</td>
</tr>
<tr>
<td>Maryland, Massachusetts, Oregon,</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>Rhode Island</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michigan, Minnesota</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(3) Allowance for social security taxes

The allowance for social security taxes is equal to the amount estimated to be earned by the student (and spouse, if appropriate) multiplied by the social security withholding rate applicable to the tax year preceding the award year, up to the maximum statutory social security tax withholding amount for that same tax year.

(4) Income protection allowance

The income protection allowance is determined by the tables described in subparagraphs (A) through (D) (or a successor table prescribed by the Secretary under section 1087rr of this title).
(A) Academic year 2009–2010
For academic year 2009–2010, the income protection allowance is determined by the following table:

<table>
<thead>
<tr>
<th>Income Protection Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Size</td>
</tr>
<tr>
<td>(including student)</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
</tbody>
</table>
For each additional add: 4,240 4,240 4,240 4,240 4,240 |

(B) Academic year 2010–2011
For academic year 2010–2011, the income protection allowance is determined by the following table:

<table>
<thead>
<tr>
<th>Income Protection Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Size</td>
</tr>
<tr>
<td>(including student)</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
</tbody>
</table>
For each additional add: 4,710 4,710 4,710 4,710 4,710 |

(C) Academic year 2011–2012
For academic year 2011–2012, the income protection allowance is determined by the following table:

<table>
<thead>
<tr>
<th>Income Protection Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Size</td>
</tr>
<tr>
<td>(including student)</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
</tbody>
</table>
For each additional add: 5,180 5,180 5,180 5,180 5,180 |

(D) Academic year 2012–2013
For academic year 2012–2013, the income protection allowance is determined by the following table:

<table>
<thead>
<tr>
<th>Income Protection Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Size</td>
</tr>
<tr>
<td>(including student)</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
</tbody>
</table>
For each additional add: 5,660 5,660 5,660 5,660 5,660 |
(5) Employment expense allowance

The employment expense allowance is determined as follows (or a successor table prescribed by the Secretary under section 1087rr of this title):

(A) If the student is married and the student’s spouse is employed in the year for which their income is reported, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the student or spouse with the lesser earned income.

(B) If a student qualifies as a surviving spouse or as a head of household as defined in section 2 of title 26, such allowance is equal to the lesser of $2,500 or 35 percent of the student’s earned income.

(c) Family’s contribution from assets

(1) In general

The family’s contribution from assets is equal to—

(A) the family net worth (determined in accordance with paragraph (2)); minus

(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

(C) the asset conversion rate (determined in accordance with paragraph (4)), except that the result shall not be less than zero.

(2) Family net worth

The family net worth is calculated by adding—

(A) the current balance of checking and savings accounts and cash on hand;

(B) the net value of investments and real estate, excluding the net value in the principal place of residence; and

(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as “NW”), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 1087rr of this title), except as provided under section 1087vv(f) of this title:

<table>
<thead>
<tr>
<th>Adjusted Net Worth of a Business or Farm</th>
<th>Then the adjusted net worth is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $1</td>
<td>$0</td>
</tr>
<tr>
<td>$1–$75,000</td>
<td>$30,000 plus 50 percent of NW</td>
</tr>
<tr>
<td>$75,001–$225,000</td>
<td>$105,000 plus 60 percent of NW</td>
</tr>
<tr>
<td>$225,001–$375,000</td>
<td>$225,000 plus 70 percent of NW</td>
</tr>
<tr>
<td>$375,001 or more</td>
<td>$375,000 plus 80 percent of NW</td>
</tr>
</tbody>
</table>

(3) Asset protection allowance

The asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

<table>
<thead>
<tr>
<th>Asset Protection Allowances for Families and Students</th>
<th>Then the allowance is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the age of the student is—</td>
<td>And the student is</td>
</tr>
<tr>
<td></td>
<td>married</td>
</tr>
<tr>
<td>25 or less</td>
<td>$0</td>
</tr>
</tbody>
</table>

(4) Asset conversion rate

The asset conversion rate is 7 percent.

(d) Assessment schedule

The adjusted available income (as determined under subsection (a)(1) of this section and hereafter referred to as “AAI”) is assessed according to the following table (or a successor table prescribed by the Secretary under section 1087rr of this title):

<table>
<thead>
<tr>
<th>Assessment From Adjusted Available Income (AAI)</th>
<th>Then the assessment is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>If AAI is—</td>
<td></td>
</tr>
<tr>
<td>Less than – $3,409</td>
<td>– $750</td>
</tr>
<tr>
<td>$3,409 to $9,400</td>
<td>22% of AAI</td>
</tr>
<tr>
<td>$9,401 to $11,800</td>
<td>$2,068 + 25% of AAI</td>
</tr>
<tr>
<td>$11,801 to $14,200</td>
<td>$2,688 + 29% of AAI</td>
</tr>
<tr>
<td>$14,201 to $16,600</td>
<td>$3,364 + 31% of AAI</td>
</tr>
<tr>
<td>$16,601 to $19,000</td>
<td>$4,180 + 40% of AAI</td>
</tr>
<tr>
<td>$19,001 or more</td>
<td>$5,140 + 47% of AAI</td>
</tr>
</tbody>
</table>

(e) Computations in case of separation, divorce, or death

In the case of a student who is divorced or separated, or whose spouse has died, the spouse’s income and assets shall not be considered in de-
terminating the family’s available income or assets.


**AMENDMENTS**


2006—Subsec. (c)(4). Pub. L. 109–171 substituted “$2,000” for “$2,100”.


1992—Pub. L. 102–325 amended section generally, substituting provisions relating to family contribution for independent students with dependents other than a spouse for provisions relating to family contribution for independent students with dependents (including a spouse).


Subsec. (b)(2). Pub. L. 100–50, § 14(1), substituted “section 1087rr of this title” for “section 1087rrr of this title”.

Subsec. (b)(5)(A). Pub. L. 100–50, § 14(19), substituted “$2,100” for “$2,000”.


Subsec. (c)(2)(C). Pub. L. 100–50, § 14(4), substituted “section 1087rr of this title” for “section 1087rrr of this title” in text, added table, and struck out former table which read as follows:

<table>
<thead>
<tr>
<th>Adjusted Net Worth of a Business or Farm</th>
<th>Then the adjusted net worth is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Less than $1’</td>
<td>$0</td>
</tr>
<tr>
<td>$1–$65,000</td>
<td>40 percent of NW</td>
</tr>
<tr>
<td>$65,001–$195,000</td>
<td>$30,000 plus 50 percent of NW</td>
</tr>
<tr>
<td>$195,001–$325,000</td>
<td>$90,000 plus 60 percent of NW</td>
</tr>
<tr>
<td>$325,001 or more</td>
<td>$169,000 plus 100 percent of NW</td>
</tr>
</tbody>
</table>


Subsec. (c)(4)(C). Pub. L. 100–50, § 14(6), substituted “$16,000” for “$15,000” in three places.

Subsec. (d). Pub. L. 100–50, § 14(1), (8), substituted “section 1087rr of this title” for “section 1087rrr of this title” in text and inserted a minus sign before “$3,409” in two places in table.

**EFFECTIVE DATE OF 2009 AMENDMENT**


**EFFECTIVE DATE OF 2007 AMENDMENT**

Amendment by Pub. L. 110–84 effective July 1, 2009, see section 601(e) of Pub. L. 110–84, set out as a note under section 1087r of this title.

**EFFECTIVE DATE OF 2006 AMENDMENT**

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

(Pub. L. 109–171, title VIII, § 8017(c)(2), Feb. 8, 2006, 120 Stat. 173, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.”)

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–244, effective Oct. 7, 1998, and applicable with respect to determinations of need under this part for academic years beginning on or after July 1, 2000, see section 480A of Pub. L. 105–244, set out as a note under section 1087kk of this title.

**EFFECTIVE DATE OF 1993 AMENDMENT**

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

**EFFECTIVE DATE OF 1987 AMENDMENT**


§ 1087rr. Regulations; updated tables

(a) Authority to prescribe regulations restricted

Notwithstanding any other provision of law, the Secretary shall not have the authority to prescribe regulations to carry out this part except—

(A) to prescribe updated tables in accordance with subsections (b) through (h) of this section; or

(B) to propose modifications in the need analysis methodology required by this part.

(2) Any regulation proposed by the Secretary that (A) updates tables in a manner that does not comply with subsections (b) through (h) of this section, or (B) that proposes modifications under paragraph (1)(B) of this subsection, shall not be effective unless approved by joint resolution of the Congress by May 1 following the date such regulations are published in the Federal Register in accordance with section 1089 of this title. If the Congress fails to approve such regulations by such May 1, the Secretary shall publish in the Federal Register in accordance with section 1089 of this title updated tables for the applicable award year that are prescribed in accordance with subsections (b) through (h) of this section.
(b) Income protection allowance

(1) Revised tables

(A) In general

For each academic year after academic year 2008–2009, the Secretary shall publish in the Federal Register a revised table of income protection allowances for the purpose of sections 1087pp(c)(4) and 1087pp(c)(4) of this title, subject to subparagraphs (B) and (C).

(B) Table for independent students

(i) Academic years 2009–2010 through 2012–2013

For each of the academic years 2009–2010 through 2012–2013, the Secretary shall not develop a revised table of income protection allowances under section 1087pp(b)(4) of this title and the table specified for such academic year under subparagraphs (A) through (D) of such section shall apply.

(ii) Other academic years

For each academic year after academic year 2012–2013, the Secretary shall develop the revised table of income protection allowances by increasing each of the dollar amounts contained in the table of income protection allowances under section 1087pp(b)(4)(D) of this title by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

(C) Table for parents

For each academic year after academic year 2008–2009, the Secretary shall develop the revised table of income protection allowances under section 1087pp(c)(4) of this title by increasing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2012 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

(2) Revised amounts

For each academic year after academic year 2007–2008, the Secretary shall publish in the Federal Register revised income protection allowances for the purpose of sections 1087pp(b)(2)(A)(iv) and 1087pp(b)(2)(A)(iv) of this title. Such revised allowances shall be developed for each academic year after academic year 2012–2013, by increasing each of the dollar amounts contained in such section for academic year 2012–2013 by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

(c) Adjusted net worth of a farm or business

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of adjusted net worth of a farm or business for purposes of sections 1087oo(d)(2)(C), 1087pp(c)(2)(C), and 1087qq(c)(2)(C) of this title. Such revised table shall be developed—

(1) by increasing each dollar amount that refers to net worth of a farm or business by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such award year, and rounding the result to the nearest $5,000; and

(2) by adjusting the dollar amounts “$30,000”, “$105,000”, and “$195,000” to reflect the changes made pursuant to paragraph (1).

(d) Education savings and asset protection allowance

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of allowances for the purpose of sections 1087oo(d)(3), 1087pp(c)(3), and 1087qq(c)(3) of this title. Such revised table shall be developed by determining the present value cost, rounded to the nearest $100, of an annuity that would provide, for each age cohort of 40 and above, a supplemental income at age 65 (adjusted for inflation) equal to the difference between the moderate family income (as most recently determined by the Bureau of Labor Statistics), and the current average social security retirement benefits. For each age cohort below 40, the allowance shall be computed by decreasing the allowance for age 40, as updated, by one-fifteenth for each year of age below age 40 and rounding the result to the nearest $100. In making such determinations—

(1) inflation shall be presumed to be 6 percent per year;

(2) the rate of return of an annuity shall be presumed to be 8 percent; and

(3) the sales commission on an annuity shall be presumed to be 6 percent.

(e) Assessment schedules and rates

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of assessments from adjusted income for the purpose of sections 1087oo(e) and 1087pp(d) of this title. Such revised table shall be developed—

(1) by increasing each dollar amount that refers to adjusted available income by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such academic year, rounded to the nearest $100; and

(2) by adjusting the dollar amounts to reflect the changes made pursuant to paragraph (1).

(f) “Consumer Price Index” defined

As used in this section, the term “Consumer Price Index” means the Consumer Price Index for All Urban Consumers published by the Department of Labor. Each annual update of tables to reflect changes in the Consumer Price Index shall be corrected for misestimation of actual changes in such Index in previous years.
(g) State and other tax allowance

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of State and other tax allowances for the purpose of sections 1087oo(c)(2), 1087oo(g)(3), 1087pp(b)(2), and 1087qq(b)(2) of this title. The Secretary shall develop such revised table after review of the Department of the Treasury's Statistics of Income file and determination of the percentage of income that each State's taxes represent.

(h) Employment expense allowance

For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of employment expense allowances for the purpose of sections 1087oo(c)(5), 1087pp(b)(4), and 1087qq(b)(5) of this title. Such revised table shall be developed by increasing the dollar amount specified in sections 1087oo(c)(5)(A), 1087oo(c)(5)(B), 1087pp(b)(4)(A), 1087qq(b)(5)(A), and 1087qq(b)(5)(B) of this title to reflect increases in the amount and percent of the Bureau of Labor Statistics budget of the marginal costs for food away from home, apparel, transportation, and household furnishings and operations for a twoworker versus one-worker family.


AMENDMENTS

2007—Subsec. (b)(1). Pub. L. 110–84, § 601(d)(1), added par. (1) and struck out former par. (1). Prior to amendment, par. (1) required the Secretary to publish in the Federal Register, for each academic year after academic year 1993–1994, a revised table of income protection allowances for the purpose of sections 1087oo(c)(4) and 1087pp(b)(4) of this title.

Subsec. (b)(2). Pub. L. 110–84, § 601(d)(2), substituted `shall be developed for each academic year after academic year 2012–2013, by increasing each of the dollar amounts contained in such section for academic year 2012–2013 by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.' for `shall be developed by increasing each of the dollar amounts contained in such section by a percentage amount equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2006 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.'

2006—Subsec. (b)(1). Pub. L. 109–171, § 8017(d)(1), inserted at end `For the 2007–2008 academic year, the Secretary shall revise the tables in accordance with this paragraph, except that the Secretary shall increase the amounts contained in the table in section 1087pp(b)(4) of this title by a percentage equal to the greater of the estimated percentage increase in the Consumer Price Index (as determined under the preceding sentence) or 5 percent.'


Subsec. (h). Pub. L. 109–171, § 8017(e), struck out `1087pp(b)(4)(B),' after `1087pp(b)(4)(A),' and substituted `food away from home, apparel, transportation, and household furnishings and operations' for `meals away from home, apparel and upkeep, transportation, and housekeeping services'.


Amendment by Pub. L. 103–208, § 14(21), substituted `''$24,000'', '$34,000', and `$156,000' '' for `''$26,000', '$84,000', and '$156,000' '' for `''$26,000', '$84,000', and '$156,000' ''. Subsec. (d). Pub. L. 100–50, § 14(20), inserted `... rounded to the nearest $100," after "present value cost" and "of 40 and above" after "each age cohort" in second sentence and, after second sentence, inserted `For each age cohort below 40, the asset protection allowance shall be computed by decreasing the asset protection allowance for age 40, as updated, by one-fifteenth for each year of age below age 40 and rounding the result to the nearest $100."'. Subsec. (f). Pub. L. 100–50, § 14(22), substituted `"Consumer Price Index for All Urban Consumers" for "Consumer Price Index for Wage Earners and Clerical Workers".'

Subsec. (c)(2). Pub. L. 100–50, § 14(21), substituted `''$24,000'', '$34,000', and `$156,000' '' for `''$26,000', '$84,000', and '$156,000' '' for `''$26,000', '$84,000', and '$156,000' ''. Subsec. (d). Pub. L. 100–50, § 14(20), inserted `... rounded to the nearest $100," after "present value cost" and "of 40 and above" after "each age cohort" in second sentence and, after second sentence, inserted `For each age cohort below 40, the asset protection allowance shall be computed by decreasing the asset protection allowance for age 40, as updated, by one-fifteenth for each year of age below age 40 and rounding the result to the nearest $100."'
as part of the common financial reporting form prescribed under section 1090(a) of this title for families described in subsections (b) and (c) of this section.

(2) Reduced data requirements

The simplified application form shall—

(A) in the case of a family meeting the requirements of subsection (b)(1) of this section, permit such family to submit only the data elements required under subsection (b)(2) of this section for the purposes of establishing eligibility for student financial aid under this part; and

(B) in the case of a family meeting the requirements of subsection (c) of this section, permit such family to be treated as having an expected family contribution equal to zero for purposes of establishing such eligibility and to submit only the data elements required to make a determination under subsection (c) of this section.

(b) Simplified needs test

(1) Eligibility

An applicant is eligible to file a simplified form containing the elements required by paragraph (2) if—

(A) in the case of an applicant who is a dependent student—

(i) the student’s parents—

(I) file, or are eligible to file, a form described in paragraph (3);

(II) certify that the parents are not required to file a Federal income tax return;

(III) include at least one parent who is a dislocated worker; or

(IV) received, or the student received, benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(ii) the total adjusted gross income of the parents (excluding any income of the dependent student) is less than $50,000; or

(B) in the case of an applicant who is an independent student—

(i) the student (and the student’s spouse, if any)—

(I) files, or is eligible to file, a form described in paragraph (3);

(II) certifies that the student (and the student’s spouse, if any) is not required to file a Federal income tax return;

(III) include at least one parent who is a dislocated worker; or

(IV) received, or the student received, benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(ii) the adjusted gross income of the student (and the student’s spouse, if any) is less than $50,000.

(2) Simplified test elements

The six elements to be used for the simplified needs analysis are—

(A) adjusted gross income,

(B) Federal taxes paid,

(C) untaxed income and benefits,

(D) the number of family members,

(E) the number of family members in post-secondary education, and

(F) an allowance (A) for State and other taxes, as defined in section 1087oo(c)(2) of this title for dependent students and in section 1087qq(b)(2) of this title for independent students with dependents other than a spouse, or (B) for State and other income taxes, as defined in section 1087pp(b)(2) of this title for independent students without dependents other than a spouse.

(3) Qualifying forms

In the case of an independent student, the student, or in the case of a dependent student, the family, files a form described in this subsection, or subsection (c), as the case may be, if the student or family, as appropriate, files—

(A) a form 1040A or 1040EZ (including any prepared or electronic version of such form) required pursuant to title 26;

(B) a form 1040 (including any prepared or electronic version of such form) required pursuant to title 26, except that such form shall be considered a qualifying form only if the student or family files such form in order to take a tax credit under section 25A of title 26, and would otherwise be eligible to file a form described in subparagraph (A); or

(C) an income tax return (including any prepared or electronic version of such return) required pursuant to the tax code of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau.

(c) Zero expected family contribution

The Secretary shall consider an applicant to have an expected family contribution equal to zero if—

(1) in the case of a dependent student—

(A) the student’s parents—

(i) file, or are eligible to file, a form described in subsection (b)(3);

(ii) certify that the parents are not required to file a Federal income tax return;

(iii) include at least one parent who is a dislocated worker; or

(iv) received, or the student received, benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(B) the sum of the adjusted gross income of the parents is less than or equal to $23,000; or

(2) in the case of an independent student with dependents other than a spouse—

(A) the student (and the student’s spouse, if any)—

(i) files, or is eligible to file, a form described in subsection (b)(3);

(ii) certifies that the student (and the student’s spouse, if any) is not required to file a Federal income tax return;

(iii) is a dislocated worker or has a spouse who is a dislocated worker; or

(iv) received, or the student received, benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(B) Federal taxes paid,

(C) untaxed income and benefits,

(D) the number of family members,

(E) the number of family members in post-secondary education, and

(F) an allowance (A) for State and other taxes, as defined in section 1087oo(c)(2) of this title for dependent students and in section 1087qq(b)(2) of this title for independent students with dependents other than a spouse, or (B) for State and other income taxes, as defined in section 1087pp(b)(2) of this title for independent students without dependents other than a spouse.
(iv) received benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and

(B) the sum of the adjusted gross income of the student and spouse (if appropriate) is less than or equal to $23,000.

An individual is not required to qualify or file for the earned income credit in order to be eligible under this subsection. The Secretary shall annually adjust the income level necessary to qualify an applicant for the zero expected family contribution. The income level shall be adjusted according to increases in the Consumer Price Index, as defined in section 1087rr(t) of this title.

(d) Definitions

In this section:

(1) Dislocated worker

The term "dislocated worker" has the meaning given the term in section 2801 of title 29.

(2) Means-tested Federal benefit program

The term "means-tested Federal benefit program" means a mandatory spending program of the Federal Government, other than a program under this subchapter and part C of subchapter I of chapter 34 of title 42, in which eligibility for the program's benefits, or the amount of such benefits, are determined on the basis of income or resources of the individual or family seeking the benefit, and may include such programs as—

(A) the supplemental security income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.);

(B) the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(C) the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(D) the program to block grants for States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(E) the special supplemental nutrition program for women, infants, and children established by section 1786 of title 42; and

(F) other programs identified by the Secretary.

existing provisions as par. (2) and substituted “The term for “in this section, the term” in introductory provisions, redesignated former pars. (1) to (6) as subpars. (A) to (P), respectively, of par. (2), and realigned margins.

2006—Subsec. (b)(1)(A)(i). Pub. L. 109–171, § 8018(a)(1)(A)(i), added cl. (i) and struck out former cl. (i) which read as follows: “the student’s parents file or are eligible to file a form described in subparagraph (A) or certify that they are not required to file an income tax return and the student files or is eligible to file such a form described in paragraph (3) or certifies that the student (and the student’s spouse, if any) is not required to file an income tax return; and”.

Subsec. (b)(1)(B)(i). Pub. L. 109–171, § 8018(a)(1)(B)(i), added cl. (i) and struck out former cl. (i) which read as follows: “the student (and the student’s spouse, if any) files or is eligible to file a form described in paragraph (3) or certifies that the student (and the student’s spouse, if any) is not required to file an income tax return; and”.

Subsec. (b)(3). Pub. L. 109–171, § 8018(a)(1)(B), in introductory provisions substituted “In the case of an independent student, the student, or in the case of a dependent student, the family, files a form described in this subsection, or subsection (c), as the case may be,” for “the student or family, as appropriate, files”.

Subsec. (c)(1)(A). Pub. L. 109–171, § 8018(a)(2)(A)(i), added subpar. (A) which read as follows: “the student’s parents file, or are eligible to file, a form described in this subsection, or subsection (c) of this section, as the case may be, if the student or family, respectively, files”.

Subsec. (c)(1)(A). Pub. L. 109–171, § 8018(a)(2)(A)(ii), added subpar. (A) and struck out former subpar. (A) which read as follows: “the student’s parents file, or are eligible to file, a form described in this subsection (b)(3) of this section, or certify that the parents are not required to file an income tax return and the student files, or is eligible to file, such a form, or certifies that the student is not required to file an income tax return; and”.

Subsec. (c)(1)(B). Pub. L. 109–171, § 8018(a)(2)(A)(iii), added subpar. (B) and struck out former subpar. (B) which read as follows: “the sum of the adjusted gross income of the parents is less than or equal to the maximum amount of income (rounded annually to the nearest thousand dollars) that may be earned in 1992 or the current year, whichever is higher, in order to claim the maximum Federal earned income credit; or”.

Subsec. (c)(2)(A). Pub. L. 109–171, § 8018(a)(2)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: “the student (and the student’s spouse, if any) files, or is eligible to file, a form described in paragraph (3) or certifies that the student (and the student’s spouse, if any) is not required to file an income tax return; and”.

Subsec. (c)(2)(B). Pub. L. 109–171, § 8018(a)(2)(B)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: “the student (and the student’s spouse, if any) was not required to file an income tax return under the Federal income tax laws; and”.

Subsec. (c)(2)(C). Pub. L. 109–171, § 8018(a)(2)(B)(iii), added subpar. (C) and struck out former subpar. (C) which read as follows: “the student (and the student’s spouse, if any) files, or is eligible to file, such a form, or certifies that the student (and the student’s spouse, if any) is not required to file an income tax return; and”.

Subsec. (c)(3)(A). Pub. L. 109–208, § 8018(a)(2)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the student’s parents did not file, and were not required to file, a form 1040 required pursuant to title 26; and”.

Subsec. (c)(3)(B). Pub. L. 109–208, § 8018(a)(2)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the student and the student’s spouse did not file, and were not required to file, a form 1040A required pursuant to title 26; and”.

Subsec. (c)(4)(A). Pub. L. 109–208, § 8018(a)(2)(B)(iii), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the student (and the student’s spouse, if any) did not file, and was not required to file, a form 1040 required pursuant to title 26; and”.

Subsec. (c)(4)(B). Pub. L. 109–208, § 8018(a)(2)(B)(iv), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the student and the student’s spouse were not required to file an income tax return; and”.

1992—Pub. L. 102–353 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), analysis applicable to all title IV programs; in subsec. (b), elements in tests; and in subsec. (c), simplified application form.

1991—Subsec. (a). Pub. L. 102–26 inserted before period at end “, or who file an income tax return pursuant to the tax code of the Commonwealth of Puerto Rico or who are not required to file pursuant to that tax code”.


1987—Subsec. (a). Pub. L. 100–50, § 14(23), substituted “subsection (b) of this section” for “paragraph (2)”, “families (1) who for families which”, and “and (2) who file a form 1040 or 1040EZ pursuant to title 26, or are not required to file pursuant to such title” for “and which file a form 1040A pursuant to title 26”.


Effective Date of 2011 Amendment Amendment by of Pub. L. 112–74 effective July 1, 2012, see section 306(g) of Pub. L. 112–74, set out as a note under section 1001 of this title.

Effective Date of 2009 Amendment Amendment by Pub. L. 111–39 effective as if enacted as part of amendments made by section 602(a) of Pub. L. 110–84 and effective July 1, 2009, see section 606(b)(2) of Pub. L. 111–39, set out as a note under section 1067mm of this title.


Effective Date of 2007 Amendment
Pub. L. 110–84, title VI, §602(b), Sept. 27, 2007, 121 Stat. 655, provided that: “The amendments made by this section [amending this section] shall be effective on July 1, 2009.”

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 1998 Amendment

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Effective Date of 1992 Amendment
Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

Effective Date of 1987 Amendment

Evaluation of Simplified Needs Test
Pub. L. 108–171, title VIII, §8018(b), Feb. 8, 2006, 120 Stat. 175, provided that:

“(1) Eligibility guidelines.—The Secretary of Education shall regularly evaluate the impact of the eligibility guidelines in subsections (b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A)).

“(2) Means-tested federal benefit program.—For each 3-year period, the Secretary of Education shall evaluate the impact of including the receipt of benefits by a student or parent under a means-tested Federal benefit program (as defined in section 479(d) of the Higher Education Act of 1965 (20 U.S.C. 1087ss(d)(1)) as a factor in determining eligibility under subsections (b) and (c) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b) and (c)).”

§1087tt. Discretion of student financial aid administrators

(a) In general

Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances. However, this authority shall not be construed to permit aid administrators to deviate from the contributions expected in the absence of special circumstances. Special circumstances may include tuition expenses at an elementary or secondary school, medical, dental, or nursing home expenses not covered by insurance, unusually high child care or dependent care costs, recent unemployment of a family member or an independent student, a student or family member who is a dislocated worker (as defined in section 2801 of title 29), the number of parents enrolled at least half-time in a degree, certificate, or other program leading to a recognized educational credential at an institution with a program participation agreement under section 1094 of this title, a change in housing status that results in an individual being homeless (as defined in section 11302 of title 42), or other changes in a family’s income, a family’s assets, or a student’s status. Special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students. Adequate documentation for such adjustments shall substantiate such special circumstances of individual students. In addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator in such cases (1) to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this subchapter and part C of subchapter I of chapter 34 of title 42, or (2) to offer a dependent student financial assistance under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan without requiring the parents of such student to file the financial aid form prescribed under section 1090 of this title if the student financial aid administrator verifies that the parent or parents of such student have ended financial support of such student and refuse to file such form. No student or parent shall be charged a fee for collecting, processing, or delivering such supplementary information.

(b) Adjustments to assets taken into account

A student financial aid administrator shall be considered to be making a necessary adjustment in accordance with subsection (a) of this section if—

(1) the administrator makes adjustments excluding from family income any proceeds of a sale of farm or business assets of a family if such sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy or an involuntary liquidation; or

(2) the administrator makes adjustments in the award level of a student with a disability so as to take into consideration the additional costs such student incurs as a result of such student’s disability.

(c) Refusal or adjustment of loan certifications

On a case-by-case basis, an eligible institution may refuse to certify a statement that permits a student to receive a loan under part B or C of this subchapter, or may certify a loan amount or make a loan that is less than the student’s determination of need (as determined under this part), if the reason for the action is documented
and provided in written form to the student. No eligible institution shall discriminate against any borrower or applicant in obtaining a loan on the basis of race, national origin, religion, sex, marital status, age, or disability status.


PRIOR PROVISIONS


AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315 substituted "medical, dental, or nursing home expenses" for "medical or dental expenses", inserted "or dependent care" after "child care" and "student" or "before "family member who is a dislocated worker", and substituted "in addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator in such cases (1) to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this subchapter and part C of subchapter I of chapter 34 of title 42, or (2) to offer a dependent student financial assistance under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan without requiring the parents of such student to file the financial aid form prescribed under section 1090 of this title if the student financial aid administrator verifies that the parent or parents of such student have ended financial support of such student and refuse to file such form." for "in addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator in such cases to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this subchapter and part C of subchapter I of chapter 34 of title 42." 2007—Subsec. (a). Pub. L. 110–94, in third sentence, substituted "family member" for "family member who is a dislocated worker (as defined in section 2801 of title 29), the number of parents", and inserted "family member, the number of parents" and inserted "as added Pub. L. 99–498, title IV, §406(a), Oct. 17, 1986, 100 Stat. 1472, related to discretion of student financial aid administrators under this part, prior to repeal by section 14(b) of Pub. L. 100–50."

1992—Pub. L. 102–325 amended section generally, revising and restating provisions of subsec. (a) and (b) and striking out former subsec. (c) which related to asset adjustment as example.
1989—Subsec. (a). Pub. L. 101–228 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator, on the basis of adequate documentation, to make necessary adjustments to the cost of attendance and expected student or parent contribution (or both) to allow for treatment of individual students with special circumstances. In addition, nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be interpreted as limiting the authority of the student financial aid administrator to use supplementary information about the financial status or personal circumstance of eligible applicants in selecting recipients and determining the amount of awards under subparts I and II of part D of this title.

EFFECTIVE DATE OF 2007 AMENDMENT


EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(a) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE

Section effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–498, see section 27 of Pub. L. 100–50, set out as an Effective Date of 1987 Amendment note under section 1001 of this title.

§1087uu. Disregard of student aid in other Federal programs

Notwithstanding any other provision of law, student financial assistance received under this subchapter and part C of subchapter I of chapter 34 of title 42, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.


PRIOR PROVISIONS

100 Stat. 1472, related to exclusion of student financial assistance for attendance costs in determining student eligibility for assistance under any other program funded in whole or part with Federal funds, prior to repeal by section 14(27) of Pub. L. 100–50.

AMENDMENTS
1992—Pub. L. 102–325 amended section generally, revising and restating as a single paragraph provisions formerly contained in subsec. (a) which proscribed consideration of aid for attendance costs as income or resources, and in subsec. (b) which delineated elements of attendance costs.

EFFECTIVE DATE OF 1992 AMENDMENT
Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE
Section effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–486, see section 27 of Pub. L. 100–50, set out as an Effective Date of 1987 Amendment note under section 1001 of this title.

Section applicable with respect to financial assistance provided for any academic year beginning after Oct. 17, 1986, see section 406(b)(4) of Pub. L. 99–486, as amended, set out as a note under section 1087kk of this title.

§ 1087uu–1. Native American students

In determining family contributions for Native American students, computations performed pursuant to this part shall exclude—

(1) any income and assets of $2,000 or less per individual payment received by the student (and spouse) and student’s parents under Public Law 98–64 (25 U.S.C. 117a et seq.; 97 Stat. 365) (commonly known as the ‘‘Per Capita Act’’) or the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.); and

(2) any income received by the student (and spouse) and student’s parents under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) or the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721 et seq.).


REFERENCES IN TEXT
Public Law 98–64, referred to in par. (1), is Pub. L. 98–64, Aug. 2, 1983, 97 Stat. 365, commonly known as the Per Capita Act, which enacted sections 117a to 117c of Title 25, Indians, and repealed section 117 of Title 25. For complete classification of this Act to the Code, see Tables.

The Indian Tribal Judgment Funds Use or Distribution Act, referred to in par. (1), is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, which is classified generally to chapter 14 (§ 1401 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1721 of Title 25 and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.


AMENDMENTS


EFFECTIVE DATE OF 2009 AMENDMENT

EFFECTIVE DATE OF 1992 AMENDMENT
Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 471(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

EFFECTIVE DATE
Section effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99–486, see section 27 of Pub. L. 100–50, set out as an Effective Date of 1987 Amendment note under section 1001 of this title.

§ 1087vv. Definitions

As used in this part:

(a) Total income

(1)(A) Except as provided in subparagraph (B) and paragraph (2), the term ‘‘total income’’ is equal to adjusted gross income plus untaxed income and benefits for the preceding tax year minus excludable income (as defined in subsection (e) of this section).

(B) Notwithstanding section 1087rr(a) of this title, the Secretary may provide for the use of data from the second preceding tax year when and to the extent necessary to carry out the simplification of applications (including simplification for a subset of applications) used for the estimation and determination of financial aid eligibility. Such simplification may include the sharing of data between the Internal Revenue Service and the Department, pursuant to the consent of the taxpayer.

(2) No portion of any student financial assistance received from any program by an individual, no portion of veterans’ education benefits received by an individual, no portion of a national service educational award or post-service benefit received by an individual under title I of the National and Community Service Act of 1990 (42 U.S.C. 12511 et seq.), no portion of any tax credit taken under section 25A of Title 26, and no distribution from any qualified education benefit described in subsection (f) (3) that is not subject to Federal income tax, shall be included as income or assets in the computation of expected
family contribution for any program funded in whole or in part under this chapter and part C of subchapter I of chapter 34 of title 42.

(b) **Untaxed income and benefits**

(1) **The term** "untaxed income and benefits" **means**—

(A) child support received;
(B) workman’s compensation;
(C) veteran’s benefits such as death pension, dependency, and indemnity compensation, but excluding veterans’ education benefits as defined in subsection (c);
(D) interest on tax-free bonds;
(E) housing, food, and other allowances (including rent subsidies for low-income housing) for military, clergy, and others (including cash payments and cash value of benefits), except that the value of on-base military housing or the value of basic allowance for housing determined under section 403(b) of title 37 received by the parents, in the case of a dependent student, or the student or student’s spouse, in the case of an independent student, shall be excluded;
(F) cash support or any money paid on the student’s behalf, except, for dependent student, funds provided by the student’s parents;
(G) untaxed portion of pensions;
(H) payments to individual retirement accounts and Keogh accounts excluded from income for Federal income tax purposes; and
(I) any other untaxed income and benefits, such as Black Lung Benefits, Refugee Assistance, or railroad retirement benefits, or benefits received through participation in employment and training activities under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(2) **The term** "untaxed income and benefits" shall not include—

(A) the amount of additional child tax credit claimed for Federal income tax purposes;
(B) welfare benefits, including assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and aid to dependent children;
(C) the amount of earned income credit claimed for Federal income tax purposes;
(D) the amount of credit for Federal tax on special fuels claimed for Federal income tax purposes;
(E) the amount of foreign income excluded for purposes of Federal income taxes; or
(F) untaxed social security benefits.

(c) **Veteran and veterans’ education benefits**

(1) **The term** "veteran" **means** any individual who—

(A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and
(B) was released under a condition other than dishonorable.

(2) **The term** "veterans’ education benefits" **means** veterans’ benefits the student will receive during the award year, including but not limited to benefits under the following provisions of law:

(A) Chapter 103 of title 10 (Senior Reserve Officers’ Training Corps).
(B) Chapter 106A of title 10 (Educational Assistance for Persons Enlisting for Active Duty).
(C) Chapter 1606 of title 10 (Selected Reserve Educational Assistance Program).
(D) Chapter 1607 of title 10 (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations).
(E) Chapter 30 of title 38 (All-Volunteer Force Educational Assistance Program, also known as the ‘‘Montgomery GI Bill—active duty’’).
(F) Chapter 31 of title 38 (Training and Rehabilitation for Veterans with Service-Connected Disabilities).
(G) Chapter 32 of title 38 (Post-Vietnam Era Veterans’ Educational Assistance Program).
(H) Chapter 33 of title 38 (Post-9/11 Educational Assistance).
(I) Chapter 35 of title 38 (Survivors’ and Dependents’ Educational Assistance Program).
(K) Section 150(b) of the ‘‘Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1981, and for other purposes’’ (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ‘‘Quayle benefits’’).
(L) The provisions of chapter 3 of title 37, related to subsistence allowances for members of the Reserve Officers’ Training Corps.

(d) **Independent student**

(1) **Definition**

The term "independent", when used with respect to a student, means any individual who—

(A) is 24 years of age or older by December 31 of the award year;
(B) is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older;
(C) is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual’s State of legal residence;
(D) is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1) of this section) or is currently serving on active duty in the Armed Forces for other than training purposes;
(E) is a graduate or professional student;
(F) is a married individual;
(G) has legal dependents other than a spouse;
(H) has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth (as such terms are defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a)), or as unaccompanied, at risk of homelessness, and self-supporting, by—

(i) a local educational agency homeless liaison, designated pursuant to section
shall not include the net value of—

(4) of part A of this subchapter, the term "assets" under this subchapter and part C of subchapter I of chapter 34 of title 42 (other than for subpart 4 of part A of this subchapter), the value of a qualified education benefit shall be—

(A) the refund value of any tuition credits or certificates purchased under a qualified education benefit; and

(B) in the case of a program in which contributions are made to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, the current balance of such account.

(5) In this subsection:

(A) The term "qualified education benefit" means—

(i) a qualified tuition program (as defined in section 529(b)(1)(A) of title 26) or other prepaid tuition plan offered by a State; and

(ii) a Coverdell education savings account (as defined in section 530(b)(1) of title 26).

(B) The term "qualified higher education expenses" has the meaning given in the term in section 529(e) of title 26.

(g) Net assets

The term "net assets" means the current market value of the assets (as defined in subsection (f) of this section), minus the outstanding liabilities or indebtedness against the assets.

(h) Treatment of income taxes paid to other jurisdictions

(1) The tax on income paid to the Governments of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau under the laws applicable to those jurisdictions, or the comparable tax paid to the central government of a foreign country, shall be treated as Federal income taxes.

(2) References in this part to title 26. Federal income tax forms, and the Internal Revenue Service shall, for purposes of the tax described in paragraph (1), be treated as references to the corresponding laws, tax forms, and tax collection agencies of those jurisdictions, respectively, subject to such adjustments as the Secretary may provide by regulation.

(i) Current balance

The term "current balance of checking and savings accounts" does not include any funds over which an individual is barred from exercising discretion and control because of the actions of any State in declaring a bank emergency due to the insolvency of a private deposit insurance fund.

(j) Other financial assistance

(1) For purposes of determining a student’s eligibility for funds under this subchapter and part
C of subchapter I of chapter 34 of title 42, estimated financial assistance not received under this subchapter and part C of subchapter I of chapter 34 of title 42 shall include all scholarships, grants, loans, or other assistance known to the institution at the time the determination of the student’s need is made, including national service educational awards or post-service benefits under title I of the National and Community Service Act of 1990 (42 U.S.C. 12511 et seq.), but excluding veterans’ education benefits as defined in subsection (c).

(2) Notwithstanding paragraph (1), a tax credit taken under section 25A of title 26, or a distribution that is not includable in gross income under section 529 of such title, under another prepaid tuition plan offered by a State, or under a Coverdell education savings account under section 530 of such title, shall not be treated as estimated financial assistance for purposes of section 1087kk(3) of this title.

(3) Notwithstanding paragraph (1) and section 1087ll of this title, assistance not received under this subchapter and part C of subchapter I of chapter 34 of title 42 may be excluded from both estimated financial assistance and cost of attendance, if that assistance is provided by a State and is designated by such State to offset a specific component of the cost of attendance. If that assistance is excluded from either estimated financial assistance or cost of attendance, it shall be excluded from both.

(4) Notwithstanding paragraph (1), special combat pay shall not be treated as estimated financial assistance for purposes of section 1087kk(3) of this title.

(k) Dependents

(1) Except as otherwise provided, the term “dependent of the student” means the student, dependent children of the student’s parents, including those children who are deemed to be dependent students when applying for aid under this subchapter and part C of subchapter I of chapter 34 of title 42, and other persons who live with and receive more than one-half of their support from the parent and will continue to receive more than half of their support from the parent during the award year.

(2) Except as otherwise provided, the term “dependent of the student” means the student’s dependent children and other persons (except the student’s spouse) who live with and receive more than one-half of their support from the student and will continue to receive more than half of their support from the student during the award year.

(l) Family size

In determining family size in the case of a dependent student—

(A) if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse’s income is included in determining the parents’ adjusted available income.

(2) In determining family size in the case of an independent student—

(A) family members include the student, the student’s spouse, and the dependents of the student; and

(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student’s dependents.

(m) Business assets

The term “business assets” means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.

(n) Special combat pay

The term “special combat pay” means pay received by a member of the Armed Forces because of exposure to a hazardous situation.

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsections (a)(2), (e)(3), and (j)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, which is classified principally to chapter 129 (§12501 et seq.) of Title 42, The Public Health and Welfare. Title I of the Act enacted subchapter I (§1251 et seq.) of chapter 129 of Title 42 and amended this section and section 1070a–6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.


of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Subsec. (c) of the Department of Defense Authorization Act, 1981, referred to in subsec. (c)(2)(J), is section 903 of Pub. L. 96-342, which is set out as a note under section 2111 of Title 10, Armed Forces.

Subsec. (e)(4)(G) of the "Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes", referred to in subsec. (c)(2)(K), is section 903 of Pub. L. 96-342, which is set out as a note under section 402 of Title 37, The Public Health and Welfare.


Codification
Amendment by section 2(g)(19) of Pub. L. 103-208 (which was effective as if included in Pub. L. 102-325) was executed to this section as amended by Pub. L. 102-325 and Pub. L. 103-52, to reflect the probable intent of Congress.

Amendments

Subsec. (c)(2). Pub. L. 111-39, § 406(a)(7), substituted "benefits under the following provisions of law" for "the following" in introductory provisions, added subpars. (A) to (L), and struck out former subpars. (A) to (J) which listed, respectively, the following provisions of law: title 10, chapter 2; title 10, chapter 106; title 10, chapter 107; title 37, chapter 2; title 38, chapter 20; title 38, chapter 31; title 38, chapter 32; title 38, chapter 35; Public Law 97-376, section 156; and Public Law 96-342, section 903.


2008—Subsec. (a)(1). Pub. L. 110-315, § 8019(b), inserted "qualified education benefit shall not be considered an asset of a student for purposes of section 1087 of this title." 

Subsec. (j)(2). Pub. L. 110-315, § 8019(a)(6)(A), inserted "distribution that is not includable in gross income under section 529 of such title," after "".


2006—Subsec. (d)(3). Pub. L. 109-171, § 8019(a), inserted "or is currently serving on active duty in the Armed Forces for other than training purposes" before semicolon at end.

Subsec. (f)(1). Pub. L. 109-171, § 8019(b), inserted "qualified education benefits (except as provided in paragraph (3))," after "tax shelters,".


Subsec. (f)(3) to (5). Pub. L. 109-171, § 8019(d), added paras. (3) to (5).


Subsec. (j)(2). (3). Pub. L. 109-171, § 8019(e)(2)–(4), struck out par. (2), redesignated par. (3) as (2), and added par. (3).

Prior to amendment, par. (2) read as follows:

"(2)(A) Except as provided in subparagraph (B), for purposes of determining a student’s eligibility for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, tuition prepayment plans shall reduce the cost of attendance (as determined under section 1087 of this title) by the amount of the prepayment, and shall not be considered estimated financial assistance.

"(B) If the institutional expense covered by the prepayment must be part of the student’s cost of attendance for accounting purposes, the prepayment shall be considered estimated financial assistance."

Pub. L. 105–277, §101(f) [title VIII, §405(d)(15)(B)], substituted “Job Training Partnership Act nonducational benefits or benefits received through participation in employment and training activities under title I of the Workforce Investment Act of 1998” for “Job Training Partnership Act nonducational benefits”.

Subsec. (j)(1). Pub. L. 105–244, §478(1), inserted before period at end “and national service educational awards or post-service benefits under title I of the National and Community Service Act of 1990”.

Subsec. (j)(3), (4), Pub. L. 105–244, §478(2), (3), redesignated par. (3) as (4) and struck out former par. (3) which read as follows: “Notwithstanding paragraph (1), a national service educational award or post-service benefit under title I of the National and Community Service Act of 1990 shall not be treated as financial assistance for purposes of section 1087kk(3) of this title.”

1997—Subsec. (a)(2). Pub. L. 105–78, §609(c), substituted “program by an individual, no” for “program by an individual, and” and “tax credit taken under section 25A of title 26,” before “shall be included”.


1996—Subsec. (b)(2). Pub. L. 104–183 substituted “assistance under a State program funded” for “aid to families with dependent children under a State plan approved”.

1993—Subsec. (a)(2). Pub. L. 103–82, §102(c)(4), inserted “and no portion of a national service educational award or post-service benefit received by an individual under title I of the National and Community Service Act of 1990,” after “by an individual”.

Subsec. (c)(2). Pub. L. 103–208, §2(g)(17), made technical amendment to references to titles of the United States Code in subpars. (A) to (H).

Subsec. (d)(2). Pub. L. 103–208, §2(g)(18), inserted before semicolon “or was a ward of the court until the individual reached the age of 18”.


Pub. L. 103–82, §102(c)(5), added par. (3).

Subsec. (k) to (m). Pub. L. 103–208, §2(g)(20), added subsec. (k) to (m).

1992—Pub. L. 102–325 amended section generally, substituting subsecs. (a) to (j) for former subsecs. (a) to (l).

1990—Subsec. (j)(2). Pub. L. 101–610, §185(f), inserted “and living allowances as a result of participation in a program established under the National and Community Service Act of 1990” after “other than parents”.


1987—Subsec. (a)(1). Pub. L. 100–50, §1428(a)(A), (B), substituted “paragraphs (2) through (4)” for “paragraphs (2) and (3)” and inserted “minus includable income (as defined in subsection (f) of this section)” before period at end.

Subsec. (a)(2). Pub. L. 100–50, §1428(C), added par. (2) and struck out former par. (2) which read as follows: “The Secretary shall promulgate special regulations to permit, in the computation of family contributions for the programs under subpart 2 of part A and parts B and D of this subchapter and part C of subchapter I of chapter 34 of title 42 for any academic year the exclusion of any proceeds of a sale of farm or business assets of that family if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.”


Subsec. (b), (c). Pub. L. 100–50, §1428(E), substituted subsec. (b) consisting of pars. (1) to (4) for former subsec. (b), consisting of pars. (1) to (19), and substituted subsec. (c) consisting of pars. (1) to (14) for former subsec. (c), consisting of pars. (1) to (16).

Subsec. (d)(2)(F). Pub. L. 100–50, §1428(F), substituted “annual total income (including all sources of resources other than parents)” for “annual total income”.

Subsecs. (f) to (h). Pub. L. 100–50, §1428(G), added subsecs. (f) to (h).

Effective Date of 2009 Amendment


Effective Date of 2008 Amendment


Effective Date of 2007 Amendment

Pub. L. 110–183, §1(b), Dec. 21, 2007, 121 Stat. 1824, provided that: “This section [amending this section] and the amendment made by this section shall take effect on July 1, 2009.”

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 1998 Amendments


Amendment by Pub. L. 105–80 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 480A of Pub. L. 105–244, set out as a note under section 1001 of this title.

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Effective Date of 1993 Amendments

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.


Effective Date of 1992 Amendment

Amendment by Pub. L. 102–325 applicable with respect to determinations of need under this part for award years beginning on or after July 1, 1993, see section 473(b) of Pub. L. 102–325, set out as a note under section 1087kk of this title.

Effective Date of 1987 Amendment

§ 1088. Definitions

(a) Academic and award year

(1) For the purpose of any program under this subchapter and part C of chapter I of chapter 34 of title 42, the term “academic year” shall be defined as the period beginning July 1 and ending June 30 of the following year.

(2)(A) For the purpose of any program under this subchapter and part C of chapter I of chapter 34 of title 42, the term “academic year” shall—

(i) require a minimum of 30 weeks of instructional time for a course of study that measures its program length in credit hours; or

(ii) require a minimum of 26 weeks of instructional time for a course of study that measures its program length in clock hours; and

(iii) require an undergraduate course of study to contain an amount of instructional time whereby a full-time student is expected to complete at least—

(I) 24 semester or trimester hours or 36 quarter credit hours in a course of study that measures its program length in credit hours; or

(II) 900 clock hours in a course of study that measures its program length in clock hours.

(B) The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree and that measures program length in credit hours or clock hours.

(b) Eligible program

(1) For purposes of this subchapter and part C of chapter I of chapter 34 of title 42, the term “eligible program” means a program of at least—

(A) 600 clock hours of instruction, 16 semester hours, or 24 quarter hours, offered during a minimum of 15 weeks, in the case of a program that—

(i) provides a program of training to prepare students for gainful employment in a recognized profession; and

(ii) admits students who have not completed the equivalent of an associate degree; or

(B) 300 clock hours of instruction, 8 semester hours, or 12 hours, offered during a minimum of 10 weeks, in the case of an—

(i) an undergraduate program that requires the equivalent of an associate degree for admissions; or

(ii) a graduate or professional program.

(2)(A) A program is an eligible program for purposes of part B of this subchapter if it is a program of at least 300 clock hours of instruction, offered during a minimum of 10 weeks, that—

(i) has a verified completion rate of at least 70 percent, as determined in accordance with the regulations of the Secretary; and

(ii) has a verified placement rate of at least 70 percent, as determined in accordance with the regulations of the Secretary; and

(iii) satisfies such further criteria as the Secretary may prescribe by regulation.

(B) In the case of a program being determined eligible for the first time under this paragraph,
such determination shall be made by the Secretary before such program is considered to have satisfied the requirements of this paragraph.

(3) An otherwise eligible program that is offered in whole or in part through telecommunication as eligible for the purposes of this subchapter and part C of subchapter I of chapter 34 of title 42 if the program is offered by an institution, other than a foreign institution, that has been evaluated and determined (before or after February 8, 2006) to have the capability to effectively deliver distance education programs by an accrediting agency or association that—

(A) is recognized by the Secretary under subpart 2 of part G of this subchapter; and

(B) has evaluation of distance education programs within the scope of its recognition, as described in section 1099b(n)(3) of this title.

(4) For purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, the term “eligible program” includes an instructional program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment. In the case of a program being determined eligible under this paragraph, such determination shall be made by the Secretary before such program is considered to be an eligible program.

(c) Third party servicer

For purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, the term “third party servicer” means any individual, any State, or any private, for-profit or nonprofit organization, which enters into a contract with—

(1) any eligible institution of higher education to administer, through either manual or automated processing, any aspect of such institution’s student assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42; or

(2) any guaranty agency, or any eligible lender, to administer, through either manual or automated processing, any aspect of such guaranty agency’s or lender’s student loan programs under part B of this subchapter, including originating, guaranteeing, monitoring, processing, servicing, or collecting loans.

(d) Definitions for military deferments

For purposes of parts B, C, and D of this subchapter:

(1) Active duty

The term “active duty” has the meaning given such term in section 101(d)(1) of title 10, except that such term does not include active duty for training or attendance at a service school.

(2) Military operation

The term “military operation” means a contingency operation as such term is defined in section 101(a)(13) of title 10.

(3) National emergency

The term “national emergency” means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(4) Serving on active duty

The term “serving on active duty during a war or other military operation or national emergency” means service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(5) Qualifying National Guard duty

The term “qualifying National Guard duty during a war or other military operation or national emergency” means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32 in connection with a war, other military operation, or a national emergency declared by the President and supported by Federal funds.

(e) Consumer reporting agency

For purposes of this subchapter and part C of subchapter I of chapter 34 of title 42, the term “consumer reporting agency” has the meaning given the term “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” in Section 1681 of title 15.

(f) Definition of educational service agency

For purposes of parts B, C, and D, the term “educational service agency” has the meaning given the term in section 7801 of this title.


**Amendments**

2009—Subsec. (c). Pub. L. 111–139 substituted "any State, or any private, for-profit or nonprofit organization," for "or any State, or private, for-profit or nonprofit organization" in introductory provisions.

2008—Subsec. (a)(2)(B), Pub. L. 110–315, §481(1), inserted "and that measures program length in credit hours or clock hours" after "baccalaureate degree".

Subsecs. (e), (f). Pub. L. 110–315, §481(2), added subsecs. (e) and (f).

2006—Subsec. (a)(2). Pub. L. 109–171, §8020(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term 'academic year' shall require a minimum of 30 weeks of instructional time and, with respect to an undergraduate course of study, shall require that during such minimum period of instructional time a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours, or at least 900 clock hours at an institution that measures program length in clock hours. The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree.

Subsec. (b)(3), (4). Pub. L. 109–171, §8020(b), added pars. (3) and (4).


1998—Pub. L. 105–244 redesignated subsecs. (d) to (f) as (e) to (h), respectively, and struck out former subsec. (a) to (c) which defined the terms "institution of higher education", "proprietary institution of higher education", and "postsecondary vocational institution".

Section 1002 of this title.

Subsec. (a)(d). Pub. L. 105–216, which directed the amendment of par. (4), effective 1 year after July 29, 1998, by designating existing provisions as subpar. (A) and redesignating former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and by adding subpar. (B) to read as follows: "Subparagraph (A)(i) shall not apply to a nonprofit institution whose primary function is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, and December 31, 1998.," could not be executed because subsec. (a) did not contain a par. (4) subsequent to amendment by Pub. L. 105–244. See above.

1993—Subsec. (a)(3)(B). Pub. L. 103–208, §2(h)(1), inserted before semicolon at end "", except that the Secretary, at the request of such institution, may waive the ineligibility of such an institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree.

Subsec. (a)(3)(D). Pub. L. 103–208, §2(h)(2), substituted "do not have a high school diploma or its recognized equivalent" for "are admitted pursuant to section 1091(d) of this title" and inserted before period at end "1, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that it exceeds such limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent.

Subsec. (a)(4)(A). Pub. L. 103–208, §2(h)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "such institution has filed for bankruptcy; or"

Subsec. (d)(2). Pub. L. 103–208, §2(h)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term 'academic year' shall require a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution which measures program length in credit hours or at least 900 clock hours at an institution which measures program length in clock hours.

Subsec. (e)(2). Pub. L. 103–208, §2(h)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary shall develop regulations to determine the quality of programs of less than 600 clock hours in length. Such regulations shall require, at a minimum, that the programs have a verified rate of completion of at least 70 percent and a verified rate of placement of at least 70 percent. Pursuant to these regulations and notwithstanding paragraph (1), the Secretary shall allow programs of less than 600 clock hours, but greater than 300 clock hours, in length to be eligible to participate in the programs authorized under part B of this subchapter.


Subsec. (a). Pub. L. 102–325, §481(a), added subsec. (a) and struck out former subsec. (a) which contained pars. (1) and (2) defining "institution of higher education" and "accredited" and par. (3) which related to recognition of accreditation of eligible institutions of higher education.

Subsec. (b). Pub. L. 102–325, §481(b)(4), struck out at end "For the purpose of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered."

Subsec. (b)(1). Pub. L. 102–325, §481(b)(1), substituted "an eligible program" for "not less than a 6-month program.

Subsec. (b)(4). Pub. L. 102–325, §481(b)(2), substituted "pursuant to part G of this subchapter," for "for this purpose, and"


Subsec. (c)(1). Pub. L. 102–325, §481(c), substituted an "eligible program" for "not less than a 6-month program."

Subsec. (d). Pub. L. 102–325, §481(d), inserted "and award" after "Academic" in heading and amended text generally. Prior to amendment, text read as follows: "For the purpose of any program under this subchapter and part C of subchapter I of chapter 34 of title 42, the term 'academic year' shall be defined by the Secretary by regulation."
ble program for provisions relating to impact of loss of accreditation.


Pub. L. 102–26, § 2(a)(2), struck out “and who have the ability to benefit (as determined by the institution under section 1091(d) of this title) from the training offered by the institution” before period at end of second sentence, and struck out at end “The Secretary shall not promulgate regulations defining the admissions procedures or remediation programs that must be used by an institution in admitting students on the basis of their ability to benefit from the training offered and shall not, as a condition of recognition under section 413(e) of this Act, impose upon any accrediting body or bodies standards which are different or more restrictive than the standards provided in this subsection.”

Subsec. (c). Pub. L. 102–26, § 2(a)(3), struck out before period at end “and who have the ability to benefit (as determined by the institution under section 1091(d) of this title) from the training offered by the institution”, 1990—Subsec. (b), Pub. L. 101–660, which inserted “, except in accordance with section 1091(d) of this title,” after “shall not” in fourth sentence, was repealed by Pub. L. 102–26, § 2(d)(2)(A). See Construction of 1991 Amendment note below.

1989—Subsec. (a)(1). Pub. L. 101–239, § 2007(b)(1), substituted “Subject to subsection (e) of this section, for the purpose” for “For the purpose”.


1987—Subsec. (c). Pub. L. 100–50 substituted “section 1091(d) of this title” for “subsection (d) of this section”.

Effective Date of 2009 Amendment


Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Amendment by section 8007(d) of Pub. L. 109–171 applicable with respect to all loans under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), see section 8007(c) of Pub. L. 109–171, set out as a note under section 1078 of this title.

Effective Date of 1998 Amendments


Amendment by Pub. L. 105–216 effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as an Effective Date note under section 14901 of Title 12, Banks and Banking.

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–225, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Effective Date of 1992 Amendment

Section 496 of Pub. L. 102–325 provided that: “The changes made in part G of title IV of the Act (20 U.S.C. 1088 et seq.) by the amendments made by this part [part G (§§ 481–496) of title IV of Pub. L. 102–325, enacting section 1091c, repealing sections 1091a, 1091c, 1094a, 1094b, 1096a, and 1096b of this title, amending sections 1088 to 1091, 1092, 1092b, 1093, 1094, 1095, 1096, 1097, and 1098 of this title, and repealing section 1096a of this title] shall take effect on the date of enactment of this Act [July 23, 1992], except that—

“(1) as otherwise provided in such part G;

“(2) the changes in section 481(a) [20 U.S.C. 1088(a)], relating to the definition of institution of higher education, other than paragraph (4) of such section, shall be effective on and after October 1, 1992;

“(3) section 481(e) as amended by such amendments, relating to the definition of eligible program, shall be effective on and after July 1, 1993;

“(4) section 481(m)(1) [20 U.S.C. 1091(m)(1)], relating to proportion of coursework permitted to be correspondence courses, as added by such amendments shall be effective on and after October 1, 1992;

“(5) the changes in section 485 [20 U.S.C. 1092], relating to disclosures, shall be effective with respect to periods of enrollment beginning on or after July 1, 1993;

“(6) the changes in section 488 [20 U.S.C. 1095], relating to transfers of allotments, shall apply with respect to funds provided for award years beginning on or after July 1, 1993; and

“(7) the changes in section 489 [20 U.S.C. 1096], relating to payments for administrative expenses, shall apply with respect to funds provided for award years beginning on or after July 1, 1993.”

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–26 applicable to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991, see section 2(d)(1) of Pub. L. 102–26, set out as a note under section 1003 of this title.

Effective Date of 1990 Amendment

Section 3005(c) of Pub. L. 101–508, which provided that the amendments made by section 3005 (amending this section and section 1091 of this title) were to apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after Jan. 1, 1991, was repealed by section 2(d)(2)(A) of Pub. L. 102–26. See Construction of 1991 Amendment note below.

Effective Date of 1987 Amendment


Construction of 2006 Amendment

Nothing in amendment by section 8007(d) of Pub. L. 109–171 to be construed to authorize any refunding of any repayment of a loan, see section 8007(e) of Pub. L. 109–171, set out as a note under section 1078 of this title.

Construction of 1991 Amendment

Section 2(d)(2)(A) of Pub. L. 102–26 provided that: “Section 3005 of the Omnibus Reconciliation Act of 1990 (Pub. L. 101–508, amending this section and section 1091 of this title and enacting provisions set out as a note above) is repealed. Sections 484(d) and 481(b) of the Act (20 U.S.C. 1091(d), 1088(b)) shall be applied as if such section 3005 had not been enacted.”

Need-Based Aid

Section 1544 of Pub. L. 102–325 authorized institutions of higher education to voluntarily agree with other such institutions to award financial aid not awarded under this chapter to students attending such institutions only on basis of demonstrated financial need for such aid, and to discuss and adopt principles of professional judgment for determining student financial need for such aid, with exceptions for cases pending on July 23, 1992, and for discussions or agreements on prospective financial aid awards to specific common applicants, and provided that such authorization was to expire on Sept. 30, 1994, prior to repeal by Pub. L. 103–382,
§ 1088a. Clock and credit hour treatment of diploma nursing schools

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, any regulations promulgated by the Secretary concerning the relationship between clock hours and semester, trimester, or quarter hours in calculating student grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall not apply to a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education.


Prior Provisions

Prior sections 1088a to 1088g were omitted in the general amendment of this part by Pub. L. 96–374.


Effective Date

Section 360(b) of Pub. L. 103–382 provided that: "Subsection (a) [enacting this section] and the amendment made by subsection (a) shall take effect on July 1, 1994.''

§ 1089. Master calendar

(a) Secretary required to comply with schedule

To assure adequate notification and timely delivery of student aid funds under this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall adhere to the following calendar dates in the year preceding the award year:

1. Development and distribution of Federal and multiple data entry forms—
   (A) by February 1: first meeting of the technical committee on forms design of the Department;
   (B) by March 1: proposed modifications, updates, and notices pursuant to sections 1087rr and 1090(a)(5) of this title published in the Federal Register;
   (C) by June 1: final modifications, updates, and notices pursuant to sections 1087rr and 1090(a)(5) of this title published in the Federal Register;
   (D) by August 15: application for Federal student assistance and multiple data entry data elements and instructions approved;
   (E) by August 30: final approved forms delivered to servicers and printers;
   (F) by October 1: Federal and multiple data entry forms and instructions printed; and
   (G) by November 1: Federal and multiple data entry forms, instructions, and training materials distributed.

2. Allocations of campus-based and Pell Grant funds—
   (A) by August 1: distribution of institutional application for campus-based funds (FISAP) to institutions;
   (B) by October 1: final date for submission of FISAP by institutions to the Department;
   (C) by November 15: edited FISAP and computer printout received by institutions;
   (D) by December 1: appeals procedures received by institutions;
   (E) by December 15: edits returned by institutions to the Department;
   (F) by February 1: tentative award levels received by institutions and final Pell Grant payment schedule;
   (G) by February 15: closing date for receipt of institutional appeals by the Department;
   (H) by March 1: appeals process completed;
   (I) by April 1: final award notifications sent to institutions; and
   (J) by June 1: Pell Grant authorization levels sent to institutions.

3. The Secretary shall, to the extent practicable, notify eligible institutions, guaranty agencies, lenders, interested software providers, and, upon request, other interested par-
ties, by December 1 prior to the start of an award year of minimal hardware and software requirements necessary to administer programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

(c) Compliance calendar

The Secretary shall attempt to conduct training activities for financial aid administrators and others in an expeditious and timely manner prior to the start of an award year in order to ensure that all participants are informed of all administrative requirements.

(b) Timing for reallocations

With respect to any funds reallocated under section 1070b–3(d) of this title, section 2752(d) or title 42, or section 1087bb(d) of this title, the Secretary shall reallocate such funds at any time during the course of the year that will best meet the purpose of the programs under subpart 3 of part A of this subchapter, part C of subchapter I of chapter 34 of title 42, and part D of this subchapter, respectively. However, such reallocation shall occur at least once each year, not later than September 30 of that year.

(c) Delay of effective date of late publications

(1) Except as provided in paragraph (2), any regulatory changes initiated by the Secretary affecting the programs under this subchapter and part C of subchapter I of chapter 34 of title 42 that have not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such November 1 date.

(2)(A) The Secretary may designate any regulatory provision that affects the programs under this subchapter and part C of subchapter I of chapter 34 of title 42 and is published in final form after November 1 as one that an entity subject to the provision may, in the entity’s discretion, choose to implement prior to the effective date described in paragraph (1). The Secretary may specify in the designation when, and under what conditions, an entity may implement the provision prior to that effective date. The Secretary shall publish any designation under this subparagraph in the Federal Register.

(B) If an entity chooses to implement a regulatory provision prior to the effective date described in paragraph (1), as permitted by subparagraph (A), the provision shall be effective with respect to that entity in accordance with the terms of the Secretary’s designation.

(d) Notice to Congress

The Secretary shall notify the authorizing committees when a deadline included in the calendar described in subsection (a) of this section is not met. Nothing in this section shall be interpreted to penalize institutions or deny them the specified times allotted to enable them to return information to the Secretary based on the failure of the Secretary to adhere to the dates specified in this section.

(e) Compliance calendar

Prior to the beginning of each award year, the Secretary shall provide to institutions of higher education a list of all the reports and disclosures required under this chapter and part C of subchapter I of chapter 34 of title 42. The list shall include—

(1) the date each report or disclosure is required to be completed and to be submitted, made available, or disseminated;

(2) the required recipients of each report or disclosure;

(3) any required method for transmittal or dissemination of each report or disclosure;

(4) a description of the content of each report or disclosure sufficient to allow the institution to identify the appropriate individuals to be assigned the responsibility for such report or disclosure;

(5) references to the statutory authority, applicable regulations, and current guidance issued by the Secretary regarding each report or disclosure; and

(6) any other information which is pertinent to the content or distribution of the report or disclosure.


Prior Provisions


Amendments

2009—Subsec. (b). Pub. L. 111–39 substituted “section 1070b–3(d) of this title, section 2752(d) of title 42, or section 1087bb(i) of this title” for “section 1070b–3(d) of this title, section 2752(e) of title 42, or section 1087bb(i) of this title”.

2008—Subsec. (a)(1)(B), (C). Pub. L. 110–315, § 482(a)(1), added subpars. (B) and (C) which read as follows: “(B) by March 1: proposed modifications and updates pursuant to section 1087rr of this title published in the Federal Register: “(C) by June 1: final modifications and updates pursuant to section 1087rr of this title published in the Federal Register:”.

Subsec. (d). Pub. L. 110–315, § 109(b)(9), substituted “authorizing committees” for “Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives”.


Subsec. (c). Pub. L. 105–244, § 481(b), amended heading and text of subsec. (c) generally. Prior to amendment,
text as follows: “Any regulatory changes initiated by the Secretary affecting the programs pursuant to this subchapter and part C of chapter I of chapter 34 of title 34 that have not been published in final form by December 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such December 1 date. For award year 1994–95, this subsection shall not require a delay in the effectiveness of regulatory changes affecting this part and parts B and G of this subchapter that are published in final form by May 1, 1994.”

1993—Subsec. (c). Pub. L. 103–208 inserted at end “For award year 1994–95, this subsection shall not require a delay in the effectiveness of regulatory changes affecting this part and parts B and G of this subchapter that are published in final form by May 1, 1994.”


Subsec. (b). Pub. L. 102–325, § 482(b)(2), substituted “subpart 3” for “subpart 2”.

Subsec. (c). Pub. L. 102–325, § 482(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Any additional regulatory changes initiated by the Secretary affecting the general administration of the programs pursuant to this subchapter and part C of subchapter I of chapter 34 of title 34 that have not been published in final form by December 1 prior to the start of the award year shall not become effective until the beginning of the second award year after the December 1 date.”

1987—Subsec. (b). Pub. L. 100–50 inserted reference to section 1087bb(i)(1) of this title and part D of this subchapter.

Effective Date of 2009 Amendment

Effective Date of 2008 Amendment
Pub. L. 110–315, title IV, § 409, July 1, 2009, 123 Stat. 2360, provided that: “Sections 482 and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title [amending sections 1070a and 1087ee of this title], or to any regulations promulgated under those amendments.”

Pub. L. 110–10, div. B, title VIII, § 1860(c), Apr. 15, 2011, 125 Stat. 170, provided that: “Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title [amending section 1070a of this title], or to any regulations promulgated under those amendments.”

Pub. L. 111–39, title IV, § 409, July 1, 2009, 123 Stat. 2360, provided that: “Sections 482 and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title [amending sections 1070a and 1087ee of this title], or to any regulations promulgated under those amendments.”

Pub. L. 110–315, title IV, § 402(b), Aug. 14, 2008, 122 Stat. 319, provided that: “Sections 482 and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title [amending section 1070a–1 of this title], or to any regulations promulgated under those amendments.”


§ 1090. Forms and regulations

(a) Common financial aid form development and processing

(1) In general

The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance under parts A through D of this subchapter and part C of subchapter I of chapter 34 of title 42 (other than under subpart 4 of part A of this subchapter). The forms shall be made available to applicants in both paper and electronic formats and shall be referred to as the “Free Application for Federal Student Aid” or the “FAFSA”. The Secretary shall work to make the FAFSA consumer-friendly and to make questions on the FAFSA easy for students and families to read and understand, and shall ensure that the FAFSA is available in formats accessible to individuals with disabilities.

(2) Paper format

(A) In general

The Secretary shall develop, make available, and process—

(i) a paper version of EZ FAFSA, as described in subparagraph (B); and

(ii) a paper version of the other forms described in this subsection, in accordance with paragraph (1), for any applicant who does not meet the requirements of or does not wish to use the process described in subparagraph (B).

(B) EZ FAFSA

(i) In general

The Secretary shall develop and use, after appropriate field testing, a simplified paper form, to be known as the EZ FAFSA, to be used for applicants meeting the requirements of subsection (b) or (c) of section 1087ss of this title.

(ii) Reduced data requirements

The EZ FAFSA shall permit an applicant to submit, for financial assistance purposes, only the data elements required to make a determination of whether the applicant meets the requirements under subsection (b) or (c) of section 1087ss of this title.

(iii) State data

The Secretary shall include on the EZ FAFSA such data items as may be necessary to award State financial assistance, as provided under paragraph (5), except that the Secretary shall not include a State’s data if that State does not permit the State’s resident applicants to use the EZ FAFSA for State assistance.

(iv) Free availability and processing

The provisions of paragraph (6) shall apply to the EZ FAFSA, and the data collected by means of the EZ FAFSA shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (10).

(C) Promoting the use of electronic FAFSA

(i) In general

The Secretary shall make all efforts to encourage all applicants to utilize the electronic version of the forms described in paragraph (3).

(ii) Maintenance of the FAFSA in a printable electronic file

The Secretary shall maintain a version of the paper forms described in subparagraphs (A) and (B) in a printable electronic file that is easily portable, accessible, and downloadable to students on the same website used to provide students with the electronic version of the forms described in paragraph (3).

(iii) Requests for printed copy

The Secretary shall provide a printed copy of the full paper version of FAFSA upon request.

(iv) Reporting requirement

The Secretary shall maintain data, and periodically report to Congress, on the impact of the digital divide on students completing applications for aid under this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall report on the steps taken to eliminate the digital divide and reduce production of the paper form described in subparagraph (A). The Secretary’s report shall specifically address the impact of the digital divide on the following student populations:

(I) Independent students.

(II) Traditionally underrepresented students.

(III) Dependent students.

(3) Electronic format

(A) In general

The Secretary shall produce, distribute, and process forms in electronic format to meet the requirements of paragraph (1). The Secretary shall develop an electronic version of the forms for applicants who do not meet the requirements of subsection (b) or (c) of section 1087ss of this title.

(B) Simplified applications: FAFSA on the web

(i) In general

The Secretary shall develop and use a simplified electronic version of the form to be used by applicants meeting the requirements under subsection (b) or (c) of section 1087ss of this title.

(ii) Reduced data requirements

The simplified electronic version of the forms shall permit an applicant to submit, for financial assistance purposes, only the
data elements required to make a determination of whether the applicant meets the requirements under subsection (b) or (c) of section 1087ss of this title.

(iii) Use of forms

Nothing in this subsection shall be construed to prohibit the use of the forms developed by the Secretary pursuant to this paragraph by an eligible institution, eligible lender, guaranty agency, State grant agency, private computer software provider, a consortium thereof, or such other entities as the Secretary may designate.

(C) State data

The Secretary shall include on the electronic version of the forms such items as may be necessary to determine eligibility for State financial assistance, as provided under paragraph (5), except that the Secretary shall not require an applicant to enter data pursuant to this subparagraph that are required by any State other than the applicant’s State of residence.

(D) Availability and processing

The data collected by means of the simplified electronic version of the forms shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (10).

(E) Privacy

The Secretary shall ensure that data collection under this paragraph complies with section 552a of title 5 and that any entity using the electronic version of the forms developed by the Secretary pursuant to this paragraph shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information, and to protect against security threats, or unauthorized uses or disclosures of the information provided on the electronic version of the forms. Data collected by such electronic version of the forms shall be used only for the application, award, and administration of aid awarded under this subchapter and part C of subchapter I of chapter 34 of title 42, and shall be used for making final aid awards under this subchapter and part C of subchapter I of chapter 34 of title 42 for the next succeeding academic year subsequent to an academic year for which such applicant applied for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(F) Signature

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, the Secretary may continue to permit an electronic version of the form under this paragraph to be submitted without a signature, if a signature is subsequently submitted by the applicant or if the applicant uses a personal identification number provided by the Secretary under subparagraph (G).

(G) Personal identification numbers authorized

The Secretary may continue to assign to an applicant a personal identification number—

(1) to enable the applicant to use such number as a signature for purposes of completing an electronic version of a form developed under this paragraph; and

(ii) for any purpose determined by the Secretary to carry out this subchapter and part C of subchapter I of chapter 34 of title 42.

(H) Personal identification number improvement

The Secretary shall continue to work with the Commissioner of Social Security to minimize the time required for an applicant to obtain a personal identification number when applying for aid under this subchapter and part C of subchapter I of chapter 34 of title 42 through an electronic version of a form developed under this paragraph.

(4) Streamlining

(A) Streamlined reapplication process

(i) In general

The Secretary shall continue to streamline reapplication forms and processes for an applicant who applies for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 in the next succeeding academic year subsequent to an academic year for which such applicant applied for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(ii) Updating of data elements

The Secretary shall determine, in cooperation with States, institutions of higher education, agencies, and organizations involved in student financial assistance, the data elements that may be transferred from the previous academic year’s application and those data elements that shall be updated.

(iii) Reduced data authorized

Nothing in this subchapter and part C of subchapter I of chapter 34 of title 42 shall be construed as limiting the authority of the Secretary to reduce the number of data elements required of reapplicants.

(iv) Zero family contribution

Applicants determined to have a zero family contribution pursuant to section 1087ss(c) of this title shall not be required to provide any financial data in a reapplication form, except data that are necessary to determine eligibility under such section.

(B) Reduction of data elements

(i) Reduction encouraged

Of the number of data elements on the FAFSA used for the 2009–2010 award year, the Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance
and consistent with efforts under subsection (c), shall continue to reduce the number of such data elements required to be entered by all applicants, with the goal of reducing such number by 50 percent.

(ii) Report
The Secretary shall submit a report on the process of this reduction to each of the authorizing committees by June 30, 2011.

(5) State requirements
(A) In general
Except as provided in paragraphs (2)(B)(iii), (3)(B), and (4)(A)(ii), the Secretary shall include on the forms developed under this subsection, such State-specific data items as the Secretary determines are necessary to meet State requirements for need-based State aid. Such items shall be selected in consultation with State agencies in order to assist in the awarding of State financial assistance in accordance with the terms of this subsection. The number of such data items shall not be less than the number included on the form for the 2008–2009 award year unless a State notifies the Secretary that the State no longer requires those data items for the distribution of State need-based aid.

(B) Annual review
The Secretary shall conduct an annual review to determine—
(i) which data items each State requires to award need-based State aid; and
(ii) if the State will permit an applicant to enter data in a form described in paragraph (2)(B) or (3)(B).

(C) Federal register notice
Beginning with the forms developed under paragraphs (2)(B) and (3)(B) for the award year 2010–2011, the Secretary shall publish on an annual basis a notice in the Federal Register requiring State agencies to inform the Secretary—
(i) if the State agency is unable to permit applicants to utilize the simplified forms described in paragraphs (2)(B) and (3)(B); and
(ii) of the State-specific nonfinancial data that the State agency requires for delivery of State need-based financial aid.

(D) Use of simplified forms encouraged
The Secretary shall encourage States to take such steps as are necessary to encourage the use of simplified forms under this subsection, including those forms described in paragraphs (2)(B) and (3)(B), for applicants who meet the requirements of subsection (b) or (c) of section 1087a as of this title.

(E) Consequences if State does not accept simplified forms
If a State does not permit an applicant to file a form described in paragraph (2)(B) or (3)(B) for purposes of determining eligibility for State need-based financial aid, the Secretary may determine that State-specific questions for such State will not be included on a form described in paragraph (2)(B) or (3)(B). If the Secretary makes such determination, the Secretary shall advise the State of the Secretary’s determination.

(F) Lack of State response to request for information
If a State does not respond to the Secretary’s request for information under subparagraph (B), the Secretary shall—
(i) permit residents of that State to complete simplified forms under paragraphs (2)(B) and (3)(B); and
(ii) not require any resident of such State to complete any data items previously required by that State under this section.

(G) Restriction
The Secretary shall, to the extent practicable, not require applicants to complete any financial or nonfinancial data items that are not required—
(i) by the applicant’s State; or
(ii) by the Secretary.

(6) Charges to students and parents for use of forms prohibited
The need and eligibility of a student for financial assistance under parts A through D of this subchapter and part C of subchapter I of chapter 34 of title 42 (other than under subpart 4 of part A of this subchapter) may be determined only by using a form developed by the Secretary under this subsection. Such forms shall be produced, distributed, and processed by the Secretary, and no parent or student shall be charged a fee by the Secretary, a contractor, a third-party servicer or private software provider, or any other public or private entity for the collection, processing, or delivery of financial aid through the use of such forms. No data collected on a form for which a fee is charged shall be used to complete the form prescribed under this section, except that a Federal or State income tax form prepared by a paid income tax preparer or preparer service for the primary purpose of filing a Federal or State income tax return may be used to complete the form prescribed under this section.

(7) Restrictions on use of PIN
No person, commercial entity, or other entity may request, obtain, or utilize an applicant’s personal identification number assigned under paragraph (3)(G) for purposes of submitting a form developed under this subsection on an applicant’s behalf.

(8) Application processing cycle
The Secretary shall enable students to submit forms developed under this subsection and initiate the processing of such forms under this subsection, as early as practicable prior to January 1 of the student’s planned year of enrollment.

(9) Early estimates
The Secretary shall continue to—
(A) permit applicants to enter data in such forms as described in this subsection in the years prior to enrollment in order to obtain a non-binding estimate of the applicant’s
family contribution (as defined in section 1087mm of this title);

(B) permit applicants to update information submitted on forms described in this subsection, without needing to re-enter previously submitted information;

(C) develop a means to inform applicants, in the years prior to enrollment, of student aid options for individuals in similar financial situations;

(D) develop a means to provide a clear and conspicuous notice that the applicant’s expected family contribution is subject to change and may not reflect the final expected family contribution used to determine Federal student financial aid award amounts under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(E) consult with representatives of States, institutions of higher education, and other individuals with experience or expertise in student financial assistance application processes in making updates to forms used to provide early estimates under this paragraph.

(10) Distribution of data

Institutions of higher education, guaranty agencies, and States shall receive, without charge, the data collected by the Secretary using a form developed under this subsection for the purposes of processing loan applications and determining need and eligibility for institutional and State financial aid awards. Entities designated by institutions of higher education, guaranty agencies, or States to receive such data shall be subject to all the requirements of this section, unless such requirements are waived by the Secretary.

(11) Third party servicers and private software providers

To the extent practicable and in a timely manner, the Secretary shall provide, to private organizations and consortia that develop software used by institutions of higher education for the administration of funds under this subchapter and part C of subchapter I of chapter 34 of title 42, all the necessary specifications that the organizations and consortia must meet for the software the organizations and consortia develop, produce, and distribute (including any diskette, modem, or network communications) to be so used. The specifications shall contain record layouts for required data. The Secretary shall develop in advance of each processing cycle an annual schedule for providing such specifications. The Secretary, to the extent practicable, shall use multiple means of providing such specifications, including conferences and other meetings, outreach, and technical support mechanisms (such as training and printed reference materials). The Secretary shall, from time to time, solicit from such organizations and consortia means of improving the support provided by the Secretary.

(12) Parent’s social security number and birth date

The Secretary is authorized to include space on the forms developed under this subsection for the social security number and birth date of parents of dependent students seeking financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(b) Information to committees of Congress

Copies of all rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this subchapter and part C of subchapter I of chapter 34 of title 42 shall be provided to the authorizing committees at least 45 days prior to their effective date.

(c) Toll-free information

The Secretary shall contract for, or establish, and publicize a toll-free telephone service to provide timely and accurate information to the general public. The information provided shall include specific instructions on completing the application form for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42. Such service shall also include a service accessible by telecommunications devices for the deaf (TDD’s) and shall, in addition to the services provided for in the previous sentence, refer such students to the national clearinghouse on postsecondary education or other appropriate provider of technical assistance and information on postsecondary educational services for individuals with disabilities, including the National Technical Assistance Center under section 1140q of this title. The Secretary shall continue to implement, to the extent practicable, a toll-free telephone based system to permit applicants who meet the requirements of subsection (b) or (c) of section 1087ss of this title to submit an application over such system.

(d) Assistance in preparation of financial aid application

(1) Preparation authorized

Notwithstanding any provision of this chapter, an applicant may use a preparer for consultative or preparation services for the completion of a form developed under subsection (a) if the preparer satisfies the requirements of this subsection.

(2) Preparer identification required

If an applicant uses a preparer for consultative or preparation services for the completion of a form developed under subsection (a), and for which a fee is charged, the preparer shall—

(A) include, at the time the form is submitted to the Department, the name, address or employer’s address, social security number or employer identification number, and organizational affiliation of the preparer on the applicant’s form; and

(B) be subject to the same penalties as an applicant for purposely giving false or misleading information in the application.

(3) Additional requirements

A preparer that provides consultative or preparation services pursuant to this subsection shall—

(A) clearly inform each individual upon initial contact, including contact through the Internet or by telephone, that the FAFSA and EZ FAFSA are free forms that
may be completed without professional assistance via paper or electronic version of the forms that are provided by the Secretary;

(B) include in any advertising clear and conspicuous information that the FAFSA and EZ FAFSA are free forms that may be completed without professional assistance via paper or electronic version of the forms that are provided by the Secretary;

(C) if advertising or providing any information on a website, or if providing services through a website, include on the website a link to the website that provides the electronic version of the forms developed under subsection (a); and

(D) not produce, use, or disseminate any other form for the purpose of applying for Federal student financial aid other than the form developed by the Secretary under subsection (a).

(4) Special rule

Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to limit preparers of the forms required under this subchapter and part C of subchapter I of chapter 34 of title 42 that meet the requirements of this subsection from collecting source information from a student or parent, including Internal Revenue Service tax forms, in providing consultative and preparation services in completing the forms.

(e) Early application and estimated award demonstration program

(1) Purpose and objectives

The purpose of the demonstration program under this subsection is to measure the benefits, in terms of student aspirations and plans to attend an institution of higher education, and any adverse effects, in terms of program costs, integrity, distribution, and delivery of aid under this subchapter and part C of subchapter I of chapter 34 of title 42 that meet the requirements of this subsection from collecting source information from a student or parent, including Internal Revenue Service tax forms, in providing consultative and preparation services in completing the forms.

(2) Program authorized

Not later than two years after August 14, 2008, the Secretary shall implement an early application demonstration program enabling dependent students who wish to participate in the program—

(A) to complete an application under this subsection during the academic year that is two years prior to the year such students plan to enroll in an institution of higher education; and

(B) based on the application described in subparagraph (A), to obtain, not later than one year prior to the year of the students' planned enrollment, information on eligibility for Federal Pell Grants, Federal student loans under this subchapter and part C of subchapter I of chapter 34 of title 42, and State and institutional financial aid for the student's first year of enrollment in the institution of higher education.

(3) Early application and estimated award

For all dependent students selected for participation in the demonstration program who submit a completed FAFSA, or, as appropriate, an EZ FAFSA, two years prior to the year such students plan to enroll in an institution of higher education, the Secretary shall, not later than one year prior to the year of such planned enrollment—

(A) provide each student who completes an early application with an estimated determination of such student's—

(i) expected family contribution for the first year of the student's enrollment in an institution of higher education; and

(ii) Federal Pell Grant award for the first such year, based on the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student is eligible at the time of application; and

(B) remind the students of the need to update the students' information during the calendar year of enrollment using the expedited reapplication process provided for in subsection (a)(4)(A).

(4) Participants

The Secretary shall include as participants in the demonstration program—

(A) States selected through the application process described in paragraph (5);

(B) institutions of higher education within the selected States that are interested in participating in the demonstration program, and that can make estimates or commitments of institutional student financial aid, as appropriate, to students the year before the students' planned enrollment date; and
(C) secondary schools within the selected States that are interested in participating in the demonstration program, and that can commit resources to—

(i) advertising the availability of the program;
(ii) identifying students who might be interested in participating in the program;
(iii) encouraging such students to apply; and
(iv) participating in the evaluation of the program.

(5) Applications

Each State that is interested in participating in the demonstration program shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require. The application shall include—

(A) information on the amount of the State's need-based student financial assistance available, and the eligibility criteria for receiving such assistance;
(B) a commitment to make, not later than the year before the dependent students participating in the demonstration program plan to enroll in an institution of higher education, an estimate of the award of State financial aid to such dependent students;
(C) a plan for recruiting institutions of higher education and secondary schools with different demographic characteristics to participate in the program;
(D) a plan for selecting institutions of higher education and secondary schools to participate in the program that—

(i) demonstrate a commitment to encouraging students to submit a FAFSA, or, as appropriate, an EZ FAFSA, two years before the students' planned date of enrollment in an institution of higher education;
(ii) serve different populations of students; and
(iii) in the case of institutions of higher education—

(I) to the extent possible, are of varying types and sectors; and
(II) commit to making, not later than the year prior to the year that dependent students participating in the demonstration program plan to enroll in the institution—

(aa) estimated institutional awards to participating dependent students; and
(bb) estimated grants or other financial aid available under this subchapter and part C of subchapter I of chapter 34 of title 42 (including supplemental grants under subpart 3 of part A of this subchapter), for all participating dependent students, along with information on State awards, as provided to the institution by the State;

(E) a commitment to participate in the evaluation conducted by the Secretary; and
(F) such other information as the Secretary may require.

(6) Special provisions

(A) Discretion of student financial aid administrators

A financial aid administrator at an institution of higher education participating in a demonstration program under this subsection may use the discretion provided under section 1087tt of this title as necessary for students participating in the demonstration program.

(B) Waivers

The Secretary is authorized to waive, for an institution of higher education participating in the demonstration program, any requirements under this subchapter and part C of subchapter I of chapter 34 of title 42, or regulations prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, that will make the demonstration program unworkable, except that the Secretary shall not waive any provisions with respect to the maximum award amounts for grants and loans under this subchapter and part C of subchapter I of chapter 34 of title 42.

(7) Outreach

The Secretary shall make appropriate efforts to notify States of the demonstration program under this subsection. Upon determination of participating States, the Secretary shall continue to make efforts to notify institutions of higher education and dependent students within participating States of the opportunity to participate in the demonstration program and of the participation requirements.

(8) Evaluation

The Secretary shall conduct a rigorous evaluation of the demonstration program to measure the program's benefits and adverse effects, as the benefits and effects relate to the purpose and objectives of the program described in paragraph (1). In conducting the evaluation, the Secretary shall—

(A) determine whether receiving financial aid estimates one year prior to the year in which the student plans to enroll in an institution of higher education, has a positive impact on the higher education aspirations and plans of such student;
(B) measure the extent to which using a student's income information from the year that is two years prior to the student's planned enrollment date had an impact on the ability of States and institutions of higher education to make financial aid awards and commitments;
(C) determine what operational changes are required to implement the program on a larger scale;
(D) identify any changes to Federal law that are necessary to implement the program on a permanent basis;
(E) identify the benefits and adverse effects of providing early estimates on program costs, program operations, program integrity, award amounts, distribution, and delivery of aid; and
(F) examine the extent to which estimated awards differ from actual awards made to students participating in the program.

(9) Consultation
The Secretary shall consult, as appropriate, with the Advisory Committee on Student Financial Assistance established under section 1086 of this title on the design, implementation, and evaluation of the demonstration program.

(f) Reduction of income and asset information to determine eligibility for student financial aid

(1) Continuation of current FAFSA simplification efforts
The Secretary shall continue to examine—

(A) how the Internal Revenue Service can provide to the Secretary income and other data needed to compute an expected family contribution for taxpayers and dependents of taxpayers, and when in the application cycle the data can be made available;

(B) whether data provided by the Internal Revenue Service can be used to—

(i) prepopulate the electronic version of the FAFSA with student and parent taxpayer data; or

(ii) generate an expected family contribution without additional action on the part of the student and taxpayer; and

(C) whether the data elements collected on the FAFSA that are needed to determine eligibility for student aid, or to administer the Federal student financial aid programs under this subchapter and part C of subchapter I of chapter 34 of title 42, but are not needed to compute an expected family contribution, such as information regarding the student’s citizenship or permanent residency status, registration for selective service, or driver’s license number, can be reduced without adverse effects.

(2) Report on FAFSA simplification efforts to date
Not later than 90 days after August 14, 2008, the Secretary shall provide a written report to the authorizing committees on the work the Department has done with the Secretary of the Treasury regarding—

(A) how the expected family contribution of a student can be calculated using substantially less income and asset information than was used on March 31, 2008;

(B) the extent to which the reduced income and asset information will result in a redistribution of Federal grants and subsidized loans under this subchapter and part C of subchapter I of chapter 34 of title 42, State aid, or institutional aid, or in a change in the composition of the group of recipients of such aid, and the amount of such redistribution;

(C) how the alternative approaches for calculating the expected family contribution will work;

(i) rely mainly, in the case of students and parents who file income tax returns, on information available on the 1040, 1040EZ, and 1040A; and

(ii) include formulas for adjusting income or asset information to produce similar results to the existing approach with less data;

(D) how the Internal Revenue Service can provide to the Secretary of Education income and other data needed to compute an expected family contribution for taxpayers and dependents of taxpayers, and when in the application cycle the data can be made available;

(E) whether data provided by the Internal Revenue Service can be used to—

(i) prepopulate the electronic version of the FAFSA with student and parent taxpayer data; or

(ii) generate an expected family contribution without additional action on the part of the student and taxpayer;

(F) the extent to which the use of income data from two years prior to a student’s planned enrollment date will change the expected family contribution computed in accordance with part E, and potential adjustments to the need analysis formula that will minimize the change; and

(G) the extent to which the data elements collected on the FAFSA on March 31, 2008, that are needed to determine eligibility for student aid or to administer the Federal student financial aid programs, but are not needed to compute an expected family contribution, such as information regarding the student’s citizenship or permanent residency status, registration for selective service, or driver’s license number, can be reduced without adverse effects.

(3) Study

(A) Formation of study group
Not later than 90 days after August 14, 2008, the Comptroller General shall convene a study group the membership of which shall include the Secretary of Education, the Secretary of the Treasury, the Director of the Office of Management and Budget, the Director of the Congressional Budget Office, representatives of institutions of higher education with expertise in analysis of financial need, to assess alternative approaches for calculating the expected family contribution under the statutory need analysis formula in effect on the day before August 14, 2008, and under a new calculation that will use substantially less income and asset informa-
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(§ 1090) The Secretary shall examine—

(D) Required subjects of study

The study required under subparagraph (B) are—

(C) Objectives of study

The objectives of the study required under subparagraph (B) are—

(i) to determine methods to shorten the FAFSA and make the FAFSA easier and less time-consuming to complete, thereby increasing higher education access for low-income students;

(ii) to identify changes to the statutory need analysis formula that will be necessary to reduce the amount of financial information students and families need to provide to receive a determination of eligibility for student financial aid without causing significant redistribution of Federal grants and subsidized loans under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(iii) to review State and institutional needs and uses for data collected on the FAFSA, and to determine the best means of addressing such needs in the case of modification of the FAFSA as described in clause (i), or modification of the need analysis formula as described in clause (ii).

(D) Required subjects of study

The study required under subparagraph (B) shall examine—

(i) with respect to simplification of the financial aid application process using the statutory requirements for need analysis—

(I) additional steps that can be taken to simplify the financial aid application process for students who (or, in the case of dependent students, whose parents) are not required to file a Federal income tax return for the prior taxable year;

(II) information on State use of information provided on the FAFSA, including—

(aa) whether a State uses, as of the time of the study, or can use, a student’s expected family contribution based on data from two years prior to the student’s planned enrollment date;

(bb) the extent to which States and institutions will accept the data provided by the Internal Revenue Service to prepopulate the electronic version of the FAFSA to determine the distribution of State and institutional student financial aid funds;

(cc) what data are used by States, as of the time of the study, to determine eligibility for State student financial aid, and whether the data are used for merit- or need-based aid;

(dd) whether State data are required by State law, State regulations, or policy directives; and

(ee) the extent to which any State-specific information requirements can be met by completion of a State application linked to the electronic version of the FAFSA; and

(III) information on institutional needs, including the extent to which institutions of higher education are already using supplemental forms to collect additional data from students and their families to determine eligibility for institutional funds; and

(ii) ways to reduce the amount of financial information students and families need to provide to receive a determination of eligibility for student financial aid, taking into account—

(I) the amount of redistribution of Federal grants and subsidized loans under this subchapter and part C of subchapter I of chapter 34 of title 42 caused by such a reduction, and the benefits to be gained by having an application process that will be easier for students and their families;

(II) students and families who do not file income tax returns;

(iii) to review State and institutional needs and uses for data collected on the FAFSA, as of the time of the study, or can use, a calculation with reduced data elements, to support determinations of eligibility for such State aid programs and, if not, what additional information will be needed or what changes to the FAFSA will be required; and

(IV) information on institutional needs, including the extent to which institutions of higher education are already using supplemental forms to collect additional data from students and their families to determine eligibility for institutional funds; and

(V) changes to this chapter and part C of subchapter I of chapter 34 of title 42 or other laws that will be required to implement a modified need analysis system.

(4) Consultation

The Secretary shall consult with the Advisory Committee on Student Financial Assistance established under section 1098 of this title as appropriate in carrying out this subsection.

(5) Reports

(A) Reports on study

The Secretary shall prepare and submit to the authorizing committees—

(i) not later than two years after August 14, 2008, a final report on the results of the study required under paragraph (3) that includes any preliminary recommendations by the study group established under such paragraph; and

(ii) not later than two years after August 14, 2008, a final report on the results of the study required under paragraph (3) that includes recommendations by the study group established under such paragraph.
(B) Reports on FAFSA simplification efforts

The Secretary shall report to the authorizing committees, from time to time, on the progress of the simplification efforts under this subsection.

(g) Addressing the digital divide

The Secretary shall utilize savings accrued by moving more applicants to the electronic version of the forms described in subsection (a)(3) to improve access to the electronic version of the forms described in such subsection for applicants meeting the requirements of subsection (b) or (c) of section 1087ss of this title.

(h) Adjustments

The Secretary shall disclose, on the form notifying a student of the student’s expected family contribution, that the student may, on a case-by-case basis, qualify for an adjustment under section 1087tt of this title to the cost of attendance. Such disclosure shall specify—

(1) the special circumstances under which a student or family member may qualify for such adjustment; and

(2) additional information regarding the steps a student or family member may take in order to seek an adjustment under section 1087tt of this title.

Prior Provisions


1996—Subsec. (a), Pub. L. 105–244, § 482(a)(1), substituted “form development” for “form” in heading.

Subsec. (a)(1), Pub. L. 105–244, § 482(a)(2)(D), struck out at end “For the purpose of collecting eligibility and other data for the purpose of part B of this subsection, the Secretary shall develop a separate, identifiable loan application document (pursuant to section 1082(m) of this title) that applicants or institutions in which the students are enrolled or accepted for enrollment shall submit directly to eligible lenders and on which the applicant shall clearly indicate a choice of a lender.”

Pub. L. 105–244, § 482(a)(2)(C), substituted “A through D” for “A, C, and D” and struck out “and to determine the need of a student for the purpose of part B of this chapter” after “part A of this chapter”.

Subsec. (a)(2), Pub. L. 105–244, § 482(a)(3), substituted “A through D” for “A, C, and D” in two places and struck out “and to determine the need of a student for the purpose of part B of this subchapter,” before “may only be determined” and “or have the student’s need established for the purpose of part B of this subchapter” before “, except by use of”.

Subsec. (a)(3), Pub. L. 105–244, § 482(a)(4), amended heading and text of subpar. (3) generally. Prior to amendment, text read as follows: “Institutions of higher education and States shall receive, without charge, the data collected by the Secretary using the form developed pursuant to this section for the purposes of determining need and eligibility for institutional and State financial aid awards. Entities designated by institutions of higher education or States to receive such data shall be subject to all requirements of this section, unless such requirements are waived by the Secretary.”

Pub. L. 105–244, § 482(a)(5), added pars. (5) to (7).

Subsec. (b)(1), Pub. L. 105–244, § 482(b), struck out “, within 240 days after July 23, 1992,” after “The Secretary shall”.

Amendments

2010—Subsec. (a)(3)(A)(ii). Pub. L. 111–152 substituted “based on the Federal Pell Grant amount, determined under section 1090a(b)(2)(B) of this title, for which a student is eligible at the time of application” for “based on the maximum Federal Pell Grant award at the time of application”.


2008—Subsec. (a). Pub. L. 110–315, § 483(a)(3), added pars. (1) to (7), which related to forms required, charges for forms, distribution of data, contracts for collection and processing, electronic forms, third party processors and private software providers, and parents’ social security numbers and birth dates.

Subsec. (b). Pub. L. 110–315, § 483(a)(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b), which related to streamlined reapplication process.

Subsec. (c), Pub. L. 110–315, § 483(a)(4), substituted “or other appropriate provider of technical assistance and information on postsecondary educational services for individuals with disabilities, including the National Technical Assistance Center under section 1146q of this title. The Secretary shall continue to implement, to the extent practicable, a toll-free telephone based system to permit applicants who meet the requirements of subsection (b) or (c) of section 1087ss of this title to submit an application over such system for “that is authorized under section 1485(d)(2)(C) of this title”.

Pub. L. 110–315, § 483(a)(1), redesignated subsec. (d) as (c), inserted “the electronic version of the forms described in such subsection for applicants meeting the requirements of subsection (b) or (c) of section 1087ss of this title.”.

Subsec. (d), Pub. L. 110–315, § 483(a)(5), added subsec. (d), redesignated (c) and struck out former subsec. (e).

Subsec. (c). Pub. L. 105–244, §482(c), substituted “and the Workforce” for “and Labor”.

Subsec. (d). Pub. L. 105–244, §482(d), substituted “section 1485(d)(2)(C)” for “section 1433(c)”.

Subsec. (f). Pub. L. 105–244, §482(e), struck out heading and text of subsec. (f). Text read as follows: “Nothing in section 1544 of the Higher Education Amendments of 1992 shall relieve processors or institutions of higher education of any or all obligations under this section.”

1992—Subsec. (a)(1). Pub. L. 102–235, §483(a)(1), made technical amendment to reference to section 1070a(d) of this title to correct reference to corresponding section of original act.


Pub. L. 102–235, §483(a)(2), substituted “address or employer’s address, social security number or employer identification number,” for “address, social security number,”.

Subsec. (g). Pub. L. 103–208, §482(c), added subsec. (g) as (f).

1992—Subsec. (a)(2). Pub. L. 102–235, §483(a)(2), added subsec. (a) and struck out former subsec. (a) which contained pars. (1) to (5) relating to a common financial aid form and processing of financial aid applications.

Subsec. (b). Pub. L. 102–235, §483(a)(3), added subsec. (b) and struck out former subsec. (b) which related to certifications of capability of systems for determining expected family contributions.


Subsec. (e). Pub. L. 102–235, §483(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The Secretary shall provide to, or establish, and publicize a toll-free telephone number to provide timely and accurate information to the general public. The information provided shall include specific instructions on completing application forms for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.”

Subsecs. (f), (g). Pub. L. 102–235, §483(b)(1), (3), added subsec. (f) and (g) and struck out former subsec. (f) which related to notice of student aid receipt.

1987—Subsec. (a)(1). Pub. L. 100–50, §15(3), (4), inserted in second sentence “or institutions in which the students are enrolled or accepted for enrollment” after “that applicant” and “and on which the applicant shall clearly indicate a choice of lender” before period at end.

Subsec. (a)(2). Pub. L. 100–50, §15(5), substituted “not less than 5” for “not less than 3” and inserted sentence at end providing that the Secretary not select new multiple data entry processors until certain examinations and recommendations are made by the Advisory Commission on Student Financial Assistance.

Subsecs. (b) to (f). Pub. L. 100–50, §15(6), added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

Effective Date of 2010 Amendment
Amendment by Pub. L. 111–152 effective July 1, 2010, see section 2101(c) of Pub. L. 111–152, set out as a note under section 1070a of this title.

Effective Date of 2009 Amendment

Effective Date of 1998 Amendment

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Effective Date of 1987 Amendment

Delayed Implementation of EZ FAFSA
Pub. L. 111–39, title IV, §407(a), July 1, 2009, 123 Stat. 123 Stat. 123, provided that: “Notwithstanding any other provision of law, the Secretary of Education shall be required to carry out the requirements under the following provisions of section 483 of the Higher Education Act of 1965 (20 U.S.C. 1090) only for academic year 2010–2011 and subsequent academic years:

‘‘(1) In subsection (a) of such section—

‘‘(A) subparagraphs (A)(i) and (B) of paragraph (2);

‘‘(B) paragraph (3)—

‘‘(i) the second sentence of subparagraph (A);

‘‘(ii) clauses (i) and (ii) of subparagraph (B); and

‘‘(iii) subparagraph (C);

‘‘(C) paragraph (4)(A)(IV); and

‘‘(D) paragraph (5)(E).

‘‘(2) Subsection (h) of such section.’’

$1091. Student eligibility
(a) In general
In order to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, a student must—

(1) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title, except as provided in subsections (b)(3) and (b)(4) of this section, and not be enrolled in an elementary or secondary school;

(2) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with the provisions of subsection (c) of this section;

(3) not owe a refund on grants previously received at any institution under this subchapter and part C of subchapter I of chapter
34 of title 42, or be in default on any loan from a student loan fund at any institution provided for in part D of this subchapter, or a loan made, insured, or guaranteed by the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42 for attendance at any institution.

(b) Eligibility for student loans

(1) In order to be eligible to receive any loan under this subchapter and part C of subchapter I of chapter 34 of title 42 (other than a loan under section 1078–2 or 1078–3 of this title, or under section 1078–3 of this title, or under section 1078–8 of this title pursuant to an exercise of discretion under section 1087tt of this title) for any period of enrollment, a student shall—

(A) have received a determination of need for a loan under section 1078(a)(2)(B) of this title;

(B) if determined to have need for a loan under section 1078 of this title, have applied for such a loan; and

(C) has applied for a loan under section 1078–8 of this title, if such student is eligible to apply for such a loan.

(2) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study that the student is pursuing, as determined by an eligible institution, and

(B) is enrolled in a course of study necessary for enrollment in a program leading to a degree or certificate, shall be, notwithstanding paragraph (1) of subsection (a) of this section, eligible to apply for loans under part B or C of this subchapter. The eligibility described in this paragraph shall be restricted to one 12-month period.

(3) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution, and

(B) is enrolled or accepted for enrollment in a program at an eligible institution necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State,

shall be, notwithstanding paragraph (1) of subsection (a) of this section, eligible to apply for loans under part B, C, or D of this subchapter or work-study assistance under part C of subchapter I of chapter 34 of title 42.

(5) Notwithstanding any other provision of this subsection, no incarcerated student is eligible to receive a loan under this subchapter and part C of subchapter I of chapter 34 of title 42.

(c) Satisfactory progress

(1) For the purpose of subsection (a)(2) of this section, a student is maintaining satisfactory progress if—

(A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution, and

(B) the student has a cumulative C average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

(2) Whenever a student fails to meet the eligibility requirements of subsection (a)(2) of this section as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(2) of this section for a grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(3) Any institution of higher education at which the student is in attendance may waive the provisions of paragraph (1) or paragraph (2) of this subsection for undue hardship based on—
(A) the death of a relative of the student,
(B) the personal injury or illness of the student,
or
(C) special circumstances as determined by the institution.

(d) Students who are not high school graduates

In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 3, and 4 of part A and parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42, the student shall have completed a secondary school education in a home school setting that is treated as a home school or private school under State law.

(e) Certification for GSL eligibility

Each eligible institution may certify student eligibility for a loan by an eligible lender under part B of this subchapter prior to completing the review for accuracy of the information submitted by the applicant required by regulations issued under this subchapter and part C of subchapter I of chapter 34 of title 42 if—

(1) checks for the loans are mailed to the eligible institution prior to disbursements;
(2) the disbursement is not made until the review is complete; and
(3) the eligible institution has no evidence or documentation on which the institution may base a determination that the information submitted by the applicant is incorrect.

(f) Loss of eligibility for violation of loan limits

(1) No student shall be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the eligible institution determines that the student fraudulently borrowed in violation of the annual loan limits under part B, part C, or part D of this subchapter in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits under such part B, part C, or part D.

(2) If the institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, such institution shall allow the student to repay any amount borrowed in excess of such limits prior to certifying the student’s eligibility for further assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(g) Verification of immigration status

(1) In general

The Secretary shall implement a system under which the statements and supporting documentation, if required, of an individual declaring that such individual is in compliance with the requirements of subsection (a)(5) of this section shall be verified prior to the individual’s receipt of a grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2) Special rule

The documents collected and maintained by an eligible institution in the admission of a student to the institution may be used by the student in lieu of the documents used to establish both employment authorization and identity under section 1324a(b)(1)(B) of title 8 to verify eligibility for GSL

(3) Verification mechanisms

The Secretary is authorized to verify such statements and supporting documentation through a data match, using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.

(4) Review

In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the institution—

(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and
(ii) may not delay, deny, reduce, or terminate the individual’s eligibility for the grant, loan, or work assistance on the basis of the individual’s immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the institution determines constitute reasonable evidence indicating such status—

(i) the institution shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual’s eligibility for the grant, loan, or work assistance on the basis of the individual’s immigration status, and

(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(h) Limitations of enforcement actions against institutions

The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution’s determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status—

(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the institution, under subsection (g)(4)(A)(i) of this section, was required to pro-
provide a reasonable opportunity to submit documentation, or
(3) because the institution, under subsection (g)(4)(B)(i) of this section, was required to wait for the response of the Immigration and Naturalization Service to the institution’s request for official verification of the immigration status of the student.

(i) Validity of loan guarantees for loan payments made before immigration status verification completed
Notwithstanding subsection (h)¹ of this section, if—
(1) a guaranty is made under this subchapter and part C of subchapter I of chapter 34 of title 42 for a loan made with respect to an individual,
(2) at the time the guaranty is entered into, the provisions of subsection (h)¹ of this section had been complied with,
(3) amounts are paid under the loan subject to such guaranty, and
(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,
the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date the entity receives the notice.


(k) Special rule for correspondence courses
A student shall not be eligible to receive grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for a correspondence course unless such course is part of a program leading to an associate, bachelor or graduate degree.

(l) Courses offered through distance education
(1) Relation to correspondence courses
(A) In general
A student enrolled in a course of instruction at an institution of higher education that is offered principally through distance education and leads to a recognized certificate, or recognized associate, recognized baccalaureate, or recognized graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses.
(B) Exception
An institution of higher education referred to in subparagraph (A) shall not include an institution or school described in section 22623(3)(C) of this title.

(2) Reductions of financial aid
A student’s eligibility to receive grants, loans, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be reduced if a financial aid officer determines under the discretionary authority provided in section 1087tt of this title that distance education results in a substantially reduced cost of attendance to such student.

(3) Special rule
For award years beginning prior to July 1, 2008, the Secretary shall not take any compliance, disallowance, penalty, or other action based on a violation of this subsection against a student or an eligible institution when such action arises out of such institution’s prior award of student assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the institution demonstrates to the satisfaction of the Secretary that its course of instruction would have been in conformance with the requirements of this subsection.

(m) Students with a first baccalaureate or professional degree
A student shall not be ineligible for assistance under parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42 because such student has previously received a baccalaureate or professional degree.

(n) Data base matching
To enforce the Selective Service registration provisions of section 462(f) of title 50, Appendix, the Secretary shall conduct data base matches with the Selective Service, using common demographic data elements. Appropriate confirmation, through an application output document or through other means, of any person’s registration shall fulfill the requirement to file a separate statement of compliance. In the absence of a confirmation from such data matches, an institution may also use data or documents that support either the student’s registration, or the absence of a registration requirement for the student, to fulfill the requirement to file a separate statement of compliance. The mechanism for reporting the resolution of nonconfirmed matches shall be prescribed by the Secretary in regulations.

(o) Study abroad
Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, without regard to whether such study abroad program is required as part of the student’s degree program.

(p) Verification of social security number
The Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, shall verify any social security number provided by a student to an eligible institution under subsection (a)(4) of this section and shall enforce the following conditions:
(1) Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student’s eligibility for
assistance under this part because social security number verification is pending.

(2) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student’s eligibility for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

(3) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, and a correct social security number cannot be provided by such student, and a loan has been guaranteed for such student under part B of this subchapter, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, but such guaranty shall not be voided or otherwise nullified with respect to such disbursements made before the date that the lender and the guaranty agency receive such notice.

(4) Nothing in this subsection shall permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

(A) any institution of higher education with respect to any error in a social security number, unless such error was a result of fraud on the part of the institution; or

(B) any student with respect to any error in a social security number, unless such error was a result of fraud on the part of the student.

(q) Use of income data

(1) Matching with IRS

The Secretary, in cooperation with the Secretary of the Treasury, is authorized to obtain from the Internal Revenue Service such information reported on Federal income tax returns by applicants, or by any other person whose financial information is required to be provided on the Federal student financial aid application, as the Secretary determines is necessary for the purpose of—

(A) prepopulating the Federal student financial aid application described in section 1090 of this title; or

(B) verifying the information reported on such student financial aid applications.

(2) Consent

The Secretary may require that applicants for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 provide a consent to the disclosure of the data described in paragraph (1) as a condition of the student receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42. The parents of an applicant, in the case of a dependent student, or the spouse of an applicant, in the case of an applicant who is married but files separately, may also be required to provide consent as a condition of the student receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(r) Suspension of eligibility for drug-related offenses

(1) In general

A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall not be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 from the date of that conviction for the period of time specified in the following table:

If convicted of an offense involving:

The possession of a controlled substance:

<table>
<thead>
<tr>
<th>Offense</th>
<th>Ineligibility period</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>1 year</td>
</tr>
<tr>
<td>Second offense</td>
<td>2 years</td>
</tr>
<tr>
<td>Third offense</td>
<td>Indefinite</td>
</tr>
</tbody>
</table>

The sale of a controlled substance:

<table>
<thead>
<tr>
<th>Offense</th>
<th>Ineligibility period</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>2 years</td>
</tr>
<tr>
<td>Second offense</td>
<td>Indefinite</td>
</tr>
</tbody>
</table>

(2) Rehabilitation

A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if—

(A) the student satisfactorily completes a drug rehabilitation program that—

(i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and

(ii) includes two unannounced drug tests; or

(B) the student successfully passes two unannounced drug tests conducted by a drug rehabilitation program that complies with such criteria as the Secretary shall prescribe in regulations for purposes of subparagraph (A)(i); or

(C) the conviction is reversed, set aside, or otherwise rendered nugatory.

(3) Definitions

In this subsection, the term “controlled substance” has the meaning given the term in section 802(6) of title 21.

(s) Students with intellectual disabilities

(1) Definitions

In this subsection the terms “comprehensive transition and postsecondary program for students with intellectual disabilities” and “student with an intellectual disability” have the meanings given in the terms in section 1140 of this title.

(2) Requirements

Notwithstanding subsections (a), (c), and (d), in order to receive any grant or work assistance under section 1070a of this title, subpart 3 of part A of this subchapter, or part C of subchapter I of chapter 34 of title 42, a student with an intellectual disability shall—
(A) be enrolled or accepted for enrollment in a comprehensive transition and post-secondary program for students with intellectual disabilities at an institution of higher education;

(B) be maintaining satisfactory progress in the program as determined by the institution, in accordance with standards established by the institution; and

(C) meet the requirements of paragraphs (3), (4), (5), and (6) of subsection (a).

(3) Authority

Notwithstanding any other provision of law unless such provision is enacted with specific reference to this section, the Secretary is authorized to waive any statutory provision applicable to the student financial assistance programs under section 1070a of this title, subpart 3 of part A of this subchapter, or part C of chapter 34 of title 42 (other than a provision of part E of this subchapter related to such a program), or any institutional eligibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, as the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection may receive such financial assistance.

(4) Regulations

Notwithstanding regulations applicable to grant or work assistance awards made under section 1070a of this title, subpart 3 of part A of this subchapter, or part C of subchapter I of chapter 34 of title 42 (other than as a provision of part E of this subchapter related to such a program), or any institutional eligibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, as the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection may receive such financial assistance.

(6) Data analysis on access to Federal student aid for certain populations

(1) Development of the system

Within one year of August 14, 2008, the Secretary shall analyze data from the FAFSA containing information regarding the number, characteristics, and circumstances of students denied Federal student aid based on a drug conviction while receiving Federal aid.

(2) Results from analysis

The results from the analysis of such information shall be made available on a continuous basis via the Department website and the Digest of Education Statistics.

(3) Data updating

The data analyzed under this subsection shall be updated at the beginning of each award year and at least one additional time during such award year.

(4) Report to Congress

The Secretary shall prepare and submit to the authorizing committees, in each fiscal year, a report describing the results obtained by the establishment and operation of the data system authorized by this subsection.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS

2011—Subsec. (d). Pub. L. 112–74 struck out “meet one of the following standards:” after “‘the student shall’,” substituted “‘have completed’ for ‘‘(9) The student has completed’”, and struck out pars. (1), (2) and (4), which required students to take an independently administered examination, required a State process, or required an institution of higher education, respectively, to determine ability of students to benefit from education or training.


Subsec. (b)(1)(B). Pub. L. 111–39, § 407(b)(4)(B), substituted “have (l)” for “have (A)” and “and (ii)” for “and (B)”.

erences to part B, part C, or part D, resulting in text identical to that after execution of Pub. L. 103–208, § 2(h)(18). See 1993 Amendment note for subsec. (g) below.


2006—Subsec. (a)(4)(B). Pub. L. 110–315, § 485(a)(1), substituted “‘the Secretary, as part of the original financial aid application process, a certification,’” for “‘the institution of higher education which the student intends to attend, or is attending (or in the case of a loan guarantee with the lender), a document’” in introductory provisions.

Subsec. (a)(5). Pub. L. 110–315, § 485(a)(2), substituted “‘a citizen of any one of the Freely Associated States’” for “‘permanent resident of the Trust Territory of the Pacific Islands, Guam, or the Northern Mariana Islands’”.


Subsec. (j). Pub. L. 110–315, § 485(a)(4), struck out subsec. (j). Text read as follows: “Notwithstanding any other provision of law, a student shall be eligible until September 30, 2004, for assistance under subparts 1 and 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 during the period beginning on the date of such conviction and ending after the interval specified in the following table:”.

1996—Subsec. (a)(4). Pub. L. 105–244, § 483(a)(1), substituted “‘the Secretary, as part of the original financial aid application process, a certification,’” for “‘the institution of higher education which the student intends to attend, or is attending (or in the case of a loan guarantee with the lender), a document’” in introductory provisions.

Subsec. (a)(5). Pub. L. 105–244, § 483(a)(2), substituted “‘a citizen of any one of the Freely Associated States’” for “‘permanent resident of the Trust Territory of the Pacific Islands, Guam, or the Northern Mariana Islands’”.

Subsec. (d). Pub. L. 105–244, § 483(b), struck out “either” after “shall meet” in introductory provisions and added par. (3).

Subsec. (i). Pub. L. 105–244, § 483(c), amended heading and text of subsec. (j) generally. Prior to amendment, text read as follows: “‘A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.’”

Subsec. (r). Pub. L. 105–197, § 8021(b), amended heading and text of introductory provisions generally. Prior to amendment, text read as follows: “‘The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the adjusted gross income, Federal income taxes paid, filling status, and exemptions reported by applicants (including parents) under this subchapter or other subchapter I of chapter 34 of title 42 on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.’”

Subsec. (t). Pub. L. 105–197, § 8021(c), amended heading and text of introductory provisions generally. Prior to amendment, text read as follows: “‘A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 during the period beginning on the date of such conviction and ending after the interval specified in the following table:’”.

Subsec. (u). Pub. L. 105–244, § 483(d), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “‘A student enrolled in a course of instruction at an eligible institution of higher education (other than an institution that meets the definition in section 2471(4)(C) of this title) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by such institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of such courses.’”


1996—Subsec. (g)(4)(B)(1). Pub. L. 104–208 amended cl. (1) generally. Prior to amendment, cl. (1) read as follows: “‘the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification.’”
1994—Subsec. (j). Pub. L. 103–382 amended heading and text of subsec. (j) generally. Prior to amendment, text read as follows: "Notwithstanding any other provision of law, a student who meets the requirements of paragraph (a)(5) of this section or who is a resident of the freely associated states, and who attends a public or nonprofit institution of higher education located in any of the freely associated states rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 1, 2, or 4 of part A of this subchapter or part C of subchapter I of chapter 34 of title 42.

Subsec. (n). Pub. L. 102–325, § 2(h)(24), substituted "documented evidence of a social security number that is determined by the institution to be correct" for "a correct social security number" in part C.

1992—Subsec. (a)(1). Pub. L. 102–325, § 484(a)(1), inserted "(including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) after "section no eligible institution shall be required to verify all applications for aid through the use of any means available, including through the exchange of information with any other Federal agency."


Subsec. (b)(3). Pub. L. 103–208, § 2(h)(16), substituted "part B or C of this subchapter" for "part B of this subchapter" in closing provisions.

Subsec. (d). Pub. L. 102–325, § 484(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 2, and 3 of part A and parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42, the student shall pass an independently administered examination approved by the Secretary."

Subsec. (f). Pub. L. 102–325, § 484(d), inserted at end "Nothing in this subsection shall preclude the Secretary from verifying all applications for aid through the use of any means available, including through the exchange of information with any other Federal agency."

Subsec. (g). Pub. L. 102–325, § 484(e), redesignated existing provisions as par. (1), inserted "part C" after "borrowed" in two places, and added par. (2).

Subsec. (h). Pub. L. 102–325, § 484(f), amended subsec. (h) generally. Prior to amendment, subsec. (h) contained pars. (1) to (6) relating to requirements for verification of student immigration status.


Subsecs. (l) to (q). Pub. L. 102–325, § 484(p), added subsecs. (l) to (q).

1991—Subsec. (a)(1). Pub. L. 102–26, § 2(c)(2), inserted before semicolon at end "and not be enrolled in an elementary or secondary school".


Pub. L. 102–26, § 2(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall—

(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

(3) A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall—

(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

(3) A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall—

(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

(3) A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall—

(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;
criteria developed by the appropriate accrediting association, measuring the applicant’s aptitude to complete successfully the program to which the applicant has applied; and “(B) with respect to applicants who are unable to satisfy the institutions’ admissions testing requirements specified in subparagraph (A), be enrolled in and successfully complete an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

In order to be eligible for assistance a student cannot be enrolled in either an elementary or a secondary school.”


1990—Subsec. (d). Pub. L. 101–508, which amended subsec. (d) generally to read: “In order for a student who is admitted on the basis of ability to benefit from the educational experience offered to be eligible for any grant, loan, or work assistance under this subchapter and part C of chapter 34 of title 42, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.”, was repealed by Pub. L. 102–26, §2(d)(2)(A). See Construction of 1991 Amendment note below.

1989—Subsec. (a)(1). Pub. L. 100–369, §6(1), substituted “subsections (b)(3) and (b)(4)” for “subsection (b)(2)’”.


Subsec. (b)(1)(A). Pub. L. 100–369, §1(2), added subpar. (A) and struck out former subpar. (A) which read as follows: “have received a determination of eligibility or ineligibility for a grant under such subpart I for such period of enrollment; or”.

Subsec. (b)(2), (3), Pub. L. 100–369, §2, added par. (2) and redesignated former par. (2) as (3).


Subsecs. (c) to (e), (h) to (j). Pub. L. 100–525 redesignated subsecs. (c) to (e) enacted by Pub. L. 99–603 as (h) to (j), respectively, and inserted headings, substituted references to subsec. (b) for references to subsec. (c) wherever appearing, and in closing provisions of subsec. (j) substituted “date” for “date of”.

1987—Subsec. (a)(1). Pub. L. 100–15. §15(7)(A), inserted “,, except as provided in subsection (b)(2) of this section” before semicolon at end.

Subsec. (b). Pub. L. 100–50, §15(7)(B)–(D), designated existing provision as par. (1), redesignated former pars. (1) and (2) as subs. (A) and (B), respectively, and added par. (2).

Subsec. (d). Pub. L. 100–50, §15(8), added subs. (2) and (3) and last sentence relating to ineligibility for assistance if a student is enrolled in either an elementary or a secondary school, and struck out former par. (2) which read as follows: “(A) be counseled prior to admissions or be administered a nationally recognized standardized or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant’s aptitude to complete successfully the program to which he has applied; and “(B) with respect to applicants who are unable to satisfy the institution’s admissions testing requirements specified in subparagraph (A), be enrolled in and successfully complete an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

In order to be eligible for assistance a student cannot be enrolled in either an elementary or a secondary school.”

Subsec. (f). Pub. L. 100–50, §15(9), inserted at end “In carrying out provisions of this subsection no eligible institution shall be required to verify more than 30 percent of such applications in any award year.”


Effective Date of 2011 Amendment

Amendment by Pub. L. 112–74 effective July 1, 2012, see section 309(g) of Pub. L. 112–74, set out as a note under section 1001 of this title.

Effective Date of 2009 Amendment

Effective Date of 2008 Amendment
Pub. L. 110–315, title IV, §485(b), Aug. 14, 2008, 122 Stat. 3290, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010, except that the amendments made by paragraphs (3), (4), and (8) of such subsection shall take effect on the date of enactment of this Act [Aug. 14, 2008].”

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as a note under section 1002 of this title.

Effective Date of 1998 Amendment

Pub. L. 105–244, title IV, §§483(f)(2), Oct. 7, 1998, 112 Stat. 1735, provided that: “The amendment made by paragraph (1) [amending this section], regarding suspension of eligibility for drug-related offenses, shall apply with respect to financial assistance to cover the costs of attendance for periods of enrollment beginning after the date of enactment of this Act [Oct. 7, 1998].”

Effective Date of 1993 Amendment
Amendment by Pub. L. 100–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 100–208, set out as a note under section 1051 of this title.

Effective Date of 1992 Amendment
Amendment by section 484(a), (b)(1)(B), and (c) to (h) of Pub. L. 102–325 effective July 23, 1992, except that paragraphs (m)(1) of this section, relating to proportion of courses permitted to be correspondence courses, as added by such amendment, effective on and after Dec. 1, 1992, see section 498 of Pub. L. 102–325, set out below.

Section 484(b)(2) of Pub. L. 102–325 provided that: “The amendments made by paragraph (1) [amending this section] shall be effective on and after December 1, 1997.”

Section 484(i) of Pub. L. 102–325, as added by Pub. L. 103–208, §2(k)(8), Dec. 20, 1993, 107 Stat. 2486, provided that: “The amendments made by subsection (c) [section 484(g) of Pub. L. 102–325] with respect to the addition of subsection (n) [adding subsection (n) of this section] shall be effective on and after December 1, 1997.”

Effective Date of 1991 Amendment
Amendment by Pub. L. 101–26 applicable to any grant, loan, or work assistance to cover the cost of instruc-
tion for periods of enrollment beginning on or after July 1, 1991, see section 2(d)(1) of Pub. L. 102-26, set out as a note under section 1085 of this title.

**Effective Date of 1988 Amendments**

Amendment by Pub. L. 100-525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99-603, see section 2(i) of Pub. L. 100-525, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 13 of Pub. L. 100-369 provided that:

"(a) General Rule.—Except as otherwise provided, the amendments made by this Act to title IV of the Higher Education Act of 1965 [amending this section and section 1078-1 of this title] shall be effective for any loan for which the eligibility of the borrower is certified by the institution 30 days after the date of enactment of this Act [July 18, 1988]."

"(b) Special Rules.—(1) The amendments made by section 5 [amending this section and sections 1077 and 1078 of this title] shall be effective with respect to loans made on or after October 1, 1988.

"(2) The amendments made by sections 6, 7, 8, 9, 10, 11, and 12 [amending this section, sections 1088, 1091, 1092, 1093, 1094, 1095(a), 1095(b), 1095(c), 1095(d), 1095(e), 1095(f), 1095(g), 1095(h), 1095(i), 1095(j), 1095(k), 1095(l), 1095(m), 1095(n), 1095(o), 1095(p), 1095(q), 1095(r), 1095(s), 1095(t), 1095(u), 1095(v), 1095(w), 1095(x), 1095(y), 1095(z), 1095(aa), and 1095(bb) of this title, and section 1950 of Title 42, The Public Health and Welfare] shall take effect on the date of enactment of this Act [July 18, 1988]."

**Effective Date of 1987 Amendment**


**Effective Date of 1986 Amendment**


**Effective Date**

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99-498, set out as a note under section 1001 of this title.

Section 479(b) of Pub. L. 99-498 provided that:

"(1) Sections 483(e) and 484(d) of the Act [20 U.S.C. 1090(e), 1091(d)] as amended by this section shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

"(2) The changes made in section 484(a)(1) of the Act [20 U.S.C. 1091(a)(1)] shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

"(3) Section 484(c) of the Act [20 U.S.C. 1091(c)] as amended by this section shall apply only to student assistance awarded for periods of enrollment beginning on or after July 1, 1987, to individuals who were not awarded such assistance for any preceding period of enrollment.

"(4) Sections 484(f), 485(b), and 487(a)(10) of the Act [20 U.S.C. 1091(f), 1092(b), 1094(a)(10)] as amended by this section shall apply only to periods of enrollment beginning on or after July 1, 1987.""
chapter after the default of the borrower on such loan; or

(D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be, for payment of a refund due from a student on a grant made under this subchapter and part C of subchapter I of chapter 34 of title 42, or for the repayment of the amount due from a borrower on a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been assigned to the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42.

(b) Assessment of costs and other charges

Notwithstanding any provision of State law to the contrary—

(1) a borrower who has defaulted on a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be required to pay, in addition to other charges specified in this subchapter and part C of subchapter I of chapter 34 of title 42 reasonable collection costs;

(2) in collecting any obligation arising from a loan made under part D of this subchapter, a guaranty agency or the Secretary shall not be subject to a defense raised by any borrower based on a claim of infancy; and

(3) in collecting any obligation arising from a loan made under part D, an institution of higher education that has an agreement with the Secretary pursuant to section 1087cc(a) of this title shall not be subject to a defense raised by any borrower based on a claim of infancy.

c) State court judgments

A judgment of a State court for the recovery of money provided as grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been assigned or transferred to the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42 may be registered in any district court of the United States by filing a certified copy of the judgment and a copy of the assignment or transfer. A judgment so registered may be enforced in the same manner, as a judgment of the district court of the district in which the judgment is registered.

d) Special rule

This section shall not apply in the case of a student who is deceased, or to a deceased student’s estate or the estate of such student’s family. If a student is deceased, then the student’s estate or the estate of the student’s family shall not be required to repay any financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, including interest paid on the student’s behalf, collection costs, or other charges specified in this subchapter and part C of subchapter I of chapter 34 of title 42.

§ 1091b. Institutional refunds

(a) Return of title IV funds

(1) In general

If a recipient of assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the amount of grant or loan assistance (other than assistance received under part C of subchapter I of chapter 34 of title 42) to be returned to the title IV programs is calculated according to paragraph (3) and returned in accordance with subsection (b) of this section.

(2) Leave of absence

(A) Leave not treated as withdrawal

In the case of a student who takes 1 or more leaves of absence from an institution for not more than a total of 180 days in any 12-month period, the institution may consider the student as not having withdrawn from the institution during the leave of absence, and not calculate the amount of grant and loan assistance provided under this subchapter and part C of subchapter I of chapter...
34 of title 42 that is to be returned in accordance with this section if—

(i) the institution has a formal policy regarding leaves of absence;

(ii) the student followed the institution’s policy in requesting a leave of absence; and

(iii) the institution approved the student’s request in accordance with the institution’s policy.

(B) Consequences of failure to return

If a student does not return to the institution at the expiration of an approved leave of absence that meets the requirements of subparagraph (A), the institution shall calculate the amount of grant and loan assistance provided under this subchapter and part C of subchapter I of chapter 34 of title 42 that has not been earned by the student, as described in subsection (a)(3)(C) of this section.

(3) Calculation of amount of title IV assistance earned

(A) In general

The amount of grant or loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that is earned by the recipient for purposes of this section is calculated by—

(i) determining the percentage of grant and loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been earned by the student, as described in subparagraph (B); and

(ii) applying such percentage to the total amount of such grant and loan assistance that was disbursed (and that could have been disbursed) to the student, or on the student’s behalf, for the payment period or period of enrollment for which the assistance was awarded, as of the day the student withdrew.

(B) Percentage earned

For purposes of subparagraph (A)(i), the percentage of grant or loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been earned by the student is—

(i) equal to the percentage of the payment period or period of enrollment for which assistance was awarded that was completed (as determined in accordance with subsection (d) of this section) as of the day the student withdrew, provided that such date occurs on or before the completion of 60 percent of the payment period or period of enrollment; or

(ii) 100 percent, if the day the student withdrew occurs after the student has completed (as determined in accordance with subsection (d)) 60 percent of the payment period or period of enrollment.

(C) Percentage and amount not earned

For purposes of subsection (b) of this section, the amount of grant and loan assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 that has not been earned by the student shall be calculated by—

(i) determining the complement of the percentage of grant assistance under subparts 1 and 3 of part A, or loan assistance under parts B, C, and D, that has been earned by the student described in subparagraph (B); and

(ii) applying the percentage determined under clause (i) to the total amount of such grant and loan assistance that was disbursed (and that could have been disbursed) to the student, or on the student’s behalf, for the payment period or period of enrollment, as of the day the student withdrew.

(4) Differences between amounts earned and amounts received

(A) In general

After determining the eligibility of the student for a late disbursement or post-withdrawal disbursement (as required in regulations prescribed by the Secretary), the institution of higher education shall contact the borrower and obtain confirmation that the loan funds are still required by the borrower. In making such contact, the institution shall explain to the borrower the borrower’s obligation to repay the funds following any such disbursement. The institution shall document in the borrower’s file the result of such contact and the final determination made concerning such disbursement.

(B) Return

If the student has received more grant or loan assistance than the amount earned as calculated under paragraph (3)(A), the unearned funds shall be returned by the institution or the student, or both, as may be required under paragraphs (1) and (2) of subsection (b) of this section, to the programs under this subchapter and part C of subchapter I of chapter 34 of title 42 in the order specified in subsection (b)(3) of this section.

(b) Return of title IV program funds

(1) Responsibility of the institution

The institution shall return not later than 45 days from the determination of withdrawal, in the order specified in paragraph (3), the lesser of—

(A) the amount of grant and loan assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 that has not been earned by the student, as calculated under subsection (a)(3)(C) of this section; or

(B) an amount equal to—

(i) the total institutional charges incurred by the student for the payment period or period of enrollment for which such assistance was awarded; multiplied by

(ii) the percentage of grant and loan assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 that has not been earned by the student, as described in subsection (a)(3)(C)(i) of this section.
(2) Responsibility of the student

(A) In general

The student shall return assistance that has not been earned by the student as described in subsection (a)(3)(C)(i) of this section in the order specified in paragraph (3) minus the amount the institution is required to return under paragraph (1).

(B) Special rule

The student (or parent in the case of funds due to a loan borrowed by a parent under part B or C of this subchapter) shall return or repay, as appropriate, the amount determined under subparagraph (A) to—

(i) a loan program under this subchapter and part C of subchapter I of chapter 34 of title 42 in accordance with the terms of the loan; and

(ii) a grant program under this subchapter and part C of subchapter I of chapter 34 of title 42, as an overpayment of such grant and shall be subject to—

(I) repayment arrangements satisfactory to the institution; or

(II) overpayment collection procedures prescribed by the Secretary.

(C) Grant overpayment requirements

(i) In general

Notwithstanding subparagraphs (A) and (B), a student shall only be required to return grant assistance in the amount (if any) by which—

(I) the amount to be returned by the student (as determined under subparagraphs (A) and (B)), exceeds

(II) 50 percent of the total grant assistance received by the student under this subchapter and part C of subchapter I of chapter 34 of title 42 for the payment period or period of enrollment.

(ii) Minimum

A student shall not be required to return amounts of $50 or less.

(D) Waivers of Federal Pell Grant repayment by students affected by disasters

The Secretary may waive the amounts that students are required to return under this section with respect to any other grant assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the withdrawals on which the returns are based are withdrawals by students—

(i) who were residing in, employed in, or attending an institution of higher education that is located in an area in which the President has declared that a major disaster exists, in accordance with section 5170 of title 42;

(ii) whose attendance was interrupted because of the impact of the disaster on the student or the institution; and

(iii) whose withdrawal ended within the academic year during which the designation occurred or during the next succeeding academic year.

(E) Waivers of grant assistance repayment by students affected by disasters

In addition to the waivers authorized by subparagraph (D), the Secretary may waive the amounts that students are required to return under this section with respect to any other grant assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the withdrawals on which the returns are based are withdrawals by students—

(i) who were residing in, employed in, or attending an institution of higher education that is located in an area in which the President has declared that a major disaster exists, in accordance with section 5170 of title 42;

(ii) whose attendance was interrupted because of the impact of the disaster on the student or the institution; and

(iii) whose withdrawal ended within the academic year during which the designation occurred or during the next succeeding academic year.

(3) Order of return of title IV funds

(A) In general

Excess funds returned by the institution or the student, as appropriate, in accordance with paragraph (1) or (2), respectively, shall be credited to outstanding balances on loans made under this subchapter and part C of subchapter I of chapter 34 of title 42 to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Such excess funds shall be credited in the following order:

(i) To outstanding balances on loans made under section 1078-8 of this title for the payment period or period of enrollment for which a return of funds is required.

(ii) To outstanding balances on loans made under section 1078 of this title for the payment period or period of enrollment for which a return of funds is required.

(iii) To outstanding balances on unsubsidized loans (other than parent loans) made under part C of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(iv) To outstanding balances on subsidized loans made under part C of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(v) To outstanding balances on loans made under part D of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(vi) To outstanding balances on loans made under section 1078-2 of this title for the payment period or period of enrollment for which a return of funds is required.

(B) Remaining excesses

If excess funds remain after repaying all outstanding loan amounts, the remaining...
excess shall be credited in the following order:

(i) To awards under subpart 1 of part A of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(ii) To awards under subpart 3 of part A of this subchapter for the payment period or period of enrollment for which a return of funds is required.

(iii) To other assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42 for which a return of funds is required.

(c) Withdrawal date

(1) In general

In this section, the term “day the student withdrew”—

(A) is the date that the institution determines—

(i) the student began the withdrawal process prescribed by the institution;

(ii) the student otherwise provided official notification to the institution of the intent to withdraw; or

(iii) in the case of a student who does not begin the withdrawal process or otherwise notify the institution of the intent to withdraw, the date that is the mid-point of the payment period for which assistance was disbursed or a later date documented by the institution; or

(B) for institutions required to take attendance, is determined by the institution from such attendance records.

(2) Special rule

Notwithstanding paragraph (1), if the institution determines that a student did not begin the withdrawal process or otherwise notify the institution of the intent to withdraw, due to illness, accident, grievous personal loss, or other such circumstances beyond the student’s control, the institution may determine the appropriate withdrawal date.

(d) Percentage of the payment period or period of enrollment completed

For purposes of subsection (a)(3)(B) of this section, the percentage of the payment period or period of enrollment for which assistance was awarded that was completed, is determined—

(1) in the case of a program that is measured in credit hours, by dividing the total number of calendar days comprising the payment period or period of enrollment for which assistance is awarded into the number of calendar days completed in that period as of the day the student withdrew; and

(2) in the case of a program that is measured in clock hours, by dividing the total number of clock hours comprising the payment period or period of enrollment for which assistance is awarded into the number of clock hours scheduled to be completed by the student in that period as of the day the student withdrew.

(e) Effective date

The provisions of this section shall take effect 2 years after October 7, 1998. An institution of higher education may choose to implement such provisions prior to that date.


References in Text

Title IV, referred to in subsecs. (a) and (b), means title IV of the Higher Education Act of 1965, Pub. L. 89–329, which is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of title IV to the Code, see Tables.

Prior Provisions


Amendments


Subsec. (a)(3)(B)(ii). Pub. L. 109–171, § 8022(2), inserted “(as determined in accordance with subsection (d))” after “student has completed”.

Subsec. (a)(3)(C)(i). Pub. L. 109–171, § 8022(3), substituted “grant assistance under subparts 1 and 3 of part A, or loan assistance under parts B, C, and D,” for “grant or loan assistance under this subchapter and part C of subchapter I of chapter 34 of title 42”.

Subsec. (a)(4)(A). Pub. L. 109–171, § 8022(4), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: “If the student has received less grant or loan assistance than the amount earned as calculated under paragraph (A) of this subpart, the institution of higher education shall comply with the procedures for late disbursement specified by the Secretary in regulations.”

Subsec. (b)(1). Pub. L. 109–171, § 8022(b), inserted “not later than 45 days from the determination of withdrawal” after “return” in introductory provisions.

Subsec. (b)(2)(C). Pub. L. 109–171, § 8022(6), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “Notwithstanding subparagraphs (A) and (B), a student shall not be required to return 50 percent of the grant assistance received by the student under this subchapter and part C of subchapter I of chapter 34 of title 42, for a payment period or period of enrollment, that is the responsibility of the student to repay under this section.”

Subsec. (d). Pub. L. 109–171, § 8022(7), (8), in introductory provisions, substituted “(as determined in accordance with subsection (d))” for “(as determined in accordance with subsection (d))” and, in par. (2), substituted “clock hours” for “clock hours” and “(1)” for “(1)”.


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1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (c) requiring each institution of higher education participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 to have in effect a fair and equitable refund policy for refunding unearned tuition, fees, room and board, and other charges to students or parents who received grant or loan assistance under this subchapter or part C of subchapter I of chapter 34 of title 42.

1993—Subsec. (a). Pub. L. 103–208, § 2(h)(26), substituted “grant or loan assistance” for “grant, loan, or work assistance” in introductory provisions.

Subsec. (b)(3). Pub. L. 103–208, § 2(h)(27), substituted “subsection (c) of this section” for “subsection (d) of this section”.

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 effective July 1, 2006, except as otherwise provided, see section 1001 of this title.

Effective Date of 1998 Amendment

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–225, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.

§ 1091c. Readmission requirements for service-members

(a) Definition of service in the uniformed services

In this section, the term “service in the uniformed services” means service (whether voluntary or involuntary) on active duty in the Armed Forces, including such service by a member of the National Guard or Reserve, for a period of more than 30 days under a call or order to active duty of more than 30 days.

(b) Discrimination against students who serve in the uniformed services prohibited

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services shall not be denied readmission to an institution of higher education on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) Readmission procedures

(1) In general

Any student whose absence from an institution of higher education is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution of higher education if—

(A) the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance written or verbal notice of such service to the appropriate official at the institution of higher education;

(B) the cumulative length of the absence and of all previous absences from that institution of higher education by reason of service in the uniformed services does not exceed five years; and

(C) except as otherwise provided in this section, the student submits a notification of intent to reenroll in the institution of higher education in accordance with the provisions of paragraph (4).

(2) Exceptions

(A) Military necessity

No notice is required under paragraph (1)(A) if the giving of such notice is precluded by military necessity, such as—

(i) a mission, operation, exercise, or requirement that is classified; or

(ii) a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(B) Failure to give advance notice

Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or verbal notice of service to the appropriate official at the institution of higher education in accordance with paragraph (1)(A) may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the student’s institution of higher education that the student performed service in the uniformed services that necessitated the student’s absence from the institution of higher education.

(3) Applicability

This section shall apply to a student who is absent from an institution of higher education by reason of service in the uniformed services if such student’s cumulative period of service in the Armed Forces (including the National Guard or Reserve), with respect to the institution of higher education for which a student seeks readmission, does not exceed five years, except that any such period of service shall not include any service—

(A) that is required, beyond five years, to complete an initial period of obligated service;

(B) during which such student was unable to obtain orders releasing such student from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such student; or

(C) performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(ii) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) ordered to active duty (other than for training) in support, as determined by
the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(iv) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) called into Federal service as a member of the National Guard under chapter 15 of title 10 or section 12406 of title 10.

(4) Notification of intent to return

(A) In general

Except as provided in subparagraph (B), a student referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the institution of higher education of the student’s intent to return to the institution not later than three years after the completion of the period of service.

(B) Hospitalization or convalescence

A student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services shall notify the institution of higher education of the student’s intent to return to the institution not later than two years after the end of the period that is necessary for recovery from such illness or injury.

(C) Special rule

A student who fails to apply for readmission within the period described in this section shall not automatically forfeit such eligibility for readmission to the institution of higher education, but shall be subject to the institution of higher education’s established leave of absence policy and general practices.

(5) Documentation

(A) In general

A student who submits an application for readmission to an institution of higher education under this section shall provide to the institution of higher education documentation to establish that—

(i) the student has not exceeded the service limitations established under this section; and

(ii) the student’s eligibility for readmission has not been terminated due to an exception in subsection (d).

(B) Prohibited documentation demands

An institution of higher education may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(6) No change in academic status

A student who is readmitted to an institution of higher education under this section shall be readmitted with the same academic status as such student had when such student last attended the institution of higher education.

(d) Exception from readmission eligibility

A student’s eligibility for readmission to an institution of higher education under this section by reason of such student’s service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of such person permitted under section 1161(a) of title 10.

(3) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.


§ 1092. Institutional and financial assistance information for students

(a) Information dissemination activities

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall carry out information dissemination activities for prospective and enrolled students (including those attending or planning to attend less than full time) regarding the institution and all financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

The information required by this section shall be produced and be made readily available upon request, through appropriate publications, mailings, and electronic media, to an enrolled student and to any prospective student. Each eligible institution shall, on an annual basis, provide to all enrolled students a list of the information that is required to be provided by institutions to students by this section and section 444 of the General Education Provisions Act [20 U.S.C. 1232g] (commonly known as the “Family Educational Rights andPrivacy Act of 1974”), together with a statement of the procedures re-
required to obtain such information. The information required by this section shall accurately describe—

(A) the student financial assistance programs available to students who enroll at such institution;
(B) the methods by which such assistance is distributed among student recipients who enroll at such institution;
(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such application;
(D) the rights and responsibilities of students receiving financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42;
(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;
(F) a statement of—

(i) the requirements of any refund policy with which the institution is required to comply;
(ii) the requirements under section 1091b of this title for the return of grant or loan assistance provided under this subchapter and part C of subchapter I of chapter 34 of title 42; and
(iii) the requirements for officially withdrawing from the institution;
(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, (iii) the faculty and other instructional personnel, and (iv) any plans by the institution for improving the academic program of the institution;
(H) each person designated under subsection (c) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection;
(I) special facilities and services available to students with disabilities;
(J) the names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs, and the procedures under which any current or prospective student may obtain or review upon request a copy of the documents describing the institution's accreditation, approval, or licensing;
(K) the standards which the student must maintain in order to be considered to be making satisfactory progress, pursuant to section 1091(a)(2) of this title;
(L) the completion or graduation rate of certificate- or degree-seeking, full-time, undergraduate students entering such institution;
(M) the terms and conditions of the loans that students receive under parts B, C, and D;
(N) that enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment in the home institution for purposes of applying for Federal student financial assistance;
(O) the campus crime report prepared by the institution pursuant to subsection (f) of this section, including all required reporting categories;
(P) institutional policies and sanctions related to copyright infringement, including—

(i) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;
(ii) a summary of the penalties for violation of Federal copyright laws; and
(iii) a description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution's information technology system;
(Q) student body diversity at the institution, including information on the percentage of enrolled, full-time students who—

(i) are male;
(ii) are female;
(iii) receive a Federal Pell Grant; and
(iv) are a self-identified member of a major racial or ethnic group;
(R) the placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources;
(S) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;
(T) the fire safety report prepared by the institution pursuant to subsection (i);
(U) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution; and
(V) institutional policies regarding vaccinations.

(2) For the purpose of this section, the term "prospective student" means any individual who has contacted an eligible institution requesting information concerning admission to that institution.

(3) In calculating the completion or graduation rate under subparagraph (L) of paragraph (i) of this subsection or under subsection (e) of this section, a student shall be counted as a completion or graduation if, within 150 percent of the normal time for completion or graduation from the program, the student has completed or graduated from the program, or enrolled in any program of an eligible institution
for which the prior program provides substantial preparation. The information required to be disclosed under such subparagraph—

(A) shall be made available by July 1 each year to enrolled students and prospective students prior to the students enrolling or entering into any financial obligation; and

(B) shall cover the one-year period ending on August 31 of the preceding year.

(4) For purposes of this section, institutions may—

(A) exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government; or

(B) in cases where the students described in subparagraph (A) represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, re-calculate the completion or graduation rates of such students by excluding from the calculation described in paragraph (3) the time period during which such students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(5) The Secretary shall permit any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection, to use such data to satisfy the requirements of this subsection.

(6) Each institution may provide supplemental information to enrolled and prospective students showing the completion or graduation rate for students described in paragraph (4) or for students transferring into the institution or information showing the rate at which students transfer out of the institution.

(7)(A)(i) Subject to clause (ii), the information disseminated under paragraph (1)(L), or reported under subsection (e), shall be disaggregated by gender, by each major racial and ethnic subgroup, by recipients of a Federal Pell Grant, by recipients of a loan made under part B or C (other than a loan made under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a loan made under part B or C (other than a loan made under section 1078–8 of this title or a Federal Direct Unsubsidized Stafford Loan), if the number of students in such subgroup or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purposes, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) The requirements of clause (i) shall not apply to two-year, degree-granting institutions of higher education until academic year 2011-2012.

(B)(i) In order to assist two-year degree-granting institutions of higher education in meeting the requirements of paragraph (1)(L) and subsection (e), the Secretary, in consultation with the Commissioner for Education Statistics, shall, not later than 90 days after August 14, 2008, convene a group of representatives from diverse institutions of higher education, experts in the field of higher education policy, state higher education officials, students, and other stakeholders in the higher education community, to develop recommendations regarding the accurate calculation and reporting of the information required to be disseminated or reported under paragraph (1)(L) and subsection (e) by two-year, degree-granting institutions of higher education. In developing such recommendations, the group of representatives shall consider the mission and role of two-year degree-granting institutions of higher education, and may recommend additional or alternative measures of student success for such institutions in light of the mission and role of such institutions.

(ii) The Secretary shall widely disseminate the recommendations required under this subparagraph to two-year, degree-granting institutions of higher education, the public, and the authorizing committees not later than 18 months after the first meeting of the group of representatives convened under clause (i).

(iii) The Secretary shall use the recommendations from the group of representatives convened under clause (i) to provide technical assistance to two-year, degree-granting institutions of higher education in meeting the requirements of paragraph (1)(L) and subsection (e).

(iv) The Secretary may modify the information required to be disseminated or reported under paragraph (1)(L) or subsection (e) by a two-year, degree-granting institution of higher education—

(I) based on the recommendations received under this subparagraph from the group of representatives convened under clause (i);

(II) to include additional or alternative measures of student success if the goals of the provisions of paragraph (1)(L) and subsection (e) can be met through additional means or comparable alternatives; and

(III) during the period beginning on August 14, 2008, and ending on June 30, 2011.

(b) Exit counseling for borrowers

(1)(A) Each eligible institution shall, through financial aid offices or otherwise, provide counseling to borrowers of loans that are made, insured, or guaranteed under part B (other than loans made pursuant to section 1078-3 of this title or loans under section 1078-2 of this title made on behalf of a student) or made under part C (other than Federal Direct Consolidation Loans or Federal Direct PLUS Loans made on behalf of a student) or made under part D of this subchapter prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from

1 So in original. Probably should be capitalized.
such institution. The counseling required by this subsection shall include—

(i) information on the repayment plans available, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments, under each plan;

(ii) debt management strategies that are designed to facilitate the repayment of such indebtedness;

(iii) an explanation that the borrower has the options to prepay each loan, pay each loan on a shorter schedule, and change repayment plans;

(iv) for any loan forgiveness or cancellation provision of this subchapter and part C of subchapter I of chapter 34 of title 42, a general description of the terms and conditions under which the borrower may obtain full or partial forgiveness or cancellation of the principal and interest, and a copy of the information provided by the Secretary under section 1092(d) of this title;

(v) for any forbearance provision of this subchapter and part C of subchapter I of chapter 34 of title 42, a general description of the terms and conditions under which the borrower may defer repayment of principal or interest or be granted forbearance, and a copy of the information provided by the Secretary under section 1092(d) of this title;

(vi) the consequences of defaulting on a loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(vii) information on the effects of using a consolidation loan under section 1078–3 of this title or a Federal Direct Consolidation Loan to discharge the borrower’s loans under parts B, C, and D, including at a minimum—

(I) the effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(II) the effects of consolidation on a borrower’s underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(III) the option of the borrower to prepay the loan or to change repayment plans; and

(IV) that borrower benefit programs may vary among different lenders;

(viii) a general description of the types of tax benefits that may be available to borrowers; and

(ix) a notice to borrowers about the availability of the National Student Loan Data System and how the system can be used by a borrower to obtain information on the status of the borrower’s loans; and

(B) In the case of borrower who leaves an institution without the prior knowledge of the institution, the institution shall attempt to provide the information described in subparagraph (A) to the student in writing.

(C) Each eligible institution shall require that the borrower of a loan made under part B, C, or D of this subchapter submit to the institution, during the exit interview required by this subsection—

(i) the borrower’s expected permanent address after leaving the institution (regardless of the reason for leaving);

(ii) the name and address of the borrower’s expected employer after leaving the institution;

(iii) the address of the borrower’s next of kin; and

(iv) any corrections in the institution’s records relating the borrower’s name, address, social security number, references, and driver’s license number.

(B) The institution shall, within 60 days after the interview, forward any corrected or completed information received from the borrower to the guaranty agency indicated on the borrower’s student aid records.

(C) Nothing in this subsection shall be construed to prohibit an institution of higher education from utilizing electronic means to provide personalized exit counseling.

(c) Financial assistance information personnel

Each eligible institution shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in subsection (a) of this section. The Secretary may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution in which the total enrollment, or the portion of the enrollment participating in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

(d) Departmental publication of descriptions of assistance programs

(1) The Secretary shall make available to eligible institutions, eligible lenders, and secondary schools descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (A) assist students in gaining information through institutional sources, and (B) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs. In particular, such information shall include information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations that will be incurred as a result of receiving loans of varying amounts under this subchapter and part C of subchapter I of chapter 34 of title 42. Such information shall also include information on the various payment options available for student loans, including income-sensitive and income-based repayment plans for loans made, insured, or guaranteed under part B and income-contingent and income-based repayment plans for loans made under part C. In addition, such
information shall include information to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles to illustrate such consequences. The Secretary shall provide information concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service, shall indicate (in terms of the Federal minimum wage) the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization. The Secretary shall also provide information on loan forbearance, including the increase in debt that results from capitalization of interest. Such information shall be provided by eligible institutions and eligible lenders at any time that information regarding loan availability is provided to any student.

(2) The Secretary, to the extent the information is available, shall compile information describing State and other prepaid tuition programs and savings programs and disseminate such information to States, eligible institutions, students, and parents in departmental publications.

(3) The Secretary, to the extent practicable, shall update the Department’s Internet site to include direct links to databases that contain information on public and private financial assistance programs. The Secretary shall only provide direct links to databases that can be accessed without charge and shall make reasonable efforts to verify that the databases included in a direct link are not providing fraudulent information. The Secretary shall prominently display adjacent to any such direct link a disclaimer indicating that a direct link to a database does not constitute an endorsement or recommendation of the database, the provider of the database, or any services or products of such provider. The Secretary shall provide additional direct links to information resources from which students may obtain information about fraudulent and deceptive practices in the provision of services related to student financial aid.

(4) The Secretary shall widely publicize the location of the information described in paragraph (1) among the public, eligible institutions, and eligible lenders, and promote the use of such information by prospective students, enrolled students, families of prospective and enrolled students, and borrowers.

(e) Disclosures required with respect to athletically related student aid

(1) Each institution of higher education which participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 and is attended by students receiving athletically related student aid shall annually submit a report to the Secretary which contains—

(A) the number of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track, and all other sports combined;

(B) the number of students at the institution of higher education, broken down by race and sex;

(C) the completion or graduation rate for students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track, and all other sports combined;

(D) the completion or graduation rate for students at the institution of higher education, broken down by race and sex;

(E) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following categories: basketball, football, baseball, cross country/track, and all other sports combined; and

(F) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education broken down by race and sex.

(2) When an institution described in paragraph (1) of this subsection offers a potential student athlete athletically related student aid, such institution shall provide to the student and the student’s parents, guidance counselor, and coach the information contained in the report submitted by such institution pursuant to paragraph (1). If the institution is a member of a national collegiate athletic association that compiles graduation rate data on behalf of the association’s member institutions that the Secretary determines is substantially comparable to the information described in paragraph (1), the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility of the institution to provide information to a prospective student athlete’s guidance counselor and coach.

(3) For purposes of this subsection, institutions may—

(A) exclude from the reporting requirements under paragraphs (1) and (2) the completion or graduation rates of students and student athletes who leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government; or

(B) in cases where the students described in subparagraph (A) represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, calculate the completion or graduation rates of such students by excluding from the calculations described in paragraph (1) the time period during which such students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(4) Each institution of higher education described in paragraph (1) may provide supplemental information to students and the Sec-
(5) The Secretary, using the reports submitted under this subsection, shall compile and publish a report containing the information required under paragraph (1) broken down by—
   (A) individual institutions of higher education; and
   (B) athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

(6) The Secretary shall waive the requirements of this subsection for any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection.

(7) The Secretary, in conjunction with the National Junior College Athletic Association, shall develop and obtain data on completion or graduation rates from two-year colleges that award athletically related student aid. Such data shall, to the extent practicable, be consistent with the reporting requirements set forth in this section.

(8) For purposes of this subsection, the term "athletically related student aid" means any scholarship, grant, or other form of financial assistance the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution of higher education in order to be eligible to receive such assistance.

(9) The reports required by this subsection shall be due each July 1 and shall cover the 1-year period ending August 31 of the preceding year.

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:
   (A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution’s response to such reports.
   (B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
   (C) A statement of current policies concerning campus law enforcement, including—
       (i) the law enforcement authority of campus security personnel;
       (ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and
       (iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies.
   (D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
   (E) A description of programs designed to inform students and employees about the prevention of crimes.
   (F) Statistics concerning the occurrence on campus, in or on non-campus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—
       (i) of the following criminal offenses reported to campus security authorities or local police agencies:
           (I) murder;
           (II) sex offenses, forcible or nonforcible;
           (III) robbery;
           (IV) aggravated assault;
           (V) burglary;
           (VI) motor vehicle theft;
           (VII) manslaughter;
           (VIII) arson; and
       (ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.
   (G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.
   (H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the
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possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 1011i of this title.

(1) A statement advising the campus community where law enforcement agency information provided by a State under section 14971(j)² of title 42, concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to—

(i) immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

(iii) test emergency response and evacuation procedures on an annual basis.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall make timely reports to the campus community on crimes considered to be a threat to other students or staff occurring on the campus, as reported in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(K)(A) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

(i) the nature, date, time, and general location of each crime; and

(ii) the disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) review such statistics and report to the authorizing committees on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The term “campus” means—

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term “noncampus building or property” means—

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution’s educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term “public property” means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adja-

²See References in Text note below.
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Participation

(B) In cases where branch campuses of an institution of higher education, schools within an administrative division, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this subchapter and part C of chapter 23 of title 42, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding:

(i) such institution’s campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—

(I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094(c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount as the penalty imposed under section 1094(c)(3)(B) of this title.

(14)(A) Nothing in this subsection may be construed to—

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary’s monitoring of such compliance.

(16) The Secretary may seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

(17) Nothing in this subsection shall be construed to permit an institution, or an officer, employee, or agent of an institution, participating in any program under this subchapter and
part C of subchapter I of chapter 34 of title 42 to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision of this subsection.

(3) This subsection may be cited as the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act".

(g) Data required

(1) In general

Each coeducational institution of higher education that participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, and has an intercollegiate athletic program, shall annually, for the immediately preceding academic year, prepare a report that contains the following information regarding intercollegiate athletics:

(A) The number of male and female full-time undergraduates that attended the institution.

(B) A listing of the varsity teams that competed in intercollegiate athletic competition and for each such team the following data:
   (i) The total number of participants, by team, as of the day of the first scheduled contest for the team.
   (ii) Total operating expenses attributable to such teams, except that an institution may also report such expenses on a per capita basis for each team and expenditures attributable to closely related teams such as track and field or swimming and diving, may be reported together, although such combinations shall be reported separately for men's and women's teams.
   (iii) Whether the head coach is male or female and whether the head coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as head coaches shall be considered to be head coaches for the purposes of this clause.
   (iv) The number of assistant coaches who are male and the number of assistant coaches who are female for each team and whether a particular coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as assistant coaches shall be considered to be assistant coaches for the purposes of this clause.

(C) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall.

(D) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(E) The total amount of expenditures on recruiting, separately for men's and women's teams overall.

(F) The total annual revenues generated across all men's teams and across all women's teams, except that an institution may also report such revenues by individual team.

(G) The average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports.

(H) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

(1)(i) The total revenues, and the revenues from football, men's basketball, women's basketball, all other men's sports combined and all other women's sports combined, derived by the institution from the institution's intercollegiate athletics activities.

(ii) For the purpose of clause (i), revenues from intercollegiate athletics activities allocable to a sport shall include (without limitation) gate receipts, broadcast revenues, appearance guarantees and options, concessions, and advertising, but revenues such as student activities fees or alumni contributions not so allocable shall be included in the calculation of total revenues only.

(3) Disclosure of information to students and public

An institution of higher education described in paragraph (1) shall make available to students and potential students, upon request, and to the public, the information contained in the report described in paragraph (1), except that all students shall be informed of their right to request such information.

(4) Submission; report; information availability

(A) On an annual basis, each institution of higher education described in paragraph (1) shall provide to the Secretary, within 15 days of the date that the institution makes available the report under paragraph (1), the information contained in the report.

(B) The Secretary shall ensure that the reports described in subparagraph (A) are made available to the public within a reasonable period of time.
(C) Not later than 180 days after October 7, 1998, the Secretary shall notify all secondary schools in all States regarding the availability of the information made available under paragraph (1), and how such information may be accessed.

(5) “Operating expenses” defined
For the purposes of this subsection, the term “operating expenses” means expenditures on lodging and meals, transportation, officials, uniforms and equipment.

(h) Transfer of credit policies
(1) Disclosure
Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall publicly disclose, in a readable and comprehensible manner, the transfer of credit policies established by the institution which shall include a statement of the institution’s current transfer of credit policies that includes, at a minimum—
(A) any established criteria the institution uses regarding the transfer of credit earned at another institution of higher education; and
(B) a list of institutions of higher education with which the institution has established an articulation agreement.

(2) Rule of construction
Nothing in this subsection shall be construed to—
(A) authorize the Secretary or the National Advisory Committee on Institutional Quality and Integrity to require particular policies, procedures, or practices by institutions of higher education with respect to transfer of credit;
(B) authorize an officer or employee of the Department to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any institution of higher education, or over any accrediting agency or association;
(C) limit the application of the General Education Provisions Act [20 U.S.C. 1221 et seq.]; or
(D) create any legally enforceable right on the part of a student to require an institution of higher education to accept a transfer of credit from another institution.

(i) Disclosure of fire safety standards and measures
(1) Annual fire safety reports on student housing required
Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 that maintains on-campus student housing facilities shall, on an annual basis, publish a fire safety report, which shall contain information with respect to the campus fire safety practices and standards of that institution, including—
(A) statistics concerning the following in each on-campus student housing facility during the most recent calendar years for which data are available:
   (i) the number of fires and the cause of each fire;
   (ii) the number of injuries related to a fire that result in treatment at a medical facility;
   (iii) the number of deaths related to a fire; and
   (iv) the value of property damage caused by a fire;
   (B) a description of each on-campus student housing facility fire safety system, including the fire sprinkler system;
   (C) the number of regular mandatory supervised fire drills;
   (D) policies or rules on portable electrical appliances, smoking, and open flames (such as candles), procedures for evacuation, and policies regarding fire safety education and training programs provided to students, faculty, and staff; and
   (E) plans for future improvements in fire safety, if determined necessary by such institution.

(2) Report to the Secretary
Each institution described in paragraph (1) shall, on an annual basis, submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(A).

(3) Current information to campus community
Each institution described in paragraph (1) shall—
(A) make, keep, and maintain a log, recording all fires in on-campus student housing facilities, including the nature, date, time, and general location of each fire; and
(B) make annual reports to the campus community on such fires.

(4) Responsibilities of the Secretary
The Secretary shall—
(A) make the statistics submitted under paragraph (1)(A) to the Secretary available to the public; and
(B) in coordination with nationally recognized fire organizations and representatives of institutions of higher education, representatives of associations of institutions of higher education, and other organizations that represent and house a significant number of students—
   (i) identify exemplary fire safety policies, procedures, programs, and practices, including the installation, to the technical standards of the National Fire Protection Association, of fire detection, prevention, and protection technologies in student housing, dormitories, and other buildings;
   (ii) disseminate the exemplary policies, procedures, programs and practices described in clause (i) to the Administrator of the United States Fire Administration;
   (iii) make available to the public information concerning those policies, procedures, programs, and practices that have proven effective in the reduction of fires; and
   (iv) develop a protocol for institutions to review the status of their fire safety systems.
(5) Rules of construction

Nothing in this subsection shall be construed to—

(A) authorize the Secretary to require particular policies, procedures, programs, or practices by institutions of higher education with respect to fire safety, other than with respect to the collection, reporting, and dissemination of information required by this subsection;


(C) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(D) establish any standard of care.

(6) Compliance report

The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary’s monitoring of such compliance.

(7) Evidence

Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(j) Missing person procedures

(1) Option and procedures

Each institution of higher education that provides on-campus housing and participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall—

(A) establish a missing student notification policy for students who reside in on-campus housing that—

(i) informs each such student that such student has the option to identify an individual to be contacted by the institution not later than 24 hours after the time that the student is determined missing in accordance with official notification procedures established by the institution under subparagraph (B);

(ii) provides each such student a means to register confidential contact information in the event that the student is determined missing for a period of more than 24 hours;

(iii) advises each such student who is under 18 years of age, and not an emancipated individual, that the institution is required to notify a custodial parent or guardian not later 24 hours after the time that the student is determined to be missing in accordance with such procedures;

(iv) informs each such residing student that the institution will notify the appropriate law enforcement agency not later than 24 hours after the time that the student is determined missing in accordance with such procedures; and

(v) requires, if the campus security or law enforcement personnel has been notified and makes a determination that a student who is the subject of a missing person report has been missing for more than 24 hours and has not returned to the campus, the institution to initiate the emergency contact procedures in accordance with the student’s designation; and

(B) establish official notification procedures for a missing student who resides in on-campus housing that—

(i) includes procedures for official notification of appropriate individuals at the institution that such student has been missing for more than 24 hours;

(ii) requires any official missing person report relating to such student be referred immediately to the institution’s police or campus security department; and

(iii) if, on investigation of the official report, such department determines that the missing student has been missing for more than 24 hours, requires—

(I) such department to contact the individual identified by such student under subparagraph (A)(i);

(II) if such student is under 18 years of age, and not an emancipated individual, the institution to immediately contact the custodial parent or legal guardian of such student; and

(III) if subclauses (I) or (II) do not apply to a student determined to be a missing person, inform the appropriate law enforcement agency.

(2) Rule of construction

Nothing in this subsection shall be construed to—

(A) to provide a private right of action to any person to enforce any provision of this subsection; or

(B) to create a cause of action against any institution of higher education or any employee of the institution for any civil liability.

(k) Notice to students concerning penalties for drug violations

(1) Notice upon enrollment

Each institution of higher education shall provide to each student, upon enrollment, a separate, clear, and conspicuous written notice that advises the student of the penalties under section 1091(r) of this title.

(2) Notice after loss of eligibility

An institution of higher education shall provide in a timely manner to each student who has lost eligibility for any grant, loan, or work-study assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 as a result of the penalties listed under section 1091(r)(1) of this title a separate, clear, and conspicuous written notice that notifies the student of the loss of eligibility and ad-
vises the student of the ways in which the student can regain eligibility under section 1091(r)(2) of this title.

(i) Entrance counseling for borrowers

(1) Disclosure required prior to disbursement

(A) In general

Each eligible institution shall, at or prior to the time of a disbursement to a first-time borrower of a loan made, insured, or guaranteed under part B (other than a loan made pursuant to section 1078–3 of this title or a loan made on behalf of a student pursuant to section 1078–2 of this title) or made under part C (other than a Federal Direct Consolidation Loan or a Federal Direct PLUS loan made on behalf of a student), ensure that the borrower receives comprehensive information on the terms and conditions of the loan and of the responsibilities the borrower has with respect to such loan in accordance with paragraph (2). Such information—

(i) shall be provided in a simple and understandable manner; and

(ii) may be provided—

(I) during an entrance counseling session conducted in person;

(II) on a separate written form provided to the borrower that the borrower signs and returns to the institution; or

(III) online, with the borrower acknowledging receipt of the information.

(B) Use of interactive programs

The Secretary shall encourage institutions to carry out the requirements of subparagraph (A) through the use of interactive programs that test the borrower’s understanding of the terms and conditions of the borrower’s loans under part B or C, using simple and understandable language and clear formatting.

(2) Information to be provided

The information to be provided to the borrower under paragraph (1)(A) shall include the following:

(A) To the extent practicable, the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance.

(B) An explanation of the use of the master promissory note.

(C) Information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary.

(D) In the case of a loan made under section 1078–2 or 1078–8 of this title, a Federal Direct PLUS Loan, or a Federal Direct Unsubsidized Stafford Loan, the option of the borrower to pay the interest while the borrower is in school.

(E) The definition of half-time enrollment at the institution, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment.

(F) An explanation of the importance of contacting the appropriate offices at the institution of higher education if the borrower withdraws prior to completing the borrower’s program of study so that the institution can provide exit counseling, including information regarding the borrower’s repayment options and loan consolidation.

(G) Sample monthly repayment amounts based on—

(i) a range of levels of indebtedness of—

(I) borrowers of loans under section 1078 or 1078–8 of this title; and

(II) as appropriate, graduate borrowers of loans under section 1078, 1078–2, or 1078–8 of this title; or

(ii) the average cumulative indebtedness of other borrowers in the same program as the borrower at the same institution.

(H) The obligation of the borrower to repay the full amount of the loan, regardless of whether the borrower completes or does not complete the program in which the borrower is enrolled within the regular time for program completion.

(I) The likely consequences of default on the loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation.

(J) Information on the National Student Loan Data System and how the borrower can access the borrower’s records.

(K) The name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower’s rights and responsibilities or the terms and conditions of the loan.

(m) Disclosures of reimbursements for service on advisory boards

(1) Disclosure

Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall report, on an annual basis, to the Secretary, any reasonable expenses paid or provided under section 1650(d) of title 15 to any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution. Such reports shall include—

(A) the amount for each specific instance of reasonable expenses paid or provided;

(B) the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) the dates of the activity for which the expenses were paid or provided; and

(D) a brief description of the activity for which the expenses were paid or provided.

(2) Report to Congress

The Secretary shall summarize the information received from institutions of higher education under paragraph (1) in a report and transmit such report annually to the authorizing committees.


REFERENCES IN TEXT


for “under this subchapter and part C of subchapter I of chapter 34 of title 42”.

Subsec. (g)(2). Pub. L. 111–39, §407(b)(5)(D), substituted “paraphraph (1)(G)” for “paragraph (G)”.

Subsec. (h)(2). (3). Pub. L. 111–39, §407(b)(5)(E)(I), (II), substituted “institution described in paragraph (1)” for “eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42”.


Subsec. (a)(1)(M). Pub. L. 110–315, §488(a)(1)(B), added subpar. (M) and struck out former subpar. (M) which read as follows: “the terms and conditions under which students receiving guaranteed student loans under part B of this subchapter or direct student loans under part D of this subchapter, or both, may—

“(i) obtain deferral of the repayment of the principal and interest for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.) or under the Peace Corps Act of 1973, or for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service, and

“(ii) obtain partial cancellation of the student loan for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.) or under the Domestic Volunteer Service Act of 1973 or, for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service,”.


Subsec. (a)(4). Pub. L. 110–315, §488(a)(2), added par. (4) and struck out former par. (A), to reflect the probable intent of Congress. Prior to amendment, subpar. (A) read as follows: “For purposes of this section, institutions may exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.”


Subsec. (b)(1)(A). Pub. L. 110–315, §488(b), which directed the general amendment of subpart (A), with the new subpar. (A) including a subsec. (b) designation and heading and par. (1) designation, was executed by substituting the new subpar. (A) without the added subsec. (b) designation and heading and par. (1) designation for the existing subpar. (A), to reflect the probable intent of Congress. Prior to amendment, subpar. (A) read as follows: “Each eligible institution shall, through financial aid officers or otherwise, make available counseling to borrowers of loans which are made, insured, or guaranteed under part B (other than loans made pursuant to section 1078–2 of this title) of this subchapter or made under part C or D of this subchapter prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution. The counseling required by this subsection shall include—

“(i) the average anticipated monthly repayments, a review of the repayment options available, and such debt and management strategies as the institution determines are designed to facilitate the repayment of such indebtedness; and

“(ii) the terms and conditions under which the student may obtain partial cancellation or defer repayment—

in an introductory provisions.

ment of the principal and interest pursuant to sections 1078(b), 1087dd(c)(2), and 1087ee of this title.’’

Subsec. (d)(1). Pub. L. 110–315, § 488(c)(1), inserted “information shall also include information on the various payment options available for student loans, including income-sensitive and income-based repayment plans for loans made, insured, or guaranteed under part C and income-contingent repayment plans for loans made under part C.” before “In addition, such information” and “The Secretary shall also provide information on loan forbearance, including the increase in debt that results from capitalization of interest.” before “Such information shall be provided”.


Subsec. (e)(3). Pub. L. 110–315, § 488(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

For purposes of this subsection, institutions may exclude from the reporting requirements under paragraphs (1) and (2) the completion or graduation rates of students and student athletes who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.”

Subsec. (f)(1)(C)(i) to (iii). Pub. L. 110–315, § 488(e)(1)(B), added cl. (i) to (iii) and struck out former cl. (i) and (ii) which read as follows:

“(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and

“(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.”

Subsec. (f)(1)(D)(i) to (iv). Pub. L. 110–315, § 488(e)(1)(C), substituted “clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of” for “clause (i), and” and inserted a comma after “any person”.


Subsec. (f)(5)(A). Pub. L. 110–315, § 1103(b)(11), substituted “authorizing committees” for “Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate”.


Subsec. (g)(4)(B) to (D). Pub. L. 110–315, § 488(f), redesignated subpars. (C) and (D) (B) and (C), respectively, struck out “and the report to Congress described in subparagraph (B)” after “subparagraph (A)” in subpar. (B) and “the information reported under subparagraph (A)” after “availability of” in subpar. (C), and struck out former subpar. (B) which read as follows:

“The Secretary shall prepare a report regarding the information received under subparagraph (A) and submit such report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate by April 1, 2000. The report shall—

“(i) summarize the information and identify trends in the information;

“(ii) aggregate the information by divisions of the National Collegiate Athletic Association; and

“(iii) contain information on each individual institution of higher education.”

Subsecs. (h) to (l). Pub. L. 110–315, § 488(g), added subsec. (h) to (l).


1998—Subsec. (a)(1). Pub. L. 105–244, § 488(a)(1)(B), in introductory provisions, inserted after second sentence “Each eligible institution shall, on an annual basis, provide to all enrolled students a list of the information that is required to be provided to institutions by students by this section and section 1232g of this title, together with a statement of the procedures required to obtain such information.”

Pub. L. 105–244, § 488(a)(1)(A), in introductory provisions, substituted “upon request, through appropriate publications, mailings, and electronic media, to an enrolled student and to any prospective student” for “, through appropriate publications and mailings, to all current students, and to any prospective student upon request”.

Subsec. (a)(1)(F). Pub. L. 105–244, § 488(a)(1)(C), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “a statement of the refund policy of the institution, as determined under section 1091b of this title, for the return of unearned tuition and fees or other refundable portion of cost, as described in subparagraph (E) of this paragraph, which refunds shall be credited in the following order:

“(i) to outstanding balances on loans under part B of this subchapter for the period of enrollment for which a refund is required;

“(ii) to outstanding balances on loans under part C of this subchapter for the period of enrollment for which a refund is required;

“(iv) to awards under subpart 1 of part A of this subchapter;

“(v) to other student assistance, and

“(vi) to the student;”


Subsec. (a)(3)(A). Pub. L. 105–244, § 488(a)(2), added subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “shall, for any academic year beginning more than 270 days after the Secretary first prescribes final regulations pursuant to such subparagraph (L), be made available to current and prospective students prior to enrolling or entering into any financial obligation; and”.


Subsec. (d). Pub. L. 105–244, § 488(c), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added paras. (2) and (3).

Subsec. (e)(2). Pub. L. 105–244, § 488(d)(1), substituted “the student’s parents, guidance” for “his parents, his guidance” and inserted at end “If the institution is a member of a national collegiate athletic association that compiles graduation rate data on behalf of the association’s member institutions that the Secretary determines is substantially comparable to the information described in paragraph (1), the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility of the institution to provide information to a prospective student athlete’s guidance counselor and coach.”

Subsec. (e)(9). Pub. L. 105–244, § 488(d)(2), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “This subsection shall not be effective until the first July 1 that follows, by more than 270 days, the date on which the Secretary first prescribes final regulations pursuant to this subsection. The reports required by this subsection shall be due on that July 1 and each succeeding July 1 and shall cover the 1-year period ending August 31 of the preceding year.”

Subsec. (f)(1)(F). Pub. L. 105–244, § 488(c)(1)(A), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “Statistics concerning the occur-
rence on campus, during the most recent calendar year, and
and during the 2 preceding calendar years for which data are available, of the following criminal offenses reported to campus security authorities or local police

"(i) murder;
"(ii) sex offenses, forcible or nonforcible;
"(iii) robbery;
"(iv) aggravated assault;
"(v) burglary; and
"(vi) motor vehicle theft.

Subsec. (f)(1)(H). Pub. L. 105–244, § 486(e)(1)(B), (C), re-
designated subpar. (I) as (H) and struck out former sub-
par. (H) which read as follows: “Statistics concerning the number of arrests for the following crimes occur-
ring on campus:
"(i) liquor law violations;
"(ii) drug abuse violations; and
"(iii) weapons possessions.”


Pub. L. 105–244, § 102(b)(3), substituted “section 1011” for “section 1145e”.


Former par. (4) redesignated (5).

Pub. L. 105–244, § 486(e)(2)(A), which directed the sub-
stitution of “On an annual basis, each” for “Upon request
of the Secretary, each” was executed by making the substitu-
tion for “Upon the request of the Sec-

tuted “the Workforce” for “and Labor” and “2000” for “1995” and struck out “and” at end.

Subsec. (f)(4)(B), (C). Pub. L. 105–244, § 486(e)(2)(F)(G), (F), added subpar. (B) and redesignated former subpar. (B) as (C).


Subsec. (f)(5)(A). Pub. L. 105–244, § 486(e)(6), amended sub-
par. (A) generally. Prior to amendment, subpar. (A) read as follows: “For purposes of this subsection, the term ‘campus’ includes—

1) any building or property owned or controlled by the institution of higher education within the same reasonably contiguous geographic area and used by the institution in direct support of, or related to its educational purposes; or

2) any building or property owned or controlled by student organizations recognized by the institution.”


Pub. L. 105–244, § 486(e)(4), substituted “paragraph (1)(F)” for “paragraphs (1)(F) and (1)(H)” and inserted at end “Such statistics shall not identify victims of crimes or persons accused of crimes.”

Subsec. (f)(7). (8). Pub. L. 105–244, § 486(e)(5), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f)(8) to (15). Pub. L. 105–244, § 486(e)(7), added paras. (9) to (15).


Subsec. (g)(4), (5). Pub. L. 105–244, § 486(f)(2)(4), added para. (4), redesignated former par. (4) as (5), and struck out heading and text of former par. (5). Text read as follows: “The Secretary shall issue final regulations to implement the requirements of this subsection not later than 180 days following October 20, 1994. Each insti-
tution described in paragraph (1) shall make available its first report pursuant to this section not later than October 1, 1996.”


Subsec. (g)(9). Pub. L. 104–208 substituted “August 30’’ for “June 30’’.


1993—Subsec. (a)(1)(F)(1) to (iii). Pub. L. 103–208, § 2(h)(28), inserted before comma at end “for the period of enrollment for which a refund is required”.


Subsec. (a)(1)(F)(vi). Pub. L. 103–208, § 2(h)(30), struck out “provided under this subchapter and part C of subchapter I of chapter 34 of title 42 after “student assistance”.


Subsec. (a)(1)(G). Pub. L. 103–208, § 2(h)(32), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “shall be available beginning on July 1, 1993, and each year thereafter to current and prospective students prior to enrolling or entering into any fi-

1992—Subsec. (a)(1)(F). Pub. L. 102–325, § 486(a)(1), inserted “as determined under section 1091b of this title,” after “of the institution” and “, which refunds shall be credited in the following order:” after “of this paragraph” and added cl. (i).


Subsec. (a)(1)(L). Pub. L. 102–325, § 486(a)(3), redesignated subpar. (L), relating to completion or graduation rate, by substituting semicolon for period at end.

Subsec. (a)(1)(M). Pub. L. 102–325, § 486(a)(4), (5), redesignated subpar. (L), relating to deferral or partial can-


Subsec. (b). Pub. L. 102–325, § 486(b), amended subsec. (b) generally, making changes in substance and structure of former text which related to exit counseling for borrowers and borrower information.

Subsec. (f)(1)(F). Pub. L. 102–325, § 486(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “Statistics concerning the occurrence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

"(i) murder;
"(ii) rape;
"(iii) robbery;
"(iv) aggravated assault;
"(v) burglary; and
"(vi) motor vehicle theft.”

1991—Subsec. (a)(1)(L). Pub. L. 102–26, § 10(a), which directed the insertion of “undergraduate” after “full-
time” in subpar. (L), was executed to the subpar. (L) added by Pub. L. 101–542, § 103(a), relating to completion or graduation rate, to reflect the probable intent of Congress.

1990—Pub. L. 101–542, § 103(a), relating to completion or graduation rate, was executed to the subpar. (L) added by Pub. L. 100–502, § 103(a), as amended by Pub. L. 101–542, § 103(a), relating to completion or graduation rate, by substituting semicolon for period at end.

1989—Pub. L. 101–542, § 103(a), relating to completion or graduation rate, was executed to the subpar. (L) added by Pub. L. 101–116, § 103(a), relating to completion or graduation rate, to reflect the probable intent of Congress.
Subsec. (a)(3)(A) to (C). Pub. L. 102–26, §10(b), inserted "and" at end of subpar. (A), substituted a period for "", and struck out subpar. (C) which read as follows: "shall be updated not less than biennially."

Subsec. (a)(5). Pub. L. 102–26, §10(c), added par. (5).

Subsec. (b), Pub. L. 102–164 substituted "Exit counseling for borrowers; borrower information" for "Exit counseling for borrowers" in heading and inserted at end "Each eligible institution shall require that the borrower of a loan made under part B, part C, or part D of this subchapter submit to the institution, during the exit interview required by this subsection, the borrower's expected permanent address after leaving the institution, regardless of the reason for leaving; the name and address of the borrower's expected employer after leaving the institution; and the address of the borrower's next of kin. In the case of a loan made under part B of this subchapter, the institution shall then include information to enable borrowers to assess the practical consequences of loan consolidation, including the level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization."


Subsec. (d). Pub. L. 100–50, §15(10), inserted "other than loans made pursuant to section 1078–2 of this title" after "part B of this subchapter".

Subsec. (d). Pub. L. 100–50, §15(11), inserted after second sentence "In addition, such information shall include information to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles to illustrate such consequences."

Subsec. (a). Pub. L. 101–542, §108(b), added paras. (3) and (4).


Subsec. (d). Pub. L. 101–610, §230, inserted before last sentence "The Secretary shall provide information concerning the specific terms and conditions under which students may obtain partial or total cancellation or deferment of loans for service, shall indicate (in terms of the Federal minimum wage) the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization."
tion 407(b) of Pub. L. 99–498, set out as a note under section 1001 of this title.

REGULATIONS

Section 401(a) of Pub. L. 101–542 provided that: "The Secretary is authorized to issue regulations to carry out the provisions of this Act [amending this section and sections 1085, 1094, and 1232g of this title and enacting provisions set out as notes under this section and section 1001 of this title]."

MODEL INSTITUTION FINANCIAL AID OFFER FORM


"(a) MODEL FORMAT.—The Secretary of Education shall—

"(1) not later than six months after the date of enactment of the Higher Education Opportunity Act [Aug. 14, 2008], convene a group of students, families of students, secondary school guidance counselors, representatives of institutions of higher education (including financial aid administrators, registrars, and business officers), and nonprofit consumer groups for the purpose of offering recommendations for improvements that—

"(A) can be made to financial aid offer forms; and

"(B) include the information described in subsection (b);

"(2) develop a model format for financial aid offer forms based on the recommendations of the group; and

"(3) not later than one year after the date of enactment of the Higher Education Opportunity Act—

"(A) submit recommendations to the authorizing committees (as defined in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)); and

"(B) make the recommendations and model format widely available.

"(b) CONTENTS.—The recommendations developed under subsection (a) for model financial aid offer forms shall include, in a consumer-friendly manner that is simple and understandable, the following:

"(1) Information on the student’s cost of attendance, including the following:

"(A) Tuition and fees.

"(B) Room and board costs.

"(C) Books and supplies.

"(D) Transportation.

"(2) The amount of financial aid that the student does not have to repay, such as scholarships, grants, and work-study assistance, offered to the student for such year; and the conditions of such financial aid.

"(3) The types and amounts of loans under part B, D, or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1074a et seq., 1075a et seq.) for which the student is eligible for such year, and the applicable terms and conditions of such loans.

"(4) The net amount that the student, or the student’s family on behalf of the student, will have to pay for the student to attend the institution for such year, equal to—

"(A) the cost of attendance for the student for such year; minus

"(B) the amount of financial aid described in paragraphs (2) and (3) that is offered in the financial aid offer form.

"(5) Where a student or the student’s family can seek additional information regarding the financial aid offered.

"(6) Any other information the Secretary of Education determines necessary so that students and parents can make informed student loan borrowing decisions.

CONGRESSIONAL FINDINGS

Section 360B(b) of Pub. L. 103–382 provided that: "The Congress finds that—

"(1) participation in athletic pursuits plays an important role in teaching young Americans how to work on teams, handle challenges and overcome obstacles;

"(2) participation in athletic pursuits plays an important role in keeping the minds and bodies of young Americans healthy and physically fit;

"(3) there is increasing concern among citizens, educators, and public officials regarding the athletic opportunities for young men and women at institutions of higher education;

"(4) a recent study by the National Collegiate Athletic Association found that in Division I–A institutions, only 20 percent of the average athletic department operations budget of $1,310,000 is spent on women’s athletics; 15 percent of the average recruiting budget of $318,402 is spent on recruiting female athletes; the average scholarship expenses for men is $1,300,000 and $505,246 for women; and an average of 143 grants are awarded to male athletes and 59 to women athletes;

"(5) female college athletes receive less than 18 percent of the athletics recruiting dollar and less than 24 percent of the athletics operating dollar;

"(6) male college athletes receive approximately $779,000,000 more per year in athletic scholarship grants than female college athletes;

"(7) prospective students and prospective student athletes should be aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students; and

"(8) knowledge of an institution’s expenditures for men’s and women’s athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students."

Section 102 of Pub. L. 101–542 provided that: "The Congress finds that—

"(1) education is fundamental to the development of individual citizens and the progress of the Nation as a whole;

"(2) there is increasing concern among citizens, educators, and public officials regarding the academic performance of students at institutions of higher education;

"(3) a recent study by the National Institute of Independent Colleges and Universities found that just 43 percent of students attending 4-year public colleges and universities and 54 percent of students entering private institutions graduated within 6 years of enrolling;

"(4) the academic performance of student athletes, especially student athletes receiving football and basketball scholarships, has been a source of great concern in recent years;

"(5) more than 10,000 athletic scholarships are provided annually by institutions of higher education;

"(6) prospective students and prospective student athletes should be aware of the educational commitments of an institution of higher education; and

"(7) knowledge of graduation rates would help prospective students and prospective student athletes make an informed judgment about the educational benefits available at a given institution of higher education."


"(1) the reported incidence of crime, particularly violent crime, on some college campuses has steadily risen in recent years;

"(2) although annual ‘National Campus Violence Surveys’ indicate that roughly 80 percent of campus crimes are committed by a student upon another student and that approximately 95 percent of the campus crimes that are violent are alcohol- or drug-related, there are currently no comprehensive data on campus crimes;

"(3) out of 8,000 postsecondary institutions participating in Federal student aid programs, only 352 colleges and universities voluntarily provide crime sta-
§ 1092a. Combined payment plan

(a) Eligibility for plan

Upon the request of the borrower, a lender described in subparagraph (A), (B), or (C) of section 1078–3(a)(1) of this title, or an eligible lender as defined in section 719 of the Public Health Service Act (42 U.S.C. 292) may, with respect to a consolidation loan made under section 1078–3 of this title and loans guaranteed under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.), offer a combined payment plan under which the lender shall submit one bill to the borrower for the repayment of all such loans for the monthly or other similar period of repayment.

(b) Applicability of other requirements

A lender offering a combined payment plan shall comply with all provisions of section 1078–3 of this title applicable to loans consolidated or to be consolidated and shall comply with all provisions of part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) applicable to loans under that subpart which are made part of the combined payment plan, except that a lender offering a combined payment plan under this section may offer consolidation loans pursuant to section 1078–3(b)(1)(A) of this title if such lender holds any outstanding loan of a borrower which is selected for inclusion in a combined payment plan.

(c) Lender eligibility

Such lender may offer a combined payment plan only if—

(1) the lender holds an outstanding loan of that borrower which is selected by the borrower for incorporation into a combined payment plan pursuant to this section (including loans which are selected by the borrower for consolidation under this section); or

(2) the borrower certifies that the borrower has sought and has been unable to obtain a combined payment plan from the holders of the outstanding loans of that borrower.

(d) Borrower selection of competing offers

In the case of multiple offers by lenders to administer a combined payment plan for a borrower, the borrower shall select from among them the lender to administer the combined payment plan including its loan consolidation component.

(e) Effect of plan

Upon selection of a lender to administer the combined payment plan, the lender may reissue any loan under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) selected by the borrower for incorporation in the combined payment plan which is not held by such lender and the proceeds of such reissued loan shall be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans, if—

(1) the lender selected to administer the combined payment plan has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being reissued (A) that the loan is a legal, valid, and binding obligation of the borrower; (B) that each such loan was made and serviced in compliance with applicable laws and regulations; and (C) the insurance on such loan is in full force and effect; and

(2) the loan being reissued was not in default (as defined in section 707(e)(3) of the Public Health Service Act [42 U.S.C. 292f(e)(3)]) at the time the request for a combined payment plan is made.

(f) Notes and insurance certificates

(1) Each loan reissued under subsection (e) of this section shall be evidenced by a note executed by the borrower. The Secretary of Health and Human Services shall insure such loan under a certificate of comprehensive insurance with no insurance limit, but any such certificate shall only be issued to an authorized holder of loans insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) (including the Student Loan Marketing Association). Such certificates shall provide that all loans reissued under this section shall be fully insured against loss of principal and interest. Any insurance issued with respect to loans reissued under this section shall be excluded from the limitation on maximum insurance authority set forth in section 710 of the Public Health Service Act [42 U.S.C. 292]. Notwithstanding the provisions of section 729(a) of the Public Health Service Act, the reissued loan shall be made in an amount, including outstanding principal, capitalized interest, accrued unpaid interest not yet capitalized, and authorized late charges. The proceeds of each such loan will be paid by the lender to the holder of the original loan being reissued and the borrower’s obligation to that holder on that loan shall be discharged.

(2) Except as otherwise specifically provided for under the provisions of this section, the terms of any reissued loan shall be the same as the terms of the original loan. The maximum re-

1 See References in Text note below.
payment period for a loan reissued under this section shall not exceed the remainder of the period which would have been permitted on the original loan. If the lender holds more than one loan insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.), the maximum repayment period for all such loans may extend to the latest date permitted for any individual loan. Any reissued loan may be consolidated with any other Health Education Assistance Loan as provided in the Public Health Service Act (42 U.S.C. 291 et seq.), and, with the concurrence of the borrower, repayment of any such loans during any period may be made in amounts that are less than the interest that accrues on such loans during that period.

(g) Termination of borrower eligibility

The status of an individual as an eligible combined payment plan borrower terminates upon receipt of a combined payment plan.

(h) Fees and premiums

No origination fee or insurance premium shall be charged to the borrower on any combined payment plan, and no origination fee or insurance premium shall be payable by the lender to the Secretary of Health and Human Services.

(i) Commencement of repayment

Repayment of a combined payment plan shall commence within 60 days after the later of the date of acceptance of the lender’s offer to administer a combined payment plan, the making of the consolidation loan or the reissuance of any Health Education Assistance Loans pursuant to clause (i) of this subsection.


REFERENCES IN TEXT


AMENDMENTS

2009—Subsec. (a). Pub. L. 111–39, §407(b)(6)(A), substituted “for an eligible lender as defined in section 719 of the Public Health Service Act (42 U.S.C. 292d)” for “or defined in subpart I of part C of title VII of the Public Health Service Act” and “and under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) for “under subpart I of part C of title VII of the Public Health Service Act (known as Health Education Assistance Loans)”.


(8) the lender, holder, and servicer of such loans;

(9) information concerning the date of any default on the loan and the collection of the loan, including any information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 1080(a) of this title or the guaranty agency has made a payment to the previous holder of the loan;

(10) information regarding any deferments or forbearance granted on such loans; and

(11) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 1087 of this title.

(b) Additional information

For the purposes of research and policy analysis, the proposal shall also contain provisions for obtaining additional data concerning the characteristics of borrowers and the extent of student loan indebtedness on a statistically valid sample of borrowers under part B of this subchapter. Such data shall include—

(1) information concerning the income level of the borrower and his family and the extent of the borrower's need for student financial assistance, including loans;

(2) information concerning the type of institution attended by the borrower and the year of the program of education for which the loan was obtained;

(3) information concerning other student financial assistance received by the borrower; and

(4) information concerning Federal costs associated with the student loan program under part B of this subchapter, including the costs of interest subsidies, special allowance payments, and other subsidies.

(c) Verification

The Secretary may require lenders, guaranty agencies, or institutions of higher education to verify information or obtain eligibility or other information through the National Student Loan Data System prior to making, guaranteeing, or certifying a loan made under part B, C, or D of this subchapter.

(d) Principles for administering the data system

In managing the National Student Loan Data System, the Secretary shall take actions necessary to maintain confidence in the data system, including, at a minimum—

(1) ensuring that the primary purpose of access to the data system by guaranty agencies, eligible lenders, and eligible institutions of higher education is for legitimate program operations, such as the need to verify the eligibility of a student, potential student, or parent for loans under part B, C, or D:

(2) prohibiting nongovernmental researchers and policy analysts from accessing personally identifiable information;

(3) creating a disclosure form for students and potential students that is distributed when such students complete the common financial reporting form under section 1090 of this title, and as a part of the exit counseling process under section 1092(b) of this title, that—

(A) informs the students that any title IV grant or loan the students receive will be included in the National Student Loan Data System, and instructs the students on how to access that information;

(B) describes the categories of individuals or entities that may access the data relating to such grant or loan through the data system, and for what purposes access is allowed;

(C) defines and explains the categories of information included in the data system;

(D) provides a summary of the provisions of section 1232g of this title (commonly known as the "Family Educational Rights and Privacy Act of 1974") and other applicable Federal privacy statutes, and a statement of the students' rights and responsibilities with respect to such statutes;

(E) explains the measures taken by the Department to safeguard the students' data; and

(F) includes other information as determined appropriate by the Secretary;

(4) requiring guaranty agencies, eligible lenders, and eligible institutions of higher education that enter into an agreement with a potential student, student, or parent of such student regarding a loan under part B, C, or D, to inform the student or parent that such loan shall be—

(A) submitted to the data system; and

(B) accessible to guaranty agencies, eligible lenders, and eligible institutions of higher education determined by the Secretary to be authorized users of the data system;

(5) regularly reviewing the data system to—

(A) delete inactive users from the data system;

(B) ensure that the data in the data system are not being used for marketing purposes; and

(C) monitor the use of the data system by guaranty agencies and eligible lenders to determine whether an agency or lender is accessing the records of students in which the agency or lender has no existing financial interest; and

(6) developing standardized protocols for limiting access to the data system that include—

(A) collecting data on the usage of the data system to monitor whether access has been or is being used contrary to the purposes of the data system;

(B) defining the steps necessary for determining whether, and how, to deny or restrict access to the data system; and

(C) determining the steps necessary to reopen access to the data system following a denial or restriction of access.

(e) Reports to Congress

(1) Annual report

Not later than September 30 of each fiscal year, the Secretary shall prepare and submit to the authorizing committees a report describing—

(A) the effectiveness of existing privacy safeguards in protecting student and parent information in the data system;
(B) the success of any new authorization protocols in more effectively preventing abuse of the data system;

(C) the ability of the Secretary to monitor how the system is being used, relative to the intended purposes of the data system and any protocols developed under subsection (d)(6) during the preceding fiscal year.

(2) Study

(A) In general

The Secretary shall conduct a study regarding—

(i) available mechanisms for providing students and parents with the ability to opt in or opt out of allowing eligible lenders to access their records in the National Student Loan Data System; and

(ii) appropriate protocols for limiting access to the data system, based on the risk assessment required under subchapter III of chapter 35 of title 42.

(B) Submission of study

Not later than three years after August 14, 2008, the Secretary shall prepare and submit a report on the findings of the study under subparagraph (A) to the authorizing committees.

(f) Standardization of data reporting

(1) In general

The Secretary shall by regulation prescribe standards and procedures (including relevant definitions) that require all lenders and guaranty agencies to report information on all aspects of loans made under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2) modify the design or operation of the system authorized by this section to ensure that data relating to any institution is readily accessible and can be used in a form compatible with the integrated postsecondary education data system (IPEDS).

(h) Integration of databases

The Secretary shall integrate the National Student Loan Data System with the Pell Grant application and recipient databases as of January 1, 1994, and any other databases containing information on participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2) Study

(A) In general

The Secretary shall conduct a study regarding—

(i) available mechanisms for providing students and parents with the ability to opt in or opt out of allowing eligible lenders to access their records in the National Student Loan Data System; and

(ii) appropriate protocols for limiting access to the data system, based on the risk assessment required under subchapter III of chapter 35 of title 42.

(B) Submission of study

Not later than three years after August 14, 2008, the Secretary shall prepare and submit a report on the findings of the study under subparagraph (A) to the authorizing committees.

References to the Code

The Peace Corps Act, referred to in subsec. (a)(5), is Pub. L. 89–239, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 22 and Tables.


Amendments


2008—Subsec. (a)(5). Pub. L. 110–315, § 489(1)(C), which directed redesignation of par. (5) “as added by Pub. L. 101–234” as (6), was executed by redesignating par. (5) relating to eligible institutions as (6) to reflect the probable intent of Congress. Par. (5) relating to eligible institutions was added by Pub. L. 101–239.


Subsec. (a)(6). Pub. L. 110–315, § 489(1)(C), which directed redesignation of par. (5) “as added by Pub. L. 101–234” as (6), was executed by redesignating par. (5) relating to eligible institutions as (6), to reflect the probable intent of Congress. Par. (5) relating to eligible institutions was added by Pub. L. 101–239.

Subsec. (a)(7) to (11). Pub. L. 110–315, § 489(1)(A), redesignated pars. (6) to (10) as (7) to (11), respectively.


Former subsec. (d) redesignated (e).
Subsec. (e). Pub. L. 110–315, §489(4), added subsec. (e) and struck out former subsec. (e) which required the Secretary to prepare and submit to appropriate committees of Congress, in each fiscal year, a report describing the results obtained by the establishment and operation of the student loan data system authorized by this section.
Pub. L. 110–315, §489(2), redesignated subsec. (d) as (e).
Former subsec. (e) redesignated (f).
Subsecs. (f) to (h). Pub. L. 110–315, §489(2), redesignated subsecs. (e) to (g) as (f) to (h), respectively.
1993—Subsec. (a). Pub. L. 103–208, §2(h)(38), substituted ‘‘parts C and D of this subchapter’’ for ‘‘part D of this subchapter’’ and struck out second period at end of third sentence.
Subsec. (a)(4). Pub. L. 103–208, §2(h)(39), substituted ‘‘parts C and D of this subchapter’’ for ‘‘part D of this subchapter’’.
Subsec. (c). Pub. L. 103–208, §2(h)(40), substituted ‘‘part B, C, or D of this subchapter’’ for ‘‘part B or part D of this subchapter’’.
Subsec. (e)(1), (2)(C). Pub. L. 103–208, §2(h)(41), substituted ‘‘under this subchapter and part C of chapter I of title 42’’ for ‘‘under this part’’.
1992—Subsec. (a). Pub. L. 102–325, §487(a), inserted ‘‘. . . and for allowing the electronic exchange of data between program participants and the system. In establishing such data system, the Secretary shall place a priority on providing for the monitoring of enrollment, student status, information about current loan holders and servicers, and internship and residency information. Such data system shall also permit borrowers to use the system to identify the current loan holders and servicers of such borrower’s loan,’’ after ‘‘part D of this subchapter’’.
Subsecs. (e) to (g). Pub. L. 102–325, §487(b), added subsecs. (e) to (g).
1989—Pub. L. 101–228 amended section generally, substituting subsecs. (a) to (d) for former subsec. (a) relating to authority of Secretary, subsec. (b) relating to access to information, subsec. (c) relating to verification not required, and subsec. (d) relating to report to Congress.
1987—Subsec. (b)(1). Pub. L. 100–50, §1513(a), substituted ‘‘public agencies’’ for ‘‘Federal agencies’’.
Subsec. (b)(2)(D). Pub. L. 100–50, §1513(b), substituted ‘‘of any borrower’’ for ‘‘of a borrower for whom the guaranty agency provides insurance’’.
Subsec. (b)(3). Pub. L. 100–50, §1513(c), substituted ‘‘public agency’’ for ‘‘Federal agency’’.

Effective Date of 2009 Amendment

Effective Date of 1998 Amendment

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

Effective Date of 1987 Amendment

§ 1092c. Simplification of lending process for borrowers
(a) All like loans treated as one
To the extent practicable, and with the cooperation of the borrower, eligible lenders shall treat all loans made to a borrower under the same section of part B of this subchapter as one loan and shall submit one bill to the borrower for the repayment of all such loans for the monthly or other similar period of repayment. Any deferments on one such loan will be considered a deferment on the total amount of all such loans.

(b) One lender, one guaranty agency
To the extent practicable, and with the cooperation of the borrower, the guaranty agency shall ensure that a borrower only have one lender, one holder, one guaranty agency, and one servicer with which to maintain contact.


§ 1092d. Scholarship fraud assessment and awareness activities
(a) Annual report on scholarship fraud
(1) Requirement
The Attorney General and the Secretary of Education, in conjunction with the Federal Trade Commission, shall jointly submit to Congress each year a report on fraud in the offering of financial assistance for purposes of financing an education at an institution of higher education. Each report shall contain an assessment of the nature and quantity of incidents of such fraud during the one-year period ending on the date of such report.

(2) Initial report
The first report under paragraph (1) shall be submitted not later than 18 months after November 1, 2000.

(b) National awareness activities
The Secretary of Education shall, in conjunction with the Federal Trade Commission, maintain a scholarship fraud awareness site on the Internet web site of the Department of Education. The scholarship fraud awareness site may include the following:

(1) Appropriate materials from the Project ScholarScam awareness campaign of the Commission, including examples of common fraudulent schemes.

(2) A list of companies and individuals who have been convicted of scholarship fraud in Federal or State court.

(3) An Internet-based message board to provide a forum for public complaints and experiences with scholarship fraud.

(4) An electronic comment form for individuals who have experienced scholarship fraud or have questions about scholarship fraud, with appropriate mechanisms for the transfer of comments received through such forms to the Department and the Commission.

(5) Internet links to other sources of information on scholarship fraud, including Inter-
net web sites of appropriate nongovernmental organizations, colleges and universities, and government agencies.

(6) An Internet link to the Better Business Bureau in order to assist individuals in assessing the business practices of other persons and entities.

(7) Information on means of communicating with the Federal Student Aid Information Center, including telephone and Internet contact information.


CODIFICATION

Section was enacted as part of the College Scholarship Fraud Prevention Act of 2000, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

FINDINGS

Pub. L. 106–420, § 2, Nov. 1, 2000, 114 Stat. 1867, provided that: "Congress makes the following findings:

'(1) A substantial amount of fraud occurs in the offering of college education financial assistance services to consumers.

'(2) Such fraud includes the following:

'(A) Misrepresentations regarding the provision of sources from which consumers may obtain financial assistance (including scholarships, grants, loans, tuition, awards, and other assistance) for purposes of financing a college education.

'(B) Misrepresentations regarding the provision of portfolios of such assistance tailored to the needs of specific consumers.

'(C) Misrepresentations regarding the pre-selection of students as eligible to receive such assistance.

'(D) Misrepresentations that such assistance will be provided to consumers who purchase specified services from specified entities.

'(E) Misrepresentations regarding the business relationships between particular entities and entities that award or may award such assistance.

'(F) Misrepresentations regarding refunds of processing fees if consumers are not provided specified amounts of such assistance, and other misrepresentations regarding refunds.

'(3) In 1996, the Federal Trade Commission launched 'Project Scholarship', a joint law enforcement and consumer education campaign directed at fraudulent purveyors of so-called 'scholarship services'.

'(4) Despite the efforts of the Federal Trade Commission, colleges and universities, and nongovernmental organizations, the continued lack of awareness about scholarship fraud permits a significant amount of fraudulent activity to occur.'

§ 1092e. College access initiative

(a) State-by-State information

The Secretary shall direct each guaranty agency with which the Secretary has an agreement under section 1078(c) of this title to develop a plan, and undertake the activity necessary, to gather the information required under subsection (a) and to make such information available to the public and to the Secretary in a form and manner as prescribed by the Secretary.

(2) Activities

Each guaranty agency shall undertake such activities as are necessary to promote access to postsecondary education for students through providing information on college planning, career preparation, and paying for college. The guaranty agency shall publicize such information and coordinate such activities with other entities that either provide or distribute such information in the States for which such guaranty agency serves as the designated guarantor.

(3) Funding

The activities required by this section may be funded from the guaranty agency's Operating Fund established pursuant to section 1072b of this title and, to the extent funds remain, from earnings on the restricted account established pursuant to section 1072(h)(4) of this title.

(4) Rule of construction

Nothing in this subsection shall be construed to require a guaranty agency to duplicate any efforts under way on February 8, 2006, that meet the requirements of this section.

(c) Access to information

(1) Secretary's responsibility

The Secretary shall ensure the availability of the information provided, by the guaranty agencies in accordance with this section, to students, parents, and other interested individuals, through Internet web links or other methods prescribed by the Secretary.

(2) Guaranty agency responsibility

The guaranty agencies shall ensure that the information required by this section is available without charge in printed format for students and parents requesting such information.

(3) Publicity

Not later than 270 days after February 8, 2006, the Secretary and guaranty agencies shall publicize the availability of the information required by this section, with special emphasis on ensuring that populations that are traditionally underrepresented in postsecondary education are made aware of the availability of such information.


EFFECTIVE DATE

Section effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109–171, set out as an Effective Date of 2006 Amendment note under section 1082 of this title.

§ 1092f. Early awareness of financial aid eligibility

(a) In general

The Secretary shall implement, in cooperation with States, institutions of higher education,
secondary schools, early intervention and outreach programs under this subchapter and part C of subchapter I of chapter 34 of title 42, other agencies and organizations involved in student financial assistance and college access, public libraries, community centers, employers, and businesses, a comprehensive system of early financial aid information in order to provide students and families with early information about financial aid and early estimates of such students’ eligibility for financial aid from multiple sources. Such system shall include the activities described in subsection (b).

(b) Communication of availability of aid and aid eligibility
(1) Students who receive benefits
The Secretary shall—
(A) make special efforts to notify students who receive or are eligible to receive benefits under a Federal means-tested benefit program (including the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), or another such benefit program as determined by the Secretary, of such students’ potential eligibility for the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which the student would be eligible; and
(B) disseminate such informational materials, that are part of the system described in subsection (a), as the Secretary determines necessary.

(2) Secondary school students
The Secretary, in cooperation with States, institutions of higher education, other organizations involved in college access and student financial aid, secondary schools, and programs under this subchapter and part C of subchapter I of chapter 34 of title 42 that serve secondary school students, shall make special efforts to notify students in secondary school and their families, as early as possible but not later than such students’ junior year of secondary school, of the availability of financial aid under this subchapter and part C of subchapter I of chapter 34 of title 42 and shall provide non-binding estimates of the amounts of grant and loan aid that an individual may be eligible for under this subchapter and part C of subchapter I of chapter 34 of title 42 upon completion of an application form under section 1090(a) of this title. The Secretary shall ensure that such information—
(A) is as accurate as possible;
(B) includes specific information regarding the availability of financial aid for students qualified as independent students, as defined in section 1087vv(d) of this title; and
(C) uses dissemination mechanisms suitable for adult learners.

(4) Public awareness campaign
Not later than two years after August 14, 2008, the Secretary, in coordination with States, institutions of higher education, early intervention and outreach programs under this subchapter and part C of subchapter I of chapter 34 of title 42, other agencies and organizations involved in college access and student financial aid, secondary schools, organizations that provide services to individuals that are or were homeless, to individuals in foster care, or to other disconnected individuals, local educational agencies, public libraries, community centers, businesses, employers; employment services, workforce investment boards, and movie theaters, shall implement a public awareness campaign in order to increase national awareness regarding the availability of financial aid under this title. The public awareness campaign shall disseminate accurate information regarding the availability of financial aid under this subchapter and part C of subchapter I of chapter 34 of title 42 and shall be implemented, to the extent practicable, using a variety of media, including print, television, radio, and the Internet. The Secretary shall design and implement the public awareness campaign based upon relevant independent research and the information and dissemination strategies found most effective in implementing paragraphs (1) through (3).

References in Text

Amendments
2010—Subsec. (b)(1)(A). Pub. L. 111–152 substituted “of such students’ potential eligibility for the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which the student would be eligible” for “of such students’ potential eligibility for a maximum Federal Pell Grant under subpart I of part A”.

Effective Date of 2010 Amendment
Amendment by Pub. L. 111–152 effective July 1, 2010, see section 2101(c) of Pub. L. 111–152, set out as a note under section 1070a of this title.

\section*{References in Text}


\begin{itemize}
\item \textbf{References in Text}
\end{itemize}
§ 1093. Distance education demonstration programs

(a) Purpose
It is the purpose of this section—
(1) to allow demonstration programs that are strictly monitored by the Department of Education to test the quality and viability of expanded distance education programs currently restricted under this chapter and part C of subchapter I of chapter 34 of title 42;
(2) to provide for increased student access to higher education through distance education programs; and
(3) to help determine—
(A) the most effective means of delivering quality education via distance education course offerings;
(B) the specific statutory and regulatory requirements which should be altered to provide greater access to high quality distance education programs; and
(C) the appropriate level of Federal assistance for students enrolled in distance education programs.

(b) Demonstration programs authorized

(1) In general
In accordance with the provisions of subsection (d) of this section, the Secretary is authorized to select institutions of higher education, systems of such institutions, or consortia of such institutions for voluntary participation in a Distance Education Demonstration Program that provides participating institutions with the ability to offer distance education programs that do not meet all or a portion of the sections or regulations described in paragraph (2).

(2) Waivers
The Secretary is authorized to waive for any institution of higher education, system of institutions of higher education, or consortium participating in a Distance Education Demonstration Program, the requirements of section 1087(i)(5) of this title as the section relates to computer costs, sections 1088(a) and 1088(b) of this title as such sections relate to requirements for a minimum number of weeks of instruction, sections 1002(a)(3)(A), 1002(a)(3)(B), and 1001(l)(1) of this title, or one or more of the regulations prescribed under this part or part G of this subchapter which inhibit the operation of quality distance education programs.

(3) Eligible applicants
(A) Eligible institutions
Except as provided in subparagraphs (B), (C), and (D), only an institution of higher education that is eligible to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be eligible to participate in the demonstration program authorized under this section.

(B) Prohibition
An institution of higher education described in section 1002(a)(1)(C) of this title shall not be eligible to participate in the demonstration program authorized under this section.

(C) Special rule
Subject to subparagraph (B), an institution of higher education that meets the requirements of subsection (a) of section 1002 of this title, other than the requirement of paragraph (3)(A) or (3)(B) of such subsection, and that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree, shall be eligible to participate in the demonstration program authorized under this section.

(D) Requirement
Notwithstanding any other provision of this paragraph, Western Governors University shall be considered eligible to participate in the demonstration program authorized under this section. In addition to the waivers described in paragraph (2), the Secretary may waive the provisions of subchapter I of this chapter and this part and part G of this subchapter for such university that the Secretary determines to be appropriate because of the unique characteristics of such university. In carrying out the preceding sentence, the Secretary shall ensure that adequate program integrity and accountability measures apply to such university’s participation in the demonstration program authorized under this section.

(e) Application

(1) In general
Each institution, system, or consortium of institutions desiring to participate in a demonstration program under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

(2) Contents
Each application shall include—
(A) a description of the institution, system, or consortium’s consultation with a recognized accrediting agency or association with respect to quality assurances for the distance education programs to be offered;
(B) a description of the statutory and regulatory requirements described in subsection (b)(2) of this section or, if applicable, subsection (b)(3)(D) of this section for which a waiver is sought and the reasons for which the waiver is sought;
(C) a description of the distance education programs to be offered;
(D) a description of the students to whom distance education programs will be offered;
(E) an assurance that the institution, system, or consortium will offer full cooperation with the ongoing evaluations of the demonstration program provided for in this section; and
(F) such other information as the Secretary may require.

(d) Selection

(1) In general
For the first year of the demonstration program authorized under this section, the Secretary is authorized to select for participation
in the program not more than 15 institutions, systems of institutions, or consortia of institutions. For the third year of the demonstration program authorized under this section, the Secretary may select not more than 35 institutions, systems, or consortia, in addition to the institutions, systems, or consortia selected pursuant to the preceding sentence, to participate in the demonstration program if the Secretary determines that such expansion is warranted based on the evaluations conducted in accordance with subsections (f) and (g) of this section.

(2) Considerations

In selecting institutions to participate in the demonstration program in the first or succeeding years of the program, the Secretary shall take into account—

(A) the number and quality of applications received;
(B) the Department’s capacity to oversee and monitor each institution’s participation;
(C) an institution’s—
   (i) financial responsibility;
   (ii) administrative capability; and
   (iii) program or programs being offered via distance education; and
(D) ensuring the participation of a diverse group of institutions with respect to size, mission, and geographic distribution.

(e) Notification

The Secretary shall make available to the public and to the authorizing committees a list of institutions, systems or consortia selected to participate in the demonstration program authorized by this section. Such notice shall include a listing of the specific statutory and regulatory requirements being waived for each institution, system or consortium and a description of the distance education courses to be offered.

(f) Evaluations and reports

(1) Evaluation

The Secretary shall evaluate the demonstration programs authorized under this section on an annual basis. Such evaluations specifically shall review—

(A) the extent to which the institution, system or consortium has met the goals set forth in its application to the Secretary, including the measures of program quality assurance;
(B) the number and types of students participating in the programs offered, including the progress of participating students toward recognized certificates or degrees and the extent to which participation in such programs increased;
(C) issues related to student financial assistance for distance education;
(D) effective technologies for delivering distance education course offerings; and
(E) the extent to which statutory or regulatory requirements not waived under the demonstration program present difficulties for students or institutions.

(2) Policy analysis

The Secretary shall review current policies and identify those policies that present impediments to the development and use of distance education and other nontraditional methods of expanding access to education.

(3) Annual reports

The Secretary shall provide reports to the authorizing committees on an annual basis regarding—

(A) the demonstration programs authorized under this section; and
(B) the number and types of students receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for instruction leading to a recognized certificate, as provided for in section 1091(l)(1) of this title, including the progress of such students toward recognized certificates and the degree to which participation in such programs leading to such certificates increased.

(g) Oversight

In conducting the demonstration program authorized under this section, the Secretary shall, on a continuing basis—

(1) assure compliance of institutions, systems or consortia with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 (other than the sections and regulations that are waived under subsections (b)(2) and (b)(3)(D) of this section);
(2) provide technical assistance;
(3) monitor fluctuations in the student population enrolled in the participating institutions, systems or consortia; and
(4) consult with appropriate accrediting agencies or associations and appropriate State regulatory authorities.

(h) “Distance education” defined

For the purpose of this section, the term “distance education” means an educational process that is characterized by the separation, in time or place, between instructor and student. Such term may include courses offered principally through the use of—

(1) television, audio, or computer transmission, such as open broadcast, closed circuit, cable, microwave, or satellite transmission;
(2) audio or computer conferencing;
(3) video cassettes or discs; or
(4) correspondence.


Prior Provisions


Amendments

2008—Subsec. (e). Pub. L. 110–315, § 103(b)(12), substituted “authorizing committees” for “Committee on Labor and Human Resources of the Senate and the
Committee on Education and the Workforce of the House of Representatives”.

Subsec. (f)(3). Pub. L. 110–315, §491, substituted “Annual reports” for “Reports” in heading, in subpar. (B) redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and adjusted their margins, and substituted “The Secretary shall provide reports to the authorizing committees on an annual basis” for former subpar. (A) which required Secretary to report to congressional committees on evaluations of demonstration programs and for introductory provisions of former subpar. (B) which related to additional annual reports.

1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section authorized Secretary to make grants to nonprofit private organizations to provide training for student financial aid administrators and TRIO personnel.

1992—Pub. L. 102–325 struck out “and student support” after “aid” in section catchline and amended text generally, substituting present provisions for former subsec. (a) relating to program authority, subsec. (b) relating to use of funds, and subsec. (c) relating to authorization of appropriations.

Effective Date of 1998 Amendment


§ 1093a. Articulation agreements

(a) Definition

In this section, the term “articulation agreement” means an agreement between or among institutions of higher education that specifies the acceptability of courses in transfer toward institutions of higher education that specifies articulation agreements, States and public institutions of higher education, to develop, enhance, and implement articulation agreements, States and public institutions of higher education may employ strategies, where applicable, including—

(A) common course numbering;

(B) a general education core curriculum;

(C) management systems regarding course equivalency, transfer of credit, and articulation; and

(D) other strategies identified by the Secretary.

(2) Technical assistance provided

The Secretary shall provide technical assistance to States and public institutions of higher education for the purposes of developing and implementing articulation agreements in accordance with this subsection.

(3) Rule of construction

Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to articulation agreements.


§ 1094. Program participation agreements

(a) Required for programs of assistance; contents

In order to be an eligible institution for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A of this subchapter, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

(1) The institution will use funds received by it for any program under this subchapter and part C of subchapter I of chapter 34 of title 42 and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program.

(2) The institution shall not charge any student a fee for processing or handling any application, form, or data required to determine the student’s eligibility for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 or the amount of such assistance.

(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this subchapter and part C of subchapter I of chapter 34 of title 42, together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to—

(A) the Secretary;

(B) the appropriate guaranty agency; and

(C) the appropriate accrediting agency or association.

(4) The institution will comply with the provisions of subsection (c) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part D of this subchapter, to holders of loans made to the institution’s students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42.

(6) The institution will not provide any student with any statement or certification to any lender under part B of this subchapter that qualifies the student for a loan or loans
in excess of the amount that student is eligible to borrow in accordance with sections 1075(a), 1078(a)(2), and 1078(b)(1)(A) and (B) of this title.

(7) The institution will comply with the requirements of section 1092 of this title.

(8) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, the institution will make available to prospective students, at or before the time of application (A) the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements, and (B) relevant State licensing requirements of the State in which such institution is located for any job for which the course of instruction is designed to prepare such prospective students.

(9) In the case of an institution participating in a program under part B or C of this subchapter, the institution will inform all eligible borrowers enrolled in the institution about the availability and eligibility of such borrowers for State grant assistance from the State in which the institution is located, and will inform such borrowers from another State of the source for further information concerning such assistance from the State.

(10) The institution certifies that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution.

(11) In the case of any institution whose students receive financial assistance pursuant to section 1091(d) of this title, the institution will make available to such students a program proven successful in assisting students in obtaining a certificate of high school equivalency.

(12) The institution certifies that—
(A) the institution has established a campus security policy; and
(B) the institution has complied with the disclosure requirements of section 1092(f) of this title.

(13) The institution will not deny any form of Federal financial aid to any student who meets the eligibility requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 on the grounds that the student is participating in a program of study abroad approved by the Secretary.

(14)(A) The institution, in order to participate as an eligible institution under part B or C of this subchapter, will develop a Default Management Plan for approval by the Secretary as part of its initial application for certification as an eligible institution and will implement such Plan for two years thereafter.

(B) Any institution of higher education which changes ownership and any eligible institution which changes its status as a parent or subordinate institution shall, in order to participate as an eligible institution under part B or C of this subchapter, develop a Default Management Plan for approval by the Secretary and implement such Plan for two years after its change of ownership or status.

(C) This paragraph shall not apply in the case of an institution in which (i) neither the parent nor the subordinate institution has a cohort default rate in excess of 10 percent, and (ii) the new owner of such parent or subordinate institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent.

(15) The institution acknowledges the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and the State agencies under subpart 1 of part G of this subchapter to share with each other any information pertaining to the institution's eligibility to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 or any information on fraud and abuse.

(16)(A) The institution will not knowingly employ an individual in a capacity that involves the administration of programs under this subchapter and part C of subchapter I of chapter 34 of title 42, or the receipt of program funds under this subchapter and part C of subchapter I of chapter 34 of title 42, who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this subchapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under this subchapter and part C of subchapter I of chapter 34 of title 42 or contract with an institution or third party servicer that has been terminated under section 1082 of this title involving the acquisition, use, or expenditure of funds under this subchapter and part C of subchapter I of chapter 34 of title 42, or who has been judicially determined to have committed fraud involving funds under this subchapter and part C of subchapter I of chapter 34 of title 42.

(B) The institution will not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—
(i) convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this subchapter and part C of subchapter I of chapter 34 of title 42, or
(ii) judicially determined to have committed fraud involving funds under this subchapter and part C of subchapter I of chapter 34 of title 42.

(17) The institution will complete surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, as designated by the Secretary, in a timely manner and to the satisfaction of the Secretary.

(18) The institution will meet the requirements established pursuant to section 1092(g) of this title.

(19) The institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds, on any student because of the student's inability
to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 due to compliance with the provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, or delays attributable to the institution.

(20) The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(21) The institution will meet the requirements established by the Secretary and accrediting agencies or associations, and will provide evidence to the Secretary that the institution has the authority to operate within a State.

(22) The institution will comply with the refund policy established pursuant to section 1091b of this title.

(23)(A) The institution, if located in a State to which section 1973gg–2(b) of title 42 does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make such forms widely available to students at the institution.

(B) The institution shall request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution shall not be held liable for not meeting the requirements of this section during that election year.

(C) This paragraph shall apply to general and special elections for Federal office, as defined in section 431(3) of title 2, and to the elections for Governor or other chief executive within such State.1

(D) The institution shall be considered in compliance with the requirements of subparagraph (A) for each student to whom the institution electronically transmits a message containing a voter registration form acceptable for use in the State in which the institution is located, or an Internet address where such a form can be downloaded, if such information is in an electronic message devoted exclusively to voter registration.

(24) In the case of a proprietary institution of higher education (as defined in section 1002(b) of this title), such institution will derive not less than ten percent of such institution’s revenues from sources other than funds provided under this subchapter and part C of subchapter I of chapter 34 of title 42, as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

(25) In the case of an institution that participates in a loan program under this subchapter and part C of subchapter I of chapter 34 of title 42, the institution will—

(A) develop a code of conduct with respect to such loans with which the institution’s officers, employees, and agents shall comply, that—

(i) prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to such loans; and

(ii) at a minimum, includes the provisions described in subsection (e);

(B) publish such code of conduct prominently on the institution’s website; and

(C) administer and enforce such code by, at a minimum, requiring that all of the institution’s officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

(26) The institution will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

(27) In the case of an institution that has entered into a preferred lender arrangement, the institution will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list, in print or other medium, of the specific lenders for loans made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such list, the institution shall comply with the requirements of subsection (h).

(28)(A) The institution will, upon the request of an applicant for a private education loan, provide to the applicant the form required under section 1638(e)(3) of title 15, and the information required to complete such form, to the extent the institution possesses such information.

(B) For purposes of this paragraph, the term “private education loan” has the meaning given such term in section 1656 of title 15.

(29) The institution certifies that the institution—

(A) has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use

1 So in original. The closing parenthesis probably should not appear.
of a variety of technology-based deterrents;
and
(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

(b) Hearings
(1) An institution that has received written notice of a final audit or program review determination and that desires to have such determination reviewed by the Secretary shall submit to the Secretary a written request for review not later than 45 days after receipt of notification of the final audit or program review determination.
(2) The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

(c) Audits; financial responsibility; enforcement of standards
(1) Notwithstanding any other provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall prescribe such regulations as may be necessary to provide for—
(A)(i) except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it under this subchapter and part C of subchapter I of chapter 34 of title 42 or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, or
(ii) with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or
(iii) a financial audit of an eligible institution with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(2) The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this subchapter and part C of subchapter I of chapter 34 of title 42, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

(C)(i) except as provided in clause (ii), a compliance audit of a third party servicer (other than with respect to the servicer’s functions as a lender if such functions are otherwise audited under this part and such audits meet the requirements of this clause), with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or
(ii) with regard to a third party servicer that is audited under chapter 75 of title 31, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by such audit;

(D)(i) a compliance audit of a secondary market with regard to its transactions involving, and its servicing and collection of, loans made under this subchapter and part C of subchapter I of chapter 34 of title 42, at least once a year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or
(ii) with regard to a secondary market that is audited under chapter 75 of title 31, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by the audit;
(E) the establishment, by each eligible institution under part B of this subchapter responsible for furnishing to the lender the statement required by section 1078(a)(2)(A)(i) of this title, of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than 60 days after such termination or failure to re-enroll;

(F) the limitation, suspension, or termination of the participation in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 of an eligible institution, or the imposition of a civil penalty under paragraph (3)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation, except that a period of suspension under this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, any application special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time;

(G) an emergency action against an institution, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the institution (by registered mail, return receipt requested), withhold funds from the institution or its students and withdraw the institution’s authority to obligate funds under any program under this subchapter and part C of subchapter I of chapter 34 of title 42, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation.

(ii) determines that immediate action is necessary to prevent misuse of Federal funds,

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted;

(H) the limitation, suspension, or termination of the eligibility of a third party servicer to contract with any institution to administer any aspect of an institution’s student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42, or the imposition of a civil penalty under paragraph (3)(B), whenever the Secretary has determined, after reasonable notice and opportunity for a hearing, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

(I) an emergency action against a third party servicer that has contracted with an institution to administer any aspect of the institution’s student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to such individual or organization (by registered mail, return receipt requested), withhold funds from the individual or organization and withdraw the individual or organization’s authority to act on behalf of an institution under any program under this subchapter and part C of subchapter I of chapter 34 of title 42, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this subchapter and part C of subchapter I of chapter 34 of title 42, any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (P), for limitation, suspension, or termination,
42, or, for purposes of paragraphs (1)(H) and (I), over one or more organizations that contract with an institution to administer any aspect of the institution’s student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42, if the institution has not received funds appropriated under this subchapter and part C of subchapter I of chapter 34 of title 42 for which the institution has not received funds appropriated under this subchapter and part C of subchapter I of chapter 34 of title 42 (in the amount necessary to provide such assistance), including funds for which reimbursement was not requested prior to such discovery or information, such institution shall be permitted to offset that amount against any sums determined to be owed by the institution pursuant to such audit, or to receive reimbursement for that amount (if the institution does not owe any such sums).

(d) Implementation of non-title IV revenue requirement

(1) Calculation

In making calculations under subsection (a)(24), a proprietary institution of higher education shall—

(A) use the cash basis of accounting, except in the case of loans described in subparagraph (D)(i) that are made by the proprietary institution of higher education;

(B) consider as revenue only those funds and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed $25,000 for each violation or misrepresentation.

(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

(4) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

(5) The Secretary shall make readily available to appropriate guaranty agencies, eligible lenders, State agencies notifying the Secretary under part 1 of part G of this subchapter, and accrediting agencies or associations the results of the audits of eligible institutions conducted pursuant to paragraph (1)(A).

(6) The Secretary is authorized to provide any information collected as a result of audits conducted under this section, together with audit information collected by guaranty agencies, to any Federal or State agency having responsibilities with respect to student financial assistance, including those referred to in subsection (a)(15) of this section.

(7) Effective with respect to any audit conducted under this subsection after December 31, 1988, if, in the course of conducting any such audit, the personnel of the Department of Education discover, or are informed of, grants or other assistance provided by an institution in accordance with this subchapter and part C of subchapter I of chapter 34 of title 42 for which the institution has not received funds appropriated under this subchapter and part C of subchapter I of chapter 34 of title 42 (in the amount necessary to provide such assistance), including funds for which reimbursement was not requested prior to such discovery or information, such institution shall be permitted to offset that amount against any sums determined to be owed by the institution pursuant to such audit, or to receive reimbursement for that amount (if the institution does not owe any such sums).
(C) presume that any funds for a program under this subchapter and part C of subchapter I of chapter 34 of title 42 that are disbursed or delivered to or on behalf of a student will be used to pay the student’s tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student’s account or pays those funds directly to the student, except to the extent that the student’s tuition, fees, or other institutional charges are satisfied by:

(i) grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;

(iii) funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under title 26;

(iv) institutional scholarships described in subparagraph (D)(iii);

(D) include institutional aid as revenue to the school only as follows:

(i) in the case of loans made by a proprietary institution of higher education on or after July 1, 2008 and prior to July 1, 2012, the net present value of such loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans—

(I) are bona fide as evidenced by enforceable promissory notes;

(II) are issued at intervals related to the institution’s enrollment periods; and

(III) are subject to regular loan repayments and collections;

(ii) in the case of loans made by a proprietary institution of higher education on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for as specified in clause (i); and

(iii) in the case of scholarships provided by a proprietary institution of higher education, only those scholarships provided by the institution in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds;

(E) in the case of each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 1078-8 of this title or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this subchapter and part C of subchapter I of chapter 34 of title 42, the amount by which the disbursement of such loan received by the institution exceeds the limit on such loan in effect on the day before May 7, 2008; and

(F) exclude from revenues—

(i) the amount of funds the institution received under part C of subchapter I of chapter 34 of title 42, unless the institution used those funds to pay a student’s institutional charges;

(ii) the amount of funds the institution received under subpart 4 of part A;

(iii) the amount of funds provided by the institution as matching funds for a program under this subchapter and part C of subchapter I of chapter 34 of title 42;

(iv) the amount of funds provided by the institution for a program under this subchapter and part C of subchapter I of chapter 34 of title 42 that are required to be refunded or returned; and

(v) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) Sanctions

(A) Ineligibility

A proprietary institution of higher education that fails to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years shall be ineligible to participate in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42, unless the institution—

(i) on the expiration date of the institution’s program participation agreement under this subsection that is in effect on the date the Secretary determines that the
institution failed to meet the requirement of subsection (a)(24); or
(ii) in the case that the Secretary determines that the institution failed to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years, on the date the institution is determined ineligible in accordance with subparagraph (A).

(3) Publication on college navigator website
The Secretary shall publicly disclose on the College Navigator website—
(A) the identity of any proprietary institution of higher education that fails to meet a requirement of subsection (a)(24); and
(B) the extent to which the institution failed to meet such requirement.

(4) Report to Congress
Not later than July 1, 2009, and July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each proprietary institution of higher education that receives assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of subsection (a)(24)—
(A) the amount and percentage of such institution’s revenues received from sources under this subchapter and part C of subchapter I of chapter 34 of title 42; and
(B) the amount and percentage of such institution’s revenues received from other sources.

(e) Code of conduct requirements
An institution of higher education’s code of conduct, as required under subsection (a)(25), shall include the following requirements:

(1) Ban on revenue-sharing arrangements
(A) Prohibition
The institution shall not enter into any revenue-sharing arrangement with any lender.

(B) Definition
For purposes of this paragraph, the term “revenue-sharing arrangement” means an arrangement between an institution and a lender under which—
(i) a lender provides or issues a loan that is made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 to students attending the institution or to the families of such students; and
(ii) the institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent.

(2) Gift ban
(A) Prohibition
No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift from a lender, guarantor, or servicer of education loans.

(B) Definition of gift
(i) In general
In this paragraph, the term “gift” means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(ii) Exceptions
The term “gift” shall not include any of the following:
(I) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.
(II) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the institution, if such training contributes to the professional development of the officer, employee, or agent.

(III) Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(IV) Entrance and exit counseling services provided to borrowers to meet the institution’s responsibilities for entrance and exit counseling as required by subsections (b) and (l) of section 1092 of this title, as long as—
(aa) the institution’s staff are in control of the counseling, (whether in person or via electronic capabilities); and
(bb) such counseling does not promote the products or services of any specific lender.

(V) Philanthropic contributions to an institution from a lender, servicer, or guarantor of education loans that are unrelated to education loans or any contribution from any lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans.

(VI) State education grants, scholarships, or financial aid funds administered by or on behalf of a State.

(iii) Rule for gifts to family members
For purposes of this paragraph, a gift to a family member of an officer or employee
of an institution, to a family member of an agent, or to any other individual based on that individual’s relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if—

(I) the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

(3) Contracting arrangements prohibited

(A) Prohibition

An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

(B) Exceptions

Nothing in this subsection shall be construed as prohibiting:

(i) an officer or employee of an institution who is not employed in the institution’s financial aid office and who does not otherwise have responsibilities with respect to education loans, or an agent who does not have responsibilities with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) an officer or employee of the institution’s financial aid office but who has responsibility with respect to education loans as a result of a position held at the institution, or an agent who has responsibility with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the institution; or

(iii) an officer, employee, or contractor of a lender, guarantor, or servicer of education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding education loans at the institution.

(4) Interaction with borrowers

The institution shall not—

(A) refuse to certify, or delay certification of, any loan based on the borrower’s selection of a particular lender or guaranty agency.

(5) Prohibition on offers of funds for private loans

(A) Prohibition

The institution shall not request or accept from any lender any offer of funds to be used for private education loans (as defined in section 1650 of title 15), including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(i) a specified number of loans made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(ii) a specified loan volume of such loans.

(B) Definition of opportunity pool loan

In this paragraph, the term ‘‘opportunity pool loan’’ means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family.

(6) Ban on staffing assistance

(A) Prohibition

The institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.

(B) Certain assistance permitted

Nothing in paragraph (1) shall be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) professional development training for financial aid administrators;

(ii) providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, and other localized disasters and emergencies identified by the Secretary.

(7) Advisory board compensation

Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of
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(f) Institutional requirements for teach-outs

(1) In general

In the event the Secretary initiates the limitation, suspension, or termination of the participation of an institution of higher education in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 under the authority of subsection (c)(1)(F) or initiates an emergency action under the authority of subsection (c)(1)(G) and its prescribed regulations, the Secretary shall require that institution to prepare a teach-out plan for submission to the institution’s accrediting agency or association in compliance with section 1099b(c)(3) of this title, the Secretary’s regulations on teach-out plans, and the standards of the institution’s accrediting agency or association.

(2) Teach-out plan defined

In this subsection, the term “teach-out plan” means a written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution’s accrediting agency or association, an agreement between institutions for such a teach-out plan.

(g) Inspector General report on gift ban violations

The Inspector General of the Department shall—

(1) submit an annual report to the authorizing committees identifying all violations of an institution’s code of conduct that the Inspector General has substantiated during the preceding year relating to the gift ban provisions described in subsection (e)(2); and

(2) make the report available to the public through the Department’s website.

(h) Preferred lender list requirements

(1) In general

In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will—

(A) clearly and fully disclose on such preferred lender list—

(i) not less than the information required to be disclosed under section 1099b(a)(2)(A) of this title;

(ii) why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(B) ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that—

(i) there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) the preferred lender list under this paragraph—

(I) specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(II) if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(C) prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) payment of origination or other fees on behalf of the borrower;

(ii) highly competitive interest rates, or other terms and conditions or provisions of loans under this subchapter and part C of subchapter I of chapter 34 of title 42 or private education loans;

(iii) high-quality servicing for such loans; or

(iv) additional benefits beyond the standard terms and conditions or provisions for such loans;

(D) exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;

(E) not deny or otherwise impede the borrower’s choice of a lender or cause unnecessary delay in loan certification under this subchapter and part C of subchapter I of chapter 34 of title 42 for those borrowers who choose a lender that is not included on the preferred lender list; and

(F) comply with such other requirements as the Secretary may prescribe by regulation.

(2) Lender affiliates list

(A) In general

The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).

(B) Use of most recent list

An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

(i) Definitions

For the purpose of this section:
(1) Agent

The term "agent" has the meaning given the term in section 1019 of this title.

(2) Affiliate

The term "affiliate" means a person that controls, is controlled by, or is under common control with another person. A person controls, is controlled by, or is under common control with another person if—

(A) the person directly or indirectly, or acting through one or more others, owns, controls, or has the power to vote five percent or more of any class of voting securities of such other person;

(B) the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or

(C) the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over the management or policies of such other person's education loans.

(3) Education loan

The term "education loan" has the meaning given the term in section 1019 of this title.

(4) Eligible institution

The term "eligible institution" means any such institution described in section 1002 of this title.

(5) Officer

The term "officer" has the meaning given the term in section 1019 of this title.

(6) Preferred lender arrangement

The term "preferred lender arrangement" has the meaning given the term in section 1019 of this title.

(j) Construction

Nothing in the amendments made by the Higher Education Amendments of 1992 shall be construed to prohibit an institution from recording, at the cost of the institution, a hearing referred to in subsection (b)(2), subsection (c)(1)(D), or subparagraph (A) or (B)(i) of subsection (c)(2), of this section to create a record of the hearing, except the unavailability of a recording shall be construed to prohibit an institution from recording, at the cost of the institution, a hearing referred to in subsection (b)(2), subsection (c)(1)(D), or subparagraph (A) or (B)(i) of subsection (c)(2), of this section to create a record of the hearing, except the unavailability of a recording shall

Subsec. (a)(23)(A). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), substituted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.


Subsec. (c)(1)(A)(i). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.

Subsec. (c)(1)(A)(ii). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.

Subsec. (c)(1)(A)(iii). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.

Subsec. (c)(1)(A)(iv). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.

Subsec. (c)(1)(A)(v). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.

Subsec. (c)(1)(A)(vi). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.

Subsec. (c)(1)(A)(vii). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.

Subsec. (c)(1)(A)(viii). Pub. L. 110–315, § 493(a)(1), redesignated subpar. (D) as (i), inserted "Definitions" for "Definition of eligible institution" in heading, added subpar. (d) to (h). Former subsecs. (d) to (e) were redesignated (i) and (j), respectively.
§ 1094a. Regulatory relief and improvement

(a) Quality Assurance Program

(1) In general

The Secretary is authorized to select institutions for voluntary participation in a Quality Assurance Program that provides participating institutions with an alternative management approach through which individual schools develop and implement their own comprehensive systems, related to processing and disbursement of student financial aid, verification of student financial aid application data, and entrance and exit interviews, thereby enhancing program integrity within the student aid delivery system.

(2) Criteria and consideration

The Quality Assurance Program authorized by this section shall be based on criteria that include demonstrated institutional performance, as determined by the Secretary, and shall take into consideration current quality assurance goals, as determined by the Secretary. The selection criteria shall ensure the participation of a diverse group of institutions of higher education with respect to size, mission, and geographical distribution.

(3) Waiver

The Secretary is authorized to waive for any institution participating in the Quality Assurance Program any regulations dealing with reporting or verification requirements in this subchapter and part C of subchapter I of chapter 34 of title 42 that are addressed by the institution’s alternative management system, and may substitute such quality assurance reporting as the Secretary determines necessary to ensure accountability and compliance with the purposes of the programs under this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall not modify or waive any statutory requirements pursuant to this paragraph.

(4) Determination

The Secretary is authorized to determine—

(A) when an institution that is unable to administer the Quality Assurance Program shall be removed from such program; and

(B) when institutions desiring to cease participation in such program will be required to complete the current award year under the requirements of the Quality Assurance Program.

(5) Review and evaluation

The Secretary shall review and evaluate the Quality Assurance Program conducted by each participating institution and, on the basis of that evaluation, make recommendations regarding amendments to this chapter and part C of subchapter I of chapter 34 of title 42 that will streamline the administration and enhance the integrity of Federal student assistance programs. Such recommendations shall be submitted to the authorizing committees.

(b) Regulatory improvement and streamlining experiments

(1) In general

The Secretary shall continue the voluntary participation of any experimental sites in existence as of July 1, 2007, unless the Secretary determines that such site’s participation has not been successful in carrying out the purposes of this section. Any experimental sites approved by the Secretary prior to such date that have not been successful in carrying out the purposes of this section shall be discontinued not later than June 30, 2010.

(2) Report

The Secretary shall review and evaluate the experience of institutions participating as experimental sites and shall, on a biennial basis, submit a report based on the review and evaluation to the authorizing committees. Such report shall include—

(A) a list of participating institutions and the specific statutory or regulatory waivers granted to each institution;

(B) the findings and conclusions reached regarding each of the experiments conducted; and

(C) recommendations for amendments to improve and streamline this chapter and part C of subchapter I of chapter 34 of title 42, based on the results of the experiment.

(3) Selection

(A) In general

The Secretary is authorized to periodically select a limited number of additional institutions for voluntary participation as experimental sites to provide recommendations to the Secretary on the impact and effectiveness of proposed regulations or new management initiatives.
(B) Waivers

The Secretary is authorized to waive, for any institution participating as an experimental site under subparagraph (A), any requirements in this subchapter and part C of subchapter I of chapter 34 of title 42, including requirements related to the award process and disbursement of student financial aid (such as innovative delivery systems for modular or compressed courses, or other innovative systems), verification of student financial aid application data, entrance and exit interviews, or other management procedures or processes as determined in the negotiated rulemaking process under section 1098a of this title, or regulations prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42, that will bias the results of the experiment, except that the Secretary shall not waive any provisions with respect to award rules (other than an award rule related to an experiment in modular or compressed schedules), grant and loan maximum award amounts, and need analysis requirements unless the waiver of such provisions is authorized by another provision under this subchapter and part C of subchapter I of chapter 34 of title 42.

(4) Determination of success

For the purposes of paragraph (1), the Secretary shall make a determination of success generally. Prior to amendment, text read as follows:

(A) the ability of the experimental site to reduce administrative burdens to the institution, as documented in the Secretary's biennial report under paragraph (2), without creating costs for the taxpayer; and

(B) whether the experimental site has improved the delivery of services to, or otherwise benefitted, students.

(c) "Current award year" defined

For purposes of this section, the term "current award year" means the award year during which the participant institution indicates the institution's intention to cease participation.


Subsec. (b)(3)(A). Pub. L. 110–315, § 494(3)(D), inserted ..., including requirements related to the award process and disbursement of student financial aid (such as innovative delivery systems for modular or compressed courses, or other innovative systems), verification of student financial aid application data, entrance and exit interviews, or other management procedures or processes as determined in the negotiated rulemaking process under section 1098a of this title" before ", or regulations prescribed". (other than an award rule related to an experiment in modular or compressed schedules) after "award rules", and "unless the waiver of such provisions is authorized by another provision under this subchapter and part C of subchapter I of chapter 34 of title 42" before period at end.

Pub. L. 110–315, § 494(3)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B). Text of former subpar. (B) read as follows: "Prior to approving any additional experimental sites, the Secretary shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives and shall provide to such Committees—

(i) a list of institutions proposed for participation in the experiment and the specific statutory or regulatory waivers proposed to be granted to each institution;

(ii) a statement of the objectives to be achieved through the experiment; and

(iii) an identification of the period of time over which the experiment is to be conducted."


1998—Pub. L. 105–244 amended section catchline and text generally. Prior to amendment, section authorized a Quality Assurance Program for institutions to develop and implement systems for verifying student financial aid application data.

EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 1998 AMENDMENT


§ 1094b. Assignment of identification numbers

The Secretary shall assign to each participant in title IV programs, including institutions, lenders, and guaranty agencies, a single Department of Education identification number to be used to identify its participation in each of the title IV programs.

§ 1095. Transfer of allotments

In order to offer an arrangement of types of aid, including institutional and State aid which best fits the needs of each individual student, an institution may (1) transfer a total of 25 percent of the institution’s allotment under section 1067b of this title to the institution’s allotment under section 1070b–3 of this title or section 2752 of title 42 (or both); (2) transfer 25 percent of the institution’s allotment under section 2752 of title 42 to the institution’s allotment under section 1070b–3 or 1067bb of this title (or both); and (3) transfer 25 percent of the institution’s allotment under section 1070b–3 of this title to the institution’s allotment under section 2752 of title 42. Funds transferred to an institution’s allotment under another section may be used as a part of and for the same purposes as funds allotted under that section. The Secretary shall have no control over such transfer, except as specifically authorized, except for the collection and dissemination of information.


PRIOR PROVISIONS


Amendments

2008—Pub. L. 110–315 struck out “and” after semicolon in par. (1), substituted “section 1067b–3 or 1067bb of this title (or both);” for “section 1067b–3 of this title;” in par. (2), and added par. (3).

1992—Pub. L. 102–325 inserted first two sentences and struck out former first sentence which read as follows: “Up to 10 percent of the allotment of an eligible institution for a fiscal year under section 1070b–3 of this title or 2752 of title 42, may be transferred to, and used for the purposes of, the institution’s allotment under the other section within the discretion of such institution in order to offer an arrangement of types of aid, including institutional and State aid, which best fits the needs of each individual student.”


Effective Date of 1992 Amendment

Amendment by Pub. L. 102–325 to this section, relating to transfers of allotments, applicable with respect to funds provided for award years beginning on or after July 1, 1993, see section 498 of Pub. L. 102–325, set out as a note under section 1088 of this title.

Effective Date of 1987 Amendment


§ 1095a. Wage garnishment requirement

(a) Garnishment requirements

Notwithstanding any provision of State law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B of this subchapter on which the guaranty agency received reimbursement from the Secretary under section 1078(c) of this title, with the guaranty agency holding the loan, as appropriate, provided that—

(1) the amount deducted for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;

(2) the individual shall be provided written notice, sent by mail to the individual’s last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;

(3) the individual shall be provided an opportunity to inspect and copy records relating to the debt;

(4) the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for the repayment of the debt;

(5) the individual shall be provided an opportunity for a hearing in accordance with subsection (b) of this section on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;

(6) the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in a State or Federal court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt of such employer of notice of the withholding order, plus attorneys’ fees, costs, and, in the court’s discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph;

(7) if an individual has been reemployed within 12 months after having been involv-
tarily separated from employment, no amount may be deducted from the disposable pay of such individual until such individual has been reemployed continuously for at least 12 months; and
(b) an employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual’s wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorneys’ fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

(b) Hearing requirements

A hearing described in subsection (a)(5) of this section shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2) of this section, and in accordance with such procedures as the Secretary or the head of the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) of this section upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) of this section may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

(c) Notice requirements

The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

(d) No attachment of student assistance

Except as authorized in this section, notwithstanding any other provision of Federal or State law, no grant, loan, or work assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42, or property traceable to such assistance, shall be subject to garnishment or attachment in order to satisfy any debt owed by the student awarded such assistance, other than a debt owed to the Secretary and arising under this subchapter and part C of subchapter I of chapter 34 of title 42.

(e) “Disposable pay” defined

For the purpose of this section, the term “disposable pay” means that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by law to be withheld.

§ 1096. Administrative expenses

(a) Amount of payments

From the sums appropriated for any fiscal year for the purpose of the program authorized under subpart 1 of part A of this subchapter, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 1094 of this title, an amount equal to $5 for each student at that institution who receives assistance under subpart 1 of part A of this subchapter. In addition, an institution which has entered into an agreement with the Secretary under subpart 3 of part A of this subchapter or part C of subchapter I of chapter 34 of title 42, or under part D of this subchapter shall be entitled for each fiscal year which such institution disburses funds to eligible students under any such part to a payment in accordance with regulations of the Secretary and shall be equal to 5 percent of the institution’s first $2,750,000 of expenditures plus 4 percent of the institution’s expenditures greater than $2,750,000 and less than $5,500,000, plus 3 percent of the institution’s expenditures in excess of $5,500,000 during the fiscal year from the sum of its grants to students under subpart 3 of part A of this subchapter, its expenditures during such fiscal year under part C of subchapter I of chapter 34 of title 42 for compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part D of this subchapter, excluding the principal amount of any such loans which the institution has referred under section 1087cc(a)(4)(B) of this title. In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the institution in implementing and operating the immigration status verification system under section 1091(g) of this title.

(b) Purpose of payments

(1) The sums paid to institutions under this part are for the sole purpose of administering
the programs described in subsection (a) of this section.

(2) If the institution enrolls a significant number of students who are (A) attending the institution less than full time, or (B) independent students, the institution shall use a reasonable proportion of the funds available under this section for financial aid services during times and in places that will most effectively accommodate the needs of such students.


PRIOR PROVISIONS


AMENDMENTS

2009—Subsec. (a). Pub. L. 111–39 substituted “has referred under section 1087cc(a)(4)(B)” for “has agreed to assign under section 1087cc(a)(6)(B)” and “1091(g)” for “1091(h)”.


1993—Subsec. (a). Pub. L. 102–325, § 2(k)(6), struck out “other than section 2768a of title 42” before “, or under part D” in second sentence and struck out fourth sentence which read as follows: “The payment for a fiscal year for the purposes of subsection (b) of this section with respect to section 2768a of title 42 shall be payable from each allotment under part C of subchapter I of chapter 34 of title 42 in accordance with regulations of the Secretary, and shall be 10 percent of the institution’s expenditures during such fiscal year under such section.”

Pub. L. 102–325, § 446(c), which directed amendment identical to amendment by Pub. L. 102–325, § 493(a)(3), substituted “subpart 3” for “subpart 2” in two places.

Pub. L. 102–325, § 493(a)(1), (2), struck out “other than section 2768a of title 42” before “, or under part D” in second sentence and struck out fourth sentence which read as follows: “The payment for a fiscal year for the purposes of subsection (b) of this section with respect to section 2768a of title 42 shall be payable from each allotment under part C of subchapter I of chapter 34 of title 42 in accordance with regulations of the Secretary, and shall be 10 percent of the institution’s expenditures during such fiscal year under such section.”

Pub. L. 102–325, § 446(c), which directed amendment identical to amendment by Pub. L. 102–325, § 493(a)(1), (2), above, was repealed by Pub. L. 103–208, § 2(k)(6).

Subsec. (b). Pub. L. 102–325, § 493(b), designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (a). Pub. L. 100–50 made technical amendment to reference to section 2768a of title 42 to correct reference to corresponding section of original Act, requiring no change in text.

1985—Subsec. (a). Pub. L. 99–603 inserted provision directing the Secretary to pay the costs incurred by institutions of higher education in implementing and operating the immigration status verification system under section 1081(c) of this title.

EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 446(c) of Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of this title.

Amendment by section 493 of Pub. L. 102–325, relating to payments for administrative expenses, applicable with respect to funds provided for award years beginning on or after July 1, 1993, see section 496(f) of Pub. L. 102–325, set out as a note under section 1088 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT


EFFECTIVE DATE OF 1986 AMENDMENT


§ 1097. Criminal penalties

(a) In general

Any person who knowingly and willfully embezzles, misapplies, steals, obtains by fraud, false statement, or forgery, or fails to refund any funds, assets, or property provided or insured under this subchapter and part C of subchapter I of chapter 34 of title 42 or attempts to so embezzle, misapply, steal, obtain by fraud, false statement, or forgery, or fail to refund any funds, assets, or property, shall be fined not more than $20,000 or imprisoned for not more than 5 years, or both, except if the amount so embezzled, misapplied, stolen, obtained by fraud, false statement, or forgery, or failed to be refunded does not exceed $200, then the fine shall not be more than $5,000 and imprisonment shall not exceed one year, or both.

(b) Assignment of loans

Any person who knowingly and willfully makes any false statement, furnishes any false information, or conceals any material information in connection with the assignment of a loan which is made or insured under this subchapter and part C of subchapter I of chapter 34 of title 42 or attempts to so make any false statement, furnish any false information, or conceal any material information in connection with such assignment shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Inducements to lend or assign

Any person who knowingly and willfully makes an unlawful payment to an eligible lender under part B of this subchapter or attempts to make such unlawful payment as an inducement to make, or to acquire by assignment, a loan insured under such part shall, upon convic-
§ 1097a. Administrative subpoenas

(a) Authority

To assist the Secretary in the conduct of investigations of possible violations of the provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary is authorized to require by subpoena the production of information, documents, reports, answers, records, accounts, papers, and other documentary evidence pertaining to participation in any program under this subchapter and part C of subchapter I of chapter 34 of title 42. The production of any such records may be required from any place in a State.

(b) Enforcement

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may request the Attorney General to invoke the aid of any court of the United States where such person resides or transacts business for a court order for the enforcement of this section.


§ 1098. Advisory Committee on Student Financial Assistance

(a) Establishment and purpose

(1) There is established in the Department an independent Advisory Committee on Student Financial Assistance (hereafter in this section referred to as the “Advisory Committee”) which shall provide advice and counsel to the authorizing committees and to the Secretary on student financial aid matters.

(2) The purpose of the Advisory Committee is—

(A) to provide extensive knowledge and understanding of the Federal, State, and institutional programs of postsecondary student assistance;

(B) to provide technical expertise with regard to systems of needs analysis and application forms;

(C) to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students;

(D) to provide knowledge and understanding of early intervention programs, and to make recommendations that will result in early awareness by low- and moderate-income students and families—

(i) of their eligibility for assistance under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(ii) to the extent practicable, of their eligibility for other forms of State and institutional need-based student assistance;

(E) to make recommendations that will expand and improve partnerships among the Federal Government, States, institutions of higher education, and private entities to increase the awareness and the total amount of need-based student assistance available to low- and moderate-income students; and

(F) to collect information on Federal regulations, and on the impact of Federal regulations on student financial assistance and on the cost of receiving a postsecondary education, and to make recommendations to help streamline the regulations for institutions of higher education from all sectors.

(b) Independence of Advisory Committee

In the exercise of its functions, powers, and duties, the Advisory Committee shall be independent of the Secretary and the other officers and officials of the Department. Notwithstanding Department of Education policies and regulations, the Advisory Committee shall exert independent control of its budget allocations, expenditures and staffing levels, personnel decisions and processes, procurements, and other administrative and management functions. The Advisory Committee’s administration and management shall be subject to the usual and customary Federal audit procedures. Reports, publications, and other documents of the Advisory Committee, including such reports, publications, and documents in electronic form, shall not be subject to review by the Secretary. The recommendations of the Committee shall not be subject to review or approval by any officer in the executive branch, but may be submitted to
the Secretary for comment prior to submission to the authorizing committees in accordance with subsection (f) of this section. The Secretary’s authority to terminate advisory committees of the Department pursuant to section 1233(g)(1) of this title ceased to be effective on June 23, 1983.

(c) Membership

(1) The Advisory Committee shall consist of 11 members appointed as follows:

(A) Four members shall be appointed by the President pro tempore of the Senate, of whom two members shall be appointed from recommendations by the Majority Leader of the Senate, and two members shall be appointed from recommendations by the Minority Leader of the Senate.

(B) Four members shall be appointed by the Speaker of the House of Representatives, of whom two members shall be appointed from recommendations by the Majority Leader of the House of Representatives, and two members shall be appointed from recommendations by the Minority Leader of the House of Representatives.

(C) Three members shall be appointed by the Secretary, of whom at least one member shall be a student.

(2) Each member of the Advisory Committee, with the exception of a student member, shall be appointed on the basis of technical qualifications, professional experience, and demonstrated knowledge in the fields of higher education, student financial aid, financing post-secondary education, and the operations and financing of student loan guarantee agencies.

(3) The appointment of a member under subparagraph (A) or (B) of paragraph (1) shall be effective upon publication of such appointment in the Congressional Record.

(d) Functions of the Committee

The Advisory Committee shall—

(1) develop, review, and comment annually upon the system of needs analysis established under part E of this subchapter;

(2) monitor, apprise, and evaluate the effectiveness of student aid delivery and recommend improvements;

(3) recommend data collection needs and student information requirements which would improve access and choice for eligible students under this subchapter and part C of subchapter I of chapter 34 of title 42 and assist the Department of Education in improving the delivery of student aid;

(4) assess the impact of legislative and administrative policy proposals;

(5) review and comment upon, prior to promulgation, all regulations affecting programs under this subchapter and part C of subchapter I of chapter 34 of title 42, including proposed regulations;

(6) recommend to the authorizing committees and to the Secretary such studies, surveys, and analyses of student financial assistance programs, policies, and practices, including the special needs of low-income, disadvantaged, and nontraditional students, and the means by which the needs may be met;

(7) review and comment upon standards by which financial need is measured in determining eligibility for Federal student assistance programs;

(8) appraise the adequacies and deficiencies of current student financial aid information resources and services and evaluate the effectiveness of current student aid information programs;

(9) provide an annual report to the authorizing committees that provides analyses and policy recommendations regarding—

(A) the adequacy of need-based grant aid for low- and moderate-income students; and

(B) the postsecondary enrollment and graduation rates of low- and moderate-income students;

(10) develop and maintain an information clearinghouse to help institutions of higher education understand the regulatory impact of the Federal Government on institutions of higher education from all sectors, in order to raise awareness of institutional legal obligations and provide information to improve compliance with, and to reduce the duplication and inefficiency of, Federal regulations; and

(11) make special efforts to advise Members of Congress and such Members’ staff of the findings and recommendations made pursuant to this paragraph.

(e) Operations of the Committee

(1) Each member of the Advisory Committee shall be appointed for a term of 4 years, except that, of the members first appointed—

(A) 4 shall be appointed for a term of 1 year;

(B) 4 shall be appointed for a term of 2 years; and

(C) 3 shall be appointed for a term of 3 years, as designated at the time of appointment by the Secretary.

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of such term. A member of the Advisory Committee serving on August 14, 2008, shall be permitted to serve the duration of the member’s term, regardless of whether the member was previously appointed to more than one term.

(3) No officers or full-time employees of the Federal Government shall serve as members of the Advisory Committee.

(4) The Advisory Committee shall elect a Chairman and a Vice Chairman from among its members.

(5) Six members of the Advisory Committee shall constitute a quorum.

(6) The Advisory Committee shall meet at the call of the Chairman or a majority of its members.

(f) Submission to Department for comment

The Advisory Committee may submit its proposed recommendations to the Department of Education for comment for a period not to exceed 30 days in each instance.

(g) Compensation and expenses

Members of the Advisory Committee may each receive reimbursement for travel expenses inci-
(h) Personnel and resources

(1) The Advisory Committee may appoint such personnel as may be determined necessary by the Chairman without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS–18 of the General Schedule. The Advisory Committee may appoint not more than 1 full-time equivalent, nonpermanent, consultant without regard to the provisions of title 5. The Advisory Committee shall not be required by the Secretary to reduce personnel to meet agency personnel reduction goals.

(2) In carrying out its duties under this chapter and part C of subchapter I of chapter 34 of title 42, the Advisory Committee shall consult with other Federal agencies, representatives of State and local governments, and private organizations to the extent feasible.

(3)(A) The Advisory Committee is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics for the purpose of this section and each such department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Advisory Committee, upon request made by the Chairman.

(B) The Advisory Committee may enter into contracts for the acquisition of information, suggestions, estimates, and statistics for the purpose of this section.

(4) The Advisory Committee is authorized to obtain the services of experts and consultants without regard to section 3109 of title 5 and to set pay in accordance with such section.

(5) The head of each Federal agency shall, to the extent not prohibited by law, cooperate with the Advisory Committee in carrying out this section.

(6) The Advisory Committee is authorized to utilize, with their consent, the services, personnel, information, and facilities of other Federal, State, local, and private agencies with or without reimbursement.

(i) Availability of funds

In each fiscal year not less than $800,000, shall be available from the amount appropriated for each such fiscal year from salaries and expenses of the Department for the costs of carrying out the provisions of this section.

(j) Special analyses and activities

The Advisory Committee shall—

(1) monitor and evaluate the modernization of student financial aid systems and delivery processes and simplifications, including recommendations for improvement;

(2) assess the adequacy of current methods for disseminating information about programs under this subchapter and part C of subchapter I of chapter 34 of title 42 and recommend improvements, as appropriate, regarding early needs assessment and information for first-year secondary school students;

(3) assess and make recommendations concerning the feasibility and degree of use of appropriate technology in the application for, and delivery and management of, financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, as well as policies that promote use of such technology to reduce cost and enhance service and program integrity, including electronic application and reapplication, just-in-time delivery of funds, reporting of disbursements and reconciliation;

(4) conduct a review and analysis of regulations in accordance with subsection (l); and

(5) conduct a study in accordance with subsection (m).

(k) Term of Committee

Notwithstanding the sunset and charter provisions of the Federal Advisory Committee Act or any other statute or regulation, the Advisory Committee shall be authorized until October 1, 2014.

(l) Review and analysis of regulations

(1) Recommendations

The Advisory Committee shall make recommendations to the Secretary and the authorizing committees for consideration of future legislative action regarding redundant or outdated regulations consistent with the Secretary’s requirements under section 1099c–2 of this title.

(2) Review and analysis of regulations

(A) Review of current regulations

To meet the requirements of subsection (d)(10), the Advisory Committee shall conduct a review and analysis of the regulations issued by Federal agencies that are in effect at the time of the review and that apply to the operations or activities of institutions of higher education from all sectors. The review and analysis may include a determination of whether the regulation is duplicative, is no longer necessary, is inconsistent with other Federal requirements, or is overly burdensome. In conducting the review, the Advisory Committee shall pay specific attention to evaluating ways in which regulations under this subchapter and part C of subchapter I of chapter 34 of title 42 affecting institutions of higher education (other than institutions described in section 1002(a)(1)(C) of this title), that have received in each of the two most recent award years prior to August 14, 2008, less than $200,000 in funds through this subchapter and part C of subchapter I of chapter 34 of title 42, may be improved, streamlined, or eliminated.

(B) Review and collection of future regulations

The Advisory Committee shall—
(i) monitor all Federal regulations, including notices of proposed rulemaking, for their impact or potential impact on higher education; and
(ii) provide a succinct description of each regulation or proposed regulation that is generally relevant to institutions of higher education from all sectors.

(C) Maintenance of public website

The Advisory Committee shall develop and maintain an easy to use, searchable, and regularly updated website that—
(i) provides information collected in subparagraph (B);
(ii) provides an area for the experts and members of the public to provide recommendations for ways in which the regulations may be streamlined; and
(iii) publishes the study conducted by the National Research Council of the National Academy of Sciences under section 1106 of the Higher Education Opportunity Act.

(3) Consultation

(A) In general

In carrying out the review, analysis, and development of the website required under paragraph (2), the Advisory Committee shall consult with the Secretary, other Federal agencies, relevant representatives of institutions of higher education, individuals who have expertise and experience with Federal regulations, and the review panels described in subparagraph (B).

(B) Review panels

The Advisory Committee shall convene not less than two review panels of representatives of the groups involved in higher education, including individuals involved in student financial assistance programs under this subchapter and part C of subchapter I of chapter 34 of title 42, who have experience and expertise in the regulations issued by the Federal Government that affect all sectors of higher education; and

(C) The ways in which low- and moderate-income students can be specifically targeted by such programs.

(4) Periodic updates to the authorizing committees

The Advisory Committee shall—
(A) submit, not later than two years after the completion of the negotiated rulemaking process required under section 1098a of this title resulting from the amendments to this chapter and part C of subchapter I of chapter 34 of title 42 made by the Higher Education Opportunity Act, a report to the authorizing committees and the Secretary detailing the review panels’ findings and recommendations with respect to the review of regulations; and
(B) provide periodic updates to the authorizing committees regarding—
(i) the impact of all Federal regulations on all sectors of higher education; and
(ii) suggestions provided through the website for streamlining or eliminating duplicative regulations.

(5) Additional support

The Secretary and the Inspector General of the Department shall provide such assistance and resources to the Advisory Committee as the Secretary and Inspector General determine are necessary to conduct the review and analysis required by this subsection.

(m) Study of innovative pathways to baccalaureate degree attainment

(1) Study required

The Advisory Committee shall conduct a study of the feasibility of increasing baccalaureate degree attainment rates by reducing the costs and financial barriers to attaining a baccalaureate degree through innovative programs.

(2) Scope of study

The Advisory Committee shall examine new and existing programs that promote baccalaureate degree attainment through innovative ways, such as dual or concurrent enrollment programs, changes made to the Federal Pell Grant program, simplification of the needs analysis process, compressed or modular scheduling, articulation agreements, and programs that allow two-year institutions of higher education to offer baccalaureate degrees.

(3) Required aspects of the study

In performing the study described in this subsection, the Advisory Committee shall examine the following aspects of such innovative programs:

(A) The impact of such programs on baccalaureate attainment rates.
(B) The degree to which a student’s total cost of attaining a baccalaureate degree can be reduced by such programs.
(C) The ways in which low- and moderate-income students can be specifically targeted by such programs.
(D) The ways in which nontraditional students can be specifically targeted by such programs.
(E) The cost-effectiveness for the Federal Government, States, and institutions of higher education to implement such programs.

(4) Consultation

(A) In general

In performing the study described in this subsection, the Advisory Committee shall consult with a broad range of interested parties in higher education, including parents, students, appropriate representatives of sec-
ondary schools and institutions of higher education, appropriate State administrators, administrators of dual or concurrent enrollment programs, and appropriate Department officials.

(B) Consultation with the authorizing committees

The Advisory Committee shall consult on a regular basis with the authorizing committees in carrying out the study required by this subsection.

(5) Reports to authorizing committees

(A) Interim report

The Advisory Committee shall prepare and submit to the authorizing committees and the Secretary an interim report, not later than one year after August 14, 2008, describing the progress made in conducting the study required by this subsection and any preliminary findings on the topics identified under paragraph (2).

(B) Final report

The Advisory Committee shall, not later than three years after August 14, 2008, prepare and submit to the authorizing committees and the Secretary a final report on the study, including recommendations for legislative, regulatory, and administrative changes based on findings related to the topics identified under paragraph (2).


REFERENCES IN TEXT


PRIOR PROVISIONS


Another prior section 491 of Pub. L. 89–329 amended former section 403 of this title.

AMENDMENTS


Subsec. (a)(2)(D) to (F). Pub. L. 110–315, § 494C(a)(1), added subpars. (D) to (F).

Subsec. (b), Pub. L. 110–315, § 494C(b), substituted “authorizing committees” for “Congress”.

Subsec. (c). Pub. L. 110–315, § 494C(a)(2), added subsec. (c) and struck out former subsec. (c) relating to appointment and qualifications of Advisory Committee members.

Subsec. (d)(6). Pub. L. 110–315, § 494C(a)(3)(A), (b), substituted “authorizing committees” for “Congress” and struck out “, but nothing in this section shall authorize the committee to perform such studies, surveys, or analyses” before semicolon.

Subsec. (d)(9) to (11). Pub. L. 110–315, § 494C(a)(3)(B)–(D), added pars. (9) and (10) and redesignated former par. (9) as (11).


Subsec. (e)(2). Pub. L. 110–315, § 494C(a)(4)(B), substituted “A member of the Advisory Committee serving on August 14, 2008, shall be permitted to serve the duration of the member’s term, regardless of whether the member was previously appointed to more than one term,” for “A member of the Advisory Committee shall, upon request, continue to serve after the expiration of a term until a successor has been appointed. A member of the Advisory Committee may be reappointed to successive terms on the Advisory Committee.”

Subsec. (j)(1). Pub. L. 110–315, § 494C(a)(5)(A), inserted “and simplifications” after “delivery processes” and struck out “including the implementation of a performance-based organization within the Department, and report to Congress regarding such modernization on not less than an annual basis,” before “including recommendations for improvement.”

Subsec. (j)(4)(A). Pub. L. 110–315, § 494C(a)(5)(B), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

“(4) assess the implications of distance education on student eligibility and other requirements for financial assistance under this subchapter and part C of chapter I of chapter 34 of title 42, and make recommendations that will enhance access to postsecondary education through distance education while maintaining access, through on-campus instruction at eligible institutions, and program integrity; and

“(5) make recommendations to the Secretary regarding redundant or outdated provisions of and regulations under this chapter, consistent with the Secretary’s requirements under section 1098c–2 of this title.”


1998—Subsec. (b), Pub. L. 105–204, § 490C(1), substituted “, expenditures and staffing levels” for “and expenditures” in second sentence and inserted “Reports, publications, and other documents of the Advisory Committee, including such reports, publications, and documents in electronic form, shall not be subject to review by the Secretary,” after third sentence.

Subsec. (e)(3) to (6). Pub. L. 105–244, § 490C(2), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsec. (g). Pub. L. 105–204, § 490C(3), substituted “Members of the Advisory Committee may each” for “(1) Members of the Advisory Committee who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

“(2) Members of the Advisory Committee who are not officers or full-time employees of the United States may each”.

Subsec. (h)(1). Pub. L. 105–204, § 490C(4), inserted “determined” after “as may be” and inserted at end “The
Advisory Committee may appoint not more than 1 full-time equivalent, nonpermanent, consultant without regard to the provisions of title 5. The Advisory Committee shall not be required by the Secretary to reduce personnel to meet agency personnel reduction goals.”

Subsec. (i). Pub. L. 105–244, § 490C(5), substituted “$800,000” for “$575,000.”

Subsec. (j). Pub. L. 105–244, § 490C(6), amended heading and text of subsec. (j) generally. Prior to amendment, text read as follows: “The committee shall:”

(1) monitor and evaluate the program modifications resulting from the enactment of the Higher Education Amendments of 1992, especially as such amendments relate to the need analysis;

(2) assess the adequacy of means of simplifying all aspects of loan programs under part B of this subchapter and part C of chapter 34 of title 42, including a simplified reapplication process;

(3) assess the adequacy of current methods for disseminating information about programs under this subchapter and part C of chapter 34 of title 42 and recommend improvements, as appropriate, regarding early needs assessment and information for first-year high school students; and

(4) assess the adequacy of methods of monitoring student debt burden.”


Subsec. (l). Pub. L. 105–244, § 490C(8), struck out heading and text of subsec. (l) which directed Advisory Committee to conduct a study of means of simplifying all aspects of loan programs under part B of this subchapter.

1995—Subsec. (d)(1). Pub. L. 103–208, § 2(b)(45), struck out “sections 1070a–1 through 1070a–5 of this title and” after “established under”.

Subsec. (h)(1). Pub. L. 103–208, § 2(h)(46), substituted “subchapter III” for “subtitle III” before “of chapter 34 of such title”.

1992—Subsec. (b). Pub. L. 102–325, § 496(a), inserted after first sentence “Notwithstanding Department of Education policies and regulations, the Advisory Committee shall exert independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions. The Advisory Committee’s administration and management shall be subject to the usual and customary Federal audit procedures.”

Subsec. (d)(3). Pub. L. 102–325, § 496(b)(1), struck out “and assessing the impact of legislative and administrative policy proposals” after “student aid”.

Subsec. (d)(4) to (9). Pub. L. 102–325, § 496(b)(2)(6), added par. (4), redesignated former pars. (4) to (7) as (5) to (8), respectively, and added par. (9).

Subsec. (h)(4). Pub. L. 102–325, § 496(c), substituted “without regard to” for “in accordance with” and inserted before period at end “and to set pay in accordance with such section”.

Subsec. (i). Pub. L. 102–325, § 496(d), substituted “$750,000” for “$500,000”.

Subsecs. (j) to (l). Pub. L. 102–325, § 496(e), added subsecs. (j) to (l) and struck out former subsec. (j), which related to special institutional lender study.

1987—Subsec. (b). Pub. L. 100–50, § 15(b)(6), inserted at end “The Secretary’s authority to terminate advisory committees of the Department pursuant to section 1233(b) of this title ceased to be effective on June 23, 1983.”

Subsec. (i). Pub. L. 100–50, § 15(b)(7), substituted “in each fiscal year not less than $500,000” for “An amount, not to exceed $500,000 in any fiscal year.”


Effective Date of 2009 Amendment

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102–325, except as otherwise provided, see section 5(a) of Pub. L. 103–208, set out as a note under section 1001 of this title.

Effective Date of 1987 Amendment

References in Other Laws to GS–16, 17, or 18 Pay Rates
References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, § 101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1098a. Regional meetings and negotiated rulemaking
(a) Meetings
(1) In general
The Secretary shall obtain public involvement in the development of proposed regulations for this subchapter and part C of this subchapter and part C of chapter 34 of title 42. The Secretary shall obtain the advice of and recommendations from individuals and representatives of the groups involved in student financial assistance programs under this subchapter and part C of chapter 34 of title 42, such as students, guaranty agencies, guaranty agencies, lenders, secondary market organizations, loan servicers, and collection agencies.

(2) Issues
The Secretary shall provide for a comprehensive discussion and exchange of information concerning the implementation of this subchapter and part C of this subchapter and part C of chapter 34 of title 42 through such mechanisms as regional meetings and electronic exchanges of information. The Secretary shall take into account the information received through such mechanisms in the development of proposed regulations and publish a summary of such information in the Federal Register together with such proposed regulations.

(b) Draft regulations
(1) In general
After obtaining the advice and recommendations described in subsection (a)(1) of this section and before publishing proposed regulations in the Federal Register, the Secretary shall prepare draft regulations implementing this subchapter and part C of chapter 34 of title 42 and shall submit such
regulations to a negotiated rulemaking process. Participants in the negotiations process shall be chosen by the Secretary from individuals nominated by groups described in subsection (a)(1) of this section, and shall include both representatives and individuals serving local areas and national markets. The negotiation process shall be conducted in a timely manner in order that the final regulations may be issued by the Secretary within the 360-day period described in section 1232(e) of this title.

(2) Expansion of negotiated rulemaking

All regulations pertaining to this subchapter and part C of subchapter I of chapter 34 of title 42 that are promulgated after October 7, 1998, shall be subject to a negotiated rulemaking (including the selection of the issues to be negotiated), unless the Secretary determines that applying such a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest (within the meaning of section 553(b)(3)(B) of title 5), and publishes the basis for such determination in the Federal Register at the same time as the proposed regulations in question are first published. All published proposed regulations shall conform to agreements resulting from such negotiated rulemaking unless the Secretary reopen the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from such agreements. Such negotiated rulemaking shall be conducted in accordance with the provisions of paragraph (1), and the Secretary shall ensure that a clear and reliable record of agreements reached during the negotiations process is maintained.

c) Applicability of Federal Advisory Committee Act

The Federal Advisory Committee Act shall not apply to activities carried out under this section.

(d) Authorization of appropriations

There are authorized to be appropriated in any fiscal year or made available from funds appropriated to carry out this part in any fiscal year such sums as may be necessary to carry out the provisions of this section, except as otherwise provided in Pub. L. 105–244, see section 3 of this subchapter.

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS


Subsec. (b)(1). Pub. L. 110–315, § 494D(b), struck out “as amended by the Higher Education Amendments of 1998” before “and shall submit”, substituted “The Secretary” for “To the extent possible, the Secretary”, and inserted “with demonstrated expertise or experience in the relevant subjects under negotiation,” after “select individual(s)”.

1998—Subsec. (a)(1). Pub. L. 105–244, § 490D(a)(1)(C), substituted “The Secretary shall obtain the advice of and recommendations from” for “Such meetings shall include”.

Pub. L. 105–244, § 490D(a)(1)(B), which directed the substitution of “this subchapter and part C of subchapter I of chapter 34 of title 42,” for “parts B, F, and G of this subchapter,”, could not be executed because “parts B, F, and G of this subchapter,” does not appear in text.

Pub. L. 105–244, § 490D(a)(1)(A), struck out “convene regional meetings to” before “obtain public involvement”.

Subsec. (a)(2). Pub. L. 105–244, § 490D(a)(2)(B)–(D), substituted “this subchapter and part C of subchapter I of chapter 34 of title 42” for “‘parts B, F, and G of this subchapter’,” “1998 through such mechanisms as regional meetings and electronic exchanges of information,” for “1992”, and “‘through such mechanisms in’ for “at such meetings in”.

Pub. L. 105–244, § 490D(a)(2)(A), which directed substitution of “The” for “During such meetings the”, was executed by making the substitution for “During such meetings, the” before “Secretary shall provide”, to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 105–244, § 490D(b), designated existing provisions as par. (1), inserted par. (1) heading, substituted “obtaining the advice and recommendations described in subsection (a)(1) of this section” for “holding regional meetings”, “this subchapter and part C of subchapter I of chapter 34 of title 42” for “‘parts B, F, and G of this subchapter’”, “1998” for “1992””, “360-day” for “‘360-day’”, and “section 1232(e)” for “section 1232(g)”, struck out “The Secretary shall follow the guidance provided in sections 305.82–4 and 305.85–5 of chapter 1, Code of Federal Regulations, and any successor recommendation, regulation, or law,” after “rulemaking process,” and “participating in the regional meetings” after “nominated by groups”, and added par. (2).

EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see sec-
This section inapplicable to amendments made by section 309 of Pub. L. 112–74, or to any regulations promulgated under such amendments, see section 309(h) of Pub. L. 112–74, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by title V of Pub. L. 112–25 or to any regulations promulgated under such amendments, see section 594 of Pub. L. 112–25, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by section 309(a)(2) of Pub. L. 112–10 or to any regulations promulgated under such amendments, see section 1869(c) of Pub. L. 112–10, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by section 402(a) of Pub. L. 110–315 or to any regulations promulgated under such amendments, see section 402(b) of Pub. L. 110–315, set out as a note under section 1089 of this title.

This section inapplicable to amendments made by Pub. L. 110–227 or to any regulations promulgated under such amendments, see section 11 of Pub. L. 110–227, set out as a note under section 1089 of this title.

§ 1089b. Authorization of appropriations for administrative expenses

There are authorized to be appropriated such sums as may be necessary for fiscal year 1993 and for each succeeding fiscal year thereafter for administrative expenses necessary for carrying out this subchapter and part C of subchapter I of chapter 34 of title 42, including expenses for staff personnel, program reviews, and compliance activities.


§ 1089d. Procedures for cancellations and deferrals for eligible disabled veterans

The Secretary, in consultation with the Secretary of Veterans Affairs, shall develop and implement a procedure to permit Department of Veterans Affairs physicians to provide the certifications and affidavits needed to enable disabled veterans enrolled in the Department of Veterans Affairs health care system to document such veterans’ eligibility for deferrals or cancellations of student loans made, insured, or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42. Not later than 6 months after October 7, 1998, the Secretary and the Secretary of Veterans Affairs jointly shall report to Congress on the progress made in developing and implementing the procedure.


Effective Date


§ 1089e. Income-based repayment

(a) Definitions

In this section:

(1) Excepted PLUS loan

The term “excepted PLUS loan” means a loan under section 1078–2 of this title, or a Federal Direct PLUS Loan, that is made, insured, or guaranteed on behalf of a dependent student.

(2) Excepted consolidation loan

The term “excepted consolidation loan” means a consolidation loan under section 1078–3 of this title, or a Federal Direct Consolidation Loan, if the proceeds of such loan were used to the discharge the liability on an excepted PLUS loan.

(3) Partial financial hardship

The term “partial financial hardship”, when used with respect to a borrower, means that for such borrower—

(A) the annual amount due on the total amount of loans made, insured, or guaranteed under part B or C (other than an excepted PLUS loan or excepted consolidation loan) to a borrower as calculated under the standard repayment plan under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title, based on a 10-year repayment period; exceeds

(B) 15 percent of the result obtained by calculating, on at least an annual basis, the amount by which—

(i) the borrower’s, and the borrower’s spouse’s (if applicable), adjusted gross income; exceeds

(ii) 150 percent of the poverty line applicable to the borrower’s family size as determined under section 9902(2) of title 42.

(b) Income-based repayment program authorized

Notwithstanding any other provision of this chapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall carry out a program under which—

(1) a borrower of any loan made, insured, or guaranteed under part B or C (other than an excepted PLUS loan or excepted consolidation loan) who has a partial financial hardship (whether or not the borrower’s loan has been submitted to a guaranty agency for default aversion or had been in default) may elect, during any period the borrower has the partial financial hardship, to have the borrower’s aggregate monthly payment for all such loans not exceed the result described in subsection (a)(3)(B) divided by 12;

(2) the holder of such a loan shall apply the borrower’s monthly payment under this subsection first toward interest due on the loan, next toward any fees due on the loan, and then toward the principal of the loan;
§ 1098e

(3) any interest due and not paid under paragraph (2)—
(A) shall, on subsidized loans, be paid by the Secretary for a period of not more than 3 years after the date of the borrower's election under paragraph (1), except that such period shall not include any period during which the borrower is in default due to an economic hardship described in section 1085(o) of this title; and
(B) be capitalized—
(i) in the case of a subsidized loan, subject to subparagraph (A), at the time the borrower—
(I) ends the election to make income-based repayment under this subsection; or
(II) begins making payments of not less than the amount specified in paragraph (6)(A); or
(ii) in the case of an unsubsidized loan, at the time the borrower—
(I) ends the election to make income-based repayment under this subsection; or
(II) begins making payments of not less than the amount specified in paragraph (6)(A);
(4) any principal due and not paid under paragraph (2) shall be deferred;
(5) the amount of time the borrower makes monthly payments under paragraph (1) may exceed 10 years;
(6) if the borrower no longer has a partial financial hardship or no longer wishes to continue the election under this subsection, then—
(A) the maximum monthly payment required to be paid for all loans made to the borrower under part B or C (other than an excepted PLUS loan or excepted consolidation loan) shall not exceed the monthly amount calculated under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title, based on a 10-year repayment period, when the borrower first made the election described in this subsection; and
(B) the amount of time the borrower is permitted to repay such loans may exceed 10 years;
(7) the Secretary shall repay or cancel any outstanding balance of principal and interest due on all loans made under part B or C (other than a loan under section 1078–2 of this title or a Federal Direct PLUS Loan) to a borrower who—
(A) at any time, elected to participate in income-based repayment under paragraph (1); and
(B) for a period of time prescribed by the Secretary, not to exceed 25 years, meets 1 or more of the following requirements—
(i) has made reduced monthly payments under paragraph (1) or paragraph (6);
(ii) has made monthly payments of not less than the monthly amount calculated under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title, based on a 10-year repayment period, when the borrower first made the election described in this subsection;
(8) a borrower who is repaying a loan made under part B or C pursuant to income-based repayment may elect, at any time, to terminate repayment pursuant to income-based repayment and repay such loan under the standard repayment plan; and
(9) the special allowance payment to a lender calculated under section 1087–1(b)(2)(I) of this title, when calculated for a loan in repayment under this section, shall be calculated on the principal balance of the loan and on any accrued interest unpaid by the borrower in accordance with this section.

(c) Eligibility determinations

The Secretary shall establish procedures for annually determining the borrower's eligibility for income-based repayment, including verification of a borrower's annual income and the annual amount due on the total amount of loans made, insured, or guaranteed under part B or C (other than an excepted PLUS loan or excepted consolidation loan), and such other procedures as are necessary to effectively implement income-based repayment under this section. The Secretary shall consider, but is not limited to, the procedures established in accordance with section 1087(e)(1) of this title or in connection with income sensitive repayment schedules under section 1078(b)(9)(A)(iii) or 1078–3(b)(1)(E) of this title.

(d) Special rule for married borrowers filing separately

In the case of a married borrower who files a separate Federal income tax return, the Secretary shall calculate the amount of the borrower's income-based repayment under this section solely on the basis of the borrower's student loan debt and adjusted gross income.

(e) Special terms for new borrowers on and after July 1, 2014

With respect to any loan made to a new borrower on or after July 1, 2014—
(1) subsection (a)(3)(B) shall be applied by substituting “10 percent” for “15 percent”; and
(2) subsection (b)(7)(B) shall be applied by substituting “20 years” for “25 years”.

§ 1098f. Deferral of loan repayment following active duty

(a) Deferral of loan repayment following active duty

In addition to any deferral of repayment of a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 pursuant to section 1078(b)(1)(M)(iii), 1087(e)(2)(C), or 1087dd(c)(2)(A)(iii) of this title, a borrower of a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 who is a member of the National Guard or other reserve component of the Armed Forces of the United States, or a member of such Armed Forces in a retired status, is called or ordered to active duty, and is enrolled, or was enrolled within six months prior to the activation, in a program of instruction at an eligible institution, shall be eligible for a deferral during the 13 months following the conclusion of such service, except that a deferment under this subsection shall expire upon the borrower’s return to enrolled student status.

(b) Active duty

Notwithstanding section 1088(d) of this title, in this section, the term “active duty” has the meaning given such term in section 101(d)(1) of title 10, except that such term—

(1) does not include active duty for training or attendance at a service school; but

(2) includes, in the case of members of the National Guard, active State duty.

Effective Date

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1078a of this title.

§ 1098g. Exemption from State disclosure requirements

Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.] shall not be subject to any disclosure requirements of any State law.

Effective Date

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1078a of this title.

§ 1098aa. Short title; findings; reference

(a) Short title

This part may be cited as the “Higher Education Relief Opportunities for Students Act of 2003”.

(b) Findings

The Congress finds the following:

(1) There is no more important cause than that of our nation’s defense.

(2) The United States will protect the freedom and secure the safety of its citizens.

(3) The United States military is the finest in the world and its personnel are determined to lead the world in pursuit of peace.

(4) Hundreds of thousands of Army, Air Force, Marine Corps, Navy, and Coast Guard reservists and members of the National Guard have been called to active duty or active service.

(5) The men and women of the United States military put their lives on hold, leave their families, jobs, and postsecondary education in order to serve their country and do so with distinction.

(6) There is no more important cause for this Congress than to support the members of the United States military and provide assistance with their transition into and out of active duty and active service.

(c) Reference

References in this part to “the Act” are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

References in Text


Codification

Section was formerly set out in a note under section 1070 of this title.

References in this part to “the Act” are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).
§ 1098bb. Waiver authority for response to military contingencies and national emergencies

(a) Waivers and modifications

(1) In general

Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education (referred to in this part as the “Secretary”) may waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the Act [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.] as the Secretary deems necessary in connection with a war or other military operation or national emergency to provide the waivers or modifications authorized by paragraph (2).

(2) Actions authorized

The Secretary is authorized to waive or modify any provision described in paragraph (1) as may be necessary to ensure that—

(A) recipients of student financial assistance under title IV of the Act who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals;

(B) administrative requirements placed on affected individuals who are recipients of student financial assistance are minimized, to the extent possible without impairing the integrity of the student financial assistance programs, to ease the burden on such students and avoid inadvertent, technical violations or defaults;

(C) the calculation of “annual adjusted family income” and “available income”, as used in the determination of need for student financial assistance under title IV of the Act for any such affected individual (and the determination of such need for his or her spouse and dependents, if applicable), may be modified to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such affected individual and his or her family;

(D) the calculation under section 484B(b)(2) of the Act (20 U.S.C. 1091(b)(2)) of the amount a student is required to return in the case of an affected individual may be modified so that no overpayment will be required to be returned or repaid if the institution has documented (i) the student’s status as an affected individual in the student’s file, and (ii) the amount of any overpayment discharged; and

(E) institutions of higher education, eligible lenders, guaranty agencies, and other entities participating in the student assistance programs under title IV of the Act that are located in areas that are declared disaster areas by any Federal, State or local official in connection with a national emergency, or whose operations are significantly affected by such a disaster, may be granted temporary relief from requirements that are rendered infeasible or unreasonable by a national emergency, including due diligence requirements and reporting deadlines.

(b) Notice of waivers or modifications

(1) In general

Notwithstanding section 1232 of this title and section 553 of title 5, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section.

(2) Terms and conditions

The notice under paragraph (1) shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions.

(3) Case-by-case basis

The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

(c) Impact report

The Secretary shall, not later than 15 months after first exercising any authority to issue a waiver or modification under subsection (a), report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate on the impact of any waivers or modifications issued pursuant to subsection (a) on affected individuals and the programs under title IV of the Act [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.], and the basis for such determination, and include in such report the Secretary’s recommendations for changes to the statutory or regulatory provisions that were the subject of such waiver or modification.

(d) No delay in waivers and modifications

Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the waivers and modifications authorized or required by this part.


References in Text

The Higher Education Act of 1965, referred to in subsecs. (a) and (c), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to this subchapter and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

Codification

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.
§ 1088cc. Tuition refunds or credits for members of armed forces

(a) Sense of Congress

It is the sense of Congress that—

(1) all institutions offering postsecondary education should provide a full refund to students who are affected individuals for that portion of a period of instruction such student was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for active duty or active service; and

(2) if affected individuals withdraw from a course of study as a result of such active duty or active service, such institutions should make every effort to minimize deferral of enrollment or reapplication requirements and should provide the greatest flexibility possible with administrative deadlines related to those applications.

(b) Definition of full refund

For purposes of this section, a full refund includes a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.


Codification

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

§ 1088dd. Use of professional judgment

A financial aid administrator shall be considered to be making a necessary adjustment in accordance with section 1087c(a) of this title if the administrator makes adjustments with respect to the calculation of the expected student or parent contribution (or both) of an affected individual, and adequately documents the need for the adjustment.


Codification

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

§ 1088ee. Definitions

In this part:

(1) Active duty

The term “active duty” has the meaning given such term in section 101(d)(1) of title 10, except that such term does not include active duty for training or attendance at a service school.

(2) Affected individual

The term “affected individual” means an individual who—

(A) is serving on active duty during a war or other military operation or national emergency;

(B) is performing qualifying National Guard duty during a war or other military operation or national emergency;

(C) resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or

(D) suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

(3) Military operation

The term “military operation” means a contingency operation as such term is defined in section 101(a)(13) of title 10.

(4) National emergency

The term “national emergency” means a national emergency declared by the President of the United States.

(5) Serving on active duty

The term “serving on active duty during a war or other military operation or national emergency” shall include service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(6) Qualifying National Guard duty

The term “qualifying National Guard duty during a war or other military operation or national emergency” means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(c) of title 32, in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.


Codification

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

§ 1099. Transferred

Codification

Section, Pub. L. 97–320, title VII, § 701(b), Oct. 15, 1982, 96 Stat. 1538, which related to exemption from State
§ 1099a. State responsibilities

(a) State responsibilities

As part of the integrity program authorized by this part, each State, through one State agency or several State agencies selected by the State, shall—

(1) furnish the Secretary, upon request, information with respect to the process for licensing or other authorization for institutions of higher education to operate within the State;

(2) notify the Secretary promptly whenever the State revokes a license or other authority to operate an institution of higher education; and

(3) notify the Secretary promptly whenever the State has credible evidence that an institution of higher education within the State—
   (A) has committed fraud in the administration of the student assistance programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42, or
   (B) has substantially violated a provision of this subchapter and part C of subchapter I of chapter 34 of title 42.

(b) Institutional responsibility

Each institution of higher education shall provide evidence to the Secretary that the institution has authority to operate within a State at the time the institution is certified under subpart 3 of this part.


Prior Provisions

Prior sections 1099a to 1099a–3 were omitted in the general amendment of this subpart by Pub. L. 105–244.


§ 1099b. Recognition of accrediting agency or association

(a) Criteria required

No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this chapter and part C of subchapter I of chapter 34 of title 42 or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish criteria for such determinations. Such criteria shall include an appropriate measure or measures of student achievement. Such criteria shall require that—

(1) the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and the experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate;

(2) such agency or association—
   (A) for the purpose of participation in programs under this chapter and part C of subchapter I of chapter 34 of title 42, has a voluntary membership of institutions of higher education and has as a principal purpose the accrediting of institutions of higher education; or
   (B) for the purpose of participation in other programs administered by the Department of Education or other Federal agencies, has a voluntary membership and has as its principal purpose the accrediting of institutions of higher education or programs;

(3) if such agency or association is an agency or association described in—
   (A) subparagraph (A)(i) of paragraph (2), then such agency or association is separate...
and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization;

(B) subparagraph (B) of paragraph (2), then such agency or association shall not be required to obtain the approval of the Secretary to expand its scope of accreditation to include distance education or correspondence education, provided that the agency association—

(i) within a timeframe determined by the agency or association; and

(ii) the agency or association requires an institution that offers distance education or correspondence education to have processes through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the program and receives the academic credit;

(5) the standards for accreditation of the agency or association assess the institution’s—

(A) success with respect to student achievement in relation to the institution’s mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, consideration of course completion, and job placement rates;

(B) curricula;

(C) faculty;

(D) facilities, equipment, and supplies;

(E) fiscal and administrative capacity as appropriate to the specified scale of operations;

(F) student support services;

(G) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising;

(H) measures of program length and the objectives of the degrees or credentials offered;

(I) record of student complaints received by, or available to, the agency or association; and

(J) record of compliance with its program responsibilities under this subchapter and part C of subchapter I of chapter 34 of title 42 based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and such other information as the Secretary may provide to the agency or association;

except that subparagraphs (A), (H), and (J) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;

(6) such an agency or association shall establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process procedures that provide—

(A) for adequate written specification of—

(i) requirements, including clear standards for an institution of higher education or program to be accredited; and

(ii) identified deficiencies at the institution or program examined;

(B) for sufficient opportunity for a written response, by an institution or program, regarding any deficiencies identified by the agency or association to be considered by the agency or association—

(i) within a timeframe determined by the agency or association; and

(ii) prior to final action in the evaluation and withdrawal proceedings;

(C) upon the written request of an institution or program, for an opportunity for the institution or program to appeal any adverse action under this section, including denial, withdrawal, suspension, or termination of accreditation, taken against the institution or program, prior to such action becoming final at a hearing before an appeals panel that—

(i) shall not include current members of the agency’s or association’s underlying
(b) “Separate and independent” defined

For the purpose of subsection (a)(3) of this section, the term “separate and independent” means that—

(1) the members of the postsecondary education governing body of the accrediting agency or association are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) among the membership of the board of the accrediting agency or association there shall be one public member (who is not a member of any related trade or membership organization) for each six members of the board, with a minimum of one such public member, and guidelines are established for such members to avoid conflicts of interest;

(3) dues to the accrediting agency or association are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(4) the budget of the accrediting agency or association is developed and determined by the accrediting agency or association without review or resort to consultation with any other entity or organization.

(c) Operating procedures required

No accrediting agency or association may be recognized by the Secretary as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this subchapter and part C of subchapter I of chapter 34 of title 42, unless the agency or association—

(1) performs, at regularly established intervals, on-site inspections and reviews of institutions of higher education (which may include unannounced site visits) with particular focus on educational quality and program effectiveness, and ensures that accreditation team members are well-trained and knowledgeable with respect to their responsibilities, including those regarding distance education;

(2) monitors the growth of programs at institutions that are experiencing significant enrollment growth;

(3) requires an institution to submit for approval to the accrediting agency a teach-out plan upon the occurrence of any of the following events:

   (A) the Department notifies the accrediting agency of an action against the institution pursuant to section 1094(f) of this title;

   (B) the accrediting agency acts to withdraw, terminate, or suspend the accreditation of the institution; or

   (C) the institution notifies the accrediting agency that the institution intends to cease operations;

(4) requires that any institution of higher education subject to its jurisdiction which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening the branch campus;

(5) agrees to conduct, as soon as practicable, but within a period of not more than 6 months of the establishment of a new branch campus or a change of ownership of an institution of higher education, an on-site visit of that branch campus or of the institution after a change of ownership;

(6) requires that teach-out agreements among institutions are subject to approval by the accrediting agency or association consistent with standards promulgated by such agency or association;

(7) makes available to the public and the State licensing or authorizing agency, and submits to the Secretary, a summary of agency or association actions, including—

   (A) the award of accreditation or reaccreditation of an institution;

   (B) final denial, withdrawal, suspension, or termination of accreditation of an institution, and any findings made in connection with the action taken, together with the of-
ficial comments of the affected institution; and
(C) any other adverse action taken with respect to an institution or placement on probation of an institution;
(8) discloses publicly whenever an institution of higher education subject to its jurisdiction is being considered for accreditation or reaccreditation; and
(9) confirms, as a part of the agency’s or association’s review for accreditation or reaccreditation, that the institution has transfer of credit policies—
(A) that are publicly disclosed; and
(B) that include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

(d) Length of recognition
No accrediting agency or association may be recognized by the Secretary for the purpose of this chapter and part C of subchapter I of chapter 34 of title 42 for a period of more than 5 years.

(e) Initial arbitration rule
The Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

(f) Jurisdiction
Notwithstanding any other provision of law, any civil action brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary for the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42 and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court.

(g) Limitation on scope of criteria
Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this chapter and part C of subchapter I of chapter 34 of title 42 shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution’s success with respect to student achievement.

(h) Change of accrediting agency
The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is in the process of changing its accrediting agency or association, unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association.

(i) Dual accreditation rule
The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is accredited, as an institution, by more than one accrediting agency or association, unless the institution submits to each such agency and association and to the Secretary the reasons for accreditation by more than one such agency or association and demonstrates to the Secretary reasonable cause for its accreditation by more than one agency or association. If the institution is accredited, as an institution, by more than one accrediting agency or association, the institution shall designate which agency’s accreditation shall be utilized in determining the institution’s eligibility for programs under this chapter and part C of subchapter I of chapter 34 of title 42.

(j) Impact of loss of accreditation
An institution may not be certified or recertified as an institution of higher education under section 1002 of this title and subpart 3 of this chapter or participate in any of the other programs authorized by this chapter and part C of subchapter I of chapter 34 of title 42 if such institution—
(1) is not currently accredited by any agency or association recognized by the Secretary;
(2) has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or
(3) has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency.

(k) Religious institution rule
Notwithstanding subsection (j) of this section, the Secretary shall allow an institution that has had its accreditation withdrawn, revoked, or otherwise terminated, or has voluntarily withdrawn from an accreditation agency, to remain certified as an institution of higher education under section 1002 of this title and subpart 3 of this chapter for a period sufficient to allow such institution to obtain alternative accreditation, if the Secretary determines that the reason for the withdrawal, revocation, or termination—
(1) is related to the religious mission or affiliation of the institution; and
(2) is not related to the accreditation criteria provided for in this section.

(l) Limitation, suspension, or termination of recognition
(1) If the Secretary determines that an accrediting agency or association has failed to apply effectively the criteria in this section, or is otherwise not in compliance with the requirements of this section, the Secretary shall—
(A) after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association; or
(B) require the agency or association to take appropriate action to bring the agency or association into compliance with such requirements within a timeframe specified by the Secretary, except that—

(i) such timeframe shall not exceed 12 months unless the Secretary extends such period for good cause; and

(ii) if the agency or association fails to bring the agency or association into compliance within such timeframe, the Secretary shall, after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association.

(2) The Secretary may determine that an accrediting agency or association has failed to apply effectively the standards provided in this section if an institution of higher education seeks and receives accreditation from the accrediting agency or association during any period in which the institution is the subject of any interim action by another accrediting agency or association, described in paragraph (2)(A)(1), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension, revocation, or termination of accreditation or the institution has been notified of the threatened loss of accreditation, and the due process procedures required by such suspension, revocation, termination, or threatened loss have not been completed.

(m) Limitation on Secretary's authority

The Secretary may only recognize accrediting agencies or associations which accredit institutions of higher education for the purpose of enabling such institutions to establish eligibility to participate in the programs under this chapter and part C of chapter I of title 42 or which accredit institutions of higher education or higher education programs for the purpose of enabling them to establish eligibility to participate in other programs administered by the Department of Education or other Federal agencies.

(n) Independent evaluation

(1) The Secretary shall conduct a comprehensive review and evaluation of the performance of all accrediting agencies or associations which seek recognition by the Secretary in order to determine whether such accrediting agencies or associations meet the criteria established by this section. The Secretary shall conduct an independent evaluation of the information provided by such agency or association. Such evaluation shall include—

(A) the solicitation of third-party information concerning the performance of the accrediting agency or association; and

(B) site visits, including unannounced site visits as appropriate, at accrediting agencies and associations, and, at the Secretary’s discretion, at representative member institutions.

(2) The Secretary shall place a priority for review of accrediting agencies or associations on those agencies or associations that accredit institutions of higher education that participate most extensively in the programs authorized by this subchapter and part C of chapter I of chapter 34 of title 42 and on those agencies or associations which have been the subject of the most complaints or legal actions.

(3) The Secretary shall consider all available relevant information concerning the compliance of the accrediting agency or association with the criteria provided for in this section, including any complaints or legal actions against such agency or association. In cases where deficiencies in the performance of an accreditation agency or association with respect to the requirements of this section are noted, the Secretary shall take these deficiencies into account in the recognition process. The Secretary shall not, under any circumstances, base decisions on the recognition or denial of recognition of accreditation agencies or associations on criteria other than those contained in this section. When the Secretary decides to recognize an accrediting agency or association, the Secretary shall determine the agency or association’s scope of recognition. If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include accreditation of institutions offering distance education courses or programs.

(4) The Secretary shall maintain sufficient documentation to support the conclusions reached in the recognition process, and, if the Secretary does not recognize any accreditation agency or association, shall make publicly available the reason for denying recognition, including reference to the specific criteria under this section which have not been fulfilled.

(o) Regulations

The Secretary shall by regulation provide procedures for the recognition of accrediting agencies or associations and for the appeal of the Secretary’s decisions. Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5).

(p) Rule of construction

Nothing in subsection (a)(5) shall be construed to restrict the ability of—

(1) an accrediting agency or association to set, with the involvement of its members, and to apply, accreditation standards for or to institutions or programs that seek review by the agency or association; or

(2) an institution to develop and use institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

(q) Review of scope changes

The Secretary shall require a review, at the next available meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency or association under subsection (a)(4)(B)(i)(II) if the enrollment of an institution that offers distance education or correspondence education that is accredited by such agency or association increases by 50 percent or more within any one institutional fiscal year.

AMENDMENTS


2008—Subsec. (a)(4). Pub. L. 110–315, § 495(1)(A), added par. (4) and struck out former par. (4) which read as follows: "Such agency or association consistently applies and enforces standards that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the program are offered;"

Subsec. (a)(5)(A). Pub. L. 110–315, § 495(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Success with respect to student achievement in relation to the institution’s mission, including, as appropriate, consideration of course completion, State licensing examinations, and job placement rates;"

Subsec. (a)(6). Pub. L. 110–315, § 495(1)(C), added par. (6) and struck out former par. (6) which read as follows: "Such agency or association shall apply procedures throughout the accreditation process, including evaluation and withdrawal proceedings, that comply with due process, including—

"(A) adequate specification of requirements and deficiencies at the institution of higher education or program being examined;

"(B) notice of an opportunity for a hearing by any such institution;

"(C) the right to appeal any adverse action against any such institution; and

"(D) the right to representation by counsel for any such institution;"

Subsec. (c)(1). Pub. L. 110–315, § 495(2)(A), inserted ", including those regarding distance education" after "their responsibilities;"

Subsec. (c)(2) to (8). Pub. L. 110–315, § 495(2)(B)–(D), added pars. (2), (3), and (7), redesignated former pars. (2) to (6) as (4) to (8), respectively, and struck out former par. (7) which read as follows: "maintains and makes publicly available written materials regarding standards and procedures for accreditation, appeal procedures, and the accreditation status of each institution subject to its jurisdiction; and"


Subsec. (g). Pub. L. 110–315, § 496(3), inserted at end "Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5)."

Subsecs. (p), (q). Pub. L. 110–315, § 496(5), added subsec. (p) and (q).


Subsec. (a)(4). Pub. L. 105–244, § 492(b)(3), substituted "offered by the institution" for "at the institution" and inserted ", including distance education courses or programs," after "higher education."

Subsec. (a)(5). Pub. L. 105–244, § 492(b)(4)(A), (H), substituted “for accreditation” for “of accreditation” in introductory provisions and “(A), (H), and (J)” for “(G), (H), (I), (J), and (L)” in concluding provisions.

Subsec. (a)(5)(A) to (G). Pub. L. 105–244, § 492(b)(4)(C), (E), added subpar. (A) and redesignated former subpars. (A) to (F) as (B) to (G), respectively. Former subpar. (G) redesignated (H).

Subsec. (a)(5)(H). Pub. L. 105–244, § 492(b)(4)(F), substituted “measures of program length” for “program length and tuition and fees in relation to the subject matters taught”.

Pub. L. 105–244, § 492(b)(4)(C), redesignated subpar. (G) as (H).

Pub. L. 105–244, § 492(b)(4)(B), struck out subpar. (H) which read as follows: “measures of program length in clock hours or credit hours;”.

Subsec. (a)(5)(I). Pub. L. 105–244, § 492(b)(4)(B), (D), redesignated subpar. (K) as (I) and struck out former subpar. (I) which read as follows: “success with respect to student achievement in relation to its mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates;”.

Subsec. (a)(5)(J). Pub. L. 105–244, § 492(b)(4)(G), inserted “record of” before “compliance”, substituted “based on the most recent student loan default rate data provided by the Secretary, the” for “, including any”, and inserted “any” after “reviews, and”.

Pub. L. 105–244, § 492(b)(4)(B), (D), redesignated subpar. (L) as (J) and struck out former subpar. (J) which read as follows: “default rates in the student loan programs under this subchapter and part C of chapter 1 of chapter 34 of title 42, based on the most recent data provided by the Secretary,”.

Subsec. (a)(5)(K), (L). Pub. L. 105–244, § 492(b)(4)(D), redesignated subpars. (K) and (L) as (I) and (J), respectively.

Subsec. (a)(7). Pub. L. 105–244, § 492(b)(5), substituted “State licensing or authorizing agency” for “State postsecondary review entity”.

Subsec. (a)(8). Pub. L. 105–244, § 492(b)(6), substituted “State licensing or authorizing agency” for “State postsecondary review entity of the State in which the institution of higher education is located”.

Subsec. (c). Pub. L. 105–244, § 492(c)(1), substituted “recognized by the Secretary” for “approved by the Secretary” in introductory provisions.

Subsec. (c)(1). Pub. L. 105–244, § 492(c)(2), substituted “(which may include unannounced site visits)” for “(at least one which inspection at each institution that provides vocational education and training shall be unannounced);”.

Subsec. (d). Pub. L. 105–244, § 492(d)(1), substituted “recognition” for “approval” in heading and “recognized” for “approved” in text.


Subsec. (l). Pub. L. 105–244, § 492(d)(5), substituted “recognition” for “approval” in heading, added par. (1), and struck out former par. (1) which read as follows: “The Secretary shall limit, suspend, or terminate the recognition” for “approval” in heading, added par. (1), and struck out former par. (1) which read as follows: “The Secretary shall limit, suspend, or terminate the approval of an accrediting agency or association if the Secretary determines, after notice and opportunity for a hearing, that the accrediting agency or association has failed to apply effectively the standards or operate according to the procedures provided in this section.”.

§ 1099c. Eligibility and certification procedures

(a) General requirement

For purposes of qualifying institutions of higher education for participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall determine the legal authority to operate within a State, the accreditation status, and the administrative capability and financial responsibility of an institution of higher education in accordance with the requirements of this section.

(b) Single application form

The Secretary shall prepare and prescribe a single application form which—

(1) requires sufficient information and documentation to determine that the requirements of eligibility, accreditation, financial responsibility, and administrative capability of the institution of higher education are met;

(2) requires a specific description of the relationship between a main campus of an institution of higher education and all of its branches, including a description of the student aid processing that is performed by the main campus and that which is performed at its branches;

(3) requires—

(A) a description of the third party servicers of an institution of higher education; and

(B) the institution to maintain a copy of any contract with a financial aid service provider or loan servicer, and provide a copy of any such contract to the Secretary upon request;

(4) requires such other information as the Secretary determines will ensure compliance with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42 with respect to eligibility, accreditation, administrative capability and financial responsibility; and

(5) provides, at the option of the institution, for participation in one or more of the programs under part B or C of this subchapter.

(c) Financial responsibility standards

(1) The Secretary shall determine whether an institution has the financial responsibility required by this subchapter and part C of subchapter I of chapter 34 of title 42 on the basis of whether the institution is able—

(A) to provide the services described in its official publications and statements;

(B) to provide the administrative resources necessary to comply with the requirements of this subchapter and part C of subchapter I of chapter 34 of title 42; and

(C) to meet all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Sec-
provides a 2-year or 4-year program of instruction or baccalaureate degree fails to meet the criteria imposed by the Secretary pursuant to paragraph (2), the Secretary shall waive that failure to meet the criteria if—

(1) the institution demonstrates to the satisfaction of the Secretary that—

(A) such institution submits to the Secretary third-party financial guarantees that the Secretary determines are reasonable, such as performance bonds or letters of credit payable to the Secretary, which third-party financial guarantees shall equal not less than one-half of the annual potential liabilities of such institution to the Secretary for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, including loan obligations discharged pursuant to section 1087 of this title, and to students for refunds of institutional charges, including funds under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) such institution has its liabilities backed by the full faith and credit of a State, or its equivalent;

(C) such institution establishes to the satisfaction of the Secretary, with the support of a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary); or

(D) such institution has met standards of financial responsibility, prescribed by the Secretary by regulation, that indicate a level of financial strength not less than those required in paragraph (2).

(4) If an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree fails to meet the criteria imposed by the Secretary pursuant to paragraph (2), the Secretary shall waive that particular requirement for that institution if the institution demonstrates to the satisfaction of the Secretary that—

(A) there is no reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(B) it is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(C) it has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the criteria.

(5) The determination as to whether an institution has met the standards of financial responsibility provided for in paragraphs (2) and (3)(C) shall be based on an audited and certified financial statement of the institution. Such audit shall be conducted by a qualified independent organization or person in accordance with standards established by the American Institute of Certified Public Accountants. Such statement shall be submitted to the Secretary at the time such institution is considered for certification or recertification under this section. If the institution is permitted to be certified (provisionally or otherwise) and such audit does not establish compliance with paragraph (2), the Secretary may require that additional audits be submitted.

(d) Administrative capacity standard

The Secretary is authorized—

(1) to establish procedures and requirements related to the administrative capacities of institutions of higher education, including—

(A) consideration of past performance of institutions or persons in control of such institutions with respect to student aid programs; and

(B) maintenance of records; and

(2) to establish such other reasonable procedures as the Secretary determines will contribute to ensuring that the institution of higher education will comply with administrative capability required by this subchapter and part C of subchapter I of chapter 34 of title 42.

(e) Financial guarantees from owners

(1) Notwithstanding any other provision of law, the Secretary may, to the extent necessary to protect the financial interest of the United States, require—

(A) financial guarantees from an institution participating, or seeking to participate, in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 or from one or more individuals who the Secretary determines, in accordance with paragraph (2), exercise substantial control over such institution, or both, in an amount determined by the Secretary to be sufficient to satisfy the insti-
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An institution's potential liability to the Federal Government, student assistance recipients, and other program participants for funds under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(3) the assumption of personal liability by one or more individuals who exercise substantial control over such institution, as determined by the Secretary in accordance with paragraph (2), for financial losses to the Federal Government, student assistance recipients, and other program participants for funds under this subchapter and part C of subchapter I of chapter 34 of title 42, and civil and criminal monetary penalties authorized under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2)(A) The Secretary may determine that an individual exercises substantial control over one or more institutions participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 if the Secretary determines that—

(i) the individual directly or indirectly controls a substantial ownership interest in the institution;

(ii) the individual, either alone or together with other individuals, represents, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who have, individually or in combination with the other persons represented or the individual representing them, a substantial ownership interest in the institution; or

(iii) the individual is a member of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity that holds a substantial ownership interest in the institution.

(B) The Secretary may determine that an entity exercises substantial control over one or more institutions participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42 if the Secretary determines that the entity directly or indirectly holds a substantial ownership interest in the institution.

(3) For purposes of this subsection, an ownership interest is defined as a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation. An ownership interest may include, but is not limited to—

(A) a sole proprietorship;

(B) an interest as a tenant-in-common, joint tenant, or tenant by the entireties;

(C) a partnership; or

(D) an interest in a trust.

(4) The Secretary shall not impose the requirements described in subparagraphs (A) and (B) of paragraph (1) on an institution that—

(A) has not been subjected to a limitation, suspension, or termination action by the Secretary or a guaranty agency within the preceding 5 years;

(B) has not had, during its 2 most recent audits of the institutions conduct of programs under this subchapter and part C of subchapter I of chapter 34 of title 42, an audit finding that resulted in the institution being required to repay an amount greater than 5 percent of the funds the institution received from programs under this subchapter and part C of subchapter I of chapter 34 of title 42 for any year;

(C) meets and has met, for the preceding 5 years, the financial responsibility standards under subsection (c) of this section; and

(D) has not been cited during the preceding 5 years for failure to submit audits required under this subchapter and part C of subchapter I of chapter 34 of title 42 in a timely fashion.

(5) For purposes of section 1094(c)(1)(G) of this title, this section shall also apply to individuals or organizations that contract with an institution to administer any aspect of an institution's student assistance program under this subchapter and part C of subchapter I of chapter 34 of title 42.

(6) Notwithstanding any other provision of law, any individual who—

(A) the Secretary determines, in accordance with paragraph (2), exercises substantial control over an institution participating in, or seeking to participate in, a program under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) is required to pay, on behalf of a student or borrower, a refund of unearned institutional charges to a lender, or to the Secretary; and

(C) willfully fails to pay such refund or willfully attempts in any manner to evade payment of such refund,

shall, in addition to other penalties provided by law, be liable to the Secretary for the amount of the refund not paid, to the same extent with respect to such refund that such an individual would be liable as a responsible person for a penalty under section 6672(a) of title 26 with respect to the nonpayment of taxes.

(f) Actions on applications and site visits

The Secretary shall ensure that prompt action is taken by the Department on any application required under subsection (b) of this section. The personnel of the Department of Education may conduct a site visit at each institution before certifying or recertifying its eligibility for purposes of any program under this subchapter and part C of subchapter I of chapter 34 of title 42. The Secretary shall establish priorities by which institutions are to receive site visits, and shall, to the extent practicable, coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.

(g) Time limitations on, and renewal of, eligibility

(1) General rule

After the expiration of the certification of any institution under the schedule prescribed under this section (as this section was in effect prior to October 7, 1998), or upon request for initial certification from an institution not previously certified, the Secretary may certify the eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42
of each such institution for a period not to exceed 6 years.

(2) Notification
The Secretary shall notify each institution of higher education not later than 6 months prior to the date of the expiration of the institution's certification.

(3) Institutions outside the United States
The Secretary shall promulgate regulations regarding the recertification requirements applicable to an institution of higher education outside of the United States that meets the requirements of section 1002(a)(1)(C) of this title and received less than $500,000 in funds under part B of this subchapter for the most recent year for which data are available.

(h) Provisional certification of institutional eligibility
(1) Notwithstanding subsections (d) and (g) of this section, the Secretary may provisionally certify an institution's eligibility to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42—
(A) for not more than one complete award year in the case of an institution of higher education seeking an initial certification; and
(B) for not more than 3 complete award years if—
(i) the institution's administrative capability and financial responsibility is being determined for the first time;
(ii) there is a complete or partial change of ownership, as defined under subsection (i) of this section, of an eligible institution; or
(iii) the Secretary determines that an institution that seeks to renew its certification is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities under a program participation agreement.

(2) Whenever the Secretary withdraws the recognition of any accrediting agency, an institution of higher education which meets the requirements of accreditation, eligibility, and certification on the day prior to such withdrawal, the Secretary may, notwithstanding the withdrawal, continue the eligibility of the institution of higher education to participate in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42 for a period not to exceed 18 months from the date of the withdrawal of recognition.

(3) If, prior to the end of a period of provisional certification under this subsection, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may terminate the institution's participation in programs under this subchapter and part C of subchapter I of chapter 34 of title 42.

(i) Treatment of changes of ownership
(1) An eligible institution of higher education that has had a change in ownership resulting in a change of control shall not qualify to participate in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 after the change in control (except as provided in paragraph (3)) unless it establishes that it meets the requirements of section 1002 of this title (other than the requirements in subsections (b)(5) and (c)(3)) and this section after such change in control.

(2) An action resulting in a change in control may include (but is not limited to)—
(A) the sale of the institution or the majority of its assets;
(B) the transfer of the controlling interest of stock of the institution or its parent corporation;
(C) the merger of two or more eligible institutions;
(D) the division of one or more institutions into two or more institutions;
(E) the transfer of the controlling interest of stock of the institutions to its parent corporation;
or
(F) the transfer of the liabilities of the institution to its parent corporation.

(3) An action that may be treated as not resulting in a change in control includes (but is not limited to)—
(A) the sale or transfer, upon the death of an owner of an institution, of the ownership interest of the deceased in that institution to a family member or to a person holding an ownership interest in that institution; or
(B) another action determined by the Secretary to be a routine business practice.

(4)(A) The Secretary may provisionally certify an institution seeking approval of a change in ownership based on the preliminary review by the Secretary of a materially complete application that is received by the Secretary within 10 business days of the transaction for which the approval is sought.
(B) A provisional certification under this paragraph shall expire not later than the end of the month following the month in which the transaction occurred, except that if the Secretary has not issued a decision on the application for the change of ownership within that period, the Secretary may continue such provisional certification on a month-to-month basis until such decision has been issued.

(j) Treatment of branches
(1) A branch of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, shall be certified under this subpart before it may participate as part of such institution in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, except that such branch shall not be required to meet the requirements of sections 1002(b)(1)(E) and 1002(c)(1)(C) of this title prior to seeking such certification. Such branch is required to be in existence at least 2 years after the branch is certified by the Secretary as a branch campus participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42, prior to seeking certification as a main campus or free-standing institution.

(2) The Secretary may waive the requirement of section 1001(a)(2) of this title for a branch...
that (A) is not located in a State, (B) is affiliated with an eligible institution, and (C) was participating in one or more programs under this subchapter and part C of subchapter I of chapter 34 of title 42 on or before January 1, 1992.

(k) Treatment of teach-outs at additional locations

(1) In general

A location of a closed institution of higher education shall be eligible as an additional location of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, for the purposes of a teach-out described in section 1094(f) of this title, if such teach-out has been approved by the institution's accrediting agency.

(2) Special rule

An institution of higher education that conducts a teach-out through the establishment of an additional location described in paragraph (1) shall be permitted to establish a permanent additional location at a closed institution and shall not be required—

(A) to meet the requirements of sections 1002(b)(1)(E) and 1002(c)(1)(C) of this title for such additional location; or

(B) to assume the liabilities of the closed institution.


REFERENCES IN TEXT

Subsections (b)(5) and (c)(3), referred to in subsec. (k)(1), originally meant subsections (b)(5) and (c)(3) of section 1088 of this title, see 1998 Amendment note below for subsection (k)(1). Pub. L. 105–244, title I, § 100(c), Oct. 7, 1998, 112 Stat. 1617, amended section 1088 by striking out subsections (b) and (c) and redesignating subsections (e) and (f) as (b) and (c), respectively. Section 1002 of this title does not contain a subsection (b)(5) or (c)(3), but provisions similar to those appearing in former subsections (b)(5) and (c)(3) of section 1088 are contained in subsections (b)(1)(E) and (c)(1)(C) of section 1002.

AMENDMENTS


Subsec. (b)(3). Pub. L. 105–244, § 493(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “requires a description of third party services of an institution of higher education, together with a copy of any contract with the institution of higher education and a financial aid service provider or loan servicer; and”.


Pub. L. 105–244, § 493(b)(1)(A), which directed amendment of first sentence by substituting “regarding ratios that demonstrate financial responsibility,” for “with respect to operating losses, net worth, asset-liabilities ratios, or operating fund deficits,” was executed by making the substitution for text which read “asset-to-liabilities ratios” rather than “asset to liabilities ratios,” to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 105–244, § 493(b)(2), inserted “that the Secretary determines are reasonable” after “Secretary third-party financial guarantees”.


Subsec. (c)(4)(C). Pub. L. 105–244, § 493(b)(3)(B), substituted “criteria” for “current operating ratio requirement”.


Subsec. (f). Pub. L. 105–244, § 493(d), substituted “and site visits” for “; site visits and fees” in heading, “may,” for “shall” in second sentence, and “shall establish” for “may establish” and “shall, to the extent practicable, coordinate” for “may coordinate” in third sentence, and struck out at end “The Secretary may charge reasonable fees to cover the expenses of certification and site visits and, to the extent permitted by appropriations Acts, may retain such fees to cover such expenses.”.

Subsec. (g). Pub. L. 105–244, § 493(e), amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows:

“(1) The eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 of any institution that is participating in any such program on July 23, 1992, shall expire in accordance with the schedule prescribed by the Secretary in accordance with paragraph (2), but not later than 5 years after July 23, 1992.

“(2) The Secretary shall establish a schedule for the expiration of the eligibility for purposes of any such program of all institutions of higher education within the 5-year period specified in paragraph (1). Such schedule shall place a priority for the expiration of the certification of institutions on those that meet the following criteria:

“(A) institutions subject to review by a State post-secondary review entity pursuant to subpart I of this part; or

“(B) other categories of institutions which the Secretary deems necessary.

“(3) After the expiration of the certification of any institution under the schedule prescribed under this subsection, or upon request for initial certification from an institution not previously certified, the Secretary may certify the eligibility for the purposes of any program authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 of such institution for a period not to exceed 4 years.”

Subsec. (h)(2). Pub. L. 105–244, § 493(f), substituted “the recognition” for “the approval” and “of recognition” for “of approval”.

Subsec. (i)(1). Pub. L. 105–244, § 102(b)(6), substituted “section 1002” for “section 1088”.


Subsec. (j)(1). Pub. L. 105–244, § 493(h), inserted “after the branch is certified by the Secretary as a branch campus participating in a program under this subchapter and part C of subchapter I of chapter 34 of title 42,” after “2 years’’.

Pub. L. 105–244, § 102(b)(7)(A), substituted “sections 1002(b)(1)(E) and 1003(c)(1)(C)” for “sections 1088(b)(3) and 1088(c)(3)”.


1993—Subsec. (c)(2). Pub. L. 103–208, § 2(b)(9)(A), inserted at end “Such criteria shall take into account any differences in generally accepted accounting prin-
ciples, and the financial statements required thereunder, that are applicable to for-profit and nonprofit institutions. The Secretary shall take into account an institution’s total financial circumstances in making a determination of its ability to meet the standards hereinafter required.

Subsec. (c)(3). Pub. L. 103–208, §2(1)(9)(B), substituted ‘‘The Secretary may determine’’ for ‘‘The Secretary shall determine’’ for ‘‘The Secretary shall determine’’ in introductory provisions.

Subsec. (c)(3)(C). Pub. L. 103–208, §2(1)(9)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ‘‘such institution establishes to the satisfaction of the Secretary, with the support of a report of an independent certified public accountant prepared under generally accepted accounting principles, that the institution is a going concern capable of meeting all of its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary; or’’.

Subsec. (c)(4) to (6). Pub. L. 103–208, §2(1)(9)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 103–208, §2(1)(10), inserted after second sentence ‘‘The Secretary may establish priorities by which institutions are to receive site visits, and may coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.’’

Subsec. (h)(1)(B)(iii). Pub. L. 103–208, §2(1)(11), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ‘‘the Secretary determines that the institution is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its responsibilities under its program participation agreement.’’

Subsec. (i)(1). Pub. L. 103–208, §2(1)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘For the purpose of certifying the eligibility of an institution, an eligible institution of higher education that has a change in ownership resulting in a change in control shall not be considered to be the same institution (except as provided in paragraph (3)) and shall be considered a new institution for the purpose of establishing eligibility, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years.’’

Subsec. (i)(3)(A). Pub. L. 103–208, §2(1)(13), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ‘‘the death of an owner of an institution, when the owner’s interest is sold or transferred to either a family member or a current stockholder of the corporation; or’’.

Subsec. (j)(1). Pub. L. 103–208, §2(1)(14), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘For the purposes of this subchapter and part C of chapter 34 of title 42, a branch of an eligible institution, as defined pursuant to regulations of the Secretary, is a separate institution of higher education and shall separately meet all the requirements of this subchapter and part C of chapter 34 of title 42, except that such institution shall not be required (under section 1088(b)(5) or 1088(c)(3) of this title) to be in existence for 2 years prior to seeking such certification unless such institution was in existence as a branch for less than 2 years.’’

§1099c–1. Program review and data

(a) General authority

In order to strengthen the administrative capability and financial responsibility provisions of this subchapter and part C of chapter 34 of title 42, the Secretary—

(1) shall provide for the conduct of program reviews on a systematic basis designed to include all institutions of higher education participating in programs authorized by this subchapter and part C of chapter 34 of title 42;

(2) shall give priority for program review to institutions of higher education that are—

(A) institutions with a cohort default rate for loans under part B of this subchapter in excess of 25 percent or which places such institutions in the highest 25 percent of such institutions;

(B) institutions with a default rate in dollar volume for loans under part B of this subchapter which places the institutions in the highest 25 percent of such institutions;

(C) institutions with a significant fluctuation in Federal Stafford Loan volume, Federal Direct Stafford/Ford Loan volume, or Federal Pell Grant award volume, or any combination thereof, in the year for which the determination is made, compared to the year prior to such year, that are not accounted for by changes in the Federal Stafford Loan program, the Federal Direct Stafford/Ford Loan program, or the Pell Grant program, or any combination thereof;

(D) institutions reported to have deficiencies or financial aid problems by the State licensing or authorizing agency, or by the appropriate accrediting agency or association;

(E) institutions with high annual dropout rates; and

(F) such other institutions that the Secretary determines may pose a significant risk of failure to comply with the administrative capability or financial responsibility provisions of this subchapter and part C of chapter 34 of title 42; and

(3) shall establish and operate a central data base of information on institutional accredita-
tion, eligibility, and certification that includes—
(A) all relevant information available to the Department;
(B) all relevant information made available by the Secretary of Veterans Affairs;
(C) all relevant information from accrediting agencies or associations;
(D) all relevant information available from a guaranty agency; and
(E) all relevant information available from States under subpart 1 of this part.

(b) Special administrative rules
In carrying out paragraphs (1) and (2) of subsection (a) of this section and any other relevant provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, the Secretary shall—
(1) establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education;
(2) make available to each institution participating in programs authorized under this subchapter and part C of subchapter I of chapter 34 of title 42 complete copies of all review guidelines and procedures used in program reviews;
(3) permit the institution to correct or cure an administrative, accounting, or record-keeping error if the error is not part of a pattern of error and there is no evidence of fraud or misconduct related to the error;
(4) base any civil penalty assessed against an institution of higher education resulting from a program review or audit on the gravity of the violation, failure, or misrepresentation;
(5) inform the appropriate State and accrediting agency or association whenever the Secretary takes action against an institution of higher education under this section, section 1099a of this title, or section 1082 of this title;
(6) provide to an institution of higher education an adequate opportunity to review and respond to any program review report and relevant materials related to the report before any final program review report is issued;
(7) review and take into consideration an institution of higher education’s response in any final program review report or audit determination, and include in the report or determination—
(A) a written statement addressing the institution of higher education’s response;
(B) a written statement of the basis for such report or determination; and
(C) a copy of the institution’s response; and
(8) maintain and preserve at all times the confidentiality of any program review report until the requirements of paragraphs (6) and (7) are met, and until a final program review is issued, other than to the extent required to comply with paragraph (5), except that the Secretary shall promptly disclose any and all program review reports to the institution of higher education under review.

(c) Data collection rules
The Secretary shall develop and carry out a plan for the data collection responsibilities described in paragraph (3) of subsection (a) of this section. The Secretary shall make the information obtained under such paragraph (3) readily available to all institutions of higher education, guaranty agencies, States, and other organizations participating in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42.

d) Training
The Secretary shall provide training to personnel of the Department, including criminal investigative training, designed to improve the quality of financial and compliance audits and program reviews conducted under this subchapter and part C of subchapter I of chapter 34 of title 42.

(e) Special rule
The provisions of section 3403(b) of this title shall not apply to Secretarial determinations made regarding the appropriate length of instruction for programs measured in clock hours.

AMENDMENTS
Subsec. (a)(2)(C). Pub. L. 103–208, § 494(1)(A)(ii), amended subpars. (C) generally. Prior to amendment, subpar. (C) read as follows: “institutions with a significant fluctuation in Federal Stafford Loan volume or Federal Pell Grant awards, or both, in the year for which the determination is made compared to the year prior to such year;”.
Subsec. (a)(2)(D). Pub. L. 103–208, § 494(1)(A)(ii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “institutions reported to have deficiencies or financial aid problems by the appropriate State postsecondary review entity designated under subpart 1 of this part or by the appropriate accrediting agency or association;”.
Subsec. (a)(2)(F). (G). Pub. L. 105–244, § 494(1)(A)(v), added subpar. (F) and struck out former subpars. (F) and (G) which read as follows: “(F) any institution which is required to be reviewed by a State postsecondary review entity pursuant to subpart 1 of this part under section 1099a–3(b) of this title; and
“(G) such other institutions as the Secretary deems necessary; and”.
Subsec. (b). Pub. L. 105–244, § 494(2), amended heading and text of subsec. (b). Prior to amendment, text read as follows:
“(1) In carrying out paragraphs (1) and (2) of subsection (a) of this section, the Secretary shall establish guidelines designed to ensure uniformity of practice in the conduct of program reviews of institutions of higher education.
“(2) The Secretary shall review the regulations of the Department and the application of such regulations to ensure the uniformity of interpretation and application of the regulations.”.
§ 1099c–2. Review of regulations
(a) Review required
The Secretary shall review each regulation issued under this subchapter and part C of subchapter I of chapter 34 of title 42 that is in effect at the time of the review and applies to the operations or activities of any participant in the programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 42. The review shall include a determination of whether the regulation is duplicative, or is no longer necessary. The review may involve one or more of the following:

(1) An assurance of the uniformity of interpretation and application of such regulations.

(2) The establishment of a process for ensuring that eligibility and compliance issues, such as institutional audit, program review, and recertification, are considered simultaneously.

(3) A determination of the extent to which unnecessary costs are imposed on institutions of higher education as a consequence of the applicability to the facilities and equipment of such institutions of regulations prescribed for purposes of regulating industrial and commercial enterprises.

(b) Regulatory and statutory relief for small volume institutions
The Secretary shall review and evaluate ways in which regulations under and provisions of this chapter and part C of subchapter I of chapter 34 of title 42 affecting institution of higher education (other than institutions described in section 1085 of this title that are not inconsistent with this subchapter and part C of subchapter I of chapter 34 of title 42) may be improved, streamlined, or eliminated.

(c) Consultation
In carrying out subsections (a) and (b) of this section, the Secretary shall consult with relevant representatives of institutions participating in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42.

§ 1099d. Competitive loan auction pilot program
(a) Definitions
In this section:

(1) Eligible Federal PLUS Loan
The term “eligible Federal PLUS Loan” means a loan described in section 1078–2 of this title made to a parent of a dependent student who is a new borrower on or after July 1, 2009.

(2) Eligible lender
The term “eligible lender” has the meaning given the term in section 1085 of this title.

(b) Pilot program
The Secretary shall carry out a pilot program under which the Secretary establishes a mechanism for an auction of eligible Federal PLUS Loans in accordance with this subsection. The pilot program shall meet the following requirements:

(1) Planning and implementation
During the period beginning on September 27, 2007, and ending on June 30, 2009, the Secretary shall plan and implement the pilot program under this subsection. During the planning and implementation, the Secretary shall consult, with other Federal agencies with knowledge of, and experience with, auction programs, including the Federal Communications Commission and the Department of the Treasury.

(2) Origination and disbursement; applicability of section 1078–2
Beginning on July 1, 2009, the Secretary shall arrange for the origination and disbursement of all eligible Federal PLUS Loans in accordance with the provisions of this subsection and the provisions of section 1078–2 of this title that are not inconsistent with this subsection.

(3) Loan origination mechanism
The Secretary shall establish a loan origination auction mechanism that meets the following requirements:

(A) Auction for each State
The Secretary administers an auction under this paragraph for each State, under which eligible lenders compete to originate eligible Federal PLUS Loans under this paragraph at all institutions of higher education within such State.

(B) Prequalification process
The Secretary establishes a prequalification process for eligible lenders.
desiring to participate in an auction under this paragraph that contains, at a minimum—

(i) a set of borrower benefits and service requirements each eligible lender shall meet in order to participate in such an auction;
(ii) an assessment of each eligible lender’s capacity, including capital capacity, to participate effectively; and
(iii) a commitment from such eligible lender that, if the lender has a winning bid under subparagraph (F), the lender will enter into the agreement required under subparagraph (G).

(C) Timing and origination

Each State auction takes place every 2 years, and the eligible lenders with the winning bids for the State are the only eligible lenders permitted to originate eligible Federal PLUS Loans made under this paragraph for the cohort of students at the institutions of higher education within the State until the students graduate from or leave the institutions of higher education.

(D) Bids

Each eligible lender’s bid consists of the amount of the special allowance payment (after the application of section 1087–1(b)(2)(I)(v) of this title) that the eligible lender proposes to accept from the Secretary with respect to the eligible Federal PLUS Loans made under this paragraph in lieu of Federal PLUS Loans made under this paragraph in the amount determined under section 1087–1(b)(2)(I)(i)(III) of this title.

(E) Maximum bid

The maximum bid allowable under this paragraph shall not exceed the amount of the special allowance payment on eligible Federal PLUS Loans made under this paragraph computed under section 1087–1(b)(2)(I) of this title (other than clauses (ii), (iii), (iv), and (vi) of such section), except that for purposes of the computation under this subparagraph, section 1087–1(b)(2)(I)(III) of this title shall be applied by substituting “1.79 percent” for “2.34 percent”.

(F) Winning bids

The winning bids for each State auction shall be the 2 bids containing the lowest and the second lowest proposed special allowance payments, subject to subparagraph (E).

(G) Agreement with Secretary; compliance

(i) Agreement

Each eligible lender having a winning bid under subparagraph (F) shall enter into an agreement with the Secretary under which the eligible lender—

(I) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

(aa) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;
(bb) is eligible for an eligible Federal PLUS Loan; and
(cc) elects to borrow from the eligible lender; and

(II) agrees to accept a special allowance payment (after the application of section 1087–1(b)(2)(I)(v) of this title) from the Secretary with respect to the eligible Federal PLUS Loans originated under subparagraph (I) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.

(ii) Compliance

If an eligible lender with a winning bid under subparagraph (F) fails to enter into the agreement required under clause (i), or fails to comply with the terms of such agreement, the Secretary may sanction such eligible lender through one or more of the following:

(I) The assessment of a penalty on such eligible lender for any eligible Federal PLUS Loans that such eligible lender fails to originate under this paragraph in accordance with the agreement required under clause (i), in the amount of the additional costs (including the amounts of any increase in special allowance payments) incurred by the Secretary in obtaining another eligible lender to originate such eligible Federal PLUS Loans. The Secretary shall collect such penalty by—

(aa) reducing the amount of any payments otherwise due to such eligible lender from the Secretary by the amount of the penalty; or
(bb) requesting any other Federal agency to reduce the amount of any payments due to such eligible lender from such agency by the amount of the penalty, in accordance with section 3716 of title 31.

(II) A prohibition of bidding by such lender in other auctions under this section.

(III) The limitation, suspension, or termination of such eligible lender’s participation in the loan program under part B.

(IV) Any other enforcement action the Secretary is authorized to take under part B.

(H) Sealed bids; confidentiality

All bids are sealed and the Secretary keeps the bids confidential, including following the announcement of the winning bids.

(I) Eligible lender of last resort

(i) In general

In the event that there is no winning bid under subparagraph (F), the students at the institutions of higher education within the State that was the subject of the auction shall be served by an eligible lender of last resort, as determined by the Secretary.

(ii) Determination of eligible lender of last resort

Prior to the start of any auction under this paragraph, eligible lenders that desire
to serve as an eligible lender of last resort shall submit an application to the Secretary at such time and in such manner as the Secretary may determine. Such application shall include an assurance that the eligible lender will meet the prequalification requirements described in subparagraph (B).

(iii) Geographic location
The Secretary shall identify an eligible lender of last resort for each State.

(iv) Notification timing
The Secretary shall not identify any eligible lender of last resort until after the announcement of all the winning bids for a State auction for any year.

(v) Maximum special allowance
The Secretary is authorized to set a special allowance payment that shall be payable to a lender of last resort for a State under this subparagraph, which special allowance payment shall be kept confidential, including following the announcement of winning bids. The Secretary shall set such special allowance payment so that it incurs the lowest possible cost to the Federal Government, taking into consideration the lowest bid that was submitted in an auction for such State and the lowest bid submitted in a similar State, as determined by the Secretary.

(J) Guarantee against losses
Each eligible Federal PLUS Loan originated under this paragraph shall be insured by a guaranty agency in accordance with part B, except that, notwithstanding section 1078(b)(1)(G) of this title, such insurance shall be in an amount equal to 99 percent of the unpaid principal and interest due on the loan.

(K) Loan fees
The Secretary shall not collect a loan fee under section 1087–1(d) of this title with respect to an eligible Federal Plus Loan originated under this paragraph.

(L) Consolidation
(i) In general
An eligible lender who is permitted to originate eligible Federal PLUS Loans for a borrower under this paragraph shall have the option to consolidate such loans into 1 loan.

(ii) Notification
In the event a borrower with eligible Federal PLUS Loans made under this paragraph wishes to consolidate the loans, the borrower shall notify the eligible lender who originated the loans under this paragraph.

(iii) Limitation on eligible lender option to consolidate
The option described in clause (i) shall not apply if—

(I) the borrower includes in the notification in clause (ii) verification of consolidation terms and conditions offered by an eligible lender other than the eligible lender described in clause (i); and

(II) not later than 10 days after receiving such notification from the borrower, the eligible lender described in clause (i) does not agree to match such terms and conditions, or provide more favorable terms and conditions to such borrower than the offered terms and conditions described in subclause (I).

(iv) Consolidation of additional loans
If a borrower has a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 1078–2 of this title and seeks to consolidate such loan with an eligible Federal PLUS Loan made under this paragraph, then the eligible lender that originated the borrower’s loan under this paragraph may include in the consolidation under this subparagraph a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 1078–2 of this title, but only if—

(I) in the case of a Federal Direct PLUS Loan, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions that would otherwise be available to the borrower if the borrower consolidated such loans in the loan program under part C; or

(II) in the case of a loan made on behalf of a dependent student under section 1078–2 of this title, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions offered by an eligible lender other than the eligible lender that originated the borrower’s loans under this paragraph.

(v) Special allowance on consolidation loans that include loans made under this paragraph
The applicable special allowance payment for loans consolidated under this paragraph shall be equal to the lesser of—

(I) the weighted average of the special allowance payment on such loans, except that in calculating such weighted average the Secretary shall exclude any Federal Direct PLUS Loan included in the consolidation; or

(II) the result of—

(a) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period; plus

(bb) 1.50 percent.

(vi) Interest payment rebate fee
Any loan under section 1078–3 of this title consolidated under this paragraph shall not be subject to the interest payment rebate fee under section 1078–3(f) of this title.
(c) Required initial evaluation  

The Secretary and Secretary of the Treasury shall jointly conduct an evaluation, in consultation with the Office of Management and Budget, the Congressional Budget Office, and the Comptroller General, of the pilot program carried out by the Secretary under this section. The evaluation shall determine—  

(1) the extent of the savings to the Federal Government that are generated through the pilot program, compared to the cost the Federal Government would have incurred in operating the PLUS loan program under section 1078–2 of this title in the absence of the pilot program;  

(2) the number of lenders that participated in the pilot program, and the extent to which the pilot program generated competition among lenders to participate in the auctions under the pilot program;  

(3) the number and volume of loans made under the pilot program in each State;  

(4) the effect of the transition to and operation of the pilot program on the ability of lenders participating in the pilot program to originate loans made through the pilot program smoothly and efficiently;  

(B) institutions of higher education participating in the pilot program to disburse loans made through the pilot program smoothly and efficiently; and  

(C) parents to obtain loans made through the pilot program in a timely and efficient manner;  

(5) the differential impact, if any, of the auction among the States, including between rural and non-rural States; and  

(6) the feasibility of using the mechanism piloted to operate the other loan programs under part B of this subchapter.  

(d) Reports  

(1) In general  

The Secretary and the Secretary of the Treasury shall submit to the authorizing committees—  

(A) not later than September 1, 2010, a preliminary report regarding the findings of the evaluation described in subsection (c);  

(B) not later than September 1, 2012, an interim report regarding such findings; and  

(C) not later than September 1, 2013, a final report regarding such findings.  

(2) Contents  

The Secretary shall include, in each report required under subparagraphs (A), (B), and (C) of paragraph (1), any recommendations, that are based on the findings of the evaluation under subsection (c), for—  

(A) improving the operation and administration of the auction; and  

(B) improving the operation and administration of other loan programs under part B.  


Amendments  

2008—Subsec. (b)(3)(G). Pub. L. 110–315, § 499(1)(B), added subpar. (G) and struck out former subpar. (G). Text of former subpar. (G) read as follows: “Each eligible lender having a winning bid under subparagraph (F) enters into an agreement with the Secretary under which the eligible lender—  

(i) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—  

I seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;  

(II) is eligible for an eligible Federal PLUS Loan; and  

(III) elects to borrow from the eligible lender; and  

(ii) agrees to accept a special allowance payment (after the application of section 1087–1(b)(2)(I)(v) of this title) from the Secretary with respect to the eligible Federal PLUS Loans originated under clause (i) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.”  

Subsecs. (b)(3)(J), (P). Pub. L. 110–315, § 499(1)(C), added subpar. (J) and struck out former subpar. (J). Text of former subpar. (J) read as follows: “The Secretary guarantees the eligible Federal PLUS Loans made under this paragraph against losses resulting from the default of a parent borrower in an amount equal to 99 percent of the unpaid principal and interest due on the loan.”  

Subsecs. (c), (d). Pub. L. 110–315, § 499(2), added subsecs. (c) and (d).  

Effective Date  

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.  

PART I—TRANSFERRED  

C O N F I D E N T I A L  


§ 1099e. Transferred  

C O N F I D E N T I A L  

Section, Pub. L. 89–329, title IV, § 499A, as added Pub. L. 110–84, title VIII, § 1820, Sept. 27, 2007, 121 Stat. 817, which related to investment in historically Black colleges and universities and other minority-serving institutions, was transferred to section 1867q of this title.  

SUBCHAPTER V—DEVELOPING INSTITUTIONS  

C O N F I D E N T I A L  

§ 1101. Findings; purpose; and program authority

(a) Findings

Congress makes the following findings:

(1) Hispanic Americans are at high risk of not enrolling or graduating from institutions of higher education.

(2) Disparities between the enrollment of non-Hispanic white students and Hispanic students in postsecondary education are increasing. Between 1973 and 1994, enrollment of white secondary school graduates in 4-year institutions of higher education increased at a rate two times higher than that of Hispanic secondary school graduates.

(3) Despite significant limitations in resources, Hispanic-serving institutions provide a significant proportion of postsecondary opportunities for Hispanic students.

(4) Relative to other institutions of higher education, Hispanic-serving institutions are underfunded. Such institutions receive significantly less in State and local funding, per full-time equivalent student, than other institutions of higher education.

(5) Hispanic-serving institutions are succeeding in educating Hispanic students despite significant resource problems that—

(A) limit the ability of such institutions to expand and improve the academic programs of such institutions; and

(B) could imperil the financial and administrative stability of such institutions.

(6) There is a national interest in remediating the disparities described in paragraphs (2) and (4) and ensuring that Hispanic students have an equal opportunity to pursue postsecondary opportunities.

(b) Purpose

The purpose of this subchapter is to—

(1) expand educational opportunities for, and improve the academic attainment of, Hispanic students; and

(2) expand and enhance the academic offerings, program quality, and institutional stability of colleges and universities that are educating the majority of Hispanic college students and helping large numbers of Hispanic students and other low-income individuals complete postsecondary degrees.

(c) Program authority

The Secretary shall provide grants and related assistance to Hispanic-serving institutions to enable such institutions to improve and expand their capacity to serve Hispanic students and other low-income individuals.
§ 1101a

(2) Eligible institution

The term "eligible institution" means—

(A) an institution of higher education—

(i) that has an enrollment of needy students as required by subsection (b) of this section;

(ii) except as provided in section 1103a(b) of this title, the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(iii) that is—

(I) legally authorized to provide, and provides within the State, an educational program for which the institution awards a bachelor’s degree; or

(II) a junior or community college;

(iv) that is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or that is, according to such an agency or association, making reasonable progress toward accreditation;

(v) that meets such other requirements as the Secretary may prescribe; and

(vi) that is located in a State; and

(B) any branch of any institution of higher education described under subparagraph (A) that by itself satisfies the requirements contained in clauses (i) and (ii) of such subparagraph.

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under subparagraph (A)(i) shall be given twice the weight of the factor described under subparagraph (A)(ii).

(3) Endowment fund

The term ‘‘endowment fund’’ means a fund that—

(A) is established by State law, by a Hispanic-serving institution, or by a foundation that is exempt from Federal income taxation;

(B) is maintained for the purpose of generating income for the support of the institution; and

(C) does not include real estate.

(4) Full-time equivalent students

The term ‘‘full-time equivalent students’’ means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

(5) Hispanic-serving institution

The term ‘‘Hispanic-serving institution’’ means an institution of higher education that—

(A) is an eligible institution; and

(B) has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application.

(6) Junior or community college

The term ‘‘junior or community college’’ means an institution of higher education—

(A) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(B) that does not provide an educational program for which the institution awards a bachelor’s degree (or an equivalent degree); and

(C) that—

(i) provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(ii) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

(b) Enrollment of needy students

For the purpose of this subchapter, the term ‘‘enrollment of needy students’’ means an enrollment at an institution with respect to which—

(1) at least 50 percent of the degree students so enrolled are receiving need-based assistance under subchapter IV of this chapter and part C of subchapter J of chapter 42 of title 42 in the second fiscal year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to section 1078 of this title); or

(2) a substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which the determination is made, compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made, unless the requirement of this paragraph is waived under section 1103a(a) of this title.


Prior Provisions

A prior section 592 of Pub. L. 89–329 was classified to section 1102a of this title, prior to the general amendment of this subchapter by Pub. L. 105–244.
Another prior section 502 of Pub. L. 89–329 was classified to section 1091a of this title, prior to repeal by Pub. L. 94–482.

**AMENDMENTS**

2009—Subsec. (b)(2). Pub. L. 111–39 substituted “for which the determination is made, compared to” for “for which determination is made, compared to”.


2006—Subsec. (a)(5). Pub. L. 109–292, §4(a)(1), inserted “and” at end of subpar. (A), in subpar. (B), struck out “at the time of application,” before “has an enrollment”, substituted “at the end of the award year immediately preceding the date of application.” for “; and”, and struck out subpar. (C) which read as follows: “provides assurances that not less than 50 percent of the institution’s Hispanic students are low-income individuals, which assurances—

“(i) may employ statistical extrapolation using appropriate data from the Bureau of the Census or other appropriate Federal or State sources; and

“(ii) the Secretary shall consider as meeting the requirements of this subparagraph, unless the Secretary determines, based on a preponderance of the evidence, that the assurances do not meet the requirements.”


2004—Subsec. (a)(5)(C). Pub. L. 108–375 inserted “,” which assurances—” and cls. (i) and (ii) before period at end.

**EFFECTIVE DATE OF 2009 AMENDMENT**


§ 1101b. Authorized activities

(a) Types of activities authorized

Grants awarded under this subchapter shall be used by Hispanic-serving institutions of higher education to assist the institutions to plan, develop, undertake, and carry out programs to improve and expand the institutions’ capacity to serve Hispanic students and other low-income students.

(b) Authorized activities

Grants awarded under this section shall be used for one or more of the following activities:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other institutional facilities.

(3) Support of faculty exchanges, faculty development, curriculum development, academic instruction, and faculty fellowships to assist in attaining advanced degrees in the fellow’s field of instruction.

(4) Purchase of library books, periodicals, and other educational materials, including telecommunications program material.

(5) Tutoring, counseling, and student service programs designed to improve academic success, including innovative and customized instruction courses (which may include remedial education and English language instruction) designed to help retain students and move the students rapidly into core courses and through program completion.

(6) Articulation agreements and student support programs designed to facilitate the transfer from two-year to four-year institutions.

(7) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management.

(8) Joint use of facilities, such as laboratories and libraries.

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(10) Establishing or improving an endowment fund.

(11) Creating or improving facilities for Internet or other distance education technologies, including purchase or rental of telecommunications technology equipment or services.

(12) Establishing or enhancing a program of teacher education designed to qualify students to teach in public elementary schools and secondary schools.

(13) Establishing community outreach programs that will encourage elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(14) Expanding the number of Hispanic and other underrepresented graduate and professional students that can be served by the institution by expanding courses and institutional resources.

(15) Providing education, counseling services, or financial information designed to improve the financial literacy and economic literacy of students or the students’ families, especially with regard to student indebtedness and student assistance programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(16) Other activities proposed in the application submitted pursuant to section 1001c of this title that—

(A) contribute to carrying out the purposes of this subchapter; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

(c) Endowment fund limitations

(1) Portion of grant

A Hispanic-serving institution may not use more than 20 percent of the grant funds provided under this subchapter for any fiscal year for establishing or improving an endowment fund.

(2) Matching required

A Hispanic-serving institution that uses any portion of the grant funds provided under this subchapter for any fiscal year for establishing or improving an endowment fund shall provide from non-Federal funds an amount equal to or greater than the portion.

(3) Comparability

The provisions of part C of subchapter III of this chapter regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with
this subsection, shall apply to funds used under paragraph (1).

PRIOR PROVISIONS
A prior section 503 of Pub. L. 89–329 was classified to section 1091b of this title prior to repeal by Pub. L. 94–482.

Another prior section 503 of Pub. L. 89–329 was classified to section 1091c of this title prior to repeal by Pub. L. 94–482.

AMENDMENTS
2008—Subsec. (b)(5). Pub. L. 110–315, §501(2), inserted “... including innovative and customized instruction courses (which may include remedial education and English language instruction) designed to help retain students and move the students rapidly into core courses and through program completion” before period at end.
Subsec. (b)(6) to (16). Pub. L. 110–315, §501(1), (3)–(5), added pars. (6) and (15), redesignated former pars. (6), (7), (8), (9), (10), (11), (12), (13), and (14) as pars. (7), (8), (9), (10), (11), (12), (13), and (14), respectively, and in par. (11), substituted “distance education technologies” for “distance learning academic instruction capabilities”.

§ 1101c. Duration of grant
(a) Award period
The Secretary may award a grant to a Hispanic-serving institution under this subchapter for 5 years.

(b) Planning grants
Notwithstanding subsection (a) of this section, the Secretary may award a grant to a Hispanic-serving institution under this subchapter for a period of 1 year for the purpose of preparation of plans and applications for a grant under this subchapter.


PRIOR PROVISIONS
A prior section 504 of Pub. L. 89–329 was classified to section 1102b of this title prior to general amendment of this subchapter by Pub. L. 105–244.

Another prior section 504 of Pub. L. 89–329 was classified to section 1103 of this title prior to the general amendment of this subchapter by Pub. L. 105–244.

AMENDMENTS
2006—Subsec. (a). Pub. L. 109–292 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:
“(1) IN GENERAL.—The Secretary may award a grant to a Hispanic-serving institution under this subchapter for 5 years.
“(2) WAITOUT PERIOD.—A Hispanic-serving institution shall not be eligible to secure a subsequent 5-year grant award under this subchapter until 2 years have elapsed since the expiration of the institution’s most recent 5-year grant award under this subchapter, except that for the purpose of this subsection a grant under section 1103(a) of this title shall not be considered a grant under this subchapter.”

§ 1101d. Special rule
No Hispanic-serving institution that is eligible for and receives funds under this subchapter may receive funds under part A or B of subchapter III of this chapter during the period for which funds under this subchapter are awarded.


PRIOR PROVISIONS
A prior section 505 of Pub. L. 89–329 was classified to section 1102d of this title prior to general amendment of this subchapter by Pub. L. 105–244.

Another prior section 505 of Pub. L. 89–329 was classified to section 1091d of this title prior to repeal by Pub. L. 94–482.

PART B—PROMOTING POSTBACCALAUREATE OPPORTUNITIES FOR HISPANIC AMERICANS

PRIOR PROVISIONS
Another prior part B consisted of sections 1103 to 1103f and related to National Teacher Academies prior to the general amendment of this subchapter by Pub. L. 105–244.

§ 1102. Purposes
The purposes of this part are—
(1) to expand postbaccalaureate educational opportunities for, and improve the academic attainment of, Hispanic students; and
(2) to expand the postbaccalaureate academic offerings and enhance the program quality in the institutions of higher education that are educating the majority of Hispanic college students and helping large numbers of Hispanic and low-income students complete post-secondary degrees.


PRIOR PROVISIONS


A prior section 511 of Pub. L. 89–329 was renumbered section 521, and is classified to section 1103 of this title.

Another prior section 511 of Pub. L. 89–329 was classified to section 1103 of this title, prior to the general amendment of this subchapter by Pub. L. 105–244.

Another prior section 511 of Pub. L. 89–329 was classified to section 1101 of this title, prior to repeal by Pub. L. 97–35.

§ 1102a. Program authority and eligibility
(a) Program authorized
Subject to the availability of funds appropriated to carry out this part, the Secretary
shall award grants, on a competitive basis, to eligible institutions to enable the eligible institutions to carry out the authorized activities described in section 1102b of this title.

(b) Eligibility

For the purposes of this part, an “eligible institution” means an institution of higher education that—

(1) is a Hispanic-serving institution (as defined in section 1101a of this title); and

(2) offers a postbaccalaureate certificate or postbaccalaureate degree granting program.

Grants awarded under this part shall be used for one or more of the following activities:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement of classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services.

(3) Purchase of library books, periodicals, film, microfiche, and other educational materials, including telecommunications program materials.

(4) Support for low-income postbaccalaureate students including outreach, academic support services, mentoring, scholarships, fellowships, and other financial assistance to permit the enrollment of such students in postbaccalaureate certificate and postbaccalaureate degree granting programs.

(5) Support of faculty exchanges, faculty development, faculty research, curriculum development, and academic instruction.

(6) Creating or improving facilities for Internet or other distance education technologies, including purchase or rental of telecommunications technology equipment or services.

(7) Collaboration with other institutions of higher education to expand postbaccalaureate certificate and postbaccalaureate degree offerings.

(8) Other activities proposed in the application submitted pursuant to section 1102c of this title that—

(A) contribute to carrying out the purposes of this part; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

§ 1102c. Application and duration

(a) Application

Any eligible institution may apply for a grant under this part by submitting an application to the Secretary at such time and in such manner as the Secretary may require. Such application shall demonstrate how the grant funds will be used to improve postbaccalaureate education opportunities for Hispanic and low-income students.

(b) Duration

Grants under this part shall be awarded for a period not to exceed five years.

(c) Limitation

The Secretary may not award more than one grant under this part in any fiscal year to any Hispanic-serving institution.

§ 1102c. Application and duration

(a) Application

Any eligible institution may apply for a grant under this part by submitting an application to the Secretary at such time and in such manner as the Secretary may require. Such application shall demonstrate how the grant funds will be used to improve postbaccalaureate education opportunities for Hispanic and low-income students.

(b) Duration

Grants under this part shall be awarded for a period not to exceed five years.

(c) Limitation

The Secretary may not award more than one grant under this part in any fiscal year to any Hispanic-serving institution.

§ 1102c. Application and duration

(a) Application

Any eligible institution may apply for a grant under this part by submitting an application to the Secretary at such time and in such manner as the Secretary may require. Such application shall demonstrate how the grant funds will be used to improve postbaccalaureate education opportunities for Hispanic and low-income students.

(b) Duration

Grants under this part shall be awarded for a period not to exceed five years.

(c) Limitation

The Secretary may not award more than one grant under this part in any fiscal year to any Hispanic-serving institution.
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PART C—GENERAL PROVISIONS

CODE


PRIORITY PROVISIONS

A prior part C consisted of sections 1104 to 1104k and related to teacher scholarships and fellowships prior to the general amendment of this subchapter by Pub. L. 105–244.

§ 1103. Eligibility; applications

(a) Institutional eligibility

Each Hispanic-serving institution desiring to receive assistance under this subchapter shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate the institution’s need for assistance. Subject to the availability of appropriations to carry out this subchapter, the Secretary may approve an application for a grant under this subchapter only if the Secretary determines that—

(A) the application meets the requirements of subsection (c) of this section; and

(B) the institution is eligible for assistance in accordance with the provisions of this subchapter under which the assistance is sought.

(2) Preliminary applications

In carrying out paragraph (1), the Secretary may develop a preliminary application for use by Hispanic-serving institutions applying under this subchapter prior to the submission of the principal application.

(c) Contents

A Hispanic-serving institution, in the institution’s application for a grant, shall—

(1) set forth, or describe how the institution will develop, a comprehensive development plan to strengthen the institution’s academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this subchapter);

(2) include a 5-year plan for improving the assistance provided by the Hispanic-serving institution to Hispanic students and other low-income individuals;

(3) set forth policies and procedures to ensure that Federal funds made available under this subchapter for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 1101(b) of this title, and in no case supplant those funds;

(4) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this subchapter;

(5) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the institution under this subchapter;

(6) provide that the institution will comply with the limitations set forth in section 1103e of this title;

(7) describe in a comprehensive manner any proposed project for which funds are sought under the application and include—

(A) a description of the various components of the proposed project, including the estimated time required to complete each such component;

(B) in the case of any development project that consists of several components (as described by the institution pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this subchapter in conjunction with other parts of the development project (as specified by the institution);

(C) an evaluation by the institution of the priority given any proposed project for which funds are sought in relation to any other projects for which funds are sought by the institution under this subchapter, and a similar evaluation regarding priorities among the components of any single proposed project (as described by the institution pursuant to subparagraph (A));

(D) a detailed budget showing the manner in which funds for any proposed project would be spent by the institution; and

(E) a detailed description of any activity which involves the expenditure of more than $25,000, as identified in the budget referred to in subparagraph (D);

(8) provide for making reports, in such form and containing such information, as the Secretary may require to carry out the Secretary’s functions under this subchapter, including not less than one report annually set-
tional evidence that the Hispanic-serving institution has entered into or will enter into a collaborative arrangement with at least one local educational agency or community-based organization to provide such agency or organization with assistance (from funds other than funds provided under this subchapter) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education.

(e) Eligibility data

The Secretary shall use the most recent and relevant data concerning the number and percentage of students receiving need-based assistance under subchapter IV of this chapter and part C of subchapter I of chapter 42 in making eligibility determinations and shall advance the base-year for the determinations forward following each annual grant cycle.


PRIOR PROVISIONS


Another prior section 521 of Pub. L. 89–329 was classified to section 1116 of this title, prior to repeal by Pub. L. 94–482.
§ 1103b. Application review process

(a) Review panel

All applications submitted under this subchapter by Hispanic-serving institutions shall be read by a panel of readers composed of individuals who are selected by the Secretary and who include individuals representing Hispanic-serving institutions. The Secretary shall ensure that no individual assigned under this section to review any application has any conflict of interest with regard to the application that might impair the impartiality with which the individual conducts the review under this section.

(b) Instruction

All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this subchapter that are consistent with the provisions of this subchapter, including—

(1) an enumeration of the factors to be used to determine the quality of applications submitted under this subchapter; and

(2) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this subchapter, the amount of any such grant, and the duration of any such grant.

(c) Recommendations of panel

In awarding grants under this subchapter, the Secretary shall take into consideration the recommendations of the panel made under subsection (a) of this section.

(d) Notification

Not later than June 30 of each year, the Secretary shall notify each Hispanic-serving institution making an application under this subchapter of—

(1) the scores given the institution by the panel pursuant to this section;

(2) the recommendations of the panel with respect to such application; and

(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this subchapter, and any modifications, if any, in the recommendations of the panel made by the Secretary.

PRIOR PROVISIONS


A prior section 522 of Pub. L. 89–329 was classified to section 1102 of this title, prior to repeal by Pub. L. 94–482.

§ 1103c. Cooperative arrangements

(a) General authority

The Secretary may make grants to encourage cooperative arrangements with funds available to carry out this subchapter, between Hispanic-serving institutions eligible for assistance under this subchapter, and between such institutions and institutions not receiving assistance under this subchapter, for the activities described in sections 1101b and 1102b of this title so that the resources of the cooperating institutions might be combined and shared in order to achieve the purposes of this subchapter, to avoid costly duplicative efforts, and to enhance the development of Hispanic-serving institutions.

(b) Priority

The Secretary shall give priority to grants for the purposes described under subsection (a) of this section whenever the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant Hispanic-serving institution.

(c) Duration

Grants to Hispanic-serving institutions having a cooperative arrangement may be made under this section for a period determined under section 1101d of this title.


PRIOR PROVISIONS


PRIOR PROVISIONS


Another prior section 524 of Pub. L. 89–329 was classified to section 1103 of this title, prior to the general amendment of this subchapter by Pub. L. 102–325.

A prior section 524 of Pub. L. 89–329 was classified to section 1113 of this title, prior to repeal by Pub. L. 94–482.
§ 1103d. Assistance to institutions under other programs

(a) Assistance eligibility

Each Hispanic-serving institution that the Secretary determines to be an institution eligible under this subchapter may be eligible for waivers in accordance with subsection (b) of this section.

(b) Waiver applicability

(1) In general

Subject to, and in accordance with, regulations promulgated for the purpose of this section, in the case of any application by a Hispanic-serving institution referred to in subsection (a) of this section for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.

(2) Programs

The provisions of this section shall apply to any program authorized by subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 or section 1124 of this title.

(c) Limitation

The Secretary shall not waive, under subsection (b) of this section, the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 percent of the appropriations for the program for any fiscal year.

§ 1103e. Limitations

The funds appropriated under section 1103g of this title may not be used—

(1) for a school or department of divinity or any religious worship or sectarian activity;

(2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to a Hispanic-serving institution;

(3) for an activity that is inconsistent with a State plan of higher education applicable to a Hispanic-serving institution; or

(4) for purposes other than the purposes set forth in the approved application under which the funds were made available to a Hispanic-serving institution.

§ 1103f. Penalties

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of Federal financial assistance or grant pursuant to this subchapter embezzles, willfully misapplies, steals, or obtains by fraud any of the funds that are the subject of such grant or assistance, shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both.

§ 1103g. Authorizations of appropriations

(a) Authorizations

(1) Parts A and C

There are authorized to be appropriated to carry out parts A and C $175,000,000 for fiscal
year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(2) Part B

There are authorized to be appropriated to carry out part B $100,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(b) Use of multiple year awards

In the event of a multiple year award to any Hispanic-serving institution under this subchapter, the Secretary shall make funds available for such award from funds appropriated for this subchapter for the fiscal year in which such funds are to be used by the institution.


A prior section 1104g, Pub. L. 89–329, title V, § 518, as added Pub. L. 102–325, title V, § 501(a), July 23, 1992, 106 Stat. 677, related to purpose of Paul Douglas Teacher Scholarship program and provided that scholarships be referred to as “Paul Douglas Teacher Scholarships”.


Another prior section 1104a, Pub. L. 89–329, title V, § 522, as added Pub. L. 99–498, title V, § 501(a), Oct. 17, 1986, 100 Stat. 1486, provided that the purpose of former part B of this subchapter was to encourage partnerships between institutions of higher education and secondary schools serving low-income students, prior to the general amendment of this subchapter by Pub. L. 102–325.

Another prior section 1103g, Pub. L. 89–329, title V, § 518, as added Pub. L. 99–498, title V, § 501(a), Oct. 17, 1986, 100 Stat. 1486, related to purpose of Christa McAuliffe fellowship program and provided that fellowship recipients be known as “Christa McAuliffe fellows”.


AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315, §505, amended subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this subchapter $62,500,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years.”

SUBCHAPTER VI—INTERNATIONAL EDUCATION PROGRAMS

Codification


Part A—International and Foreign Language Studies

Codification


§1121. Findings; purposes; consultation; survey

(a) Findings

Congress finds as follows:

(1) The security, stability, and economic vitality of the United States in a complex global era depend upon American experts in and citizens knowledgeable about world regions, foreign languages, and international affairs, as well as upon a strong research base in these areas.

(2) Advances in communications technology and the growth of regional and global problems make knowledge of other countries and the ability to communicate in other languages more essential to the promotion of mutual understanding and cooperation among nations and their peoples.

(3) Dramatic changes in the world’s geopolitical and economic landscapes are creating needs for American expertise and knowledge about a greater diversity of less commonly taught foreign languages and nations of the world.
(4) Systematic efforts are necessary to enhance the capacity of institutions of higher education in the United States for—
(A) producing graduates with international and foreign language expertise and knowledge; and
(B) research regarding such expertise and knowledge.

(5) Cooperative efforts among the Federal Government, institutions of higher education, and the private sector are necessary to promote the generation and dissemination of information about world regions, foreign languages, and international affairs throughout education, government, business, civic, and nonprofit sectors in the United States.

(b) Purposes The purposes of this part are—
(1)(A) to support centers, programs, and fellowships in institutions of higher education in the United States for producing increased numbers of trained personnel and research in foreign languages, area studies, and other international studies;
(B) to develop a pool of international experts to meet national needs;
(C) to develop and validate specialized materials and techniques for foreign language acquisition and fluency, emphasizing (but not limited to) the less commonly taught languages;
(D) to promote access to research and training overseas, including through linkages with overseas institutions; and
(E) to advance the internationalization of a variety of disciplines throughout undergraduate and graduate education;
(2) to support cooperative efforts promoting access to and the dissemination of international and foreign language knowledge, teaching materials, and research, throughout education, government, business, civic, and nonprofit sectors in the United States, through the use of advanced technologies; and
(3) to coordinate the programs of the Federal Government in the areas of foreign language, area studies, and other international studies, including professional international affairs education and research.

(c) Consultation
(1) In general The Secretary shall, prior to requesting applications for funding under this subchapter during each grant cycle, consult with and receive recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies.

(2) Considering recommendations; providing information The Secretary—
(A) may take into account the recommendations described in paragraph (1); and
(B) shall—
(i) provide information collected under paragraph (1) when requesting applications for funding under this subchapter; and
(ii) make available to applicants a list of areas identified as areas of national need.

(d) Survey The Secretary shall assist grantees in developing a survey to administer to students who have completed programs under this subchapter to determine postgraduate employment, education, or training. All grantees, where applicable, shall administer such survey once every two years and report survey results to the Secretary.


PRIORITY PROVISIONS


AMENDMENTS
Subsecs. (c), (d). Pub. L. 110–315, §601(4), added subsecs. (c) and (d).

EFFECTIVE DATE

NATIONAL ENDOWMENT FOR INTERNATIONAL STUDIES

§1122. Graduate and undergraduate language and area centers and programs

(a) National language and area centers and programs authorized
(1) Centers and programs
(A) In general
The Secretary is authorized to make grants to institutions of higher education or
consortia of such institutions for the purpose of establishing, strengthening, and operating—

(i) comprehensive foreign language and area or international studies centers and programs; and

(ii) a diverse network of undergraduate foreign language and area or international studies centers and programs.

(B) National resources

The centers and programs referred to in paragraph (1) shall be national resources for—

(i) teaching of any modern foreign language;

(ii) instruction in fields needed to provide full understanding of areas, regions, or countries in which such language is commonly used;

(iii) research and training in international studies, and the international and foreign language aspects of professional and other fields of study; and

(iv) instruction and research on issues in world affairs that concern one or more countries.

(2) Authorized activities

Any such grant may be used to pay all or part of the cost of establishing or operating a center or program, including the cost of—

(A) teaching and research materials;

(B) curriculum planning and development;

(C) establishing and maintaining linkages with overseas institutions of higher education and other organizations that may contribute to the teaching and research of the center or program;

(D) bringing visiting scholars and faculty to the center to teach or to conduct research;

(E) professional development of the center’s faculty and staff;

(F) projects conducted in cooperation with other centers addressing themes of world regional, cross-regional, international, or global importance;

(G) summer institutes in the United States or abroad designed to provide language and area training in the center’s field or topic;

(H) support for faculty, staff, and student travel in foreign areas, regions, or countries, and for the development and support of educational programs abroad for students;

(I) supporting instructors of the less commonly taught languages; and

(J) projects that support students in the science, technology, engineering, and mathematics fields to achieve foreign language proficiency.

(3) Grants to maintain library collections

The Secretary may make grants to centers described in paragraph (1) having important library collections, as determined by the Secretary, for the maintenance of such collections.

(4) Outreach grants and summer institutes

The Secretary may make additional grants to centers described in paragraph (1) for any one or more of the following purposes:

(A) Programs of linkage or outreach between foreign language, area studies, or other international fields, and professional schools and colleges.

(B) Programs of linkage or outreach with 2- and 4-year colleges and universities.

(C) Programs of linkage or outreach between or among—

(i) postsecondary programs or departments in foreign language, area studies, or other international fields; and

(ii) State educational agencies or local educational agencies.

(D) Partnerships or programs of linkage and outreach with departments or agencies of Federal and State governments, including Federal or State scholarship programs for students in related areas.

(E) Programs of linkage or outreach with the news media, business, professional, or trade associations.

(F) Summer institutes in area studies, foreign language, and other international fields designed to carry out the programs described in subparagraphs (A), (B), (D), and (E).

(b) Fellowships for foreign language and area or international studies

(1) In general

The Secretary is authorized to make grants to institutions of higher education or combinations of such institutions for the purpose of paying stipends to individuals undergoing advanced training in any center or program approved by the Secretary.

(2) Eligible students

A student receiving a stipend described in paragraph (1) shall be engaged—

(A) in an instructional program with stated performance goals for functional foreign language use or in a program developing such performance goals, in combination with area studies, international studies, or the international aspects of a professional studies program; and

(B) in the case of an undergraduate student, in the intermediate or advanced study of a less commonly taught language; or

(ii) in the case of a graduate student, in graduate study in connection with a program described in subparagraph (A), including—

(I) predissertation level study;

(II) preparation for dissertation research;

(III) dissertation research abroad; or

(IV) dissertation writing.

(c) Special rule with respect to travel

No funds may be expended under this part for undergraduate travel except in accordance with rules prescribed by the Secretary setting forth policies and procedures to assure that Federal funds made available for such travel are expended as part of a formal program of supervised study.

(d) Allowances

(1) Graduate level recipients

A stipend awarded to a graduate level recipient may include allowances for dependents
and for travel for research and study in the United States and abroad.

(2) Undergraduate level recipients

A stipend awarded to an undergraduate level recipient may include an allowance for educational programs in the United States or educational programs abroad that (A) are closely linked to the overall goals of the recipient’s course of study; and (B) have the purpose of promoting foreign language fluency and knowledge of foreign cultures.

(e) Application

Each institution of higher education or consortium of such institutions desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information and assurances as the Secretary may require. Each such application shall include—

(1) an explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs; and

(2) a description of how the applicant will encourage government service in areas of national need, as identified by the Secretary, as well as in areas of need in the education, business, and nonprofit sectors.


PRIOR PROVISIONS


The activities carried out by the centers described in subsection (a) of this section—

(1) shall include effective dissemination efforts, whenever appropriate; and

(2) may include—

(A) the development and dissemination of new teaching materials reflecting the use of such research in effective teaching strategies;

(B) the development, application, and dissemination of performance testing appropriate to an educational setting for use as a standard and comparable measurement of skill levels in all languages;

(C) the development, application, and dissemination of performance testing appropriate to an educational setting for use as a standard and comparable measurement of skill levels in all languages;

(D) the training of teachers in the administration and interpretation of performance tests, the use of effective teaching strategies, and the use of new technologies;

(E) a significant focus on the teaching and learning needs of the less commonly taught languages, including an assessment of the strategic needs of the United States, the determination of ways to meet those needs na-
tionally, and the publication and dissemination of instructional materials in the less commonly taught languages;

(F) the development and dissemination of materials designed to serve as a resource for foreign language teachers at the elementary and secondary school levels; and

(G) the operation of intensive summer language institutes to train advanced foreign language students, to provide professional development, and to improve language instruction through preservice and inservice language training for teachers.

(c) Conditions for grants

Grants under this section shall reflect the purposes of this part and be made on such conditions as the Secretary determines to be necessary to carry out the provisions of this section.


PRIOR PROVISIONS


Another prior section 1123, Pub. L. 89–329, title VI, §603, Nov. 8, 1965, 79 Stat. 1362, related to the State plans for carrying out the program of equipment grants to institutions of higher education, prior to the general amendment of this subchapter by Pub. L. 96–374.

AMENDMENTS


Subsec. (c). Pub. L. 110–315, §603, inserted “reflect the purposes of this part and” after “section shall”.

§1124. Undergraduate international studies and foreign language programs

(a) Incentives for creation of new programs and strengthening of existing programs in undergraduate international studies and foreign language programs

(1) Authority

The Secretary is authorized to make grants to institutions of higher education, consortia of such institutions, or partnerships between nonprofit educational organizations and institutions of higher education, to assist such institutions, consortia or partnerships in planning, developing, and carrying out programs to improve undergraduate instruction in international studies and foreign languages. Such grants shall be awarded to institutions, consortia or partnerships seeking to create new programs or to strengthen existing programs in foreign languages, area studies, and other international fields.

(2) Use of funds

Grants made under this section may be used for the Federal share of the cost of projects and activities which are an integral part of such a program, such as—

(A) planning for the development and expansion of undergraduate programs in international studies and foreign languages;

(B) teaching, research, curriculum development, faculty training in the United States or abroad, and other related activities, including—

(i) the expansion of library and teaching resources; and

(ii) pre-service teacher training and in-service teacher professional development;

(C) expansion of opportunities for learning foreign languages, including less commonly taught languages;

(D) programs under which foreign teachers and scholars may visit institutions as visiting faculty;

(E) programs designed to develop or enhance linkages between 2- and 4-year institutions of higher education, or baccalaureate and post-baccalaureate programs or institutions;

(F) the development of undergraduate educational programs—

(i) in locations abroad where such opportunities are not otherwise available or that serve students for whom such opportunities are not otherwise available; and

(ii) that provide courses that are closely related to on-campus foreign language and international curricula;

(G) the integration of new and continuing education abroad opportunities for undergraduate students into curricula of specific degree programs;

(H) the development of model programs to enrich or enhance the effectiveness of educational programs abroad, including pre-departure and postreturn programs, and the integration of educational programs abroad into the curriculum of the home institution;

(I) the provision of grants for educational programs abroad that—

(i) are closely linked to the program’s overall goals; and

(ii) have the purpose of promoting foreign language fluency and knowledge of world regions;

(J) the development of programs designed to integrate professional and technical education with foreign languages, area studies, and other international fields;

(K) the establishment of linkages overseas with institutions of higher education and organizations that contribute to the educational programs assisted under this sub-section;

(L) the conduct of summer institutes in foreign area, foreign language, and other international fields to provide faculty and curriculum development, including the integration of professional and technical education with foreign area and other international studies, and to provide foreign area and other international knowledge or skills to government personnel or private sector professionals in international activities;

(M) the development of partnerships between—

(i) institutions of higher education; and
(ii) the private sector, government, or elementary and secondary education institutions, in order to enhance international knowledge and skills; and

(N) the use of innovative technology to increase access to international education programs.

(3) Non-Federal share

The non-Federal share of the cost of the programs assisted under this subsection—

(A) may be provided in cash from the private sector corporations or foundations in an amount equal to one-third of the total cost of the programs assisted under this section; or

(B) may be provided as an in-cash or in-kind contribution from institutional and noninstitutional funds, including State and private sector corporation or foundation contributions, equal to one-half of the total cost of the programs assisted under this section.

(4) Special rule

The Secretary may waive or reduce the required non-Federal share for institutions that—

(A) are eligible to receive assistance under part A or B of subchapter III of this chapter or under subchapter V of this chapter; and

(B) have submitted a grant application under this section that demonstrates a need for a waiver or reduction.

(5) Priority

In awarding grants under this section, the Secretary shall give priority to applications from institutions of higher education, consortia or partnerships that require entering students to have successfully completed at least 2 years of secondary school foreign language instruction or that require each graduating student to earn 2 years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in the foreign language) or, in the case of a 2-year degree grant—

(a)(2)(I).

(6) Grant conditions

Grants under this subsection shall reflect the purposes of this part and be made on such conditions as the Secretary determines to be necessary to carry out this subsection.

(7) Application

Each application for assistance under this subsection shall include—

(A) evidence that the applicant has conducted extensive planning prior to submitting the application;

(B) an assurance that the faculty and administrators of all relevant departments and programs served by the applicant are involved in ongoing collaboration with regard to achieving the stated objectives of the application;

(C) an assurance that students at the applicant institutions, as appropriate, will have equal access to, and derive benefits from, the program assisted under this subsection;

(D) an assurance that each applicant, consortium, or partnership will use the Federal assistance provided under this subsection to supplement and not supplant non-Federal funds the institution expends for programs to improve undergraduate instruction in international studies and foreign languages;

(E) a description of how the applicant will provide information to students regarding federally funded scholarship programs in related areas;

(F) an explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, where applicable; and

(G) a description of how the applicant will encourage service in areas of national need, as identified by the Secretary.

(8) Evaluation

The Secretary may establish requirements for program evaluations and require grant recipients to submit annual reports that evaluate the progress and performance of students participating in programs assisted under this subsection.

(b) Programs of national significance

The Secretary may also award grants to public and private nonprofit agencies and organizations, including professional and scholarly associations, whenever the Secretary determines such grants will make an especially significant contribution to improving undergraduate international studies and foreign language programs.

(c) Funding support

(1) In general

The Secretary may use not more than 20 percent of the total amount appropriated for this part for carrying out the purposes of this section.

(2) Grantees

Of the total amount of grant funds awarded to a grantee under this section, the grantee may use not more than ten percent of such funds for the activity described in subsection (a)(2)(I).


PRIOR PROVISIONS

§ 1125. Research; studies; annual report

(a) Authorized activities

The Secretary may, directly or through grants or contracts, conduct research and studies that contribute to achieving the purposes of this part. Such research and studies may include—

(1) studies and surveys to determine needs for increased or improved instruction in foreign language, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(2) studies and surveys to assess the utilization of graduates of programs supported under this subchapter by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(3) evaluation of the extent to which programs assisted under this subchapter that address national needs would not otherwise be offered;

(4) comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(5) research on more effective methods of providing instruction and achieving competency in foreign languages, area studies, or other international fields;

(6) the development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists;

(7) studies and surveys of the uses of technology in foreign language, area studies, and international studies programs;

(8) studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques throughout the education community, including elementary and secondary schools;

(9) the application of performance tests and standards across all areas of foreign language instruction and classroom use;

(10) evaluation of the extent to which programs assisted under this subchapter reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, as described in the grantees’ application;

(11) the systematic collection, analysis, and dissemination of data that contribute to achieving the purposes of this part; and

(12) support for programs or activities to make data collected, analyzed, or disseminated under this section publicly available and easy to understand.

(b) Annual report

The Secretary shall prepare, publish, and announce an annual report listing the books and research materials produced with assistance under this section.

PENDING SECTION

Prior provisions


Prior provisions

Subsection (a)(2) is redesignated as subsubsection (a)(3).

Effective Date of 2009 Amendment


PENDING SECTION
§ 1126. Technological innovation and cooperation for foreign information access

(a) Authority

(1) In general

The Secretary is authorized to make grants to institutions of higher education, public or nonprofit private libraries, or partnerships between such institutions and other such institutions, libraries, or nonprofit educational organizations, to develop innovative techniques or programs using electronic technologies to collect, organize, preserve, and widely disseminate information from foreign sources on world regions and countries other than the United States that address our Nation’s teaching and research needs in international education and foreign languages.

(2) Grant recipients

The Secretary may award grants under this section to carry out the activities authorized under this section to the following:

(A) An institution of higher education.

(B) A public or nonprofit private library.

(C) A partnership of an institution of higher education and one or more of the following:

(i) Another institution of higher education.

(ii) A library.

(iii) A nonprofit educational organization.

(b) Authorized activities

Grants under this section may be used—

(1) to acquire, facilitate access to, or preserve foreign information resources in print or electronic forms;

(2) to develop new means of immediate, full-text document delivery for information and scholarship from abroad;

(3) to develop new means of or standards for shared electronic access to international data;

(4) to support collaborative projects of indexing, cataloging, and other means of bibliographic access for scholars to important research materials published or distributed outside the United States;

(5) to develop methods for the wide dissemination of resources written in non-Roman language alphabets;

(6) to assist teachers of less commonly taught languages in acquiring, via electronic and other means, materials suitable for classroom use;

(7) to promote collaborative technology based projects in foreign languages, area studies, and international studies among grant recipients under this subchapter;

(8) to establish linkages to facilitate carrying out the activities described in this subsection—

(A) the institutions of higher education, libraries, and partnerships receiving grants under this section; and

(B) institutions of higher education, nonprofit educational organizations, and libraries overseas; and

(9) to carry out other activities that the Secretary determines are consistent with the purpose of the grants awarded under this section.

(c) Application

Each institution of higher education, library, or partnership desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information and assurances as the Secretary may reasonably require.

(d) Match required

The Federal share of the total cost of carrying out a program supported by a grant under this section shall not be more than 66 2/3 percent. The non-Federal share of such cost may be provided either in-kind or in cash, and may include contributions from private sector corporations or foundations.


Prior Provisions


A prior section 606 of Pub. L. 89–329 was classified to section 1125 of this title, prior to the general amendment of this part by Pub. L. 105–244.

Amendments


§ 1127. Selection of certain grant recipients

(a) Competitive grants

The Secretary shall award grants under section 1122 of this title competitively on the basis of criteria that separately, but not less rigorously, evaluates—

(1) the applications for comprehensive foreign language and area or international studies centers and programs; and

(2) the applications for undergraduate foreign language and area or international studies centers and programs.
§ 1128a. American overseas research centers

(a) Centers authorized

The Secretary is authorized to make grants to and enter into contracts with any American overseas research center that is a consortium of institutions of higher education (hereafter in this section referred to as a “center”) to enable such center to promote postgraduate research, exchanges and area studies.

(b) Use of grants

Grants made and contracts entered into pursuant to this section may be used to pay all or a portion of the cost of establishing or operating a center or program, including—

(1) the cost of faculty and staff stipends and salaries;

(2) the cost of faculty, staff, and student travel;

(3) the cost of the operation and maintenance of overseas facilities;

(4) the cost of teaching and research materials;

(5) the cost of acquisition, maintenance, and preservation of library collections;

(6) the cost of bringing visiting scholars and faculty to a center to teach or to conduct research;

(7) the cost of organizing and managing conferences; and

(8) the cost of publication and dissemination of material for the scholarly and general public.

(c) Limitation

The Secretary shall only award grants to and enter into contracts with centers under this section that—

(1) receive more than 50 percent of their funding from public or private United States sources;
(2) have a permanent presence in the country in which the center is located; and
(3) are organizations described in section 501(c)(3) of title 26 which are exempt from taxation under section 501(a) of such title.

(d) Development grants

The Secretary is authorized to make grants for the establishment of new centers. The grants may be used to fund activities that, within 1 year, will result in the creation of a center described in subsection (c) of this section.

(e) Application

Each center desiring to receive a grant or contract under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information and assurances as the Secretary may require.


PRIOR PROVISIONS

A prior section 609 of Pub. L. 89–329 was classified to section 1126 of this title, prior to the general amendment of this part by Pub. L. 105–244.


AMENDMENTS


§ 1128b. Authorization of appropriations

There are authorized to be appropriated to
(1) the future economic welfare of the United States will depend substantially on increasing international skills in the business and educational community and creating an awareness among the American public of the internationalization of our economy;
(2) concerted efforts are necessary to engage business schools, language and area study programs, professional international affairs education programs, public and private sector organizations, and United States business in a mutually productive relationship which benefits the Nation’s future economic interests;
(3) few linkages presently exist between the manpower and information needs of United States business and the international education, language training and research capacities of institutions of higher education in the United States, and public and private organizations; and
(4) organizations such as world trade councils, world trade clubs, chambers of commerce and State departments of commerce are not adequately used to link universities and business for joint venture exploration and program development.

(b) Purposes

It is the purpose of this part—
(1) to enhance the broad objective of this chapter and part C of subchapter I of chapter 34 of title 42 by increasing and promoting the Nation’s capacity for international understanding and economic enterprise through the provision of suitable international education and training for business personnel in various stages of professional development; and
(2) to promote institutional and noninstitutional educational and training activities that will contribute to the ability of United States business to prosper in an international economy.


AMENDMENTS


EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1992 AMENDMENT

§ 1130–1. Centers for international business education

(a) Program authorized

(1) Purpose

The purpose of this section is to coordinate the programs of the Federal Government in the areas of research, education, and training in international business and trade competitiveness.

(2) In general

The Secretary is authorized to make grants to institutions of higher education, or consortia of such institutions, to pay the Federal share of the cost of planning, establishing and operating centers for international business education which—

(A) will be national resources for the teaching of improved business techniques, strategies, and methodologies which emphasize the international context in which business is transacted;

(B) will provide instruction in critical foreign languages and international fields needed to provide understanding of the cultures and customs of United States trading partners; and

(C) will provide research and training in the international aspects of trade, commerce, and other fields of study.

(3) Special rule

In addition to providing training to students enrolled in the institution of higher education in which a center is located, such centers shall serve as regional resources to businesses proximately located by offering programs and providing research designed to meet the international training needs of such businesses. Such centers shall also serve other faculty, students, and institutions of higher education located within their region.

(b) Authorized expenditures

Each grant made under this section may be used to pay the Federal share of the cost of planning, establishing or operating a center, including the cost of—

(1) faculty and staff travel in foreign areas, regions, or countries;

(2) teaching and research materials;

(3) curriculum planning and development;

(4) bringing visiting scholars and faculty to the center to teach or to conduct research; and

(5) training and improvement of the staff, for the purpose of, and subject to such conditions as the Secretary finds necessary for, carrying out the objectives of this section.

(c) Authorized activities

(1) Mandatory activities

Programs and activities to be conducted by centers assisted under this section shall include—

(A) interdisciplinary programs which incorporate foreign language and international studies training into business, finance, management, communications systems, and other professional curricula;

(B) interdisciplinary programs which provide business, finance, management, communications systems, and other professional training for foreign language and international studies faculty and degree candidates;

(C) programs, such as intensive language programs, available to members of the business community and other professionals which are designed to develop or enhance their international skills, awareness, and expertise;

(D) collaborative programs, activities, or research involving other institutions of higher education, local educational agencies, professional associations, businesses, firms, or consortia thereof, to promote the development of international skills, awareness, and expertise among current and prospective members of the business community and other professionals;

(E) research designed to strengthen and improve the international aspects of business and professional education and to promote integrated curricula; and

(F) research designed to promote the international competitiveness of American businesses and firms, including those not currently active in international trade.

(2) Permissible activities

Programs and activities to be conducted by centers assisted under this section may include—

(A) the establishment of overseas internship programs for students and faculty designed to provide training and experience in international business activities, except that no Federal funds provided under this section may be used to pay wages or stipends to any participant who is engaged in compensated employment as part of an internship program;

(B) the establishment of linkages overseas with institutions of higher education and other organizations that contribute to the educational objectives of this section;

(C) summer institutes in international business, foreign area studies, foreign language studies, and other international studies designed to carry out the purposes of subparagraph (A) of this paragraph;

(D) the development of opportunities for business students to study abroad in locations which are important to the existing and future economic well-being of the United States;

(E) outreach activities or consortia with business programs located at other institutions of higher education (including those that are eligible to receive assistance under part A or B of subchapter III or under chapter V) for the purpose of providing expertise regarding the internationalization of such programs, such as assistance in research, curriculum development, faculty development, or educational exchange programs;

(F) programs encouraging the advancement and understanding of technology-related disciplines, including manufacturing software systems and technology management; and
§ 1130–1

(d) Advisory council

(1) Establishment

In order to be eligible for assistance under this section, an institution of higher education, or consortium of such institutions, shall establish a center advisory council which will conduct extensive planning prior to the establishment of a center concerning the scope of the center’s activities and the design of its programs.

(2) Membership on advisory council

The center advisory council shall include—

(A) one representative of an administrative department or office of the institution of higher education;

(B) one faculty representative of the business or management school or department of such institution;

(C) one faculty representative of the international studies or foreign language school or department of such institution;

(D) one faculty representative of another professional school or department of such institution, as appropriate;

(E) one or more representatives of local or regional businesses or firms;

(F) one representative appointed by the Governor of the State in which the institution of higher education is located whose normal responsibilities include official oversight or involvement in State-sponsored trade-related activities or programs; and

(G) such other individuals as the institution of higher education deems appropriate, such as a representative of a community college in the region served by the center.

(3) Meetings

In addition to the initial planning activities required under subsection (d)(1) of this section, the center advisory council shall meet not less than once each year after the establishment of the center to assess and advise on the programs and activities conducted by the center.

(e) Grant duration; Federal share

(1) Duration of grants

The Secretary shall make grants under this section for a minimum of 3 years unless the Secretary determines that the provision of grants of shorter duration is necessary to carry out the objectives of this section.

(2) Federal share

The Federal share of the cost of planning, establishing and operating centers under this section shall be—

(A) not more than 90 percent for the first year in which Federal funds are received;

(B) not more than 70 percent for the second such year; and

(C) not more than 50 percent for the third such year and for each such year thereafter.

(3) Non-Federal share

The non-Federal share of the cost of planning, establishing, and operating centers under this section may be provided either in cash or in-kind.

(4) Waiver of non-Federal share

In the case of an institution of higher education receiving a grant under this part and conducting outreach or consortia activities with another institution of higher education in accordance with subsection (c)(2)(E) of this section, the Secretary may waive a portion of the requirements for the non-Federal share required in paragraph (2) equal to the amount provided by the institution of higher education receiving such grant to such other institution of higher education for carrying out such outreach or consortia activities. Any such waiver shall be subject to such terms and conditions as the Secretary deems necessary for carrying out the purposes of this section.

(f) Grant conditions

Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the objectives of this section. Such conditions shall include—

(1) evidence that the institution of higher education, or consortium of such institutions, will conduct extensive planning prior to the establishment of a center concerning the scope of the center’s activities and the design of its programs in accordance with subsection (d)(1) of this section;

(2) assurance of ongoing collaboration in the establishment and operation of the center by faculty of the business, management, foreign language, international studies, professional international affairs, and other professional schools or departments, as appropriate;

(3) assurance that the education and training programs of the center will be open to students concentrating in each of these respective areas, as appropriate, and that diverse perspectives will be made available to students in programs under this section; and

(4) assurance that the institution of higher education, or consortium of such institutions, will use the assistance provided under this section to supplement and not to supplant activities conducted by institutions of higher education described in subsection (c)(1) of this section.

Subsec. (c)(2)(E), Pub. L. 110–315, § 611(a)(2)(A), inserted “(including those that are eligible to receive assistance under part A or B of subchapter III or under subchapter V)” after “other institutions of higher education”.

Subsec. (c)(2)(F), (G). Pub. L. 110–315, § 611(a)(2)(B)–(D), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(1), Pub. L. 110–315, § 610(b), substituted “consortium” for “combination”.

Subsec. (f)(1), Pub. L. 110–315, § 610(b), substituted “consortium” for “combination”.

Subsec. (f)(3), Pub. L. 110–315, § 611(a)(3), inserted “and that diverse perspectives will be made available to students in programs under this section” before semicolon.

Subsec. (f)(4), Pub. L. 110–315, § 610(b), substituted “consortium” for “combination”.


§ 1130a. Education and training programs

(a) Program authorized

The Secretary shall make grants to, and enter into contracts with, institutions of higher education to pay the Federal share of the cost of programs designed to promote linkages between such institutions and the American business community engaged in international economic activity. Each program assisted under this section shall both enhance the international academic programs of institutions of higher education and provide appropriate services to the business community which will expand its capacity to engage in commerce abroad.

(b) Authorized activities

Eligible activities to be conducted by institutions of higher education pursuant to grants or contracts awarded under this section shall include—

(1) innovation and improvement in international education curricula to serve the needs of the business community, including development of new programs for nontraditional, mid-career, or part-time students;

(2) development of programs to inform the public of increasing international economic interdependence and the role of American business within the international economic system;

(3) internationalization of curricula at the junior and community college level, and at undergraduate and graduate schools of business;

(4) development of area studies programs, and interdisciplinary international programs;

(5) establishment of export education programs through cooperative arrangements with regional and world trade centers and councils, and with bilateral and multilateral trade associations;

(6) research for and development of specialized teaching materials, including language materials, and facilities appropriate to business-oriented students;

(7) establishment of student and faculty fellowships and internships for training and education in international business activities;

(8) development of opportunities for junior business and other professional school faculty to acquire or strengthen international skills and perspectives;

(9) development of research programs on issues of common interest to institutions of higher education and private sector organizations and associations engaged in or promoting international economic activity;

(10) the establishment of internships overseas to enable foreign language students to develop their foreign language skills and knowledge of foreign cultures and societies;

(11) the establishment of linkages overseas with institutions of higher education and organizations that contribute to the educational objectives of this section; and

(12) summer institutes in international business, foreign area and other international studies designed to carry out the purposes of this section.

(c) Applications

No grant may be made and no contract may be entered into under this section unless an institution of higher education submits an application to the Secretary at such time and in such manner as the Secretary may reasonably require. Each such application shall be accompanied by a copy of the agreement entered into by the institution of higher education with a business enterprise, trade organization or association engaged in international economic activity, or a combination or consortium of such enterprises, organizations or associations, for the purpose of establishing, developing, improving or expanding activities eligible for assistance under subsection (b) of this section. Each such application shall contain assurances that the institution of higher education will use the assistance provided under this section to supplement and not to supplant activities conducted by institutions of higher education described in subsection (b) of this section. Each such application shall include an assurance that, if more applicable, the activities funded by the grant will reflect diverse perspectives and a wide range of views on world regions and international affairs.

(d) Federal share

The Federal share under this part for each fiscal year shall not exceed 50 percent of the cost of such program.
PRIORITY PROVISIONS

A prior section 613 of Pub. L. 89–329 was renumbered section 614 and is classified to section 1130b of this title.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–315 inserted at end "(d) There are authorized to be appropriated $7,500,000 for the fiscal year 2008 and for each of the 4 succeeding fiscal years to carry out the provisions of section 1130–1 of this title.

(b) There are authorized to be appropriated $5,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years, to carry out the provisions of section 1130a of this title.

1990—Subsec. (a). Pub. L. 101–600 substituted "$7,500,000" for "$5,000,000" and "4 succeeding" for "3 succeeding".

1986—Pub. L. 100–418, §6262, amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated $7,500,000 for fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1985, to carry out the provisions of this part."

\section{Authorization of appropriations}

\subsection{Centers for international business education}

There are authorized to be appropriated such sums as may be necessary for the fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years to carry out the provisions of section 1130–1 of this title.

\subsection{Education and training programs}

There are authorized to be appropriated such sums as may be necessary for fiscal year 2009, and such sums as may be necessary for the five succeeding fiscal years, to carry out the provisions of section 1130a of this title.

\section{Eligible recipient defined}

(1) In general

For the purpose of this part, the term "eligible recipient" means a consortium consisting of 1 or more of the following entities:

(A) An institution eligible for assistance under part B of subchapter III of this chapter.

(B) A tribally controlled college or university or Alaska Native or Native Hawaiian-serving institution eligible for assistance under part A or B of subchapter III, or an institution eligible for assistance under subchapter V.

(C) An institution of higher education that serves substantial numbers of underrepresented minority students.
(D) An institution of higher education with programs in training foreign service professionals.

(2) Host institution

Each eligible recipient receiving a grant under this section shall designate an institution of higher education as the host institution for the Institute.

(c) Application

(1) In general

Each eligible recipient desiring a grant under this section shall submit an application at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) Content of application

Each application submitted under paragraph (1) shall include a description of how the activities funded by the grant will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, where applicable.

(d) Duration

Grants made pursuant to this section shall be awarded for a period not to exceed 5 years.

(e) Match required

The eligible recipient of a grant under this section shall contribute to the conduct of the program supported by the grant an amount from non-Federal sources equal to at least one-half the amount of the grant, which contribution may be in cash or in kind.


PRIOR PROVISIONS


AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315, § 612(a), substituted "The Institute shall conduct a program to enhance the international competitiveness of the United States by increasing the participation of underrepresented populations in the international service, including private international voluntary organizations and the foreign service of the United States." for "The Institute shall conduct a program to significantly increase the number of African Americans and other underrepresented minorities in the international service, including private international voluntary organizations and the foreign service of the United States."

Subsec. (b)(1)(B) to (D). Pub. L. 110–315, § 612(2), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which read as follows: "An institution of higher education which serves substantial numbers of African American or other underrepresented minority students."
§ 1131a. Study abroad program

(a) Program authority

The Institute shall conduct, by grant or contract, a junior year abroad program. The junior year abroad program shall be open to eligible students at institutions of higher education, including historically Black colleges and universities, tribally controlled colleges or universities, Alaska Native-serving, Native Hawaiian-serving, and Hispanic-serving institutions, and other institutions of higher education with significant minority student populations. Eligible student expenses shall be shared by the Institute and the institution at which the student is in attendance. Each student may spend not more than 9 months abroad in a program of academic study, as well as social, familial and political interactions designed to foster an understanding of and familiarity with the language, culture, economics and governance of the host country.

(b) "Eligible student" defined

For the purpose of this section, the term "eligible student" means a student that is—

(1) enrolled full-time in a baccalaureate degree program at an institution of higher education; and

(2) entering the third year of study, or completing the third year of study in the case of a summer abroad program, at an institution of higher education which nominates such student for participation in the study abroad program.

(c) Special rule

An institution of higher education desiring to send a student on the study abroad program shall enter into a Memorandum of Understanding with the Institute under which such institution of higher education agrees to—

(1) provide the requisite academic preparation for students participating in the study abroad or internship programs;

(2) pay one-third the cost of each student it nominates for participation in the study abroad program; and

(3) meet such other requirements as the Secretary may from time to time, by regulation, reasonably require.

§ 1131b. Advanced degree in international relations

The Institute shall provide, in cooperation with the other members participating in the eligible recipient consortium, a program of study leading to an advanced degree in international relations, international affairs, international economics, or other academic areas related to the Institute fellow’s career objectives. The advanced degree study program shall be designed by the consortia, consistent with the fellow’s career objectives, and shall be reviewed and approved by the Secretary. The Institute may grant fellowships in an amount not to exceed the level of support comparable to that provided by the National Science Foundation graduate fellowships, except such amount shall be adjusted as necessary so as not to exceed the fellow’s demonstrated level of need according to measurement of need approved by the Secretary. A fellowship recipient shall agree to undertake full-time study and to enter the international service (including work with private international voluntary organizations) or foreign service of the United States.
§ 1131c. Internships

(a) In general

The Institute shall enter into agreements with historically Black colleges and universities, tribally controlled colleges or universities, Alaska Native-serving, Native Hawaiian-serving, and Hispanic-serving institutions, other institutions of higher education with significant numbers of minority students, and institutions of higher education with programs in training foreign service professionals, to provide academic year internships during the junior and senior year and summer internships following the sophomore and junior academic years, by work placements with international, voluntary or government organizations or agencies, including the Agency for International Development, the Department of State, the International Monetary Fund, the National Security Council, the Organization of American States, the Export-Import Bank, the Overseas Private Investment Corporation, the Department of State, Office of the United States Trade Representative, the World Bank, and the United Nations.

(b) Postbaccalaureate internships

The Institute shall enter into agreements with institutions of higher education described in the first sentence of subsection (a) of this section to conduct internships for students who have completed study for a baccalaureate degree. The internship program authorized by this subsection shall—

(1) assist the students to prepare for a master's degree program;

(2) be carried out with the assistance of the Woodrow Wilson International Center for Scholars; and

(3) contain work experience for the students designed to contribute to the students' preparation for a master's degree program.

(c) Interagency Committee on Minority Careers in International Affairs

(1) Establishment

There is established in the executive branch of the Federal Government an Interagency Committee on Minority Careers in International Affairs composed of not less than 7 members, including—

(A) the Under Secretary for Farm and Foreign Agricultural Services of the Department of Agriculture, or the Under Secretary's designee;

(B) the Assistant Secretary and Director General, of the United States and Foreign Commercial Service of the Department of Commerce, or the Assistant Secretary and Director General's designee;

(C) the Under Secretary of Defense for Personnel and Readiness of the Department of Defense, or the Under Secretary's designee;

(D) the Assistant Secretary for Post-secondary Education in the Department of Education, or the Assistant Secretary's designee;

(E) the Director General of the Foreign Service of the Department of State, or the Director General's designee; and

(F) the General Counsel of the Agency for International Development, or the General Counsel's designee.

(2) Functions

The Interagency Committee established by this section shall—

(A) on an annual basis inform the Secretary and the Institute regarding ways to advise students participating in the internship program assisted under this section with respect to goals for careers in international affairs;

(B) locate for students potential internship opportunities in the Federal Government related to international affairs; and

(C) promote policies in each department and agency participating in the Committee that are designed to carry out the objectives of this part.
§ 1131c–1 TITLE 20—EDUCATION

(1) Amount and duration

A Ralph Bunche scholarship awarded to a student under this section shall not exceed $5,000 per academic year.


Prior Provisions

A prior section 626 of Pub. L. 89–329 was renumbered section 627, and is classified to section 1131d of this title.

Another prior section 626 of Pub. L. 89–329 was renumbered section 628, and is classified to section 1131e of this title.

§ 1131d. Report

The Institute shall prepare a report once every two years on the activities of the Institute and shall submit such report to the Secretary of Education and the Secretary of State.


Prior Provisions

A prior section 627 of Pub. L. 89–329 was renumbered section 628, and is classified to section 1131e of this title.

Another prior section 627 of Pub. L. 89–329 was renumbered section 629, and is classified to section 1131f of this title.

Amendments

2008—Pub. L. 110–315, § 618, substituted “prepare a report once every two years” for “annually prepare a report”.

§ 1131e. Gifts and donations

The Institute is authorized to receive money and other property donated, bequeathed, or devised to the Institute with or without a condition of restriction, for the purpose of providing financial support for the fellowships or underwriting the cost of the Junior Year Abroad Program. All funds or property given, devised, or bequeathed shall be retained in a separate account, and an accounting of those funds and property shall be included in the report described in section 1131d of this title.


Prior Provisions

A prior section 628 of Pub. L. 89–329 was renumbered section 629, and is classified to section 1131f of this title.

Amendments

2008—Pub. L. 110–315, § 619, substituted “report described in section 1131d” for “annual report described in section 1131d”.

1998—Pub. L. 105–244, § 603(f), made technical amendment to reference in original act which appears in text as reference to section 1131d of this title.

Effective Date of 1998 Amendment

§ 1131f. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years to carry out this part.


AMENDMENTS

2008—Pub. L. 110–315, § 620, substituted “such sums as may be necessary” for “$10,000,000”, “2009” for “1999”, and “five succeeding” for “4 succeeding.”


EFFECTIVE DATE OF 1998 AMENDMENT


PART D—GENERAL PROVISIONS

§ 1132. Definitions

(a) Definitions

As used in this subchapter—

(1) the term “area studies” means a program of comprehensive study of the aspects of a society or societies, including study of its history, culture, economy, politics, international relations and languages;

(2) the term “comprehensive foreign language and area or international studies center” means an administrative unit of a university that contributes significantly to the national interest in advanced research and scholarship, employs a critical mass of scholars in diverse disciplines related to a geographic concentration, offers intensive language training in languages of its area specialization, maintains important library collections related to the area, and makes training available in language and area studies to a graduate, postgraduate, and undergraduate clientele; and

(3) the term “educational programs abroad” means programs of study, internships, or service learning outside the United States which are part of a foreign language or other international curriculum at the undergraduate or graduate education levels;

(4) the term “export education” means educating, teaching and training to provide general knowledge and specific skills pertinent to the selling of goods and services to other countries, including knowledge of market conditions, financial arrangements, laws and procedures;

(5) the term “historically Black college and university” has the meaning given the term “part B institution” in section 1001 of this title;

(6) the term “institution of higher education” means, in addition to institutions which meet the definition of section 1001 of this title, institutions which meet the requirements of section 1001 of this title except that (1) they are not located in the United States, and (2) they apply for assistance under this subchapter in consortia with institutions which meet the definition of section 1001 of this title;

(7) the term “international business” means profit-oriented business relationships conducted across national boundaries and includes activities such as the buying and selling of goods, investments in industries, the licensing of processes, patents and trademarks, and the supply of services;

(8) the term “internationalization of curricula” means the incorporation of international or comparative perspectives in existing courses of study or the addition of new components to the curricula to provide an international context for American business education;

(9) the term “tribally controlled college or university” has the meaning given the term in section 1801 of title 25; and

(10) the term “undergraduate foreign language and area or international studies center” means an administrative unit of an institution of higher education, including but not limited to 4-year colleges, that contributes significantly to the national interest through the education and training of students who matriculate into advanced language and area studies programs, professional school programs, or incorporates substantial international and foreign language content into baccalaureate degree programs, engages in research, curriculum development and community outreach activities designed to broaden international and foreign language knowledge, employs faculty with strong language, area, and international studies credentials, maintains library holdings, including basic reference works, journals, and works in translation, and makes training available predominantly to undergraduate students.

(b) Special conditions

All references to individuals or organizations, unless the context otherwise requires, mean individuals who are citizens or permanent residents of the United States or organizations which are organized or incorporated in the United States.


PRIOR PROVISIONS


Another prior section 1132, Pub. L. 89–329, title VI, § 622, Nov. 8, 1965, 79 Stat. 1266, related to stipends for persons attending faculty development program insti-
The Secretary may waive or reduce the non-Federal share required under this subchapter for institutions that—

(1) are eligible to receive assistance under part A or B of subchapter III or under subchapter V; and

(2) have submitted a grant application under this section that demonstrates a need for a waiver or reduction, as determined by the Secretary.


PRIOR PROVISIONS


§ 1132–2. Rule of construction

Nothing in this subchapter shall be construed to authorize the Secretary to mandate, direct, or control an institution of higher education’s specific instructional content, curriculum, or program of instruction.


§ 1132–3. Assessment

The Secretary is authorized to assess and ensure compliance with all the conditions and terms of grants provided under this subchapter.


§ 1132–4. Evaluation, outreach, and information

The Secretary may use not more than one percent of the funds made available under this subchapter to carry out program evaluation, national outreach, and information dissemination activities relating to the programs authorized under this subchapter.


§ 1132–5. Report

The Secretary shall, in consultation and collaboration with the Secretary of State, the Secretary of Defense, and the heads of other relevant Federal agencies, submit a report once every two years that identifies areas of national need in foreign language, area, and international studies as such studies relate to government, education, business, and nonprofit needs, and a plan to address those needs. The report shall be provided to the authorizing committees and made available to the public.


§ 1132–6. Science and technology advanced foreign language education grant program

(a) Purpose

It is the purpose of this section to support programs in institutions of higher education that—

(1) encourage students to develop—

(A) an understanding of science and technology; and
(B) foreign language proficiency;
(2) foster future international scientific collaboration;
(3) provide for professional development opportunities for elementary school and secondary school teachers of critical foreign languages to increase the number of highly qualified teachers in critical foreign languages; and
(4) increase the number of United States students who achieve the highest level of proficiency in foreign languages critical to the security and competitiveness of the Nation.

(b) Development

The Secretary shall develop a program for the awarding of grants to institutions of higher education that develop innovative programs for the teaching of foreign languages, which may include the preparation of teachers to teach foreign languages.

c) Regulations and requirements

The Secretary shall promulgate regulations for the awarding of grants under subsection (b). Such regulations may require institutions of higher education to use grant funds for, among other things—

(1) the development of an on-campus cultural awareness program by which students attend classes taught in a foreign language and study the science and technology developments and practices in a non-English speaking country;
(2) immersion programs where students take science or technology related course work in a non-English speaking country;
(3) other programs, such as summer workshops, that emphasize the intense study of a foreign language and science technology;
(4) if applicable, recruiting highly qualified teachers in critical foreign languages, and providing professional development activities for such teachers at the elementary school and secondary school levels; and
(5) providing innovative opportunities for students that will allow for critical language learning, such as immersion environments, intensive study opportunities, internships, and distance learning.

d) Grant distribution

In distributing grants to institutions of higher education under this section, the Secretary shall give priority to—

(1) institutions that have programs focusing on curricula that combine the study of foreign languages and the study of science and technology and produce graduates who have both skills; and
(2) institutions teaching critical foreign languages.

e) Report on best practices

Not later than one year after August 14, 2008, the Secretary shall—

(1) conduct a study to identify the best practices to strengthen the role of institutions of higher education that receive funding under subchapter III or subchapter V in increasing the critical foreign language education efforts in the United States; and
(2) submit a report on the results of such study to the authorizing committees.

(f) Appropriations authorized

There are authorized to be appropriated to carry out this section, such sums as may be necessary for fiscal year 2009 and for each subsequent fiscal year.


Prior sections 1132a–1 to 1132a–7 were omitted in the general amendment of this subchapter by Pub. L. 96–374.


§1132–7

TITLE 20—EDUCATION

§1132–7

ferred to section 1066a of this title.


Another prior section 1132d, Pub. L. 89–329, title VII, §731, as added Pub. L. 92–318, title I, §161(a), June 23, 1972, 86 Stat. 296, set out general provisions relating to functions, powers, and duties of the Secretary under former part C of this subchapter, prior to the general amendment of this subchapter by Pub. L. 105–244.


§ 1133. Purpose

It is the purpose of this subchapter—

(1) to authorize national graduate fellowship programs—

(A) in order to attract students of superior ability and achievement, exceptional promise, and demonstrated financial need, into high-quality graduate programs and provide the students with the financial support necessary to complete advanced degrees; and

(B) that are designed to—

(ii) encourage talented students to pursue scholarly careers in the humanities, social sciences, and the arts; and

(2) to promote postsecondary programs.


PRIOR PROVISIONS


Another prior section 1133, Pub. L. 89–329, title VII, § 801, as added Pub. L. 90–575, title II, § 251, Oct. 16, 1968, 82 Stat. 1043, authorized free or reduced rates for sharing educational or related resources by institutions of...
higher education, prior to the general amendment of subchapter VIII of this chapter by Pub. L. 94–482.


AMENDMENTS

2008—Par. (1)(B)(i). Pub. L. 110–315 inserted ‘‘, including those areas critical to United States national and homeland security needs, such as science, technology, engineering, and mathematics’’ before semicolon.

CONTINUATION OF CHAPTER 21 PROGRAMS


PART A—GRADUATE EDUCATION PROGRAMS

SUBPART I—JACOB K. JAVITS FELLOWSHIP PROGRAM

§ 1134. Award of Jacob K. Javits fellowships

(a) Authority and timing of awards

The Secretary is authorized to award fellowships in accordance with the provisions of this subpart for graduate study in the arts, humanities, and social sciences by students of superior ability selected on the basis of demonstrated achievement, financial need, and exceptional promise. The fellowships shall be awarded to students who are eligible to receive any grant, loan, or work assistance pursuant to section 1091 of this title and intend to pursue a doctoral degree, except that fellowships may be granted to students pursuing a master’s degree in those fields in which the master’s degree is the terminal highest degree awarded in the area of study. All funds appropriated in a fiscal year shall be obligated and expended to the students for fellowships for use in the academic year beginning after July 1 of the fiscal year following the fiscal year for which the funds were appropriated. The fellowships shall be awarded for only 1 academic year of study and shall be renewable for a period not to exceed 4 years of study.

(b) Designation of fellows

Students receiving awards under this subpart shall be known as ‘‘Jacob K. Javits Fellows’’.

(c) Interruptions of study

The institution of higher education may allow a fellowship recipient to interrupt periods of study for a period not to exceed 12 months for the purpose of work, travel, or independent study away from the campus, if such independent study is supportive of the fellowship recipient’s academic program and shall continue payments for those 12-month periods during which the student is pursuing travel or independent study supportive of the recipient’s academic program. In the case of other exceptional circumstances, such as active duty military service or personal or family member illness, the institution of higher education may also permit the fellowship recipient to interrupt periods of study for the duration of the tour of duty (in the case of military service) or for not more than 12 months (in any other case), but without payment of the stipend.

(d) Process and timing of competition

The Secretary shall make applications for fellowships under this part available not later than October 1 of the academic year preceding the academic year for which fellowships will be awarded, and shall announce the recipients of fellowships under this section not later than March 1 of the academic year preceding the academic year for which the fellowships are awarded.

(e) Authority to contract

The Secretary is authorized to enter into a contract with a nongovernmental agency to administer the program assisted under this part if the Secretary determines that entering into the contract is an efficient means of carrying out the program.


PRIOR PROVISIONS

Provisions similar to this section were contained in section 1134h of this title, prior to repeal by Pub. L. 105–244.


A prior section 701 of Pub. L. 89–329 was classified to section 1132a of this title, prior to the general amendment of this subchapter by Pub. L. 105–244.

Another prior section 701 of Pub. L. 89–329 was classified to section 1132a of this title, prior to the general amendment of this subchapter by Pub. L. 99–498.

Another prior section 701 of Pub. L. 89–329 was classified to section 1132a of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–315 inserted at end ‘‘In the case of other exceptional circumstances, such as active duty military service or personal or family member illness, the institution of higher education may also permit the fellowship recipient to interrupt periods of study for the duration of the tour of duty (in the case of military service) or for not more than 12 months (in any other case), but without payment of the stipend.’’
§ 1134a. Allocation of fellowships

(a) Fellowship Board

(1) Appointment

(A) In general

The Secretary shall appoint a Jacob K. Javits Fellows Program Fellowship Board (referred to in this subpart as the “Board”) consisting of 9 individuals representative of both public and private institutions of higher education who are especially qualified to serve on the Board.

(B) Qualifications

In making appointments under subparagraph (A), the Secretary shall—

(i) give due consideration to the appointment of individuals who are highly respected in the academic community;

(ii) appoint members who represent the various geographic regions of the United States;

(iii) ensure that individuals appointed to the Board are broadly representative of a range of disciplines in graduate education in arts, humanities, and social sciences; and

(iv) ensure that such individuals include representatives from institutions that are eligible for one or more of the grants under subchapter III or V.

(2) Duties

The Board shall—

(A) establish general policies for the program established by this subpart and oversee the program’s operation;

(B) establish general criteria for the award of fellowships in academic fields identified by the Board, or, in the event that the Secretary enters into a contract with a nongovernmental entity to administer the program assisted under this subpart, by such nongovernmental entity;

(C) appoint panels of academic scholars with distinguished backgrounds in the arts, humanities, and social sciences for the purpose of selecting fellows, except that, in the event that the Secretary enters into a contract with a nongovernmental entity to administer the program, such panels may be appointed by such nongovernmental entity; and

(D) prepare and submit to the Congress at least once in every 3-year period a report on any modifications in the program that the Board determines are appropriate.

(3) Consultations

In carrying out its responsibilities, the Board shall consult on a regular basis with representatives of the National Science Foundation, the National Endowment for the Humanities, the National Endowment for the Arts, and representatives of institutions of higher education and associations of such institutions, learned societies, and professional organizations.

(4) Term

The term of office of each member of the Board shall be 4 years, except that any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed. No member may serve for a period in excess of 6 years.

(5) Initial meeting; vacancy

The Secretary shall call the first meeting of the Board, at which the first order of business shall be the election of a Chairperson and a Vice Chairperson, who shall serve until 1 year after the date of the appointment of the Chairperson and Vice Chairperson. Thereafter each officer shall be elected for a term of 2 years. In case a vacancy occurs in either office, the Board shall elect an individual from among the members of the Board to fill such vacancy.

(6) Quorum; additional meetings

(A) A majority of the members of the Board shall constitute a quorum.

(B) The Board shall meet at least once a year or more frequently, as may be necessary, to carry out the Board’s responsibilities.

(7) Compensation

Members of the Board, while serving on the business of the Board, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate of basic pay payable for level IV of the Executive Schedule, including travel time, and while so serving away from their homes or regular places of business, the members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(b) Use of selection panels

The recipients of fellowships shall be selected in each designated field from among all applicants nationwide in each field by distinguished panels appointed by the Board to make such selections under criteria established by the Board, except that, in the event that the Secretary enters into a contract with a nongovernmental entity to administer the program, such panels may be appointed by such nongovernmental entity. The number of recipients in each field in each year shall not exceed the number of fellows allocated to that field for that year by the Board.

(c) Fellowship portability

Each recipient shall be entitled to use the fellowship in a graduate program at any accredited institution of higher education in which the recipient may decide to enroll.


REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (a)(7), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1134i of this title, prior to repeal by Pub. L. 105–244. A prior section 1134a, Pub. L. 89–329, title IX, §911, as added Pub. L. 102–325, title IX, §901, July 23, 1992, 106...
§ 1134b. Stipends

(a) Award by Secretary

The Secretary shall pay to individuals awarded fellowships under this subpart such stipends as the Secretary may establish, reflecting the purpose of this program to encourage highly talented students to undertake graduate study as described in this subpart. In the case of an individual who receives such individual’s first stipend under this subpart in academic year 2009–2010 or any succeeding academic year, such stipend shall be set at a level of support equal to that provided by the National Science Foundation Graduate Research Fellowship Program for such academic year, except such amount shall be adjusted as necessary so as not to exceed the fellow’s demonstrated level of need determined in accordance with part E of subchapter IV of this chapter.

(b) Institutional payments

(1) In general

(A) The Secretary shall (in addition to stipends paid to individuals under this subpart) pay to the institution of higher education, for each individual awarded a fellowship under this subpart at such institution, an institutional allowance. Except as provided in subparagraph (B), such allowance shall be, for academic year 2009–2010 and succeeding academic years, the same amount as the institutional payment made for academic year 2008–2009, adjusted for academic year inflation as determined by the Department of Labor’s Consumer Price Index for the previous calendar year.

(B) The institutional allowance paid under subparagraph (A) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient’s instructional program.

(2) Special rules

(A) Beginning March 1, 1992, any applicant for a fellowship under this subpart who has been notified in writing by the Secretary that such applicant has been selected to receive such a fellowship and is subsequently notified that the fellowship award has been withdrawn, shall receive such fellowship unless the Secretary subsequently makes a determination that such applicant submitted fraudulent information on the application.

(B) Subject to the availability of appropriations, amounts payable to an institution by the Secretary pursuant to this subsection shall not be reduced for any purpose other than the purposes specified under paragraph (1).

2008—Subsec. (a)(1). Pub. L. 110–315 amended par. (1) generally. Prior to amendment, text read as follows: "The Secretary shall appoint a Jacob K. Javits Fellows Program Fellowship Board (hereinafter in this subpart referred to as the ‘Board’) consisting of 9 individuals representative of both public and private institutions of higher education who are especially qualified to serve on the Board. In making appointments, the Secretary shall give due consideration to the appointment of individuals who are highly respected in the academic community. The Secretary shall assure that individuals appointed to the Board are broadly representative of a range of disciplines in graduate education in arts, humanities, and social sciences."

§ 1134b. TITLE 20—EDUCATION


A prior section 702 of Pub. L. 89–329 was classified to section 1132a–1 of this title, prior to the general amendment of this subchapter by Pub. L. 105–244.

Another prior section 702 of Pub. L. 89–329 was classified to section 1132a–1 of this title, prior to the general amendment of this subchapter by Pub. L. 99–489.

Another prior section 702 of Pub. L. 89–329 was classified to section 1132a–1 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–315 amended par. (1) generally. Prior to amendment, text read as follows: "The Secretary shall appoint a Jacob K. Javits Fellows Program Fellowship Board (hereinafter in this subpart referred to as the ‘Board’) consisting of 9 individuals representative of both public and private institutions of higher education who are especially qualified to serve on the Board. In making appointments, the Secretary shall give due consideration to the appointment of individuals who are highly respected in the academic community. The Secretary shall assure that individuals appointed to the Board are broadly representative of a range of disciplines in graduate education in arts, humanities, and social sciences."

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1134 of this title, prior to repeal by Pub. L. 105–244.


A prior section 703 of Pub. L. 89–329 was classified to section 1132a–2 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.
AMENDMENTS
Subsec. (b)(1)(A). Pub. L. 110–315, §702(2)(c)(1)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: “The Secretary shall (in addition to stipends paid to individuals under this subpart) pay to the institution of higher education, for each individual awarded a fellowship under this subpart at such institution, an institutional allowance. Except as provided in subparagraph (B), such allowance shall be, for 1999–2000 and succeeding academic years, the same amount as the institutional payment made for 1998–1999 under section 1134(b) of this title (as such section was in effect on the day before October 7, 1998) adjusted for 1999–2000 and annually thereafter in accordance with inflation as determined by the Department of Labor’s Consumer Price Index for the previous calendar year.”

§1134c. Fellowship conditions
(a) Requirements for receipt
An individual awarded a fellowship under the provisions of this subpart shall continue to receive payments provided in section 1134b of this title only during such periods as the Secretary finds that such individual is maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, in an institution of higher education, and is not engaging in gainful employment other than part-time employment by such institution in teaching, research, or similar activities, approved by the Secretary.

(b) Reports from recipients
The Secretary is authorized to require reports containing such information in such form and filed at such times as the Secretary determines necessary from any person awarded a fellowship under the provisions of this subpart. The reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Secretary, stating that such individual is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.


PRIOR PROVISIONS
Provisions similar to this section were contained in section 1134c of this title, prior to repeal by Pub. L. 105–244.

§1134d. Authorization of appropriations
There are authorized to be appropriated $30,000,000 for fiscal year 2009 and each of the five succeeding fiscal years to carry out this subpart.


PRIOR PROVISIONS
Provisions similar to this section were contained in section 1134d of this title, prior to repeal by Pub. L. 105–244.


A prior section 704 of Pub. L. 89–329 was classified to section 1132a–3 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.
Aug. 13, 1979, 93 Stat. 353, related to the authorization, duration, and extension of the period of fellowships, the awarding of vacated fellowships, and the question of the duration of stipends, additional allowances to institutions of higher education, and deductions, prior to the general amendment of subchapter IX of this chapter by Pub. L. 99–498.


Another prior section 1134k, Pub. L. 98–398, title IX, §942, as added Pub. L. 99–498, title IX, §903(a), Oc...


AMENDMENTS

2008—Pub. L. 110–315 substituted “fiscal year 2009 and each of the five succeeding fiscal years to carry out this subpart” for “fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years to carry out this subpart”.

SUBPART 2—GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

§ 1135. Grants to academic departments and programs of institutions

(a) Grant authority

(1) In general

The Secretary shall make grants to academic departments, programs and other academic units of institutions of higher education that provide courses of study leading to a graduate degree, including a master's or doctoral degree, in order to enable such institutions to provide assistance to graduate students in accordance with this subpart.

(2) Additional grants

The Secretary may also make grants to such departments, programs and other academic units of institutions of higher education granting graduate degrees which submit joint proposals involving nondegree granting institutions which have formal arrangements for the support of doctoral dissertation research with degree-granting institutions. Nondegree granting institutions eligible for awards as part of such joint proposals include any organization which—

(A) is described in section 501(c)(3) of title 26, and is exempt from tax under section 501(a) of such title;

(B) is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(C) is not a private foundation;

(D) has academic personnel for instruction and counseling who meet the standards of the institution of higher education in which the students are enrolled; and

(E) has necessary research resources not otherwise readily available in such institutions to such students.

(b) Award and duration of grants

(1) Awards

The principal criterion for the award of grants shall be the relative quality of the graduate programs presented in competing applications. Consistent with an allocation of awards based on quality of competing applications, the Secretary shall, in awarding such grants, promote an equitable geographic distribution among eligible public and private institutions of higher education.

(2) Duration and amount

(A) Duration

The Secretary shall award a grant under this subpart for a period of 3 years.

(B) Amount

The Secretary shall award a grant to an academic department, program or unit of an institution of higher education under this subpart for a fiscal year in an amount that is not less than $100,000 and not greater than $750,000.

(3) Reallotment

Whenever the Secretary determines that an academic department, program or unit of an institution of higher education is unable to use all of the amounts available to the department, program or unit under this subpart, the Secretary shall, on such dates during each fiscal year as the Secretary may fix, reallocate the amounts not needed to academic departments, programs and units of institutions which can use the grants authorized by this subpart.

(c) Preference to continuing grant recipients

(1) In general

The Secretary shall make new grant awards under this subpart only to the extent that each previous grant recipient under this subpart has received continued funding in accordance with subsection (b)(2)(A) of this section.

(2) Ratable reduction

To the extent that appropriations under this subpart are insufficient to comply with paragraph (1), available funds shall be distributed by ratably reducing the amounts required to be awarded under subsection (b)(2)(A) of this section.


PRIOR PROVISIONS

Provisions similar to this section were contained in section 1134m of this title, prior to repeal by Pub. L. 105–244.

leading to a graduate degree.

including a master's or doctoral degree.

amendment of this subchapter by Pub. L. 99–498.

fied to section 1132b of this title, prior to the general

Designation of areas of national need

Sciences, and the Bureau of Labor Statistics,

cluding the National Science Foundation, the

program of postbaccalaureate

study leading to a

program of postbaccalaureate study leading to a

study has been in existence for at least 4 years

In making such designations, the Sec-

areas of national need (as des-

torial degree, in an area of national need (as des -

an institution of higher education that offers a

the Secretary shall designate areas of national

need. In making such designations, the Sec -

(f) Area of national need

ment of Postsecondary Education, prior to repeal by

section 1138 of this title.

Another prior section 1135a, Pub. L. 89–329, title X,

$1135a

Eligibility criteria

Any academic department, program or unit of an

institution of higher education that offers a

program of postbaccalaureate study leading to a

graduate degree, including a master's or doc-

toral degree, in an area of national need (as des-

ignated under subsection (b) of this section) may

apply for a grant under this subpart. No depart-

ment, program or unit shall be eligible for a

grant unless the program of postbaccalaureate

study has been in existence for at least 4 years

at the time of application for assistance under

this subpart.

Designation of areas of national need

After consultation with appropriate Federal and

nonprofit agencies and organizations, in-

cluding the National Science Foundation, the

Department of Defense, the Department of

Homeland Security, the National Academy of

Sciences, and the Bureau of Labor Statistics,

the Secretary shall designate areas of national

need. In making such designations, the Sec-

retary shall take into consideration—

(1) the extent to which the interest in the

area is compelling;

(2) the extent to which other Federal pro-

grams support postbaccalaureate study in the

area concerned;

(3) an assessment of how the program may

achieve the most significant impact with

available resources; and

(4) an assessment of current (as of the time

of the designation) and future professional

workforce needs of the United States.


AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315, §703(e)(2), inserted "‘including a master’s or doctoral degree,’ after ‘leading to a graduate degree’.”

Subsec. (b). Pub. L. 110–315, §703(a), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “After consultation with appropriate Federal and nonprofit agencies and organizations, the Secretary shall designate areas of national need. In making such designations, the Secretary shall take into account the extent to which the interest in the area is compelling, the extent to which other Federal programs support postbaccalaureate study in the area concerned, and an assessment of how the program could achieve the most significant impact with available resources.”

§ 1135b. Criteria for applications

(a) Selection of applications

The Secretary shall make grants to academic departments, programs and units of institutions of higher education on the basis of applications submitted in accordance with subsection (b) of this section. Applications shall be ranked on the quality and effectiveness of the academic program and the achievement and promise of the students to be served. To the extent possible (consistent with other provisions of this section), the Secretary shall make awards that are consistent with recommendations of the review panels.

(b) Contents of applications

An academic department, program or unit of an institution of higher education, in the department, program or unit’s application for a grant, shall—

(1) describe the current academic program of the applicant for which the grant is sought;

(2) provide assurances that the applicant will provide, from other non-Federal sources, for the purposes of the fellowship program under this subpart an amount equal to at least 25 percent of the amount of the grant received under this subpart, which contribution may be in cash or in kind, fairly valued;

(3) set forth policies and procedures to assure that, in making fellowship awards under this subpart, the institution will seek talented students from traditionally underrepresented backgrounds, as determined by the Secretary;

(4) describe the number, types, and amounts of the fellowships that the applicant intends to offer with grant funds provided under this part;

(5) set forth policies and procedures to assure that, in making fellowship awards under this subpart, the institution will make awards to individuals who—

(A) have financial need, as determined under part E of subchapter IV of this chapter;

(B) have excellent academic records in their previous programs of study; and

(C) plan to pursue the highest possible degree available in their course of study at the institution;

(6) set forth policies and procedures to ensure that Federal funds made available under this subpart for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of this subpart and in no case to supplant those funds;

(7) provide assurances that, in the event that funds made available to the academic department, program or unit under this subpart are insufficient to provide the assistance due a student under the commitment entered into between the academic department, program or unit and the student, the academic department, program or unit will, from any funds available to the department, program or unit, fulfill the commitment to the student;

(8) provide that the applicant will comply with the limitations set forth in section 1135d of this title;

(9) provide assurances that the academic department will provide at least 1 year of supervised training in instruction for students; and

(10) include such other information as the Secretary may prescribe.


PRIOR PROVISIONS

Provisions similar to this section were contained in section 1134e of this title, prior to repeal by Pub. L. 105–244.


improvement of graduate programs, prior to the general amendment of subchapter X of this chapter by Pub. L. 92-318.

A prior section 713 of Pub. L. 89-329 was classified to section 1132b-2 of this title, prior to the general amendment of this subchapter by Pub. L. 105-244.

Another prior section 713 of Pub. L. 89-329 was classified to section 1132b-2 of this title, prior to the general amendment of part A of this subchapter by Pub. L. 102-325.

Another prior section 713 of Pub. L. 89-329 was classified to section 1132b-2 of this title, prior to the general amendment of this subchapter by Pub. L. 99-498.


Another prior section 1135b-1, Pub. L. 89-329, title X, §1022, as added Pub. L. 99-498, title X, §1002, June 23, 1992, 106 Stat. 316, set forth allotment and reallocation requirements for institutional payments made by the Secretary for the purpose of paying stipends to individuals who are awarded fellowships under this subpart. The stipends the Secretary establishes shall reflect the purpose of the program under this subpart to encourage highly talented students to undertake graduate study as described in this subpart. In the case of any individual who receives such individual’s first stipend under this subpart and whose academic progress satisfies the academic progress required by section 1135b(b)(2) of this title, the institution is required to award such student—

(a) Commitments to graduate students

1. In general

An academic department, program or unit of an institution of higher education shall make commitments to graduate students who are eligible students under section 1091 of this title (including students pursuing a doctoral degree after having completed a master’s degree program at an institution of higher education) at any point in their graduate study to provide stipends for the length of time necessary for a student to complete the course of graduate study, but in no case longer than 5 years.

2. Special rule

No such commitments shall be made to students under this subpart unless the academic department, program or unit has determined adequate funds are available to fulfill the commitment from funds received or anticipated under this subpart, or from institutional funds.

(b) Amount of stipends

The Secretary shall make payments to institutions of higher education for the purpose of paying stipends to individuals who are awarded fellowships under this subpart. The stipends the Secretary establishes shall reflect the purpose of the program under this subpart to encourage highly talented students to undertake graduate study as described in this subpart.

(c) Treatment of institutional payments

An institution of higher education that makes institutional payments for tuition and fees on behalf of individuals supported by fellowships under this subpart in amounts that exceed the institutional payments made by the Secretary pursuant to section 1155d(a) of this title may count such excess toward the amounts the institution is required to provide pursuant to section 1135b(b)(2) of this title.

(d) Academic progress required

Notwithstanding the provisions of subsection (a) of this section, no student shall receive an award—

1. except during periods in which such student is maintaining satisfactory progress in,
§ 1135d. Additional assistance for cost of education

(a) Institutional payments

(1) In general

The Secretary shall (in addition to stipends paid to individuals under this subpart) pay to the institution of higher education, for each individual awarded a fellowship under this subpart at such institution, an institutional allowance. Except as provided in paragraph (2), such allowance shall be, for 2009–2010 and succeeding academic years, the same amount as the institutional payment made for 2008–2009 adjusted annually thereafter in accordance with inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

(2) Reduction

The institutional allowance paid under paragraph (1) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.

(b) Use for overhead prohibited

Funds made available pursuant to this subpart may not be used for the general operational overhead of the academic department or program.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1134f of this title, prior to repeal by Pub. L. 105–244.


AMENDMENTS

2008—Subsec. (b), Pub. L. 110–315, §708(b), substituted “2009–2010” for “1999–2000” and “Foundation Graduate Research Fellowship Program for such academic year” for “Foundation graduate fellowships”.

Subsec. (c), Pub. L. 110–315, §703(e)(4), made technical amendment to references in original act which appear in text as references to sections 1135a(a) and 1135b(b)(2) of this title.
§1135e. Authorization of appropriations

There are authorized to be appropriated $35,000,000 for fiscal year 2009 and each of the five succeeding fiscal years to carry out this subpart.


Prior Provisions


AMENDMENTS


§1135e–1. Program authority

The Secretary shall carry out a program to be known as the ‘‘Thurgood Marshall Legal Educational Opportunity Program’’ designed to provide low-income, minority, or disadvantaged secondary school and college students with the information, preparation, and financial assistance to gain access to and complete law school study and admission to law practice.

(b) Eligibility

A secondary school student or college student is eligible for assistance under this section if the student is—

(1) from a low-income family;

(2) a minority; or

(3) from an economically or otherwise disadvantaged background.

(c) Contract or grant authorized

The Secretary is authorized to enter into a contract with, or make a grant to, the Council on Legal Education Opportunity, for a period of not less than 3 years—

(1) to identify secondary school and college students who are from low-income families, are minorities, or are from disadvantaged backgrounds described in subsection (b)(3) of this section;

(2) to prepare such students for successful completion of a baccalaureate degree and for study at accredited law schools, and to assist them with the development of analytical skills, writing skills, and study methods to enhance the students’ success in, and promote the students’ admission to and completion of, law school;

(3) to assist such students to select the appropriate law school, make application for entry into law school, and receive financial assistance for such study;

(4) to provide support services to such students who are first-year law students to improve retention and success in law school studies;
(5) to motivate and prepare such students—
   (A) with respect to law school studies and practice in low-income communities; and
   (B) to provide legal services to low-income individuals and families; and

(6) to award Thurgood Marshall Fellowships to eligible law school students—
   (A) who participated in summer institutes under subsection (d)(6) and who are enrolled in an accredited law school; or
   (B) who have successfully completed a comparable summer institute program that is certified by the Council on Legal Education Opportunity.

(d) Services provided

In carrying out the purposes described in subsection (c) of this section, the contract or grant shall provide for the delivery of services through pre-college programs, undergraduate prelaw courses and material for the law school aptitude tests, study methods, and course selection;

(2) summer academic programs for secondary school students who have expressed interest in a career in the law;

(3) tutoring and academic counseling, including assistance in preparing for bar examinations;

(4) prelaw mentoring programs, involving law school faculty, members of State and local bar associations, and retired and sitting judges, justices, and magistrates;

(5) assistance in identifying preparatory courses and material for the law school aptitude or admissions tests;

(6) summer institutes for Thurgood Marshall Fellows that expose the Fellows to a rigorous curriculum that emphasizes abstract thinking, legal analysis, research, writing, and examination techniques; and

(7) midyear seminars and other educational activities that are designed to reinforce reading, writing, and studying skills of Thurgood Marshall Fellows and Associates.

(e) Duration of provision of services

The services described in subsection (d) of this section may be provided—

(1) prior to the period of law school study, including before and during undergraduate study;

(2) during the period of law school study; and

(3) during the period following law school study and prior to taking a bar examination.

(f) Subcontracts and subgrants

For the purposes of planning, developing, or delivering one or more of the services described in subsection (d) of this section, the Council on Legal Education Opportunity shall enter into subcontracts with, and make subgrants to, institutions of higher education, law schools, public and private agencies and organizations, national and State bar associations, and combinations of such institutions, schools, agencies, organizations, and associations.

(g) Fellowships and stipends

The Secretary shall annually establish the maximum fellowship to be awarded, and the maximum stipend to be paid (including allowances for participant travel and for the travel of the dependents of the participant), to Thurgood Marshall Fellows or Associates for the period of participation in summer institutes, midyear seminars, and bar preparation seminars. A Thurgood Marshall Fellow or Associate may be eligible for such a fellowship or stipend only if the Fellow or Associate maintains satisfactory academic progress toward the Juris Doctor or Bachelor of Laws degree, as determined by the respective institutions (except with respect to a law school graduate enrolled in a bar preparation course).

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2009 and each of the five succeeding fiscal years.


Prior Provisions


Prior Provisions


Amendments

2009—Subsec. (d). Pub. L. 111–39 substituted ‘services through pre-college programs, undergraduate prelaw
$1136a. Masters degree programs at historically Black colleges and universities

(a) Grant program authorized

(1) In general

Subject to the availability of funds appropriated to carry out this section, the Secretary shall award program grants to each of the institutions listed in subsection (b)(1) that is determined by the Secretary to be making a substantial contribution to graduate education opportunities at the masters level in mathematics, engineering, the physical or natural sciences, computer science, information technology, nursing, allied health, or other scientific disciplines for Black Americans.

(2) Assurance of non-Federal matching funds

No grant in excess of $1,000,000 may be made under this section unless the institution provides assurances that 50 percent of the cost of the purposes for which the grant is made will be paid from non-Federal sources, except that no institution shall be required to match any portion of the first $1,000,000 of the institution’s award from the Secretary. After funds are made available to each eligible institution under the funding rules described in subsection (f), the Secretary shall distribute, on a pro rata basis, any amounts which were not made available (by reason of the failure of an institution to comply with the matching requirements of this paragraph) among the institutions that have complied with such matching requirement.

(3) Minimum award

Subject to subsections (f) and (g), the amount awarded to each eligible institution listed in subsection (b)(1) for a fiscal year shall not be less than $500,000.

(4) Duration of grants

A grant awarded under this section shall be for a period of not more than six years, but may be periodically renewed for a period to be determined by the Secretary.

(b) Institutional eligibility

(1) In general

Institutions eligible for grants under subsection (a) are the following:

(A) Albany State University.
(B) Alcorn State University.
(C) Claflin University.
(D) Coppin State University.
(E) Elizabeth City State University.
(F) Fayetteville State University.
(G) Fisk University.
(H) Fort Valley State University.
(I) Grambling State University.
(J) Kentucky State University.
(K) Mississippi Valley State University.
(L) Savannah State University.
(M) South Carolina State University.
(N) University of Arkansas, Pine Bluff.
(O) Virginia State University.
(P) West Virginia State University.
(Q) Wilberforce University.
(R) Winston-Salem State University.
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(2) Qualified masters degree program
(A) In general

For the purposes of this section, the term "qualified masters degree program" means a masters degree program that provides a program of instruction in mathematics, engineering, the physical or natural sciences, computer science, information technology, nursing, allied health, or other scientific disciplines in which African Americans are underrepresented.

(B) Enrollment exception

Notwithstanding the enrollment requirement contained in subparagraph (A), an institution may use an amount equal to not more than 10 percent of the institution's grant under this section for the development of a new qualified masters degree program.

(3) Institutional choice

The president or chancellor of the institution may decide which graduate school or qualified masters degree program will receive funds under the grant in any one fiscal year, if the allocation of funds among the schools or programs is delineated in the application for funds submitted to the Secretary under this section.

(4) One grant per institution

The Secretary shall not award more than one grant per institution in any fiscal year to any institution of higher education.

c) Application

An eligible institution listed in subsection (b)(1) desiring a grant under this section shall submit an application at such time, in such manner, and containing such information as the Secretary may require. The application shall—

(1) demonstrate how the grant funds under this section will be used to improve graduate educational opportunities for Black and low-income students, and lead to greater financial independence; and

(2) provide, in the case of applications for grants in excess of $1,000,000, the assurances required under subsection (a)(2) and specify the manner in which the eligible institution is going to pay the non-Federal share of the cost of the application.

d) Uses of funds

A grant under this section may be used for—

(1) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) purchase of library books, periodicals, technical and other scientific journals, microfilm, microfiche, and other educational materials, including telecommunications program materials;

(4) scholarships, fellowships, and other financial assistance for needy graduate students to permit the enrollment of the students in, and completion of, a masters degree in mathematics, engineering, the physical or natural sciences, computer science, information technology, nursing, allied health, or other scientific disciplines in which African Americans are underrepresented;

(5) establishing or improving a development office to strengthen and increase contributions from alumni and the private sector;

(6) assisting in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 1065 of this title;

(7) funds and administrative management, and the acquisition of equipment, including software, for use in strengthening funds management and management information systems;

(8) acquisition of real property that is adjacent to the campus in connection with the construction, renovation, or improvement of, or an addition to, campus facilities;

(9) education or financial information designed to improve the financial literacy and economic literacy of students or the students' families, especially with regard to student indebtedness and student assistance programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(10) tutoring, counseling, and student service programs designed to improve academic success;

(11) faculty professional development, faculty exchanges, and faculty participation in professional conferences and meetings; and

(12) other activities proposed in the application submitted under subsection (c) that—

(A) contribute to carrying out the purposes of this section; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

e) Interaction with other grant programs

No institution that is eligible for and receives an award under section 1063b, 1102a, or 1136b of this title for a fiscal year shall be eligible to apply for a grant, or receive grant funds, under this section for the same fiscal year.

f) Funding rule

Subject to subsection (g), the amount appropriated to carry out this section for any fiscal year—

(1) the first $9,000,000 (or any lesser amount appropriated) shall be available only for the purposes of making minimum grants under subsection (a)(3) to eligible institutions listed in subparagraphs (A) through (R) of subsection (b)(1), except that if the amount appropriated is not sufficient to pay the minimum grant awards to all such eligible institutions, the amount of the minimum award to each such eligible institution shall be ratably reduced;

(2) after the application of paragraph (1), an amount shall be available for the purpose of making minimum grants under subsection (a)(3) to eligible institutions listed in subsection (b)(1) that do not receive a grant under paragraph (1), if any, except that if the amount appropriated is not sufficient to pay
the minimum grant awards to all such eligible institutions, the amount of the minimum award to each such eligible institution shall be ratably reduced; and

(3) any amount in excess of $9,000,000 shall be made available to each of the eligible institutions identified in subparagraphs (A) through (R) of subsection (b)(1), pursuant to a formula developed by the Secretary that uses the following elements:

(A) The ability of the institution to match Federal funds with non-Federal funds.

(B) The number of students enrolled in the qualified masters degree program at the eligible institution in the previous academic year.

(C) The average cost of attendance per student, for all full-time students enrolled in the qualified masters degree program at such institution.

(D) The number of students in the previous year who received a degree in the qualified masters degree program at such institution.

(E) The contribution, on a percent basis, of the programs for which the institution is eligible to receive funds under this section to the total number of African Americans receiving masters degrees in the disciplines related to the programs for the previous year.

(g) Hold harmless rule

Notwithstanding paragraphs (2) and (3) of subsection (f), no eligible institution identified in subsection (b)(1) that receives a grant under this section for fiscal year 2009 and that is eligible to receive a grant for a subsequent fiscal year shall receive a grant amount for any such subsequent fiscal year that is less than the grant amount received for fiscal year 2009, unless—

(1) the amount appropriated is not sufficient to provide such grant amounts to all such institutions and programs that received grants under this section for such fiscal year and that are eligible to receive a grant in such subsequent fiscal year; or

(2) the institution cannot provide sufficient matching funds to meet the requirements of this section.

§ 1136b. Masters degree programs at predominantly Black institutions

(a) Grant program authorized

(1) In general

Subject to the availability of funds appropriated to carry out this section, the Secretary shall award program grants to each of the institutions listed in subsection (b)(1) that is determined by the Secretary to be making a substantial contribution to graduate education opportunities at the masters level in mathematics, engineering, the physical or natural sciences, computer science, information technology, nursing, allied health, or other scientific disciplines for Black Americans.

(2) Assurance of non-Federal matching funds

No grant in excess of $1,000,000 may be made under this section unless the institution provides assurances that 50 percent of the cost of the purposes for which the grant is made will be paid from non-Federal sources, except that the Secretary shall determine, either:

A grant awarded under this section shall be paid from non-Federal sources, except that no institution shall be required to match any portion of the first $1,000,000 of the institution’s award from the Secretary. After funds are made available to each eligible institution under the funding rules described in subsection (f), the Secretary shall distribute, on a pro rata basis, any amounts which were not so made available (by reason of the failure of an institution to comply with the matching requirements of this paragraph) among the institutions that have complied with such matching requirement.

(3) Minimum award

Subject to subsections (f) and (g), the amount awarded to each eligible institution listed in subsection (b)(1) for a fiscal year shall be not less than $500,000.

(4) Duration of grants

A grant awarded under this section shall be for a period of not more than six years, but may be periodically renewed for a period to be determined by the Secretary.

(b) Institutional eligibility

(1) In general

Institutions eligible for grants under subsection (a) are the following:

(A) Chicago State University.

(B) Columbia Union College.
(C) Long Island University, Brooklyn campus.
(D) Robert Morris College.
(E) York College, The City University of New York.

(2) Qualified masters degree program

(A) In general
For the purposes of this section, the term "qualified masters degree program" means a masters degree program that provides a program of instruction in mathematics, engineering, the physical or natural sciences, computer science, information technology, nursing, allied health, or other scientific disciplines in which African Americans are underrepresented and has students enrolled in such program of instruction at the time of application for a grant under this section.

(B) Enrollment exception
Notwithstanding the enrollment requirement contained in subparagraph (A), an institution may use an amount equal to not more than 10 percent of the institution's grant under this section for the development of a new qualified masters degree program.

(3) Institutional choice
The president or chancellor of the institution may decide which graduate school or qualified masters degree program will receive funds under the grant in any one fiscal year, if the allocation of funds among the schools or programs is delineated in the application for funds submitted to the Secretary under this section.

(4) One grant per institution
The Secretary shall not award more than one grant under this section in any fiscal year to any institution of higher education.

(c) Application
An eligible institution listed in subsection (b)(1) desiring a grant under this section shall submit an application at such time, in such manner, and containing such information as the Secretary may require. The application shall—
(1) demonstrate how the grant funds under this section will be used to improve graduate educational opportunities for Black and low-income students and lead to greater financial independence; and
(2) provide, in the case of applications for grants in excess of $1,000,000, the assurances required under subsection (a)(2) and specify the manner in which the eligible institution is going to pay the non-Federal share of the cost of the application.

(d) Uses of funds
A grant under this section may be used for—
(1) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;
(2) construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;
(3) purchase of library books, periodicals, technical and other scientific journals, microfilm, microfiche, and other educational materials, including telecommunications program materials;
(4) scholarships, fellowships, and other financial assistance for needy graduate students to permit the enrollment of the students in, and completion of, a masters degree in mathematics, engineering, the physical or natural sciences, computer science, information technology, nursing, allied health, or other scientific disciplines in which African Americans are underrepresented;
(5) establishing or improving a development office to strengthen and increase contributions from alumni and the private sector;
(6) assisting in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 1065 of this title;
(7) funds and administrative management, and the acquisition of equipment, including software, for use in strengthening funds management and management information systems;
(8) acquisition of real property that is adjacent to the campus in connection with the construction, renovation, or improvement of, or an addition to, campus facilities;
(9) education or financial information designed to improve the financial literacy and economic literacy of students or the students' families, especially with regard to student indebtedness and student assistance programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;
(10) tutoring, counseling, and student service programs designed to improve academic success;
(11) faculty professional development, faculty exchanges, and faculty participation in professional conferences and meetings; and
(12) other activities proposed in the application submitted under subsection (c) that—
(A) contribute to carrying out the purposes of this section; and
(B) are approved by the Secretary as part of the review and acceptance of such application.

(e) Interaction with other grant programs
No institution that is eligible for and receives an award under section 1083b, 1102a, or 1136a of this title for a fiscal year shall be eligible to apply for a grant, or receive grant funds, under this section for the same fiscal year.

(f) Funding rule
Subject to subsection (g), of the amount appropriated to carry out this section for any fiscal year—
(1) the first $2,500,000 (or any lesser amount appropriated) shall be available only for the purposes of making minimum grants under subsection (a)(3) to eligible institutions listed in subparagraphs (A) through (E) of subsection (b)(1), except that if the amount appropriated is not sufficient to pay the minimum grant awards to all such eligible institutions, the amount of the minimum award to each such eligible institution shall be ratably reduced;
(2) after the application of paragraph (1), an amount shall be available for the purpose of...
making minimum grants under subsection (a)(3) to eligible institutions described in subsection (b)(1) that do not receive a grant under paragraph (1), if, any, except that if the amount appropriated is not sufficient to pay the minimum grant awards to all such eligible institutions, the amount of the minimum award to each such eligible institution shall be ratably reduced; and
(3) any amount in excess of $2,500,000 shall be made available to each of the eligible institutions identified in subparagraphs (A) through (E) of subsection (b)(1), pursuant to a formula developed by the Secretary that uses the following elements:
(A) The ability of the institution to match Federal funds with non-Federal funds.
(B) The number of students enrolled in the qualified masters degree program at the eligible institution in the previous academic year.
(C) The average cost of attendance per student, for all full-time students enrolled in the qualified masters degree program at such institution.
(D) The number of students in the previous year who received a degree in the qualified masters degree program at such institution.
(E) The contribution, on a percent basis, of the programs for which the institution is eligible to receive funds under this section to the total number of African Americans receiving masters degrees in the disciplines related to the programs for the previous year.

(g) Hold harmless rule
Notwithstanding paragraphs (2) and (3) of subsection (f), no eligible institution identified in subsection (b)(1) that receives a grant under this section for fiscal year 2009 and that is eligible to receive a grant in a subsequent fiscal year shall receive a grant amount in any such subsequent fiscal year that is less than the grant amount received for fiscal year 2009, unless—
(1) the amount appropriated is not sufficient to provide such grant amounts to all such institutions and programs that received grants under this section for such fiscal year and that are eligible to receive a grant in such subsequent fiscal year; or
(2) the institution cannot provide sufficient matching funds to meet the requirements of this section.


§ 1136c. Authorization of appropriations

(a) Masters degree programs at historically Black colleges and universities

There are authorized to be appropriated to carry out section 1136a of this title such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


Prior Provisions


A prior section 724 of Pub. L. 89–329 was renumbered section 345, and is classified to section 1066d of this title.

(b) Masters degree programs at predominantly Black institutions

There are authorized to be appropriated to carry out section 1136b of this title such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


Prior Provisions


§ 1137. Administrative provisions for subparts 1 through 4
(a) Coordinated administration
In carrying out the purpose described in section 1133(1) of this title, the Secretary shall provide for coordinated administration and regulation of graduate programs assisted under subparts 1 through 4 of this part with other Federal programs providing assistance for graduate education in order to minimize duplication and improve efficiency to ensure that the programs are carried out in a manner most compatible with academic practices and with the standard timetables for applications for, and notifications of acceptance to, graduate programs.

(b) Hiring authority
For purposes of carrying out subparts 1 through 4 of this part, the Secretary shall appoint, without regard to the provisions of title 5 that govern appointments in the competitive service, such administrative and technical employees, with the appropriate educational background, as shall be needed to assist in the administration of such parts. The employees shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(c) Use for religious purposes prohibited
No institutional payment or allowance under section 1134(b) or 1135d(a) of this title shall be paid to a school or department of divinity as a result of the award of a fellowship under subpart 1 or 2 of this part, respectively, to an individual who is studying for a religious vocation.

(d) Evaluation
The Secretary shall evaluate the success of assistance provided to individuals under subpart 1, 2, 3, or 4 of this part with respect to graduating from their degree programs, and placement in faculty and professional positions.

AMENDMENTS
Subsec. (d). Pub. L. 110–315, §706(a)(3)(B), substituted “subpart 1, 2, 3, or 4” for “subpart 1, 2, or 3”.
Subsec. (e). Pub. L. 110–315, §706(f), struck out subsec. (e). Prior to amendment, text read as follows: “The Secretary, using funds appropriated to carry out subparts 1 and 2 of this part, and before awarding any assistance under such parts to a recipient that did not receive assistance under part C or D of title IX (as such parts were in effect prior to October 7, 1998) shall continue to provide funding to recipients of assistance under such part C or D (as so in effect), as the case may be, pursuant to any multiyear award of such assistance.”

PART B—Fund for the Improvement of Postsecondary Education
§ 1138. Fund for the Improvement of Postsecondary Education
(a) Authority
The Secretary is authorized to make grants to, or enter into contracts with, institutions of higher education, combinations of such institutions, and other public and private nonprofit institutions and agencies, to enable such institutions, combinations, and agencies to improve postsecondary education opportunities by—

1 The encouragement of reform and improvement of, and innovation in, postsecondary education and the provision of educational opportunity for all students, including nontraditional students;

2 The creation of institutions, programs, and joint efforts involving paths to career and professional training, including—

(A) efforts that provide academic credit for programs; and

(B) combinations of academic and experiential learning;

3 The establishment and continuation of institutions, programs, consortia, collaborations, and other joint efforts based on telecommunications technology, including those efforts

1 So in original. Probably should be “subparts”. 
that utilize distance education and technological advancements to educate and train postsecondary students (including health professionals serving medically underserved populations);
(4) the carrying out, in postsecondary educational institutions, of changes in internal structure and operations designed to clarify institutional priorities and purposes;
(5) the design and introduction of cost-effective methods of instruction and operation;
(6) the introduction of institutional reforms designed to expand individual opportunities for entering and reentering postsecondary institutions and pursuing programs of postsecondary study tailored to individual needs;
(7) the introduction of reforms in graduate education, in the structure of academic professions, and in the recruitment and retention of faculties;
(8) the creation of new institutions and programs for examining and awarding credentials to individuals, and the introduction of reforms in current institutional practices related thereto;
(9) the introduction of reforms in remedial education, including English language instruction, to customize remedial courses to student goals and help students progress rapidly from remedial courses into core courses and through postsecondary program completion;
(10) the provision of support and assistance to partnerships between institutions of higher education and secondary schools with a significant population of students identified as late-entering limited English proficient students, to establish programs that—
(A) result in increased secondary school graduation rates of limited English proficient students; and
(B) increase the number of participating late-entering limited English proficient students who pursue postsecondary education;
(11) the creation of consortia that join diverse institutions of higher education to design and offer curricular and cocurricular interdisciplinary programs at the undergraduate and graduate levels, sustained for not less than a 5 year period, that—
(A) focus on poverty and human capability; and
(B) include—
(i) a service-learning component; and
(ii) the delivery of educational services through informational resource centers, summer institutes, midyear seminars, and other educational activities that stress the effects of poverty and how poverty can be alleviated through different career paths;
(12) the provision of support and assistance for demonstration projects to provide comprehensive support services to ensure that homeless students, or students who were in foster care or were a ward of the court at any time before the age of 13, enroll and succeed in postsecondary education, including providing housing to such students during periods when housing at the institution of higher education is closed or generally unavailable to other students; and
(13) the support of efforts to work with institutions of higher education, and nonprofit organizations, that seek to promote cultural diversity in the entertainment media industry, including through the training of students in production, marketing, and distribution of culturally relevant content.

(b) Planning grants

The Secretary is authorized to make planning grants to institutions of higher education for the development and testing of innovative techniques in postsecondary education. Such grants shall not exceed $20,000.

(c) Center for best practices to support single parent students

(1) Program authorized

The Secretary is authorized to award one grant or contract to an institution of higher education to enable such institution to establish and maintain a center to study and develop best practices for institutions of higher education to support single parents who are also students attending such institutions.

(2) Institution requirements

The Secretary shall award the grant or contract under this subsection to a four-year institution of higher education that has demonstrated expertise in the development of programs to assist single parents who are students at institutions of higher education, as shown by the institution’s development of a variety of targeted services to such students, including on-campus housing, child care, counseling, advising, internship opportunities, financial aid, and financial aid counseling and assistance.

(3) Center activities

The center funded under this section shall—
(A) assist institutions implementing innovative programs that support single parents pursuing higher education;
(B) study and develop an evaluation protocol for such programs that includes quantitative and qualitative methodologies;
(C) provide appropriate technical assistance regarding the replication, evaluation, and continuous improvement of such programs; and
(D) develop and disseminate best practices for such programs.

(d) Prohibition

(1) In general

No funds made available under this part shall be used to provide direct financial assistance in the form of grants or scholarships to students who do not meet the requirements of section 1091(a) of this title.

(2) Rule of construction

Nothing in this subsection shall be construed to prevent a student who does not meet the requirements of section 1091(a) of this title from participating in programs funded under this part.

(e) Priority

In making grants under this part to any institution of higher education after August 14, 2008,
the Secretary may give priority to institutions that meet or exceed the most current version of ASHRAE/IES Standard 90.1 (as such term is used in section 6313(a)(6) of title 42) for any new facilities construction or major renovation of the institution after such date, except that this subsection shall not apply with respect to barns or greenhouses or similar structures owned by the institution.

(f) Scholarship program for family members of veterans or members of the military

(1) Authorization

The Secretary shall enter into a contract with a nonprofit organization with demonstrated success in carrying out the activities described in this subsection to carry out a program to provide postsecondary education scholarships for eligible students.

(2) Definition of eligible student

In this subsection, the term “eligible student” means an individual who is enrolled as a full-time or part-time student at an institution of higher education (as defined in section 1087 of this title); or

(i) serving on active duty during a war or other military operation or national emergency (as defined in section 1088 of this title); or

(ii) performing qualifying National Guard duty during a war or other military operation or national emergency (as defined in section 1088 of this title); or

(iii) a veteran who—

(A) served or performed, as described in clause (i), since September 11, 2001; and

(B) an independent student who—

(I) was a spouse of a veteran who—

(ii) served or performed, as described in clause (i), since September 11, 2001; and

(II) died, or has been disabled, as a result of such service or performance; or

(III) a spouse of a veteran who—

(i) a dependent student who is a child of—

(ii) a veteran who—

(A) served or performed, as described in clause (i), since September 11, 2001; and

(B) died as a result of such service or performance; or

(C) a veteran who—

(i) served or performed, as described in clause (i), since September 11, 2001; and

(ii) died, or has been disabled, as a result of such service or performance; or

(3) Awarding of scholarships

Scholarships awarded under this subsection shall be awarded based on need with priority given to eligible students who are eligible to receive Federal Pell Grants under subpart 1 of part A of subchapter IV.

(4) Maximum scholarship amount

The maximum scholarship amount awarded to an eligible student under this subsection for an award year shall be the lesser of $5,000, or the student’s cost of attendance (as defined in section 1087f of this title).

(5) Amounts for scholarships

All of the amounts appropriated to carry out this subsection for a fiscal year shall be used for scholarships awarded under this subsection, except that the nonprofit organization receiving a contract under this subsection may use not more than one percent of such amounts for the administrative costs of the contract.

Amendments

2008—Subsec. (a)(1) to (3). Pub. L. 110–315, § 707(a)(1), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

“(1) encouraging the reform, innovation, and improvement of postsecondary education, and providing equal educational opportunity for all;

“(2) the creation of institutions, programs, and joint efforts involving paths to career and professional training, and combinations of academic and experiential learning;

“(3) the establishment of institutions and programs based on the technology of communications;”;

Subsec. (a)(6). Pub. L. 110–315, § 707(a)(2), added par. (6) and struck out former par. (6) which read as follows:

“the introduction of institutional reforms designed to expand individual opportunities for entering and reentering institutions and pursuing programs of study tailored to individual needs;”.


§ 1138a. National Board of the Fund for the Improvement of Postsecondary Education

(a) Establishment

There is established a National Board of the Fund for the Improvement of Postsecondary Education (in this part referred to as the
The Board shall consist of 15 members appointed by the Secretary for overlapping 3-year terms. A majority of the members shall constitute a quorum. Any member of the Board who has served for 6 consecutive years shall thereafter be ineligible for appointment to the Board during a 2-year period following the expiration of such sixth year.

(b) Membership

The Secretary shall designate one of the members of the Board as Chairperson of the Board. A majority of the members of the Board shall be public interest representatives, including students, and a minority shall be educational representatives. All members selected shall be individuals able to contribute an important perspective on priorities for improvement in postsecondary education and strategies of educational and institutional change.

(c) Duties

The Board shall—

(1) advise the Secretary on priorities for the improvement of postsecondary education and make such recommendations as the Board may deem appropriate for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice;

(2) advise the Secretary on the operation of the Fund for the Improvement of Postsecondary Education, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund; and

(3) meet at the call of the Chairperson, except that the Board shall meet whenever one-third or more of the members request in writing that a meeting be held.

(d) Information and assistance

The Secretary shall make available to the Board such information and assistance as may be necessary to enable the Board to carry out its functions.

2008—Subsec. (b). Pub. L. 110–315, §707(h)(1)(A), struck out par. (1) designation before “The Secretary shall designate” and struck out par. (2). Prior to amendment, text of par. (2) read as follows: “The Secretary shall appoint the Director of the Fund for the Improvement of Postsecondary Education (hereafter in this part referred to as the ‘Director’).”

Subsec. (c)(1), (2). Pub. L. 110–315, §707(h)(1)(B), struck out “and the Director” after “Secretary”.

Subsec. (d). Pub. L. 110–315, §707(h)(1)(C), substituted “Secretary” for “Director”.

§1138b. Administrative provisions

The Secretary may appoint, for terms not to exceed 3 years, without regard to the provisions of title 5 governing appointments in the competitive service, not more than 7 technical employees to administer this part who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates.

2008—Pub. L. 110–315 substituted “who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates” for “who may be paid at rates not in excess of Grade 12 of the General Schedule for the applicable area”.

§1138c. Special projects

(a) Grant authority

The Secretary is authorized to make grants to institutions of higher education, or consortia thereof, and such other public agencies and nonprofit organizations as the Secretary deems necessary for innovative projects concerning one or more areas of particular national need identified by the Secretary.

(b) Application

No grant shall be made under this part unless an application is made at such time, in such manner, and contains or is accompanied by such information as the Secretary may require.
(c) Areas of national need

Areas of national need shall include, at a minimum, the following:

(1) Institutional restructuring to improve learning and promote productivity, efficiency, quality improvement, and cost reduction.

(2) Improvements in academic instruction and student learning, including efforts designed to assess the learning gains made by postsecondary students.

(3) Articulation between two- and four-year institutions of higher education, including developing innovative methods for ensuring the successful transfer of students from two- to four-year institutions of higher education.

(4) Development, evaluation, and dissemination of model courses, including model courses that—

(A) provide students with a broad and integrated knowledge base;

(B) include, at a minimum, broad survey courses in

[REST OF TEXT ELIMINATED DUE TO LENGTH LIMITATIONS]


PART D—PROGRAMS TO PROVIDE STUDENTS WITH DISABILITIES WITH A QUALITY HIGHER EDUCATION

PRIOR PROVISIONS

A prior part D consisted of sections 1140 to 1140d, title VI, as added Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which was classified generally to chapter 33 (§1400 et seq.) of this title.

§1140. Definitions

In this part:

(1) Comprehensive transition and postsecondary program for students with intellectual disabilities

The term “comprehensive transition and postsecondary program for students with intellectual disabilities” means a degree, certificate, or nondegree program that meets each of the following:

(A) Is offered by an institution of higher education.

(B) Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment.

(C) Includes an advising and curriculum structure.

(D) Requires students with intellectual disabilities to participate on not less than a half-time basis as determined by the institution, with such participation focusing on academic components, and occurring through 1 or more of the following activities:

(i) Regular enrollment in credit-bearing courses with nondisabled students offered by the institution.

(ii) Auditing or participating in courses with nondisabled students offered by the institution for which the student does not receive regular academic credit.

(iii) Enrollment in noncredit-bearing, nondegree courses with nondisabled students.

(iv) Participation in internships or work-based training in settings with nondisabled individuals.

(E) Requires students with intellectual disabilities to be socially and academically integrated with non-disabled students to the maximum extent possible.

(2) Student with an intellectual disability

The term “student with an intellectual disability” means a student—

(A) with a cognitive impairment, characterized by significant limitations in—

(i) Intellectual and cognitive functioning;

(ii) adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and

(B) who is currently, or was formerly, eligible for a free appropriate public education under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).


REFERENCES IN TEXT

The Individuals with Disabilities Education Act referred to in par. (2)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

PRIOR PROVISIONS


AMENDMENTS


2009—Par. (1). Pub. L. 111–39 added par. (1) and struck out former par. (1) which contained provisions substantially similar to new subpars. (A) to (D), defining “comprehensive transition and postsecondary program for students with intellectual disabilities”.

EFFECTIVE DATE OF 2009 AMENDMENT

(2) Authorized activities

A grant, contract, or cooperative agreement awarded under this subpart shall be used to carry out one or more of the following activities:

(A) Teaching methods and strategies

The development of innovative, effective, and efficient teaching methods and strategies, consistent with the principles of universal design for learning, to provide postsecondary faculty, staff, and administrators with the skills and supports necessary to teach and meet the academic and programmatic needs of students with disabilities, in order to improve the retention of such students in, and the completion by such students of, postsecondary education. Such methods and strategies may include in-service training, professional development, customized and general technical assistance, workshops, summer institutes, distance learning, and training in the use of assistive and educational technology.

(B) Effective transition practices

The development of innovative and effective teaching methods and strategies to provide postsecondary faculty, staff, and administrators with the skill and supports necessary to ensure the successful and smooth transition of students with disabilities from secondary school to postsecondary education.

(C) Synthesizing research and information

The synthesis of research and other information related to the provision of postsecondary educational services to students with disabilities, including data on the impact of a postsecondary education on subsequent employment of students with disabilities. Such research, information, and data shall be made publicly available and accessible.

(D) Distance learning

The development of innovative and effective teaching methods and strategies to provide postsecondary faculty, staff, and administrators with the ability to provide accessible distance education programs or classes that would enhance the access of students with disabilities to postsecondary education, including the use of accessible curricula and electronic communication for instruction and advising.

(E) Disability career pathways

(i) In general

The provision of information, training, and technical assistance to secondary and postsecondary faculty, staff, and administrators with respect to disability-related fields that would enable such faculty, staff, and administrators to—

(II) enhance awareness and understanding of such fields among students with disabilities and other students;
(III) provide educational opportunities in such fields for students with disabilities and other students;
(IV) teach practical skills related to such fields to students with disabilities and other students; and
(V) offer work-based opportunities in such fields to students with disabilities and other students.

(ii) Development

The training and support described in subparagraphs (I) through (V) of clause (i) may include offering students—
(I) credit-bearing postsecondary-level coursework; and
(II) career and educational counseling.

(F) Professional development and training sessions

The conduct of professional development and training sessions for postsecondary faculty, staff, and administrators from other institutions of higher education to enable such individuals to meet the educational needs of students with disabilities.

(G) Accessibility of education

Making postsecondary education more accessible to students with disabilities through curriculum development, consistent with the principles of universal design for learning.

(3) Mandatory evaluation and dissemination

An institution of higher education awarded a grant, contract, or cooperative agreement under this subpart shall evaluate and disseminate to other institutions of higher education, the information obtained through the activities described in subparagraphs (A) through (G) of paragraph (2).

(e) Considerations in making awards

In awarding grants, contracts, or cooperative agreements under this subpart, the Secretary shall consider the following:

(1) Geographic distribution

Providing an equitable geographic distribution of such awards.

(2) Rural and urban areas

Distributing such awards to urban and rural areas.

(3) Range and type of institution

Ensuring that the activities to be assisted are developed for a range of types and sizes of institutions of higher education.

(4) Prior experience or exceptional programs

Distributing the awards to institutions of higher education with demonstrated prior experience in, or exceptional programs for, meeting the postsecondary educational needs of students with disabilities.

(d) Reports

(1) Initial report

Not later than one year after August 14, 2008, the Secretary shall prepare and submit to the authorizing committees, and make available to the public, a report on all demonstration projects awarded grants under this part for any of fiscal years 1999 through 2008, including a review of the activities and program performance of such demonstration projects based on existing information as of the date of the report.

(2) Subsequent report

Not later than three years after the date of the first award of a grant under this subpart after August 14, 2008, the Secretary shall prepare and submit to the authorizing committees, and make available to the public, a report that—
(A) reviews the activities and program performance of the demonstration projects authorized under this subpart; and
(B) provides guidance and recommendations on how effective projects can be replicated.


PRIOR PROVISIONS


A prior section 762 of Pub. L. 89–329 was classified to section 1140a of this title, prior to repeal by Pub. L. 110–315.

Another prior section 762 of Pub. L. 89–329 was classified to section 1132g–1 of this title, prior to repeal by Pub. L. 102–325.

Another prior section 762 of Pub. L. 89–329 was classified to section 1132d–1 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

§ 1140c. Applications

Each institution of higher education desiring to receive a grant, contract, or cooperative agreement under this subpart shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall include—

(1) a description of the activities authorized under this subpart that the institution proposes to carry out, and how such institution plans to conduct such activities in order to further the purpose of this subpart;
(2) a description of how the institution consulted with a broad range of people within the institution to develop activities for which assistance is sought;
(3) a description of how the institution will coordinate and collaborate with the office that provides services to students with disabilities within the institution; and
(4) a description of the extent to which the institution will work to replicate the research-based and best practices of institutions of higher education with demonstrated effectiveness in serving students with disabilities.


PRIOR PROVISIONS

§ 1140d. Rule of construction

Nothing in this subpart shall be construed to impose any additional duty, obligation, or responsibility on an institution of higher education or on the institution’s faculty, administrators, or staff than is required under section 794 of title 29 and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 1140e. Authorization of appropriations

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PRIOR PROVISIONS

A prior section 765 of Pub. L. 89–329 was classified to section 1140d of this title, prior to repeal by Pub. L. 110–315.

Another prior section 765 of Pub. L. 89–329 was classified to section 1132d–3 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

§ 1140f. Purpose

It is the purpose of this subpart to support model demonstration programs that promote the successful transition of students with intellectual disabilities into higher education.


PRIOR PROVISIONS

A prior section 766 of Pub. L. 89–329 was classified to section 1132d–5 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

§ 1140g. Model comprehensive transition and postsecondary programs for students with intellectual disabilities

(a) Grants authorized

(1) In general

From amounts appropriated under section 1140f(a) of this title, the Secretary shall annually award grants, on a competitive basis, to institutions of higher education (or consortia of institutions of higher education), to enable the institutions or consortia to create or expand high quality, inclusive model comprehensive transition and postsecondary programs for students with intellectual disabilities.

(2) Administration

The program under this section shall be administered by the office in the Department that administers other postsecondary education programs.

(3) Duration of grants

A grant under this section shall be awarded for a period of 5 years.

(b) Application

An institution of higher education (or a consortium) desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) Award basis

In awarding grants under this section, the Secretary shall—

(1) provide for an equitable geographic distribution of such grants;

(2) provide grant funds for model comprehensive transition and postsecondary programs for students with intellectual disabilities that will serve areas that are underserved by programs of this type; and

(3) give preference to applications submitted under subsection (b) that agree to incorporate into the model comprehensive transition and postsecondary program for students with intellectual disabilities carried out under the grant one or more of the following elements:

(A) The formation of a partnership with any relevant agency serving students with intellectual disabilities, such as a vocational rehabilitation agency.

(B) In the case of an institution of higher education that provides institutionally owned or operated housing for students attending the institution, the integration of students with intellectual disabilities into the housing offered to nondisabled students.

(C) The involvement of students attending the institution of higher education who are
An institution of higher education (or consortium) receiving a grant under this section shall use the grant funds to establish a model comprehensive transition and postsecondary program for students with intellectual disabilities that—

1. serves students with intellectual disabilities;
2. provides individual supports and services for the academic and social inclusion of students with intellectual disabilities in academic courses, extracurricular activities, and other aspects of the institution of higher education’s regular postsecondary program;
3. with respect to the students with intellectual disabilities participating in the model program, provides a focus on—
   A. academic enrichment;
   B. socialization;
   C. independent living skills, including self-advocacy skills; and
   D. integrated work experiences and career skills that lead to gainful employment;
4. integrates person-centered planning in the development of the course of study for each student with an intellectual disability participating in the model program;
5. participates with the coordinating center established under section 1140q(b) of this title in the evaluation of the model program;
6. partners with one or more local educational agencies to support students with intellectual disabilities participating in the model program who are still eligible for special education and related services under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], including the use of funds available under part B of such Act [20 U.S.C. 1411 et seq.] to support the participation of such students in the model program;
7. plans for the sustainability of the model program after the end of the grant period; and
8. creates and offers a meaningful credential for students with intellectual disabilities upon the completion of the model program.

(e) Matching requirement

An institution of higher education (or consortium) that receives a grant under this section shall provide matching funds toward the cost of the model comprehensive transition and postsecondary program for students with intellectual disabilities carried out under the grant. Such matching funds may be provided in cash or in-kind, and shall be in an amount of not less than 25 percent of the amount of such costs.

(f) Report

Not later than five years after the date of the first grant awarded under this section, the Secretary shall prepare and disseminate a report to the authorizing committees and to the public that—

1. reviews the activities of the model comprehensive transition and postsecondary programs for students with intellectual disabilities funded under this section; and
2. provides guidance and recommendations on how effective model programs can be replicated.
(2) equal to 3 percent of the amount appropriated to carry out this subpart for any year in which such amount appropriated is greater than $8,000,000.


SUBPART 3—COMMISSION ON ACCESSIBLE MATERIALS; PROGRAMS TO SUPPORT IMPROVED ACCESS TO MATERIALS

§1140k. Definition of student with a print disability

In this subpart, the term "student with a print disability" means a student with a disability who experiences barriers to accessing instructional material in nonspecialized formats, including an individual described in section 121(d)(2) of title 17.


PRIOR PROVISIONS

A prior section 771 of Pub. L. 89–329 was renumbered section 781, and is classified to section 1141 of this title. Another prior section 771 of Pub. L. 89–329 was classified to section 1132h of this title, prior to repeal by Pub. L. 102–325. Another prior section 771 of Pub. L. 89–329 was classified to section 1132d–11 of this title, prior to the general amendment of this subchapter by Pub. L. 96–374.

§1140l. Establishment of Advisory Commission on Accessible Instructional Materials in Post-secondary Education for Students with Disabilities

(a) Establishment

(1) In general

The Secretary shall establish a commission to be known as the Advisory Commission on Accessible Instructional Materials in Post-secondary Education for Students with Disabilities (in this section referred to as the "Commission").

(2) Membership

(A) Total number of members

The Commission shall include not more than 19 members, who shall be appointed by the Secretary in accordance with subparagraphs (B) and (C).

(B) Members of the Commission

The Commission members shall include one representative from each of the following categories:

(i) The Office of Postsecondary Education of the Department.

(ii) The Office of Special Education and Rehabilitative Services of the Department.

(iii) The Office for Civil Rights of the Department.


(v) The Association on Higher Education and Disability.


(viii) The National Council on Disability.

(ix) Recording for the Blind and Dyslexic.

(x) National organizations representing individuals with visual impairments.

(xi) National organizations representing individuals with learning disabilities.

(b) Duties of the Commission

The Commission shall include two representatives from each of the following categories:

(i) Staff from institutions of higher education with demonstrated experience teaching or supporting students with print disabilities, including representatives from both two-year and four-year institutions of higher education of different sizes.

(ii) Producers of accessible materials, publishing software, and supporting technologies in specialized formats, such as Braille, audio or synthesized speech, and digital media.

(iii) Individuals with visual impairments, including not less than one currently enrolled postsecondary student.

(iv) Individuals with dyslexia or other learning disabilities related to reading, including not less than one currently enrolled postsecondary student.

(D) Timing

The Secretary shall appoint the members of the Commission not later than 60 days after the Commission is established under paragraph (1).

(3) Chairperson and vice chairperson

The Commission shall select a chairperson and vice chairperson from among the members of the Commission.

(4) Meetings

(A) In general

The Commission shall meet at the call of the Chairperson.

(B) First meeting

Not later than 60 days after the appointment of the members of the Commission under paragraph (2)(D), the Commission shall hold the Commission’s first meeting.

(5) Quorum

A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(b) Duties of the Commission

(1) Study

(A) In general

The Commission shall conduct a comprehensive study to—

(i) assess the barriers and systemic issues that may affect, and technical solutions available that may improve, the timely delivery and quality of accessible instructional materials for postsecondary
students with print disabilities, as well as the effective use of such materials by faculty and staff; and
(ii) make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print disabilities to access instructional materials in specialized formats in a timeframe comparable to the availability of instructional materials for postsecondary nondisabled students.

(B) Existing information
To the extent practicable, in carrying out the study under this paragraph, the Commission shall identify and use existing research, recommendations, and information.

(C) Recommendations

(i) In general
The Commission shall develop recommendations—
(I) to inform Federal regulations and legislation;
(II) to support the model demonstration programs authorized under section 1140m of this title;
(III) to identify best practices in systems for collecting, maintaining, processing, and disseminating materials in specialized formats to students with print disabilities at costs comparable to instructional materials for postsecondary nondisabled students;
(IV) to improve the effective use of such materials by faculty and staff, while complying with applicable copyright law; and
(V) to modify the definitions of instructional materials, authorized entities, and eligible students, as such terms are used in applicable Federal law, for the purpose of improving services to students with disabilities.

(ii) Considerations
In developing the recommendations under clause (i), the Commission shall consider—
(I) how students with print disabilities may obtain instructional materials in accessible formats—
(aa) within a timeframe comparable to the availability of instructional materials for nondisabled students; and
(bb) to the maximum extent practicable, at costs comparable to the costs of such materials for nondisabled students;
(II) the feasibility and technical parameters of establishing standardized electronic file formats, such as the National Instructional Materials Accessibility Standard as defined in section 1474(e)(3) of this title, to be provided by publishers of instructional materials to producers of materials in specialized formats, institutions of higher education, and eligible students;
(III) the feasibility of establishing a national clearinghouse, repository, or file-sharing network for electronic files in specialized formats and files used in producing instructional materials in specialized formats, and a list of possible entities qualified to administer such clearinghouse, repository, or network;
(IV) the feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher education;
(V) solutions utilizing universal design; and
(VI) solutions for low-incidence, high-cost requests for instructional materials in specialized formats.

(2) Report
Not later than one year after the Commission's first meeting, the Commission shall submit a report to the Secretary and the authorizing committees detailing the findings and recommendations of the study conducted under paragraph (1).

(3) Dissemination of information
In carrying out the study under paragraph (1), the Commission shall disseminate information concerning the issues that are the subject of the study through—
(A) the National Technical Assistance Center established under subpart 4; and
(B) other means, as determined by the Commission.

(c) Termination of the Commission
The Commission shall terminate on the date that is 90 days after the date on which the Commission submits the report under subsection (b)(2) to the Secretary and the authorizing committees.


Prior Provisions
A prior section 772 of Pub. L. 89–329 was classified to section 1132h–1 of this title, prior to repeal by Pub. L. 102–325.

Amendments

Effective Date of 2009 Amendment

§1140m. Model demonstration programs to support improved access to postsecondary instructional materials for students with print disabilities

(a) Purpose
It is the purpose of this section to support model demonstration programs for the purpose
of encouraging the development of systems to improve the quality of postsecondary instructional materials in specialized formats and such materials' timely delivery to postsecondary students with print disabilities, including systems to improve efficiency and reduce duplicative efforts across multiple institutions of higher education.

(b) Definition of eligible partnership

In this section, the term "eligible partnership" means a partnership that—

(1) shall include—

(A) an institution of higher education with demonstrated expertise in meeting the needs of students with print disabilities, including the retention of such students in, and such students' completion of, postsecondary education; and

(B) a public or private entity, other than an institution of higher education, with—

(i) demonstrated expertise in developing accessible instructional materials in specialized formats for postsecondary students with print disabilities; and

(ii) the technical development expertise necessary for the efficient dissemination of such materials, including procedures to protect against copyright infringement with respect to the creation, use, and distribution of instructional materials in specialized formats; and

(2) may include representatives of the publishing industry.

c) Program authorized

From amounts appropriated under section 1140 of this title, the Secretary shall award grants or contracts, on a competitive basis, to not less than one eligible partnership to enable the eligible partnership to support the activities described in subsection (f) and, as applicable, subsection (g).

d) Application

An eligible partnership that desires a grant or contract under this section shall submit an application at such time, in such manner, and in such format as the Secretary may prescribe. The application shall include information on how the eligible partnership will implement activities described in subsection (f) and, as applicable, subsection (g).

e) Priority

In awarding grants or contracts under this section, the Secretary shall give priority to any applications that include the development and implementation of the procedures and approaches described in paragraphs (2) and (3) of subsection (g).

(f) Required activities

An eligible partnership that receives a grant or contract under this section shall use the grant or contract funds to carry out the following:

(1) Supporting the development and implementation of the following:

(A) Processes and systems to help identify, and verify eligibility of, postsecondary students with print disabilities in need of instructional materials in specialized formats.

(B) Procedures and systems to facilitate and simplify request methods for accessible instructional materials in specialized formats from eligible students described in subparagraph (A), which may include a single point-of-entry system.

(C) Procedures and systems to coordinate among institutions of higher education, publishers of instructional materials, and entities that produce materials in specialized formats, to efficiently facilitate—

(i) requests for such materials;

(ii) the responses to such requests; and

(iii) the delivery of such materials.

(D) Delivery systems that will ensure the timely provision of instructional materials in specialized formats to eligible students, which may include electronic file distribution.

(E) Systems to reduce duplicative conversions and improve sharing of the same instructional materials in specialized formats for multiple eligible students at multiple institutions of higher education.

(F) Procedures to protect against copyright infringement with respect to the development, use, and distribution of instructional materials in specialized formats while maintaining accessibility for eligible students, which may include digital technologies such as watermarking, fingerprinting; and other emerging approaches.

(G) Awareness, outreach, and training activities for faculty, staff, and students related to the acquisition and dissemination of instructional materials in specialized formats and instructional materials utilizing universal design.

(g) Authorized approaches

An eligible partnership that receives a grant or contract under this section may use the grant or contract funds to support the development and implementation of the following:

(1) Approaches for the provision of instructional materials in specialized formats limited to instructional materials used in smaller categories of postsecondary courses, such as introductory, first-, and second-year courses.

(2) Approaches supporting a unified search for instructional materials in specialized formats across multiple databases or lists of available materials.

(3) Market-based approaches for making instructional materials in specialized formats directly available to eligible students at prices comparable to standard instructional formats.

(h) Report

Not later than three years after the date of the first grant or contract awarded under this section, the Secretary shall submit to the authorizing committees a report that includes—

(1) the number of grants and contracts and the amount of funds distributed under this section;
(2) a summary of the purposes for which the grants and contracts were provided and an evaluation of the progress made under such grants and contracts;

(3) a summary of the activities implemented under subsection (f) and, as applicable, subsection (g), including data on the number of postsecondary students with print disabilities served and the number of instructional material requests executed and delivered in specialized formats; and

(4) an evaluation of the effectiveness of programs funded under this section.

(i) Model expansion

The Secretary may, on the basis of the reports under subsection (h) and section 1140(b)(2) of this title and any evaluations of the projects funded under this section, expand the program under this section to additional grant or contract recipients that use other programmatic approaches and serve different geographic regions, if the Secretary finds that the models used under this section—

(1) are effective in improving the timely delivery and quality of materials in specialized formats; and

(2) provide adequate protections against copyright infringement.


PRIOR PROVISIONS

A prior section 773 of Pub. L. 89–329 was classified to section 1132h–2 of this title, prior to repeal by Pub. L. 102–325.

§ 1140m. Rule of construction

Nothing in this subpart shall be construed to limit or preempt any State law requiring the production or distribution of postsecondary instructional materials in accessible formats to students with disabilities.


PRIOR PROVISIONS

A prior section 774 of Pub. L. 89–329 was classified to section 1132h–3 of this title, prior to repeal by Pub. L. 102–325.

§ 1140n. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(b) Priority

For the first fiscal year for which funds are made available under this section, the Secretary shall give priority to allocating funding for the purposes of section 1140f of this title.


PRIOR PROVISIONS

A prior section 775 of Pub. L. 89–329 was classified to section 1132h–4 of this title, prior to repeal by Pub. L. 102–325.
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(i) information to assist individuals with disabilities who are prospective students of an institution of higher education in planning for postsecondary education while the students are in secondary school;
(ii) information and technical assistance provided to individualized education program teams (as defined in section 1414(d)(1) of this title) for secondary school students with disabilities, and to early outreach and student services programs, including programs authorized under subparts 2, 4, and 5 of part A of subchapter IV, to support students across a broad spectrum of disabilities with the successful transition to postsecondary education;
(iii) research-based supports, services, and accommodations which are available in postsecondary settings, including services provided by other agencies such as vocational rehabilitation;
(iv) information on student mentoring and networking opportunities for students with disabilities; and
(v) effective recruitment and transition programs at postsecondary educational institutions.

(B) Assistance to institutions of higher education
The National Center shall provide information and technical assistance to faculty, staff, and administrators of institutions of higher education to improve the services provided to, the accommodations for, the retention rates of, and the completion rates of, students with disabilities in higher education settings, which may include—
(i) collection and dissemination of best practices and materials for accommodating and supporting students with disabilities, including practices and materials supported by the grants, contracts, or cooperative agreements authorized under subparts 1, 2, and 3;
(ii) development and provision of training modules for higher education faculty on exemplary practices for accommodating and supporting postsecondary students with disabilities across a range of academic fields, which may include universal design for learning and practices supported by the grants, contracts, or cooperative agreements authorized under subparts 1, 2, and 3; and
(iii) development of technology-based tutorials for higher education faculty and staff, including new faculty and graduate students, on best and promising practices related to support and retention of students with disabilities in postsecondary education.

(C) Information collection and dissemination
The National Center shall be responsible for building, maintaining, and updating a database of disability support services information with respect to institutions of higher education, or for expanding and updating an existing database of disabilities support services information with respect to institutions of higher education. Such database shall be available to the general public through a website built to high technical standards of accessibility practicable for the broad spectrum of individuals with disabilities. Such database and website shall include available information on—
(i) disability documentation requirements;
(ii) support services available;
(iii) links to financial aid;
(iv) accommodations policies;
(v) accessible instructional materials;
(vi) other topics relevant to students with disabilities; and
(vii) the information in the report described in subparagraph (E).

(D) Disability support services
The National Center shall work with organizations and individuals with proven expertise related to disability support services for postsecondary students with disabilities to evaluate, improve, and disseminate information related to the delivery of high quality disability support services at institutions of higher education.

(E) Review and report
Not later than three years after the establishment of the National Center, and every two years thereafter, the National Center shall prepare and disseminate a report to the Secretary and the authorizing committees analyzing the condition of postsecondary success for students with disabilities. Such report shall include—
(i) a review of the activities and the effectiveness of the programs authorized under this part;
(ii) annual enrollment and graduation rates of students with disabilities in institutions of higher education from publicly reported data;
(iii) recommendations for effective postsecondary supports and services for students with disabilities, and how such supports and services may be widely implemented at institutions of higher education;
(iv) recommendations on reducing barriers to full participation for students with disabilities in higher education; and
(v) a description of strategies with a demonstrated record of effectiveness in improving the success of such students in postsecondary education.

(F) Staffing of the Center
In hiring employees of the National Center, the National Center shall consider the expertise and experience of prospective employees in providing training and technical assistance to practitioners.

(b) Coordinating center
(1) Definition of eligible entity
In this subsection, the term “eligible entity” means an entity, or a partnership of entities, that has demonstrated expertise in the fields of—
(A) higher education;
(B) the education of students with intellectual disabilities;
(C) the development of comprehensive transition and postsecondary programs for students with intellectual disabilities; and

(D) evaluation and technical assistance.

(2) In general

From amounts appropriated under section 1140r of this title, the Secretary shall enter into a cooperative agreement, on a competitive basis, with an eligible entity for the purpose of establishing a coordinating center for institutions of higher education that offer inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities, including institutions participating in grants authorized under subpart 2, to provide—

(A) recommendations related to the development of standards for such programs;

(B) technical assistance for such programs; and

(C) evaluations for such programs.

(3) Administration

The program under this subsection shall be administered by the office in the Department that administers other postsecondary education programs.

(4) Duration

The Secretary shall enter into a cooperative agreement under this subsection for a period of five years.

(5) Requirements of cooperative agreement

The eligible entity entering into a cooperative agreement under this subsection shall establish and maintain a coordinating center that shall—

(A) serve as the technical assistance entity for all comprehensive transition and postsecondary programs for students with intellectual disabilities;

(B) provide technical assistance regarding the development, evaluation, and continuous improvement of such programs;

(C) develop an evaluation protocol for such programs that includes qualitative and quantitative methodologies for measuring student outcomes and program strengths in the areas of academic enrichment, socialization, independent living, and competitive or supported employment;

(D) assist recipients of grants under subpart 2 in efforts to award a meaningful credential to students with intellectual disabilities upon the completion of such programs, which credential shall take into consideration unique State factors;

(E) develop recommendations for the necessary components of such programs, such as—

(i) academic, vocational, social, and independent living skills;

(ii) evaluation of student progress;

(iii) program administration and evaluation;

(iv) student eligibility; and

(v) issues regarding the equivalency of a student’s participation in such programs to semester, trimester, quarter, credit, or clock hours at an institution of higher education, as the case may be;

(F) analyze possible funding streams for such programs and provide recommendations regarding the funding streams;

(G) develop model memoranda of agreement for use between or among institutions of higher education and State and local agencies providing funding for such programs;

(H) develop mechanisms for regular communication, outreach and dissemination of information about comprehensive transition and postsecondary programs for students with intellectual disabilities under subpart 2 between or among such programs and to families and prospective students;

(I) host a meeting of all recipients of grants under subpart 2 not less often than once each year; and

(J) convene a workgroup to develop and recommend model criteria, standards, and components of such programs as described in subparagraph (E), that are appropriate for the development of accreditation standards, which workgroup shall include—

(i) an expert in higher education;

(ii) an expert in special education;

(iii) a disability organization that represents students with intellectual disabilities;

(iv) a representative from the National Advisory Committee on Institutional Quality and Integrity; and

(v) a representative of a regional or national accreditation agency or association.

(6) Report

Not later than five years after the date of the establishment of the coordinating center under this subsection, the coordinating center shall report to the Secretary, the authorizing committees, and the National Advisory Committee on Institutional Quality and Integrity on the recommendations of the workgroup described in paragraph (5)(J).


PRIOR PROVISIONS

A prior section 777 of Pub. L. 89–329 was classified to section 1132h–6 of this title, prior to repeal by Pub. L. 102–325.

§ 1141r. Authorization of appropriations

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART E—COLLEGE ACCESS CHALLENGE GRANT PROGRAM

§ 1141. College access challenge grant program

(a) Authorization and appropriation

There are authorized to be appropriated, and there are appropriated, to carry out this section $150,000,000 for each of the fiscal years 2010
through 2014. The authority to award grants under this section shall expire at the end of fiscal year 2014. In addition to the amount authorized and appropriated under the preceding sentence, there are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(b) Program authorized

(1) Grants authorized

From amounts appropriated under subsection (a), the Secretary shall, subject to the availability of appropriations, award grants, from allotments under subsection (c), to States (and to philanthropic organization,\(^1\) as appropriate under paragraph (3)) having applications approved under subsection (d), to enable the State (or philanthropic organization) to pay the Federal share of the costs of carrying out the activities and services described in subsection (f).

(2) Federal share; non-Federal share

(A) Federal share

The amount of the Federal share under this section for a fiscal year shall be equal to \(\frac{3}{4}\) of the costs of the activities and services described in subsection (f) that are carried out under the grant.

(B) Non-Federal share

The amount of the non-Federal share under this section shall be equal to \(\frac{1}{4}\) of the costs of the activities and services described in subsection (f). The non-Federal share may be in cash or in-kind, and may be provided from State resources, contributions from private organizations, or both.

(3) Reduction for failure to pay non-Federal share

If a State fails to provide the full non-Federal share required under this subsection, the Secretary shall reduce the amount of the grant payment under this section proportionately, and may award the proportionate reduction amount of the grant directly to a philanthropic organization, as defined in subsection (f), to carry out this section.

(4) Temporary ineligibility for subsequent payments

(A) In general

The Secretary shall determine a grantee to be temporarily ineligible to receive a grant payment under this section for a fiscal year if—

(i) the grantee fails to submit an annual report pursuant to subsection (h) for the preceding fiscal year; or

(ii) the Secretary determines, based on information in such annual report, that the grantee is not effectively meeting the conditions described under subsection (g) and the goals of the application under subsection (d).

(B) Reinstatement

If the Secretary determines that a grantee is ineligible under subparagraph (A), the Secretary may enter into an agreement with the grantee setting forth the terms and conditions under which the grantee may regain eligibility to receive payments under this section.

(c) Determination of allotment

(1) Amount of allotment

Subject to paragraph (2), in making grant payments to grantees under this section, the allotment to each grantee for a fiscal year shall be equal to the sum of—

(A) the amount that bears the same relation to 50 percent of the amount appropriated under subsection (a) as the number of residents in the State aged 5 through 17 who are living below the poverty line applicable to the resident’s family size (as determined under section 9902(2) of title 42) bears to the total number of such residents in all States; and

(B) the amount that bears the same relation to 50 percent of the amount appropriated under subsection (a) as the number of residents in the State aged 15 through 44 who are living below the poverty line applicable to the individual’s family size (as determined under section 9902(2) of title 42) bears to the total number of such residents in all States.

(2) Minimum amount

The allotment for each State under this section for a fiscal year shall not be an amount that is less than 1.0 percent of the total amount appropriated under subsection (a) for such fiscal year.

(d) Submission and contents of application

(1) In general

For each fiscal year for which a grantee desires a grant payment under subsection (b), the State agency with jurisdiction over higher education, or another agency designated by the Governor or chief executive of the State to administer the program under this section, or a philanthropic organization, in accordance with subsection (b)(3), shall submit an application to the Secretary at such time, in such manner, and containing the information described in paragraph (2).

(2) Application

An application submitted under paragraph (1) shall include the following:

(A) A description of the grantee’s capacity to administer the grant under this section and report annually to the Secretary on the activities and services described in subsection (f).

(B) A description of the grantee’s plan for using the grant funds to meet the requirements of subsections (f) and (g), including plans for how the grantee will make special efforts to—

(i) provide such benefits to students in the State that are underrepresented in postsecondary education; or

(ii) in the case of a philanthropic organization that operates in more than one State, provide benefits to such students in each such State for which the philan-
(e) Subgrants to nonprofit organizations

A State receiving a payment under this section may elect to make a subgrant to one or more nonprofit organizations in the State, including an eligible not-for-profit holder (as described in section 1085(p) of this title), or those nonprofit organizations that have agreements with the Secretary under section 1078(b) of this title, or a partnership of such organizations, to carry out activities or services described in subsection (f), if the nonprofit organization or partnership—

(1) was in existence on the day before the date of the enactment of this Act; and
(2) as of such day, was participating in activities and services related to increasing access to higher education, such as those activities and services described in subsection (f).

(f) Allowable uses

(1) In general

Subject to paragraph (3), a grantee may use a grant payment under this section only for the following activities and services, pursuant to the conditions under subsection (g):

(A) Information for students and families regarding—
   (i) the benefits of a postsecondary education;
   (ii) postsecondary education opportunities;
   (iii) planning for postsecondary education; and
   (iv) career preparation.

(B) Information on financing options for postsecondary education and activities that promote financial literacy and debt management among students and families.

(C) Outreach activities for students who may be at risk of not enrolling in or completing postsecondary education.

(D) Assistance in completion of the Free Application for Federal Student Aid or other common financial reporting form under section 1090(a) of this title.

(E) Need-based grant aid for students.

(F) Professional development for guidance counselors at middle schools and secondary schools, and financial aid administrators and college admissions counselors at institutions of higher education, to improve such individuals’ capacity to assist students and parents with—
   (i) understanding—
      (I) entrance requirements for admission to institutions of higher education; and
   (II) State eligibility requirements for Academic Competitiveness Grants or National SMART Grants under section 1070a–1 of this title, and other financial assistance that is dependent upon a student’s coursework;
   (ii) applying to institutions of higher education;
   (iii) applying for Federal student financial assistance and other State, local, and private student financial assistance and scholarships;
   (iv) activities that increase students’ ability to successfully complete the coursework required for a postsecondary degree, including activities such as tutoring or mentoring; and
   (v) activities to improve secondary school students’ preparedness for postsecondary entrance examinations.

(G) Student loan cancellation or repayment (as applicable), or interest rate reductions, for borrowers who are employed in a high-need geographical area or a high-need profession in the State, as determined by the State.

(2) Prohibited uses

Funds made available under this section shall not be used to promote any lender’s loans.

(3) Use of funds for administrative purposes

A grantee may use not more than 6 percent of the total amount of the sum of the Federal share provided under this section and the non-Federal share required under this section for administrative purposes relating to the grant under this section.

(g) Special conditions

(1) Availability to students and families

A grantee receiving a grant payment under this section shall—

(A) make the activities and services described in subparagraphs (A) through (F) of subsection (f)(1) that are funded under the payment available to all qualifying students and families in the State;

(B) allow students and families to participate in the activities and services without regard to—
   (i) the postsecondary institution in which the student enrolls;
   (ii) the type of student loan the student receives;
   (iii) the servicer of such loan; or
   (iv) the student’s academic performance;

(C) not charge any student or parent a fee or additional charge to participate in the activities or services; and

(D) in the case of an activity providing grant aid, do not require the student to meet any condition other than eligibility for Federal financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, except as provided for in the loan cancellation or repayment or interest rate reductions described in subsection (f)(1)(G).
(2) Priority
A grantee receiving a grant payment under this section shall, in carrying out any activity or service described in subsection (f)(1) with the grant funds, prioritize students and families who are living below the poverty line applicable to the individual's family size (as determined under section 9902(2) of title 42).

(3)Disclosures
(A) Organizational disclosures
In the case of a State that has chosen to make a payment to an eligible not-for-profit holder in the State in accordance with subsection (e), the holder shall clearly and prominently indicate the name of the holder and the nature of the holder's work in connection with any of the activities carried out, or any information or services provided, with such funds.

(B) Informational disclosures
Any information about financing options for higher education provided through an activity or service funded under this section shall—
(i) include information to students and the students' parents of the availability of Federal, State, local, institutional, and other grants and loans for postsecondary education; and
(ii) present information on financial assistance for postsecondary education that is not provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 in a manner that is clearly distinct from information on student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(4)Coordination
A grantee receiving a grant payment under this section shall attempt to coordinate the activities carried out with the grant payment with any existing activities that are similar to such activities, and with any other entities that support the existing activities in the State.

(h)Report
A grantee receiving a grant payment under this section shall prepare and submit an annual report to the Secretary on the activities and services carried out under this section, and on the implementation of such activities and services. The report shall include—
(1) each activity or service that was provided to students and families over the course of the year;
(2) the cost of providing each activity or service;
(3) the number, and percentage, if feasible and applicable, of students who received each activity or service; and
(4) the total contributions from private organizations included in the grantee's non-Federal share for the fiscal year.

(i)Definitions
In this section:
(1)Philanthropic organization
The term "philanthropic organization" means a non-profit organization—
(A) that does not receive funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 or under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);
(B) that is not a local educational agency or an institution of higher education;
(C) that has a demonstrated record of dispensing grant aid to underserved populations to ensure access to, and participation in, higher education;
(D) that is affiliated with an eligible consortium (as defined in paragraph (2)) to carry out this section; and
(E) the primary purpose of which is to provide financial aid and support services to students from underrepresented populations to increase the number of such students who enter and remain in college.

(2)Eligible consortium
The term "eligible consortium" means a partnership of 2 or more entities that have agreed to work together to carry out this section that—
(A) includes—
(i) a philanthropic organization, which serves as the manager of the consortium;
(ii) a State that demonstrates a commitment to ensuring the creation of a Statewide system to address the issues of early intervention and financial support for eligible students to enter and remain in college; and
(iii) at the discretion of the philanthropic organization described in clause (i), additional partners, including other non-profit organizations, government entities (including local municipalities, school districts, cities, and counties), institutions of higher education, and other public or private programs that provide mentoring or outreach programs; and
(B) conducts activities to assist students with entering and remaining in college, which may include—
(i) providing need-based grants to students;
(ii) providing early notification to low-income students of their potential eligibility for Federal financial aid (which may include assisting students and families with filling out FAFSA forms), as well as other financial aid and other support available from the eligible consortium;
(iii) encouraging increased student participation in higher education through mentoring or outreach programs; and
(iv) conducting marketing and outreach efforts that are designed to—
(I) encourage full participation of students in the activities of the consortium that carry out this section; and
(II) provide the communities impacted by the activities of the consortium with a general knowledge about the efforts of the consortium.

(3)Grantee
The term "grantee" means—
(A) a State awarded a grant under this section; or
(B) with respect to such a State that has failed to meet the non-Federal share requirement of subsection (b), a philanthropic organization awarded the proportionate reduc-
tion amount of such a grant under subsection (b)(3).


REFERENCES IN TEXT
The date of the enactment of this Act, referred to in subsec. (e)(1), probably means the date of enactment of Pub. L. 110–84, which enacted this section and was approved Sept. 27, 2007.


Another prior section 114Aa, Pub. L. 90–575, title II, §201, Oct. 13, 1970, 84 Stat. 353, set forth sense of Congress that governing boards of institutions of higher education give consideration to student participation on such boards, prior to being omitted from the Code.


A prior section 1146a, Pub. L. 99–498, §3, Oct. 17, 1986, 100 Stat. 1278, which provided that contracting authority be subject to appropriations, was transferred, and is set out as a Contracting Authority Subject to Appropriations note under section 1154 of this title.

Prior sections 1147 to 1150, Pub. L. 89–329, title XII, §§1207–1210, as added Pub. L. 90–575, title II, §295, Oct. 16, 1968, 82 Stat. 1051, 1052, provided for program planning and evaluation for higher education programs; advance funding; evaluation reports and Congressional review; availability of appropriations; and the program shall expire at the end of fiscal year 2014,” for “‘$66,000,000 for each of the fiscal years 2008 and 2009.’”

Subsec. (a)(2). Pub. L. 111–152, §2102(2), substituted “‘1.0 percent’ for “‘0.5 percent’”.


Subsec. (e). Pub. L. 111–39, §701(6)(B), substituted “(as described in section 1085(p) of this title)” for “(as defined in section 1085(p) of this title, as amended by section 303 of this Act)” and “1078(b)” for “1085(j)” in introductory provisions.

Subsec. (g)(1). Pub. L. 111–39, §701(6)(C), made technical amendment to reference in original act which appears in text as reference to section 9902(2) of title 25.

Subsec. (i). Pub. L. 111–39, §701(6)(D), substituted “‘consortium’ for “‘consortia’” in par. (1)(D) and in par. (2) in heading and wherever appearing in text.
(d) Program requirements

Each State correctional education agency receiving a grant under this section shall—

(1) annually report to the Secretary regarding—

(A) the results of the evaluations conducted using data elements and definitions provided by the Secretary for the use of State correctional education programs;

(B) any objectives or requirements established by the Secretary pursuant to subsection (b)(2);

(C) the additional performance objectives and evaluation methods contained in the proposal described in subsection (c)(4) as necessary to document the attainment of project performance objectives;

(D) how the funds provided under this section are being allocated among postsecondary preparatory education, postsecondary academic programs, and career and technical education programs; and

(E) the service delivery methods being used for each course offering; and

(2) provide for each student eligible under subsection (e) not more than—

(A) $3,000 annually for tuition, books, and essential materials; and

(B) $300 annually for related services such as career development, substance abuse counseling, parenting skills training, and health education.

(e) Student eligibility

An incarcerated individual who has obtained a secondary school diploma or its recognized equivalent shall be eligible for participation in a program receiving a grant under this section if such individual—

(1) is eligible to be released within seven years (including an incarcerated individual who is eligible for parole within such time);

(2) is 35 years of age or younger; and

(3) has not been convicted of—

(A) a "criminal offense against a victim who is a minor" or a "sexually violent offense", as such terms are defined in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071 et seq.); 1 or

(B) murder, as described in section 1111 of title 18.

(f) Length of participation

A State correctional education agency receiving a grant under this section shall provide educational and related services to each participating incarcerated individual for a period not to exceed seven years, not more than two years of which may be devoted to study in a graduate education degree program or to coursework to prepare such individuals to take college level courses. Educational and related services shall start during the period of incarceration in prison or prerelease, and the related services may continue for not more than two years after release from confinement.

(g) Education delivery systems

State correctional education agencies and cooperating institutions shall, to the extent practicable, use high-tech applications in developing programs to meet the requirements and goals of this section.

(h) Allocation of funds

(1) Fiscal year 2009

From the funds appropriated pursuant to subsection (i) for fiscal year 2009, the Secretary shall allot to each State an amount that bears the same relationship to such funds as the total number of incarcerated individuals described in paragraphs (1) and (2) of subsection (e) in the State bears to the total number of such individuals in all States.

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1 See References in Text note below.
(2) Future fiscal years

From the funds appropriated pursuant to subsection (i) for each fiscal year after fiscal year 2009, the Secretary shall allot to each State an amount that bears the same relationship to such funds as the total number of students eligible under subsection (e) in such State bears to the total number of such students in all States.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2009 through 2014.

Public Law (Pub. L.)


AMENDMENTS

2009—Subsec. (h), Pub. L. 111–39 amended subsec. (h) generally. Prior to amendment, text read as follows: “From the funds appropriated pursuant to subsection (i) for each fiscal year, the Secretary shall allot to each State an amount that bears the same relationship to such funds as the total number of students eligible under subsection (e) in such State bears to the total number of such students in all States.”

2008—Pub. L. 110–315 amended section generally. Prior to amendment, section consisted of subsections (a) to (j) relating to grants to States for workplace and community transition training for incarcerated youth offenders.


date of repeal


§ 1153. Underground Railroad educational and cultural program

(a) Program established

The Secretary of Education, in consultation and cooperation with the Secretary of the Inte-
(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section $3,000,000 for fiscal year 2009 and each of the five succeeding fiscal years.


CODIFICATION

Section was enacted as part of the Higher Education Amendments of 1998, and not as part of the Higher Education Act of 1965 which comprises this chapter.

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–39 inserted “this section” after “to carry out”.

2008—Subsec. (a). Pub. L. 110–315, § 933(1), inserted “‘including the lessons to be drawn from such history’” after “Underground Railroad’”.

Subsec. (b)(1), (2). Pub. L. 110–315, § 933(2)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) to establish a facility to house, display, and interpret the artifacts related to the history of the Underground Railroad, and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree;

“(2) to demonstrate substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private entity for the support of the facility, which private entity shall provide matching funds for the support of the facility in an amount equal to 4 times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government.”


Subsec. (b)(5). Pub. L. 110–315, § 933(2)(C), inserted “and maintain” after “establish” and “‘including the lessons to be drawn from such history’” after “Underground Railroad’”.

Subsec. (c). Pub. L. 110–315, § 933(3), substituted “$3,000,000 for fiscal year 2009 and each of the five succeeding fiscal years” for “this section $6,000,000 for fiscal year 2009, $6,000,000 for fiscal year 2001, $3,000,000 for fiscal year 2002, and $3,000,000 for fiscal year 2003”.

EFFECTIVE DATE OF 2009 AMENDMENT


§ 1154. Contract authority

The authorization to enter into contracts or other obligations under the Act, as amended by this Act, shall be effective for fiscal year 1981 and any succeeding fiscal year only to the extent or in such amounts as are provided in appropriation Acts.


REFERENCES IN TEXT


CODIFICATION

Section was formerly classified to section 1146 of this title.

Section was enacted as part of the Education Amendments of 1980, and not as part of the Higher Education Act of 1965 which comprises this chapter.

Section was enacted as part of the Higher Education Amendments of 1986, and not as part of the Higher Education Act of 1965 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of this title.

CONTRACTING AUTHORITY SUBJECT TO APPROPRIATIONS

Pub. L. 99–498, § 3, Oct. 17, 1986, 100 Stat. 1276, provided that: “The authority to enter into contracts or other obligations under this Act (other than amendments made to part B of title IV of the Act) [see Tables for classification] shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.”

§ 1155. Connie Lee privatization

(a) Status of Corporation and corporate powers; obligations not federally guaranteed

(1) Status of the Corporation

The Corporation shall not be an agency, instrumentality, or establishment of the United States Government, nor a Government corporation, nor a Government controlled corporation, as such terms are defined in section 103 of title 5. No action under section 1491 of title 28 (commonly known as the Tucker Act) shall be allowable against the United States based on the actions of the Corporation.

(2) Corporate powers

The Corporation shall be subject to the provisions of this section, and, to the extent not inconsistent with this section, to the District of Columbia Business Corporation Act (or the comparable law of another State, if applicable). The Corporation shall have the powers conferred upon a corporation by the District of Columbia Business Corporation Act (or such other applicable State law) as from time to time in effect in order to conduct the Corporation’s affairs as a private, for-profit corporation and to carry out the Corporation’s purposes and activities incidental thereto. The Corporation shall have the power to enter into contracts, to execute instruments, to incur liabilities, to provide products and services, and to do all things as are necessary or incidental to the proper management of the Corporation’s affairs and the efficient operation of a private, for-profit business.

(3) Limitation on ownership of stock

(A) Student Loan Marketing Association

The Student Loan Marketing Association shall not increase its share of the ownership of the Corporation in excess of 42 percent of the shares of stock of the Corporation outstanding on September 30, 1996. The Student Loan Marketing Association shall not con-
control the operation of the Corporation, except that the Student Loan Marketing Association may participate in the election of directors as a shareholder, and may continue to exercise the Student Loan Marketing Association's right to appoint directors under section 1132f–3 of this title as long as that section is in effect.

(B) Prohibition

Until such time as the Secretary of the Treasury sells the stock of the Corporation owned by the Secretary of Education pursuant to subsection (c) of this section, the Student Loan Marketing Association shall not provide financial support or guarantees to the Corporation.

(C) Financial support or guarantees

After the Secretary of the Treasury sells the stock of the Corporation owned by the Secretary of Education pursuant to subsection (c) of this section, the Student Loan Marketing Association may provide financial support or guarantees to the Corporation, if such support or guarantees are subject to terms and conditions that are no more advantageous to the Corporation than the terms and conditions the Student Loan Marketing Association provides to other entities, including, where applicable, other monoline financial guaranty corporations in which the Student Loan Marketing Association has no ownership interest.

(4) No Federal guarantee

(A) Obligations insured by the Corporation

(i) Full faith and credit of the United States

No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the full faith and credit of the United States.

(ii) Student Loan Marketing Association

No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the Student Loan Marketing Association.

(iii) Special rule

This paragraph shall not affect the determination of whether such obligation is guaranteed for purposes of Federal income taxes.

(B) Securities offered by the Corporation

No debt or equity securities of the Corporation shall be deemed to be guaranteed by the full faith and credit of the United States.

(5) “Corporation” defined

The term “Corporation” as used in this section means the College Construction Loan Insurance Association as in existence on the day before September 30, 1996, and any successor corporation.

(b) Related privatization requirements

(1) Notice requirements

(A) In general

During the six-year period following September 30, 1996, the Corporation shall include, in each of the Corporation’s contracts for the insurance, guarantee, or reinsurance of obligations, and in each document offering debt or equity securities of the Corporation, a prominent statement providing notice that—

(i) such obligations or such securities, as the case may be, are not obligations of the United States, nor are such obligations or such securities, as the case may be, guaranteed in any way by the full faith and credit of the United States; and

(ii) the Corporation is not an instrumentality of the United States.

(B) Additional notice

During the five-year period following the sale of stock pursuant to subsection (c)(1) of this section, in addition to the notice requirements in subparagraph (A), the Corporation shall include, in each of the contracts and documents referred to in such subparagraph, a prominent statement providing notice that the United States is not an investor in the Corporation.

(2) Corporate charter

The Corporation’s charter shall be amended as necessary and without delay to conform to the requirements of this section.

(3) Corporate name

The name of the Corporation, or of any direct or indirect subsidiary thereof, may not contain the term “College Construction Loan Insurance Association”, or any substantially similar variation thereof.

(4) Articles of incorporation

The Corporation shall amend the Corporation’s articles of incorporation without delay to reflect that one of the purposes of the Corporation shall be to guarantee, insure, and reinsurance bonds, leases, and other evidences of debt of educational institutions, including Historically Black Colleges and Universities and other academic institutions which are ranked in the lower investment grade category using a nationally recognized credit rating system.

(5) Requirements until stock sale

Notwithstanding subsection (d) of this section, the requirements of sections 1132f–3 and 1132f–9 of this title, as such sections were in effect on the day before September 30, 1996, shall continue to be effective until the day immediately following the date of closing of the purchase of the Secretary of Education’s stock (or the date of closing of the final purchase, in the case of multiple transactions) pursuant to subsection (c)(1) of this Act.¹

(c) Sale of federally owned stock

(1) Purchase by the Corporation

The Secretary of the Treasury shall sell and the Corporation shall purchase, within 90 days

¹So in original. Probably should be “section.”
after September 30, 1996, the stock of the Corporation held by the Secretary of Education at a price determined by the binding, independent appraisal of a nationally recognized financial firm, except that the 90-day period may be extended by mutual agreement of the Secretary of the Treasury and the Corporation to not more than 150 days after September 30, 1996. The appraiser shall be jointly selected by the Secretary of the Treasury and the Corporation. In the event that the Secretary of the Treasury and the Corporation cannot agree on the appraiser, then the Secretary of the Treasury and the Corporation shall name an independent third party to select the appraiser.

(2) Reimbursement of costs and expenses of sale

The Secretary of the Treasury shall be reimbursed from the proceeds of the sale of the stock under this subsection for all reasonable costs and expenses related to such sale, except that one-half of all reasonable costs and expenses relating to the independent appraisal under paragraph (1) shall be borne by the Corporation.

(3) Deposit into account

Amounts collected from the sale of stock pursuant to this subsection that are not used to reimburse the Secretary of the Treasury pursuant to paragraph (2) shall be deposited into the account established under subsection (e) of this section.

(4) Assistance by the Corporation

The Corporation shall provide such assistance as the Secretary of the Treasury and the Secretary of Education may require to facilitate the sale of the stock under this subsection.

(5) Report to Congress

Not later than 6 months after September 30, 1996, the Secretary of the Treasury shall report to the appropriate committees of Congress on the completion and terms of the sale of stock of the Corporation pursuant to this subsection.

(d) Omitted

(e) Establishment of account

(1) In general

Notwithstanding any other provision of law, the District of Columbia Financial Responsibility and Management Assistance Authority shall establish an account to receive—

(A) amounts collected from the sale and proceeds resulting from the exercise of stock warrants pursuant to section 1087–2(c)(9) of this title;

(B) amounts and proceeds remitted as compensation for the right to assign the “Sallie Mae” name as a trademark or service mark pursuant to section 1087–3(e)(3) of this title; and

(C) amounts and proceeds collected from the sale of the stock of the Corporation and deposited pursuant to subsection (c)(3) of this section.

(2) Amounts and proceeds

(A) Amounts and proceeds relating to Sallie Mae

The amounts and proceeds described in subparagraphs (A) and (B) of paragraph (1) shall be used to finance public elementary and secondary school facility construction and repair within the District of Columbia or to carry out the District of Columbia School Reform Act of 1995.

(B) Amounts and proceeds relating to Connie Lee

The amounts and proceeds described in subparagraph (C) of paragraph (1) shall be used to finance public and public charter elementary and secondary school facility construction and repair within the District of Columbia. Of such amounts and proceeds, $5,000,000 shall be set aside for a credit enhancement revolving fund for public charter schools in the District of Columbia, to be administered and disbursed in accordance with paragraph (3).

(3) Credit enhancement revolving fund for public charter schools

(A) Distribution of amounts

Of the amounts in the credit enhancement revolving fund established under paragraph (2)(B)—

(i) 50 percent shall be used to make grants under subparagraph (B); and

(ii) 50 percent shall be used to make grants under subparagraph (C).

(B) Grants to eligible nonprofit corporations

(i) In general

Using the amounts described in subparagraph (A)(i), the Mayor of the District of Columbia shall make and disburse grants to eligible nonprofit corporations to carry out the purposes described in subparagraph (E).

(ii) Administration

Subject to subparagraph (F), the Mayor shall administer the program of grants under this subparagraph, except that if the committee described in subparagraph (C)(iii) is in operation and is fully functional prior to the date the Mayor makes the grants, the Mayor may delegate the administration of the program to the committee.

(C) Other grants

(i) In general

Using the amounts described in subparagraph (A)(ii), the Mayor of the District of Columbia shall make grants to entities to carry out the purposes described in subparagraph (E).

(ii) Participation of schools

A public charter school in the District of Columbia may receive a grant under this subparagraph to carry out the purposes described in subparagraph (E) in the same manner as other entities receiving grants to carry out such activities.
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(iii) Administration through committee

Subject to subparagraph (F), the Mayor shall carry out this subparagraph through the committee appointed by the Mayor under the second sentence of paragraph (2)(B) (as in effect prior to November 22, 2000). The committee may enter into an agreement with a third party to carry out its responsibilities under this subparagraph.

(iv) Cap on administrative costs

Not more than 5 percent of the funds available for grants under this subparagraph for a fiscal year may be used to cover the administrative costs of making grants under this subparagraph for the fiscal year.

(D) Special rule regarding eligibility of nonprofit corporations

In order to be eligible to receive a grant under this paragraph, a nonprofit corporation must provide appropriate certification to the Mayor or to the committee described in subparagraph (C)(iii) (as the case may be) that it is duly authorized by two or more public charter schools in the District of Columbia to act on their behalf in obtaining financing (or in assisting them in obtaining financing) to cover the costs of activities described in subparagraph (E)(i).

(E) Purposes of grants

(i) In general

The recipient of a grant under this paragraph shall use the funds provided under the grant to carry out activities to assist public charter schools in the District of Columbia in—

(I) obtaining financing to acquire interests in real property (including by purchase, lease, or donation), including financing to cover planning, development, and other incidental costs;

(II) obtaining financing for construction of facilities or the renovation, repair, or alteration of existing property or facilities (including the purchase or replacement of fixtures and equipment), including financing to cover planning, development, and other incidental costs;

(III) enhancing the availability of loans (including mortgages) and bonds; and

(IV) obtaining lease guarantees (in accordance with regulations promulgated by the Office of Public Charter School Financing).

(ii) No direct funding for schools

Funds provided under a grant under this subparagraph may not be used by a recipient to make direct loans or grants to public charter schools.

(F) Role of Office of Public Charter School Financing and Support

During fiscal year 2003 and each succeeding fiscal year, the Office of Public Charter School Financing and Support shall be responsible for receiving applications, making payments, and otherwise administering this paragraph, except that no grant may be made under this paragraph without the approval of the committee described in subparagraph (C)(iii).
(3)(A), was executed by revising the amendment by Pub. L. 106–522, §161(2), which had added subsec. (e)(3) to this section, to reflect the probable intent of Congress. See 2000 Amendment note below.


See Effective Date and Construction of 2000 Amendment note below.

Pub. L. 106–522, §161(1), as amended by Pub. L. 107–96, par. (2), amended second sentence generally. Prior to amendment, second sentence read as follows: “Of such amounts and proceeds, $5,000,000 shall be set aside for use as a credit enhancement fund for public charter schools in the District of Columbia, with the administration of the fund (including the making of loans) to be carried out by the Mayor through a committee consisting of three individuals appointed by the Mayor of the District of Columbia and two individuals appointed by the Public Charter School Board established under section 2214 of the District of Columbia School Reform Act of 1995.”


1999—Subsec. (e)(2)(B). Pub. L. 106–113 inserted “and public charter” after “public” and inserted at end “Of such amounts and proceeds, $5,000,000 shall be set aside for use as a credit enhancement fund for public charter schools in the District of Columbia, with the administration of the fund (including the making of loans) to be carried out by the Mayor through a committee consisting of three individuals appointed by the Mayor of the District of Columbia and two individuals appointed by the Public Charter School Board established under section 2214 of the District of Columbia School Reform Act of 1995.”

EFFECTIVE DATE OF 2004 AMENDMENT


EFFECTIVE DATE OF 2001 AMENDMENT


EFFECTIVE DATE AND CONSTRUCTION OF 2000 AMENDMENT


“(a) The provisions of H.R. 5547 (as enacted into law by H.R. 4942 of the 106th Congress) [H.R. 5547 as enacted by section 1(a)(1) of Pub. L. 106–553, amending this section and enacting provisions set out as a note under section 6301 of Title 31, Money and Finance] are repealed and shall be deemed for all purposes (including section 1(b) of H.R. 4942 [Pub. L. 106–553, 1 U.S.C. 112 note]) to have never been enacted.

“(b) The provisions made by this section shall take effect as if included in H.R. 4942 of the 106th Congress [Pub. L. 106–553] on the date of its enactment [Dec. 21, 2000].”

SUBCHAPTER IX—ADDITIONAL PROGRAMS

PART A—PROJECT GRAD

§1161a. Project GRAD

(a) Purposes

The purposes of this section are—

(1) to provide support and assistance to programs implementing integrated education reform services in order to improve secondary school graduation, postsecondary program attendance, and postsecondary completion rates for low-income students; and

(2) to promote the establishment of new programs to implement such integrated education reform services.

(b) Definitions

In this section:

(1) Low-income student

The term “low-income student” means a student who is determined by a local educational agency to be a low-income family using the measures described in section 6313(a)(5) of this title.

(2) Feeder pattern

The term “feeder pattern” means a secondary school and the elementary schools and middle schools that channel students into that secondary school.

(c) Contract authorized

From the amount appropriated to carry out this section, the Secretary is authorized to award a five-year contract to Project GRAD USA (referred to in this section as the “contractor”), a nonprofit education organization that has as its primary purpose the improvement of secondary school graduation and postsecondary attendance and completion rates for low-income students. Such contract shall be used to carry out the requirements of subsection (d) and to implement and sustain integrated education reform services through subcontractor activities described in subsection (e)(3) at existing Project GRAD program sites and to promote the expansion to new sites.

(d) Requirements of contract

The Secretary shall enter into an agreement with the contractor that requires that the contractor shall—

(1) enter into subcontracts with nonprofit educational organizations that serve a substantial number or percentage of low-income students (referred to in this subsection as “subcontractors”), under which the subcontractors agree to implement the Project GRAD programs described in subsection (e) and provide matching funds for such programs;

(2) directly carry out—

(A) activities to implement and sustain the literacy, mathematics, classroom management, social service, and postsecondary access programs further described in subsection (e)(3); and

(B) activities to build the organizational and management capacity of the subcontractors to effectively implement and sustain the programs;
(C) activities for the purpose of improving and expanding the programs, including activities—
   (i) to further articulate a program for one or more grade levels and across grade levels;
   (ii) to tailor a program for a particular target audience; and
   (iii) to provide tighter integration across programs;
(D) activities for the purpose of implementing new Project GRAD program sites;
(E) activities for the purpose of promoting greater public awareness of integrated education reform services to improve secondary school graduation and postsecondary attendance rates for low-income students; and
(F) other activities directly related to improving secondary school graduation and postsecondary attendance and completion rates for low-income students; and
(3) use contract funds available under this section to pay—
   (A) the amount determined under subsection (f); and
   (B) costs associated with carrying out the activities and providing the services, as provided in paragraph (2) of this subsection.

(e) Supported programs
(1) Designation
The subcontractor programs referred to in this subsection shall be known as Project GRAD programs.

(2) Feeder patterns
Each subcontractor shall implement a Project GRAD program and shall, with the agreement of the contractor—
   (A) identify or establish not less than one feeder pattern of public schools; and
   (B) provide the integrated educational reform services described in paragraph (3) at each identified feeder pattern.

(3) Integrated education reform services
The services provided through a Project GRAD program may include—
   (A) research-based programs in reading, mathematics, and classroom management;
   (B) campus-based social services programs, including a systematic approach to increase family and community involvement in the schools served by the Project GRAD program;
   (C) a postsecondary access program that includes—
      (i) providing postsecondary scholarships for students who meet established criteria; (ii) proven approaches for increasing student and family postsecondary awareness; and
      (iii) assistance for students in applying for higher education financial aid; and
   (D) such other services identified by the contractor as necessary to increase secondary school graduation and postsecondary attendance and completion rates.

(f) Use of funds
Of the funds made available to carry out this section, not more than five percent of such funds, or $4,000,000, whichever is less, shall be used by the contractor to pay for administration of the contract.

(g) Contribution and matching requirement
(1) In general
The contractor shall provide to each subcontractor an average of $200 for each student served by the subcontractor in the Project GRAD program, adjusted to take into consideration—
   (A) the resources or funds available in the area where the subcontractor will implement the Project GRAD program; and
   (B) the need for the Project GRAD program in such area to improve student outcomes, including reading and mathematics achievement, secondary school graduation, and postsecondary attendance and completion rates.

(2) Matching requirement
Each subcontractor shall provide funds for the Project GRAD program in an amount that is equal to the amount received by the subcontractor from the contractor. Such matching funds may be provided in cash or in kind, fairly evaluated.

(3) Waiver authority
The contractor may waive, in whole or in part, the requirement of paragraph (2) for a subcontractor, if the subcontractor—
   (A) demonstrates that the subcontractor would not otherwise be able to participate in the program; and
   (B) enters into an agreement with the contractor with respect to the amount to which the waiver will apply.

(h) Evaluation
(1) Evaluation by the Secretary
The Secretary shall select an independent entity to evaluate, every three years, the performance of students who participate in a Project GRAD program under this section. The evaluation shall—
   (A) be conducted using a rigorous research design for determining the effectiveness of the Project GRAD programs funded under this section; and
   (B) compare reading and mathematics achievement, secondary school graduation, and postsecondary attendance and completion rates of students who participate in a Project GRAD program funded under this section with those indicators for students of similar backgrounds who do not participate in such program.

(2) Evaluation by contractor and subcontractors
The contractor shall require each subcontractor to prepare an in-depth report of the results and the use of funds of each Project GRAD program funded under this section that includes—
   (A) data on the reading and mathematics achievement of students involved in the Project GRAD program;
   (B) data on secondary school graduation and postsecondary attendance and completion rates; and
(C) such financial reporting as required by the Secretary to review the effectiveness and efficiency of the program.

(3) Availability of evaluations
Copies of any evaluation or report prepared under this subsection shall be made available to—
(A) the Secretary; and
(B) the authorizing committees.

(i) Authorization of appropriations
There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART B—MATHEMATICS AND SCIENCE SCHOLARS PROGRAM

§ 1161b. Mathematics and science scholars program

(a) Program authorized
From the amounts appropriated under subsection (f), the Secretary is authorized to award grants to States, on a competitive basis, to enable the States to encourage students to pursue a rigorous course of study, beginning in secondary school and continuing through the students' postsecondary education, in science, technology, engineering, mathematics, or a health-related field.

(b) Applications
(1) In general
A State that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. A State may submit an application to receive a grant under subsection (c) or (d), or both.

(2) Contents of application
Each application shall include a description of—
(A) the program or programs for which the State is applying;
(B) if applicable, the priority set by the Governor pursuant to subsection (c)(4) or (d)(3); and
(C) how the State will meet the requirements of subsection (e).

(c) Mathematics and science scholars program

(1) Grant for scholarships
The Secretary shall award grants under this subsection to provide scholarship support to eligible students.

(2) Eligible students
A student is eligible for a scholarship under this subsection if the student—
(A) meets the requirements of section 1091(a) of this title;
(B) is a full-time student who has completed at least the first year of undergraduate study;
(C) is enrolled in a program of undergraduate instruction leading to a bachelor's degree with a major in science, technology, engineering, mathematics, or a health-related field; and
(D) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the most recently completed term.

(3) Priority for scholarships
The Governor of a State may set a priority for awarding scholarships under this subsection for particular eligible students, such as students attending schools in high-need local educational agencies (as defined in section 1021 of this title), students who are from groups underrepresented in the fields of mathematics, science, and engineering, students served by local educational agencies that do not meet or exceed State standards in mathematics and science, or other high-need students.

(4) Amount and duration of scholarship
The Secretary shall award a grant under this subsection to provide scholarships—
(A) in an amount that does not exceed $5,000 per student; and
(B) for not more than one year of undergraduate study.

(d) STEM or health-related scholars program

(1) Grant for scholarships
The Secretary shall award grants under this subsection to provide scholarship support to eligible students.

(2) Eligible students
A student is eligible for scholarship under this subsection if the student—
(A) meets the requirements of section 1091(a) of this title;
(B) is a full-time student in the student’s first year of undergraduate study; and
(C) has completed a rigorous secondary school curriculum in mathematics and science.

(3) Rigorous curriculum
Each participating State shall determine the requirements for a rigorous secondary school curriculum in mathematics and science described in paragraph (2)(C).

(4) Priority for scholarships
The Governor of a State may set a priority for awarding scholarships under this subsection for particular eligible students, such as students attending schools in high-need local educational agencies (as defined in section 1021 of this title), students who are from groups underrepresented in the fields of mathematics, science, and engineering, students served by local educational agencies that do not meet or exceed State standards in mathematics and science, or other high-need students.

(5) Amount and duration of scholarship
The Secretary shall award a grant under this subsection to provide scholarships—
(A) in an amount that does not exceed $5,000 per student; and
(B) for not more than one year of undergraduate study.

(e) Matching requirement
In order to receive a grant under this section, a State shall provide matching funds for the scholarships awarded under this section in an amount equal to 50 percent of the Federal funds received.
(f) Authorization

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(g) Definition

The term “Governor” means the chief executive officer of a State.


Amendments


Effective Date of 2009 Amendment


PART C—BUSINESS WORKFORCE PARTNERSHIPS FOR JOB SKILL TRAINING IN HIGH-GROWTH OCCUPATIONS OR INDUSTRIES

§ 1161c. Business workforce partnerships for job skill training in high-growth occupations or industries

(a) Purpose

The purpose of this section is to provide grants to institutions of higher education partnering with employers to—

(1) provide relevant job skill training in high-growth and high-wage industries or occupations to nontraditional students; and
(2) strengthen ties between degree credit offerings at institutions of higher education and business and industry workforce needs.

(b) Authorization

(1) In general

From the amounts appropriated under subsection (k), the Secretary shall award grants, on a competitive basis, to eligible partnerships for the purpose provided in subsection (a).

(2) Duration

The Secretary shall award grants under this section for a period of not less than 36 months and not more than 60 months.

(3) Supplement, not supplant

Funds made available under this section shall be used to supplement, and not supplant, other Federal, State, and local funds available to the eligible partnership for carrying out the activities described in subsection (c).

(c) Use of funds

In consultation with all of the members of an eligible partnership, grant funds provided under this section may be used to—

(1) expand or create for-credit academic programs or programs of training that provide relevant job skill training for high-growth and high-wage occupations or industries, including offerings connected to registered apprenticeship programs and entrepreneurial training opportunities;
(2) in consultation with faculty in the appropriate departments of an institution of higher education, adapt college offerings to the schedules and needs of working students, such as the creation of evening, weekend, modular, compressed, or distance learning formats;
(3) purchase equipment that will facilitate the development of academic programs or programs of training that provide training for high-growth and high-wage occupations or industries;
(4) strengthen outreach efforts that enable students, including students with limited English proficiency, to attend institutions of higher education with academic programs or programs of training focused on high-growth and high-wage occupations or industries;
(5) expand worksite learning and training opportunities, including registered apprenticeships as appropriate; and
(6) support other activities the Secretary determines to be consistent with the purpose of this section.

(d) Application

(1) In general

Each eligible partnership that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may require.

(2) Contents

Each application submitted under paragraph (1) shall include a description of—

(A) how the eligible partnership, through the institution of higher education, will provide relevant job skill training for students to enter high-growth and high-wage occupations or industries; and
(B) how the eligible partnership has consulted with employers and, where applicable, labor organizations to identify local high-growth and high-wage occupations or industries.

(e) Award basis

In awarding grants under this section, the Secretary shall—

(1) give priority to applications focused on serving nontraditional students;
(2) ensure an equitable distribution of grant funds under this section among urban and rural areas of the United States; and
(3) take into consideration the capability of an institution of higher education that is participating in an eligible partnership to—

(A) offer one- or two-year high-quality programs of instruction and job skill training for students entering a high-growth and high-wage occupation or industry;
(B) involve the local business community, and to place graduates in employment in high-growth and high-wage occupations or industries in the community; and
(C) serve adult workers or displaced workers.

(f) Administrative costs

A grantee under this section may use not more than five percent of the grant amount to pay administrative costs associated with activities funded by the grant.
(g) Technical assistance

The Secretary shall provide technical assistance to grantees under this section throughout the grant period.

(h) Evaluation

The Secretary shall conduct an evaluation of the effectiveness of the program under this section based on performance standards developed in consultation with the Department of Labor, and shall disseminate to the public the findings of such evaluation and information related to promising practices developed under this section.

(i) Report to Congress

Not later than 36 months after the first grant is awarded under this section, the Comptroller General shall report to the authorizing committees recommendations—

(1) for changes to this chapter and part C of subchapter I of chapter 34 of title 42 and related Acts, such as the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.] and the Workforce Investment Act of 1998 (including titles I and II [29 U.S.C. 2801 et seq.; 20 U.S.C. 9201 et seq.]), to help create and sustain business and industry workforce partnerships at institutions of higher education; and

(2) for other changes to this chapter and part C of subchapter I of chapter 34 of title 42 and related Acts to otherwise strengthen the links between business and industry workforce needs, workforce development programs, and other degree credit offerings at institutions of higher education.

(j) Definitions

In this section:

(1) Eligible partnership

(A) In general

The term “eligible partnership” means a partnership that includes—

(i) one or more institutions of higher education, one of which serves as the fiscal agent and grant recipient for the eligible partnership;

(ii) except as provided in subparagraph (B), an employer, group of employers, local board (as such term is defined in section 1087vv(d) of this title; and

(iii) where applicable, one or more labor organizations that represent workers locally in the businesses or industries that are the focus of the partnership, including as a result of such an organization’s representation of employees at a worksite at which the partnership proposes to conduct activities under this section.

(B) State and local boards

Notwithstanding subparagraph (A), if an institution of higher education that is participating in an eligible partnership under this section is located in a State that does not operate local boards, an eligible partnership may include a State board (as such term is defined in section 101 of the Workforce Investment Act of 1998 [29 U.S.C. 2801]).

(C) Rule of construction

Nothing in this subsection shall be construed to prohibit an eligible partnership that is in existence on August 14, 2008, from applying for a grant under this section.

(2) Nontraditional student

The term “nontraditional student” means a student—

(A) who is an independent student, as defined in section 1087vv(d) of this title;

(B) who attends an institution of higher education—

(i) on less than a full-time basis;

(ii) via evening, weekend, modular, or compressed courses; or

(iii) via distance education methods; and

(C) who—

(i) enrolled for the first time in an institution of higher education three or more years after completing high school; or

(ii) works full-time.

(k) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


REFERENCES IN TEXT


PART D—CAPACITY FOR NURSING STUDENTS AND FACULTY

§1161d. Capacity for nursing students and faculty

(a) Authorization

From the amounts appropriated under subsection (f), the Secretary shall award grants to institutions of higher education that offer—

(1) an accredited registered nursing program at the baccalaureate or associate degree level to enable such program to expand the faculty and facilities of such program to accommodate additional students in such program; or

(2) an accredited graduate-level nursing program to accommodate advanced practice degrees for registered nurses or to accommodate students enrolled in such program to become teachers of nursing students.
(b) Determination of number of students and application

Each institution of higher education that offers a program described in subsection (a) that desires to receive a grant under this section shall—

(1) determine, for the four academic years preceding the academic year for which the determination is made, the average number of matriculated nursing program students, in each of the institution’s accredited associate, baccalaureate, or advanced nursing degree programs at such institution for such academic years;

(2) submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require, including the average number in each of the institution’s accredited nursing programs determined under paragraph (1); and

(3) with respect to the partnerships described in subsection (c)(2)(B), provide assurances that—

(A) the individuals enrolled in the program will—

(i) be registered nurses in pursuit of a master’s or doctoral degree in nursing; and

(ii) have a contractual obligation with the hospital or health facility that is in partnership with the institution of higher education;

(B) the hospital or health facility of employment will be the clinical site for the accredited school of nursing program, if the program requires a clinical site;

(C) individuals enrolled in the program will—

(i) maintain their employment on at least a part-time basis with the hospital or health facility that allowed them to participate in the program; and

(ii) receive an income from the hospital or health facility, as at least a part-time employee, and release times or flexible schedules, to accommodate their program requirements, as necessary; and

(D) upon completion of the program, recipients of scholarships described in subsection (c)(2)(B)(i)(III) will be required to teach for two years in an accredited school of nursing for each year of support the individual received under this section.

c) Grant amount; award basis

(1) Grant amount

For each academic year after academic year 2009–2010, the Secretary is authorized to provide to each institution of higher education awarded a grant under this section an amount that is equal to $3,000 multiplied by the number by which—

(A) the number of matriculated nursing program students at such institution for such academic year, exceeds

(B) the average number determined with respect to such institution under subsection (b)(1).

(2) Distribution of grants among different degree programs

(A) In general

Subject to subparagraph (D), from the funds available to award grants under this section for each fiscal year, the Secretary shall—

(i) use 20 percent of such funds to award grants under this section to institutions of higher education for the purpose of accommodating advanced practice degrees or students in accredited graduate-level nursing programs;

(ii) use 40 percent of such funds to award grants under this section to institutions of higher education for the purpose of expanding accredited registered nurse programs at the baccalaureate degree level; and

(iii) use 40 percent of such funds to award grants under this section to institutions of higher education for the purpose of expanding accredited registered nurse programs at the associate degree level.

(B) Optional uses of funds

Grants awarded under this section may be used to support partnerships with hospitals or health facilities to—

(i) improve the alignment between nursing education and the emerging challenges of health care delivery by—

(I) the purchase of distance learning technologies and expanding methods of delivery of instruction to include alternatives to onsite learning; and

(II) the collection, analysis, and dissemination of data on educational outcomes and best practices identified through the activities described in this section; and

(ii) ensure that students can earn a salary while obtaining an advanced degree in nursing with the goal of becoming nurse faculty by—

(I) funding release time for qualified nurses enrolled in the graduate nursing program;

(II) providing for faculty salaries; or

(III) providing scholarships to qualified nurses in pursuit of an advanced degree with the goal of becoming faculty members in an accredited nursing program.

(C) Considerations in making awards

In awarding grants under this section, the Secretary shall consider the following:

(i) Geographic distribution

Providing an equitable geographic distribution of such grants.

(ii) Urban and rural areas

Distributing such grants to urban and rural areas.

(iii) Range and type of institution

Ensuring that the activities to be assisted are developed for a range of types and sizes of institutions of higher education, including institutions providing alternative methods of delivery of instruction in addition to on-site learning.
(D) Distribution of excess funds
If, for a fiscal year, funds described in clause (i), (ii), or (iii) of subparagraph (A) remain available after the Secretary awards grants under this section to all applicants for the particular category of accredited nursing programs described in such clause, the Secretary shall use equal amounts of the remaining funds to award grants under this section to applicants that applied under the other categories of nursing programs.

(E) Limitation
Of the amount appropriated to carry out this section, the Secretary may award not more than ten percent of such amount for the optional purposes under subparagraph (B).

(d) Definitions
For purposes of this section:

(1) Health facility
The term ‘‘health facility’’ means an Indian health service center, a Native Hawaiian health center, a hospital, a federally qualified health center, a rural health clinic, a nursing home, a home health agency, a hospice program, a public health clinic, a State or local department of public health, a skilled nursing facility, or an ambulatory surgical center.

(2) Public Health Service Act
The terms ‘‘accredited’’ and ‘‘school of nursing’’ have the meanings given those terms in section 804 of the Public Health Service Act (42 U.S.C. 296).

(e) Prohibition

(1) In general
Funds provided under this section may not be used for the construction of new facilities.

(2) Rule of construction
Nothing in paragraph (1) shall be construed to prohibit funds provided under this section from being used for the repair or renovation of facilities.

(f) Authorization of appropriations
There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


AMENDMENTS
2009—Subsec. (d). Pub. L. 111–39 substituted ‘‘Definitions’’ for ‘‘Definition’’ in heading, added par. (2), and struck out former par. (2). Prior to amendment, text read as follows: ‘‘The terms ‘accredited school of nursing’ and ‘accredited nursing program’ have the meaning given those terms in section 296 of title 42.’’

EFFECTIVE DATE OF 2009 AMENDMENT

PART E—AMERICAN HISTORY FOR FREEDOM

§ 1161e. American history for freedom

(a) Grants authorized
From the amounts appropriated under subsection (f), the Secretary is authorized to award three-year grants, on a competitive basis, to eligible institutions to establish or strengthen postsecondary academic programs or centers that promote and impart knowledge of—

(1) traditional American history;
(2) the history and nature of, and threats to, free institutions; or
(3) the history and achievements of Western civilization.

(b) Definitions
In this section:

(1) Eligible institution
The term ‘‘eligible institution’’ means an institution of higher education as defined in section 1001 of this title.

(2) Free institution
The term ‘‘free institution’’ means an institution that emerged out of Western civilization, such as democracy, constitutional government, individual rights, market economics, religious freedom and religious tolerance, and freedom of thought and inquiry.

(3) Traditional American history
The term ‘‘traditional American history’’ means—

(A) the significant constitutional, political, intellectual, economic, and foreign policy trends and issues that have shaped the course of American history; and
(B) the key episodes, turning points, and leading figures involved in the constitutional, political, intellectual, diplomatic, and economic history of the United States.

(c) Application

(1) In general
Each eligible institution that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Contents
Each application submitted under paragraph (1) shall include a description of—

(A) how funds made available under this section will be used for the activities set forth under subsection (e), including how such activities will increase knowledge with respect to traditional American history, free institutions, or Western civilization;
(B) how the eligible institution will ensure that information about the activities funded under this section is widely disseminated pursuant to subsection (e)(1)(B);
(C) any activities to be undertaken pursuant to subsection (e)(2)(A), including identification of entities intended to participate;
(D) how funds made available under this section shall be used to supplement and not supplant non-Federal funds available for the activities described in subsection (e); and
(E) such fiscal controls and accounting procedures as may be necessary to ensure proper disbursement of and accounting for funding made available to the eligible institution under this section.

(d) Award basis
In awarding grants under this section, the Secretary shall take into consideration the capability of the eligible institution to—

(1) increase access to quality programming that expands knowledge of traditional American history, free institutions, or Western civilization;

(2) involve personnel with strong expertise in traditional American history, free institutions, or Western civilization; and

(3) sustain the activities funded under this section after the grant has expired.

(e) Use of funds
(1) Required use of funds
Funds provided under this section shall be used to—

(A) establish or strengthen academic programs or centers focused on traditional American history, free institutions, or Western civilization, which may include—

(i) design and implementation of programs of study, courses, lecture series, seminars, and symposia;

(ii) development, publication, and dissemination of instructional materials;

(iii) research;

(iv) support for faculty teaching in undergraduate and, if applicable, graduate programs;

(v) support for graduate and postgraduate fellowships, if applicable; or

(vi) teacher preparation initiatives that stress content mastery regarding traditional American history, free institutions, or Western civilization; and

(B) conduct outreach activities to ensure that information about the activities funded under this section is widely disseminated—

(i) to undergraduate students (including students enrolled in teacher education programs, if applicable);

(ii) to graduate students (including students enrolled in teacher education programs, if applicable);

(iii) to faculty;

(iv) to local educational agencies; and

(v) within the local community.

(2) Allowable uses of funds
Funds provided under this section may be used to support—

(A) collaboration with entities such as—

(i) local educational agencies, for the purpose of providing elementary and secondary school teachers an opportunity to enhance their knowledge of traditional American history, free institutions, or Western civilization; and

(ii) nonprofit organizations whose mission is consistent with the purpose of this section, such as academic organizations, museums, and libraries, for assistance in carrying out activities described under subsection (a); and

(B) other activities that meet the purposes of this section.

(f) Authorization of appropriations
For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART F—TEACH FOR AMERICA

§ 1161f. Teach For America

(a) Definitions
For purposes of this section:

(1) Grantee
The term “grantee” means Teach For America, Inc.

(2) Highly qualified
The term “highly qualified” has the meaning given the term in section 7801 of this title or section 1401 of this title.

(3) High-need local educational agency
The term “high-need local educational agency” has the meaning given such term in section 1021 of this title.

(b) Grants authorized
From the amounts appropriated under subsection (f), the Secretary is authorized to award a five-year grant to Teach For America, Inc., the national teacher corps of outstanding recent college graduates who commit to teach for two years in underserved communities in the United States, to implement and expand its program of recruiting, selecting, training, and supporting new teachers.

(c) Requirements
In carrying out the grant program under subsection (b), the Secretary shall enter into an agreement with the grantee under which the grantee agrees to use the grant funds provided under this section to—

(1) provide highly qualified teachers to high-need local educational agencies in urban and rural communities;

(2) pay the costs of recruiting, selecting, training, and supporting new teachers; and

(3) serve a substantial number and percentage of underserved students.

(d) Authorized activities
(1) In general
Grant funds provided under this section shall be used by the grantee to carry out each of the following activities:

(A) Recruiting and selecting teachers through a highly selective national process.

(B) Providing preservice training to such teachers through a rigorous summer institute that includes hands-on teaching experience and significant exposure to education coursework and theory.

(C) Placing such teachers in schools and positions designated by high-need local educational agencies as high-need placements serving underserved students.
(D) Providing ongoing professional development activities for such teachers’ first two years in the classroom, including regular classroom observations and feedback, and ongoing training and support.

(2) Limitation

The grantee shall use all grant funds received under this section to support activities related directly to the recruitment, selection, training, and support of teachers as described in subsection (b), except that funds may be used for non-programmatic costs in accordance with subsection (f)(2).

(e) Reports and evaluations

(1) Annual report

The grantee shall provide to the Secretary an annual report that includes—

(A) data on the number and quality of the teachers provided to local educational agencies through a grant under this section;

(B) an externally conducted analysis of the satisfaction of local educational agencies and principals with the teachers so provided; and

(C) comprehensive data on the background of the teachers chosen, the training such teachers received, the placement sites of such teachers, the professional development of such teachers, and the retention of such teachers.

(2) Study

(A) In general

From funds appropriated under subsection (f), the Secretary shall provide for a study that examines the achievement levels of the students taught by the teachers assisted under this section.

(B) Student achievement gains compared

The study shall compare, within the same schools, the achievement gains made by students taught by teachers who are assisted under this section with the achievement gains made by students taught by teachers who are not assisted under this section.

(C) Requirements

The Secretary shall provide for such a study not less than once every three years, and each such study shall include multiple placement sites and multiple schools within placement sites.

(D) Peer review standards

Each such study shall meet the peer review standards of the education research community. Further, the peer review standards shall ensure that reviewers are practicing researchers and have expertise in assessment systems, accountability, psychometric measurement and statistics, and instruction.

(3) Accounting, financial reporting, and internal control systems

(A) In general

The grantee shall contract with an independent auditor to conduct a comprehensive review of the grantee’s accounting, financial reporting, and internal control systems.

Such review shall assess whether that grantee’s accounting, financial reporting, and internal control systems are designed to—

(i) provide information that is complete, accurate, and reliable;

(ii) reasonably detect and prevent material misstatements, as well as fraud, waste, and abuse; and

(iii) provide information to demonstrate the grantee’s compliance with related Federal programs, as applicable.

(B) Review requirements

Not later than 90 days after the grantee receives funds to carry out this section for the first fiscal year in which funds become available to carry out this section after August 14, 2008, the independent auditor shall complete the review required by this paragraph.

(C) Report

Not later than 120 days after the grantee receives funds to carry out this section for the first fiscal year in which funds become available to carry out this section after August 14, 2008, the independent auditor shall submit a report to the authorizing committees and the Secretary of the findings of the review required under this paragraph, including any recommendations of the independent auditor, as appropriate, with respect to the grantee’s accounting, financial reporting, and internal control systems.

(f) Authorization of appropriations

(1) In general

The amount authorized to be appropriated to carry out this section shall not exceed—

(A) $20,000,000 for fiscal year 2009;

(B) $25,000,000 for fiscal year 2010; and

(C) such sums as may be necessary for each of the four succeeding fiscal years.

(2) Limitation

The grantee shall not use more than 5 percent of Federal funds made available under this section for non-programmatic costs to carry out this section.


PART G—PATSY T. MINK FELLOWSHIP PROGRAM

§ 1161g. Patsy T. Mink fellowship program

(a) Purpose; designation

(1) In general

It is the purpose of this section to provide, through eligible institutions, a program of fellowships to assist highly qualified minorities and women to acquire the doctoral degree, or highest possible degree available, in academic areas in which such individuals are underrepresented for the purpose of enabling such individuals to enter the higher education professoriate.

(2) Designation

Each recipient of a fellowship award from an eligible institution receiving a grant under this section shall be known as a “Patsy T. Mink Graduate Fellow”.

§ 1161g

(b) Eligible institution
In this section, the term “eligible institution” means an institution of higher education, or a consortium of such institutions, that offers a program of postbaccalaureate study leading to a graduate degree.

c) Program authorized
(1) Grants by Secretary
(A) In general
From the amounts appropriated under subsection (f), the Secretary shall award grants to eligible institutions to enable such institutions to make fellowship awards to individuals in accordance with the provisions of this section.

(B) Priority consideration
In awarding grants under this section, the Secretary shall consider the eligible institution’s prior experience in producing doctoral degree, or highest possible degree available, holders who are minorities and women, and shall give priority consideration in making grants under this section to those eligible institutions with a demonstrated record of producing minorities and women who have earned such degrees.

(2) Applications
(A) In general
An eligible institution that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(B) Applications made on behalf
The following entities may submit an application on behalf of an eligible institution:

(i) A graduate school or department of such institution.

(ii) A graduate school or department of such institution in collaboration with an undergraduate college or school of such institution.

(iii) An organizational unit within such institution that offers a program of postbaccalaureate study leading to a graduate degree, including an interdisciplinary or an interdepartmental program.

(C) Partnership
In developing a grant application and carrying out the grant activities authorized under this section, an eligible institution may partner with a nonprofit organization with a demonstrated record of helping minorities and women earn postbaccalaureate degrees.

(3) Selection of applications
In awarding grants under paragraph (1), the Secretary shall—

A) take into account—

(i) the number and distribution of minority and female faculty nationally;

(ii) the current and projected need for highly trained individuals in all areas of the higher education professoriate; and

(iii) the present and projected need for highly trained individuals in academic career fields in which minorities and women are underrepresented in the higher education professoriate; and

(B) consider the need to prepare a large number of minorities and women generally in academic career fields of high national priority, especially in areas in which such individuals are traditionally underrepresented in college and university faculty.

(4) Distribution and amounts of grants
(A) Equitable distribution
In awarding grants under this section, the Secretary shall, to the maximum extent feasible, ensure an equitable geographic distribution of awards and an equitable distribution among public and private eligible institutions that apply for grants under this section and that demonstrate an ability to achieve the purpose of this section.

(B) Special rule
To the maximum extent practicable, the Secretary shall use not less than 30 percent of the amount appropriated pursuant to subsection (f) to award grants to eligible institutions that are eligible for assistance under subchapter III or subchapter V, or to consortia of eligible institutions that include at least one eligible institution that is eligible for assistance under subchapter III or subchapter V.

(C) Allocation
In awarding grants under this section, the Secretary shall allocate appropriate funds to those eligible institutions whose applications indicate an ability to significantly increase the numbers of minorities and women entering the higher education professoriate and that commit institutional resources to the attainment of the purpose of this section.

(D) Number of fellowship awards
An eligible institution that receives a grant under this section shall make not less than ten fellowship awards.

(E) Insufficient funds
If the amount appropriated is not sufficient to permit all grantees under this section to provide the minimum number of fellowships required by subparagraph (D), the Secretary may, after awarding as many grants to support the minimum number of fellowships as such amount appropriated permits, award grants that do not require the grantee to award the minimum number of fellowships required by such subparagraph.

(5) Institutional allowance
(A) In general

(i) Number of allowances
In awarding grants under this section, the Secretary shall pay to each eligible institution awarded a grant, for each individual awarded a fellowship by such institution under this section, an institutional allowance.
(d) Fellowship recipients

(1) Authorization

An eligible institution that receives a grant under this section shall use the grant funds to make fellowship awards to minorities and women who are enrolled at such institution in the highest possible degree available, and—

(A) intend to pursue a career in instruction at—

(i) an institution of higher education (as the term is defined in section 1001 of this title);

(ii) an institution of higher education (as the term is defined in section 1002(a)(1) of this title); and

(iii) a proprietary institution of higher education (as the term is defined in section 1002(b) of this title); and

(B) sign an agreement with the Secretary agreeing—

(i) to begin employment at an institution described in subparagraph (A) not later than three years after receiving the doctoral degree or highest possible degree available, which three-year period may be extended by the Secretary for extraordinary circumstances; and

(ii) to be employed by such institution for one year for each year of fellowship assistance received under this section.

(2) Repayment for failure to comply

In the event that any recipient of a fellowship under this section fails or refuses to comply with the agreement signed pursuant to paragraph (1)(B), the sum of the amounts of any fellowship received by such recipient shall, upon a determination of such a failure or refusal to comply, be treated as a Federal Direct Unsubsidized Stafford Loan under part C of subchapter IV, and shall be subject to repayment, together with interest thereon accruing from the date of the grant award, in accordance with terms and conditions specified by the Secretary in regulations under this section.

(3) Waiver and modification

(A) Regulations

The Secretary shall promulgate regulations setting forth criteria to be considered in granting a waiver for the service requirement under paragraph (1)(B).

(B) Content

The criteria under subparagraph (A) shall include whether compliance with the service requirement by the fellowship recipient would be—

(i) inequitable and represent an extraordinary hardship; or

(ii) deemed impossible because the individual is permanently and totally disabled at the time of the waiver request.

(4) Amount of fellowship awards

Fellowship awards under this section shall consist of a stipend in an amount equal to the level of support provided to fellows under the National Science Foundation Graduate Research Fellowship Program, except that such stipend shall be adjusted as necessary so as not to exceed the fellow’s tuition and fees or demonstrated need (as determined by the institution of higher education where the graduate student is enrolled), whichever is greater.

(5) Academic progress required

An individual student shall not be eligible to receive a fellowship award—

(A) except during periods in which such student is enrolled, and such student is maintaining satisfactory academic progress in, and devoting essentially full time to, study or research in the pursuit of the degree for which the fellowship support was awarded; and

(B) if the student is engaged in gainful employment, other than part-time employment in teaching, research, or similar activity determined by the eligible institution to be consistent with and supportive of the student’s progress toward the appropriate degree.

(e) Rule of construction

Nothing in this section shall be construed to require an eligible institution that receives a grant under this section—

(1) to grant a preference to or to differentially treat any applicant for a faculty position as a result of the institution’s participation in the program under this section; or

(2) to hire a Patsy T. Mink Fellow who completes this program and seeks employment at such institution.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.
PART H—IMPROVING COLLEGE ENROLLMENT BY SECONDARY SCHOOLS

§ 1161h. Improving college enrollment by secondary schools

(a) In general

From the amounts appropriated under subsection (c), the Secretary shall award a grant to one nonprofit organization described in subsection (b) to enable the nonprofit organization—

(1) to make publicly available the year-to-year postsecondary education enrollment rate trends of secondary school students, disaggregated by secondary school, in compliance with section 1232g of this title (commonly known as the “Family Educational Rights and Privacy Act of 1974”);

(2) to identify not less than 50 urban local educational agencies and five States with significant rural populations, each serving a significant population of low-income students, and to carry out a comprehensive assessment in the agencies and States of the factors known to contribute to improved postsecondary education enrollment rates, which factors shall include—

(A) the local educational agency’s and State’s leadership strategies and capacities;

(B) the secondary school curriculum and class offerings of the local educational agency and State;

(C) the professional development used by the local educational agency and the State to assist teachers, guidance counselors, and administrators in supporting the transition of secondary students to postsecondary education;

(D) secondary school student attendance and other factors demonstrated to be associated with enrollment into postsecondary education;

(E) the use of data systems by the local educational agency and the State to measure postsecondary education enrollment rates and the incentives in place to motivate the efforts of faculty and students to improve student and schoolwide outcomes; and

(F) strategies to mobilize student leaders to build a college-bound culture; and

(3) to provide comprehensive services to improve the schoolwide postsecondary education enrollment rates of each of not less than 10 local educational agencies and States, with the federally funded portion of each project declining by not less than 20 percent each year beginning in the second year of the comprehensive services, that—

(A) participated in the needs assessment described in paragraph (2); and

(B) demonstrated a willingness and commitment to improving the postsecondary education enrollment rates of the local educational agency or State, respectively.

(b) Grant recipient criteria

The recipient of the grant awarded under subsection (a) shall be a nonprofit organization with demonstrated expertise—

(1) in increasing schoolwide postsecondary enrollment rates in low-income communities nationwide by providing curriculum, training, and technical assistance to secondary school staff and student peer influencers; and

(2) in a postsecondary education transition data management system.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


AMENDMENTS


EFFECTIVE DATE OF 2009 AMENDMENT


PART I—EARLY CHILDHOOD EDUCATION PROFESSIONAL DEVELOPMENT AND CAREER TASK FORCE

§ 1161i. Purpose

The purposes of this part are—

(1) to improve the quality of the early childhood education workforce by creating a statewide early childhood education professional development and career task force for early childhood education program staff, directors, administrators, and faculty; and

(2) to create—

(A) a coherent system of core competencies, pathways to qualifications, credentials, degrees, quality assurances, access, and outreach, for early childhood education program staff, directors, administrators, and faculty that is linked to compensation commensurate with experience and qualifications;

(B) articulation agreements that enable early childhood education professionals to transition easily among degrees; and

(C) compensation initiatives for individuals working in an early childhood education program that reflect the individuals’ credentials, degrees, and experience.


§ 1161i–1. Definition of early childhood education program

In this part, the term “early childhood education program” means—

(1) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), including a migrant or seasonal Head Start program or an Indian Head Start program;
§ 1161i–2. Grants authorized

(a) In general
From the amounts appropriated under section 1161i–7 of this title, the Secretary is authorized to award grants to States in accordance with the provisions of this part to enable such States—
(1) to establish a State Task Force described in section 1161i–3 of this title; and
(2) to support activities of the State Task Force described in section 1161i–4 of this title.

(b) Competitive basis
Grants under this part shall be awarded on a competitive basis.

(c) Equitable geographic distribution
In awarding grants under this part, the Secretary shall take into consideration providing an equitable geographic distribution of such grants.

(d) Duration
Grants under this part shall be awarded for a period of five years.

§ 1161i–3. State Task Force establishment

(a) State Task Force established
The Governor of a State receiving a grant under this part shall establish, or designate an existing entity to serve as, the State Early Childhood Education Professional Development and Career Task Force (hereafter in this part referred to as the “State Task Force”).

(b) Membership
The State Task Force shall include a representative of a State agency, an institution of higher education (including an associate or a baccalaureate degree granting institution of higher education), an early childhood education program, a nonprofit early childhood organization, a statewide early childhood workforce scholarship or supplemental initiative, the State Head Start collaboration director, and any other entity or individual the Governor determines appropriate.

§ 1161i–4. State Task Force activities

(a) Activities
The State Task Force shall—
(1) coordinate and communicate regularly with the State Advisory Council on Early Care and Education (hereafter in this part referred to as “State Advisory Council”); or a similar State entity charged with creating a comprehensive system of early care and education in the State, for the purposes of—
(A) integrating recommendations for early childhood professional development and career activities into the plans of the State Advisory Council; and
(B) assisting in the implementation of professional development and career activities that are consistent with the plans described in subparagraph (A);
(2) conduct a review of opportunities for and barriers to high-quality professional development, training, and higher education degree programs, in early childhood development and learning, including a periodic statewide survey concerning the demographics of individuals working in early childhood education programs in the State, which survey shall include information disaggregated by—
(A) race, gender, and ethnicity;
(B) compensation levels;
(C) type of early childhood education program setting;
(D) specialized knowledge of child development;
(E) years of experience in an early childhood education program;
(F) attainment of—
(i) academic credit for coursework;
(ii) an academic degree;
(iii) a credential;
(iv) licensure; or
(v) certification in early childhood education; and
(G) specialized knowledge in the education of children with limited English proficiency and students with disabilities; and
(3) develop a plan for a comprehensive statewide professional development and career system for individuals working in early childhood education programs or for early childhood education providers, which plan may include—
(A) methods of providing outreach to early childhood education program staff, directors, and administrators, including methods for how outreach is provided to non-English speaking providers, in order to enable the providers to be aware of opportunities and resources under the statewide plan;
(B) developing a unified data collection and dissemination system for early childhood education training, professional development, and higher education programs;

(C) increasing the participation of early childhood educators in high-quality training and professional development by assisting in paying the costs of enrollment in and completion of such training and professional development courses;

(D) increasing the participation of early childhood educators in undergraduate and graduate education programs leading to degrees in early childhood education by providing assistance to pay the costs of enrollment in and completion of such programs, which assistance—

(i) shall only be provided to an individual who—

(I) in the case of an individual pursuing an undergraduate or graduate degree, enters into an agreement under which the individual agrees to work, for a reasonable number of years after receiving such a degree, in an early childhood education program that is located in a low-income area; and

(II) has a family income equal to or less than the annually adjusted national median family income as determined by the Bureau of the Census; and

(ii) shall be provided in an amount that does not exceed $17,500;

(E) supporting professional development activities and a career lattice for a variety of early childhood professional roles with varying professional qualifications and responsibilities for early childhood education personnel, including strategies to enhance the compensation of such personnel;

(F) supporting articulation agreements between two- and four-year public and private institutions of higher education and mechanisms to transform other training, professional development, and experience into academic credit;

(G) developing mentoring and coaching programs to support new educators in and directors of early childhood education programs;

(H) providing career development advising with respect to the field of early childhood education, including informing an individual regarding—

(i) entry into and continuing education requirements for professional roles in the field;

(ii) available financial assistance for postsecondary education; and

(iii) professional development and career advancement in the field;

(I) enhancing the capacity and quality of faculty and coursework in postsecondary programs that lead to an associate, baccalaureate, or graduate degree in early childhood education;

(J) consideration of the availability of online graduate level professional development offered by institutions of higher education with experience and demonstrated expertise in establishing programs in child development, in order to improve the skills and expertise of individuals working in early childhood education programs; and

(K) developing or enhancing a system of quality assurance with respect to the early childhood education professional development and career system, including standards or qualifications for individuals and entities who offer training and professional development in early childhood education.

(b) Public hearings

The State Task Force shall hold public hearings and provide an opportunity for public comment on the activities described in the statewide plan described in subsection (a)(3).

(c) Periodic review

The State Task Force shall meet periodically to review implementation of the statewide plan and to recommend any changes to the statewide plan the State Task Force determines necessary.

§ 1161i–5. State application and report

(a) In general

Each State desiring a grant under this part shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require. Each such application shall include a description of—

(1) the membership of the State Task Force;

(2) the activities for which the grant assistance will be used;

(3) other Federal, State, local, and private resources that will be available to support the activities of the State Task Force described in section 1161i–4 of this title;

(4) the availability within the State of training, early childhood educator preparation, professional development, compensation initiatives, and career systems, related to early childhood education; and

(5) the resources available within the State for such training, educator preparation, professional development, compensation initiatives, and career systems.

(b) Report to the Secretary

Not later than two years after receiving a grant under this part, a State shall submit a report to the Secretary that shall describe—

(1) other Federal, State, local, and private resources that will be used in combination with a grant under this section to develop or expand the State's early childhood education professional development and career activities;

(2) the ways in which the State Advisory Council (or similar State entity) will coordinate the various State and local activities that support the early childhood education professional development and career system; and

(3) the ways in which the State Task Force will use funds provided under this part and
carry out the activities described in section 1161i–4 of this title.


§ 1161i–6. Evaluations

(a) State evaluation

Each State receiving a grant under this part shall—

(1) evaluate the activities that are assisted under this part in order to determine—

(A) the effectiveness of the activities in achieving State goals;

(B) the impact of a career lattice for individuals working in early childhood education programs;

(C) the impact of the activities on licensing or regulating requirements for individuals in the field of early childhood development;

(D) the impact of the activities, and the impact of the statewide plan described in section 1161i–4(a)(3) of this title, on the quality of education, professional development, and training related to early childhood education programs that are offered in the State;

(E) the change in compensation and retention of individuals working in early childhood education programs within the State resulting from the activities; and

(F) the impact of the activities on the demographic characteristics of individuals working in early childhood education programs; and

(2) submit a report at the end of the grant period to the Secretary regarding the evaluation described in paragraph (1).

(b) Secretary's evaluation

Not later than September 30, 2013, the Secretary, in consultation with the Secretary of Health and Human Services, shall prepare and submit to the authorizing committees an evaluation of the State reports submitted under subsection (a)(2).


§ 1161i–7. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART J—IMPROVING SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATION WITH A FOCUS ON ALASKA NATIVE AND NATIVE HAWAIIAN STUDENTS

§ 1161j. Improving science, technology, engineering, and mathematics education with a focus on Alaska Native and Native Hawaiian students

(a) Purpose

The purposes of this section are—

(1) to develop or expand programs for the development of professionals in the fields of science, technology, engineering, and mathematics; and

(2) to focus resources on meeting the educational and cultural needs of Alaska Natives and Native Hawaiians.

(b) Definitions

In this section:

(1) Alaska Native

The term “Alaska Native” has the meaning given such term in section 7516 of this title.

(2) Eligible partnership

The term “eligible partnership” means a partnership that includes—

(A) one or more colleges, schools, or departments of engineering;

(B) one or more colleges of science or mathematics;

(C) one or more institutions of higher education that offer two-year degrees; and

(D) one or more private entities that—

(i) conduct career awareness activities showcasing local technology professionals;

(ii) encourage students to pursue education in science, technology, engineering, and mathematics from elementary school through postsecondary education, and careers in those fields, with the assistance of local technology professionals;

(iii) develop internships, apprenticeships, and mentoring programs in partnership with relevant industries; and

(iv) assist with placement of interns and apprentices.

(3) Institution of higher education

The term “institution of higher education” has the meaning given such term in section 1001(a) of this title.

(4) Native Hawaiian

The term “Native Hawaiian” has the meaning given the term in section 7517 of this title.

(c) Grant authorized

From the amounts appropriated to carry out this section under subsection (l), the Secretary is authorized to award a grant to an eligible partnership to enable the eligible partnership to expand programs for the development of science, technology, engineering, or mathematics professionals, from elementary school through postsecondary education, including existing programs for Alaska Native and Native Hawaiian students.

(d) Uses of funds

Grant funds under this section shall be used for one or more of the following:

(1) Development or implementation of cultural, social, or educational transition programs to assist students to transition into college life and academics in order to increase such students' retention rates in the fields of science, technology, engineering, or mathematics, with a focus on Alaska Native or Native Hawaiian students.

(2) Development or implementation of academic support or supplemental educational
programs to increase the graduation rates of students in the fields of science, technology, engineering, or mathematics, with a focus on Alaska Native and Native Hawaiian students.

(3) Development or implementation of internship programs, carried out in coordination with educational institutions and private entities, to prepare students for careers in the fields of science, technology, engineering, or mathematics, with a focus on programs that serve Alaska Native or Native Hawaiian students.

(4) Such other activities as are consistent with the purpose of this section.

(e) Application
Each eligible partnership that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(f) Priority
In awarding grants under this section, the Secretary shall give priority to an eligible partnership that, on the day before August 14, 2008, provides one or more programs in which 30 percent or more of the program participants are Alaska Native or Native Hawaiian.

(g) Period of grant
A grant under this section shall be awarded for a period of five years.

(h) Evaluation and report
Each eligible partnership that receives a grant under this section shall conduct an evaluation to determine the effectiveness of the programs funded under the grant and shall provide a report regarding the evaluation to the Secretary not later than six months after the end of the grant period.

(i) Authorization of appropriations
There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(1) In general
An eligible institution seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. An eligible institution may submit an application to receive a grant under subsection (c) or (d) or both.

(2) Evaluation condition
Each eligible institution seeking a grant under this section shall agree to participate in the evaluation described in subsection (f).

(3) Priority for replication of evidence-based policies and practices
In awarding grants for the program under subsection (d), the Secretary shall give priority to applications submitted by eligible institutions that propose to replicate policies and practices that have proven effective in increasing persistence and degree completion by low-income students or students in need of developmental education.

(c) Pilot program to increase persistence and success in college communities

(1) Definitions
In this subsection:

(A) Eligible institution
The term "eligible institution" means an institution of higher education, as defined in section 1001 of this title, that provides a one- or two-year program of study leading to a degree or certificate.

(B) Eligible student
The term "eligible student" means a student who—

(i) to provide scholarships in accordance with this section, on a competitive basis, to eligible institutions to enable the institutions to develop programs to increase the persistence and success of low-income college students.

(b) Applications

(1) In general

An eligible institution seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. An eligible institution may submit an application to receive a grant under subsection (c) or (d) or both.

(2) Evaluation condition

Each eligible institution seeking a grant under this section shall agree to participate in the evaluation described in subsection (f).

(3) Priority for replication of evidence-based policies and practices

In awarding grants for the program under subsection (d), the Secretary shall give priority to applications submitted by eligible institutions that propose to replicate policies and practices that have proven effective in increasing persistence and degree completion by low-income students or students in need of developmental education.

(c) Pilot program to increase persistence and success in college communities

(1) Definitions
In this subsection:

(A) Eligible institution

The term "eligible institution" means an institution of higher education, as defined in section 1001 of this title, that provides a one- or two-year program of study leading to a degree or certificate.

(B) Eligible student

The term "eligible student" means a student who—

(i) is enrolled at least half-time;

(ii) is not younger than age 19;

(iv) is the parent of at least one dependent child, which dependent child is age 18 or younger;

(v) has a secondary school diploma or its recognized equivalent; and

(vi) does not have a degree or certificate from an institution of higher education.

(2) Uses of funds

(A) Support

The Secretary shall award grants under this subsection to eligible institutions to enable such institutions to provide additional monetary and nonmonetary support to eligible students to enable the eligible students to maintain enrollment and complete degree or certificate programs.

(B) Required uses

Each eligible institution receiving a grant under this subsection shall use the grant funds—

(i) to provide scholarships in accordance with paragraph (3); and

(ii) to support...
(ii) to provide counseling services in accordance with paragraph (4).

(C) Allowable uses of funds

Grant funds provided under this subsection may be used—

(i) to conduct outreach to make students aware of the scholarships and counseling services available under this subsection and to encourage the students to participate in the program assisted under this subsection; and

(ii) to provide incentives of $20 or less to applicants who complete the process of applying for assistance under this subsection, as compensation for the student’s time.

(3) Scholarship requirements

(A) In general

Each scholarship awarded under this subsection shall—

(i) be awarded for one academic year consisting of two semesters or the equivalent;

(ii) require the student to maintain, during the scholarship period, at least half-time enrollment and at least a 2.0 grade point average or the equivalent;

(iii) be awarded in the amount of $1,000 for each of two semesters (prorated for quarters or other equivalents), or $2,000 for an academic year;

(iv) not exceed the student’s cost of attendance, as defined in section 1087f of this title; and

(v) be paid, for each of the two semesters, in increments of—

(I) $250 upon enrollment (prorated for quarters or other equivalents);

(II) $250 upon passing midterm examinations or comparable assessments (prorated for quarters or other equivalents); and

(III) $500 upon passing courses (prorated for quarters or other equivalents).

(B) Number

An eligible institution may award an eligible student not more than two scholarships under this subsection.

(4) Counseling services

(A) In general

Each eligible institution receiving a grant under this subsection shall use the grant funds to provide students at the institution with a counseling staff dedicated to students participating in the program under this subsection. Each such counselor shall—

(i) have a caseload of less than 125 students;

(ii) use a proactive, team-oriented approach to counseling;

(iii) hold a minimum of two meetings with each student each semester; and

(iv) provide referrals to and follow-up with other student services staff, including financial aid and career services.

(B) Counseling services availability

The counseling services provided under this subsection shall be available to participating students during the daytime and evening hours.

(d) Student success grant pilot program

(1) Definitions

(A) Eligible institution

In this subsection, the term “eligible institution” means an institution of higher education in which, during the three-year period preceding the year in which the institution is applying for a grant under this subsection, an average of not less than 50 percent of the institution’s entering first-year students are assessed as needing developmental courses to bring reading, writing, or mathematics skills up to college level.

(B) Eligible student

In this subsection, the term “eligible student” means a student who—

(i) is eligible to receive assistance under section 1070a of this title;

(ii) is a first-year student at the time of entering the program;

(iii) is assessed as needing developmental education to bring reading, writing, or mathematics skills up to college level; and

(iv) is selected by an eligible institution to participate in the program.

(2) Student success grant amount

The Secretary shall award grants under this subsection to eligible institutions in an amount equal to $1,500 multiplied by the number of students the institution selects to participate in the program in such year. An institution shall not select more than 200 students to participate in the program under this subsection during such year.

(3) Required uses

An eligible institution that receives a grant under this subsection shall use the grant funds to assign a student success coach to each first-year student participating in the program under this subsection.

(A) College and career success courses provided at no charge to participating students during any academic period;

(B) may be employees of academic departments, student services offices, community-based organizations, or other entities as determined appropriate by the institution; and

(C) shall meet with each eligible student selected for the program before registration for courses.

(4) Allowable uses

An eligible institution that receives a grant under this subsection may use the grant funds to provide services and program innovations for students participating in the program, including the following:

(A) College and career success courses provided at no charge to participating students. These courses may cover college success topics, including how to take notes, how to
study, how to take tests, and how to budget time, and may also include a substantial career exploration component. Institutions may use such courses to help students develop a college and career success plan, so that by the end of the first semester the students have a clear sense of their career goals and what classes to take to achieve such goals.

(B) Work-study jobs with private employers in the students' fields of study.

(C) Learning communities that ensure that students participating in the program are clustered together for at least two courses beginning in the first semester after enrolling and have other opportunities to create and maintain bonds that allow them to provide academic and social support to each other.

(D) Curricular redesign, which may include such innovations as blended or accelerated remediation classes that help student success grant recipients to attain college-level reading, writing, or math skills (or a combination thereof) more rapidly than traditional remediation formats allow, and intensive skills refresher classes, offered prior to each semester, to help students who have tested into remedial coursework to reach entry level assessment scores for the post-secondary programs they wish to enter.

(E) Instructional support, such as learning labs, supplemental instruction, and tutoring.

(F) Assistance with support services, such as child care and transportation.

(5) Required non-Federal share

Each institution participating in the program under this subsection shall provide a non-Federal share of 25 percent of the amount of the grant to carry out the activities of the program. The non-Federal share under this subsection may be provided in cash or in kind.

(e) Period of grant

The Secretary may award a grant under subsection (c) or (d) of this section for a period of five years.

(f) Technical assistance and evaluation

(1) Contractor

From the funds appropriated under this section, the Secretary shall enter into a contract with one or more private, nonprofit entities to provide technical assistance to grantees and to conduct the evaluations required under paragraph (3).

(2) Evaluations

The evaluations required under paragraph (3) shall be conducted by entities that are capable of designing and carrying out independent evaluations that identify the impact of the activities carried out by eligible institutions under this section on improving persistence and success of student participants under this section.

(3) Conduct of evaluations

The Secretary shall conduct an evaluation of the impact of the persistence and success grant programs as follows:

(A) Program to increase persistence in community colleges

The evaluation of the program under subsection (c) shall be conducted using a random assignment research design with the following requirements:

(i) When students are recruited for the program, all students will be told about the program and the evaluation.

(ii) Baseline data will be collected from all applicants for assistance under subsection (c).

(iii) Students will be assigned randomly to two groups, which will consist of—

(I) a program group that will receive the scholarship and the additional counseling services; and

(II) a control group that will receive whatever regular financial aid and counseling services are available to all students at the institution of higher education.

(B) Student success grant program

Eligible institutions receiving a grant to carry out the program under subsection (d) shall work with the evaluator to track persistence and completion outcomes for students in such program, specifically the proportion of these students who take and complete developmental education courses, the proportion who take and complete college-level coursework, and the proportion who complete certificates and degrees. The data shall be broken down by gender, race, ethnicity, and age and the evaluator shall assist institutions in analyzing these data to compare program participants to comparable nonparticipants, using statistical techniques to control for differences in the groups.

(g) Report

The Secretary shall—

(1) provide a report to the authorizing committees that includes the evaluation and information on best practices and lessons learned during the pilot programs described in this section; and

(2) disseminate the report to the public by making the report available on the Department's website.

(h) Supplement not supplant

Funds made available under this section shall be used to supplement and not supplant other Federal, State, and local funds available to the institution to carry out the activities described in subsections (c) and (d).

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years. The Secretary may use not more than two percent of the amounts appropriated to provide the technical assistance and conduct the evaluations required under subsection (f).

§ 1161. Student safety and campus emergency management

(a) Grants authorized

(1) In general

From the amounts appropriated under subsection (c), the Secretary is authorized to award grants, on a competitive basis, to institutions of higher education or consortia of institutions of higher education to enable institutions of higher education or consortia to pay the Federal share of the cost of carrying out the authorized activities described in subsection (c).

(2) Consultation with the Attorney General and the Secretary of Homeland Security

Where appropriate, the Secretary shall award grants under this section in consultation with the Attorney General and the Secretary of Homeland Security.

(3) Duration

The Secretary shall award each grant under this section for a period of two years.

(4) Limitation on institutions and consortia

An institution of higher education or consortium shall be eligible for only one grant under this section.

(b) Federal share; non-Federal share

(1) In general

The Federal share of the activities described in subsection (c) shall be 50 percent.

(2) Non-Federal share

An institution of higher education or consortium that receives a grant under this section shall provide the non-Federal share, which may be provided from State and local resources dedicated to emergency preparedness and response.

(c) Authorized activities

Each institution of higher education or consortium receiving a grant under this section may use the grant funds to carry out one or more of the following:

(1) Developing and implementing a state-of-the-art emergency communications system for each campus of an institution of higher education or consortium, in order to contact students via cellular, text message, or other state-of-the-art communications methods when a significant emergency or dangerous situation occurs. An institution or consortium using grant funds to carry out this paragraph shall also, in coordination with the appropriate State and local emergency management authorities—

(A) develop procedures that students, employees, and others on a campus of an institution of higher education or consortium will be directed to follow in the event of a significant emergency or dangerous situation; and

(B) develop procedures the institution of higher education or consortium shall follow to inform, in a reasonable and timely manner, students, employees, and others on a campus in the event of a significant emergency or dangerous situation, which procedures shall include the emergency communications system described in this paragraph.

(2) Supporting measures to improve safety at the institution of higher education or consortium, such as—

(A) security assessments;

(B) security training of personnel and students at the institution of higher education or consortium;

(C) where appropriate, coordination of campus preparedness and response efforts with local law enforcement, local emergency management authorities, and other agencies, to improve coordinated responses in emergencies among such entities;

(D) establishing a hotline that allows a student or staff member at an institution or consortium to report another student or staff member at the institution or consortium who the reporting student or staff member believes may be a danger to the reported student or staff member or to others; and

(E) acquisition and installation of access control, video surveillance, intrusion detection, and perimeter security technologies and systems.

(3) Coordinating with appropriate local entities for the provision of mental health services for students and staff of the institution of higher education or consortium, including mental health crisis response and intervention services for students and staff affected by a campus or community emergency.

(d) Application

Each institution of higher education or consortium desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(e) Technical assistance

The Secretary shall coordinate technical assistance provided by State and local emergency management agencies, the Department of Homeland Security, and other agencies as appropriate, to institutions of higher education or consortia that request assistance in developing and implementing the activities assisted under this section.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be nec-
The term “institution affected by a Gulf hurricane disaster” means an institution of higher education that—

(1) submit a financial statement and other appropriate data, documentation, or evidence requested by the Secretary that indicates that the institution incurred losses resulting from the impact of a major disaster or emergency declared by the President, and the monetary amount of such losses; 

(2) demonstrate that the institution had appropriate insurance policies prior to the major disaster or emergency and filed claims, as appropriate, related to the major disaster or emergency; and

(3) demonstrate that the institution attempted to minimize the cost of any losses by pursuing collateral source compensation from the Federal Emergency Management Agency prior to seeking a loan under this section, except that an institution of higher education shall not be required to receive collateral source compensation from the Federal Emergency Management Agency prior to being eligible for a loan under this section.

d) Audit
The Secretary may audit a financial statement submitted under subsection (c) and an institution of higher education shall provide any information that the Secretary determines necessary to conduct such an audit.

e) Reduction in loan amounts
To determine the amount of a loan to make available to an institution of higher education under this section, the Secretary shall calculate the monetary amount of losses incurred by such institution as a result of a major disaster or emergency declared by the President, and shall reduce such amount by the amount of collateral source compensation the institution has already received from insurance, the Federal Emergency Management Agency, and the Small Business Administration.

(f) Establishment of loan program
Prior to disbursing any loans under this section, the Secretary shall prescribe regulations that establish the Education Disaster and Emergency Relief Loan Program, including—

(1) terms for the loan program; 

(2) procedures for an application for a loan; 

(3) minimum requirements for the loan program and for receiving a loan, including—

(A) online forms to be used in submitting a request for a loan; 

(B) information to be included in such forms; and

(C) procedures to assist in filing and pursuing a loan; and

(4) any other terms and conditions the Secretary may prescribe after taking into consideration the structure of other existing capital financing loan programs under this chapter and part C of subchapter I of chapter 34 of title 42.

(g) Definitions
In this section:

(1) Institution affected by a Gulf hurricane disaster
The term “institution affected by a Gulf hurricane disaster” means an institution of higher education that—

(1) submit a financial statement and other appropriate data, documentation, or evidence requested by the Secretary that indicates that the institution incurred losses resulting from the impact of a major disaster or emergency declared by the President, and the monetary amount of such losses; 

(2) demonstrate that the institution had appropriate insurance policies prior to the major disaster or emergency and filed claims, as appropriate, related to the major disaster or emergency; and

(3) demonstrate that the institution attempted to minimize the cost of any losses by pursuing collateral source compensation from the Federal Emergency Management Agency prior to seeking a loan under this section, except that an institution of higher education shall not be required to receive collateral source compensation from the Federal Emergency Management Agency prior to being eligible for a loan under this section.
(A) is located in an area affected by a Gulf hurricane disaster; and

(B) is able to demonstrate that the institution—

(i) incurred physical damage resulting from the impact of a Gulf hurricane disaster; and

(ii) was not able to fully reopen in existing facilities or to fully reopen to the pre-hurricane levels for 30 days or more on or after August 29, 2005.

(2) Area affected by a Gulf hurricane disaster; Gulf hurricane disaster

The terms “area affected by a Gulf hurricane disaster” and “Gulf hurricane disaster” have the meanings given such terms in section 209 of the Higher Education Hurricane Relief Act of 2005 (Public Law 109–148, 119 Stat. 2808).

(3) Emergency

The term “emergency” has the meaning given such term in section 5122(1) of title 42.

(4) Institutions of higher education

The term “institution of higher education” has the meaning given such term in section 1001 of this title.

(5) Major disaster

The term “major disaster” has the meaning given the term in section 5122(2) of title 42.

(h) Effective date

Loans provided to institutions of higher education pursuant to this section shall be available only with respect to major disasters or emergencies declared by the President that occur after August 14, 2008, except that loans may be provided pursuant to this section to an institution affected by a Gulf hurricane disaster with respect to such disaster.

(i) Authorization of appropriations

There are authorized to be appropriated to higher education with respect to the disclosure of education records, including to a parent or legal guardian of a dependent student, in the event that such student demonstrates that the student poses a significant risk of harm to himself or herself or to others, including a significant risk of suicide, homicide, or assault. Such guidance shall further clarify that an institution of higher education that, in good faith, discloses education records or other information in accordance with the requirements of this chapter and part C of subchapter I of chapter 34 of title 42 and section 1232g of this title (commonly known as the “Family Educational Rights and Privacy Act of 1974”) shall not be liable to any person for that disclosure.

(b) Information to Congress

The Secretary shall provide an update to the authorizing committees on the Secretary’s activities under subsection (a) not later than 180 days after August 14, 2008.

The term “major disaster” has the meaning given such term in section 5122(2) of title 42.

(i) Authorization of appropriations

There are authorized to be appropriated to higher education with respect to the disclosure of education records, including to a parent or legal guardian of a dependent student, in the event that such student demonstrates that the student poses a significant risk of harm to himself or herself or to others, including a significant risk of suicide, homicide, or assault. Such guidance shall further clarify that an institution of higher education that, in good faith, discloses education records or other information in accordance with the requirements of this chapter and part C of subchapter I of chapter 34 of title 42 and section 1232g of this title (commonly known as the “Family Educational Rights and Privacy Act of 1974”) shall not be liable to any person for that disclosure.

(b) Information to Congress

The Secretary shall provide an update to the authorizing committees on the Secretary’s activities under subsection (a) not later than 180 days after August 14, 2008.
§ 1161m. Incentives and rewards for low tuition

(a) Rewards for low tuition

(1) Grants

From funds made available under subsection (e), the Secretary shall award grants to institutions of higher education that, for academic year 2009-2010 or any succeeding academic year—

(A) have an annual tuition and fee increase, expressed as a percentage change, for the most recent academic year for which satisfactory data is available, that is in the lowest 20 percent of such increases for each category described in subsection (b);

(B) are public institutions of higher education that have tuition and fees that are in the lowest quartile of institutions in each category described in subsection (b) (1), (b)(4), or (b)(7); or

(C) are public institutions of higher education that have a tuition and fee increase of less than $600 for a first-time, full-time undergraduate student.

(2) Use of funds

Funds awarded to an institution of higher education under paragraph (1) shall be distributed by the institution in the form of need-based grant aid to students who are eligible for Federal Pell Grants, except that no student shall receive an amount under this section that would cause the amount of total financial aid received by such student to exceed the cost of attendance of the institution.

(b) Categories of institutions

The categories of institutions described in subsection (a) shall be the following:

(1) four-year public institutions of higher education;

(2) four-year private, nonprofit institutions of higher education;

(3) four-year private, for-profit institutions of higher education;

(4) two-year public institutions of higher education;

(5) two-year private, nonprofit institutions of higher education;

(6) two-year private, for-profit institutions of higher education;

(7) less than two-year public institutions of higher education;

(8) less than two-year private, nonprofit institutions of higher education; and

(9) less than two-year private, for-profit institutions of higher education.

(c) Rewards for guaranteed tuition

(1) Bonus

For each institution of higher education that the Secretary determines complies with the requirements of paragraph (2) or (3) of this subsection, the Secretary shall provide to such institution a bonus amount. Such institution shall award the bonus amount in the form of need-based aid first to students who are eligible for Federal Pell Grants who were in attendance at the institution during the academic year that such institution satisfied the eligibility criteria for maintaining low tuition and fees, then to students who are eligible for Federal Pell Grants who were not in attendance at the institution during such academic year.

(2) Four-year institutions

An institution of higher education that provides a program of instruction for which it awards a bachelor’s degree complies with the requirements of this paragraph if—

(A) for a public institution of higher education, such institution’s tuition and fees are in the lowest quartile of institutions in the same category as described under subsection (b); or

(B) for any institution of higher education, such institution guarantees that for any academic year (or the equivalent) beginning on or after July 1, 2009, and for each of the four succeeding continuous academic years, the tuition and fees charged to an undergraduate student will not exceed—

(i) for a public institution of higher education, $600 per year for a full-time undergraduate student; or

(ii) for any other institution of higher education—

(I) the amount that the student was charged for an academic year at the time the student first enrolled in the institution of higher education, plus

(II) the percentage change in tuition and fees at the institution for the three most recent academic years for which data is available, multiplied by the amount determined under subclause (I).

(3) Less-than four-year institutions

An institution of higher education that does not provide a program of instruction for which it awards a bachelor’s degree complies with the requirements of this paragraph if—

(A) for a public institution of higher education, such institution’s tuition is in the lowest quartile of institutions in the same category as described under subsection (b); or

(B) for any institution of higher education, such institution guarantees that for any academic year (or the equivalent) beginning on or after July 1, 2009, and for each of the 1.5 succeeding continuous academic years, the tuition and fees charged to an undergraduate student will not exceed—

(i) for a public institution of higher education, $600 per year for a full-time undergraduate student; or

(ii) for any other institution of higher education—

(I) the amount that the student was charged for an academic year at the time the student first enrolled in the institution of higher education, plus

(II) the percentage change in tuition and fees at the institution for the three most recent academic years for which data is available, multiplied by the amount determined under subclause (I).
(d) Definitions

In this section, the terms “tuition and fees” and “net price” have the meaning given to such terms in section 1015a of this title.

(e) Authorization

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(1) In general

Of the amount appropriated to carry out this part in each fiscal year—

(1) not less than 50 percent shall be available for awarding grants to institutions of higher education or consortia of such institutions to encourage such institutions to develop and make available to their students work experience that will aid such students in future careers and will enable such students to support themselves financially while in school;

(2) not less than 25 percent shall be available for awarding grants to institutions of higher education (other than cooperative education described in section 1161n–2(a)(1)(B)) receiving grants under section 1161n–2(a)(1)(A) of this title; and

(3) not to exceed 11 percent shall be available for training and resource centers under paragraph (1) of section 1161n–3(a) of this title; and

(5) not to exceed 3 percent shall be available for research under paragraph (3) of section 1161n–3(a) of this title.

(b) Availability of appropriations

Amounts appropriated under this part shall not be used for the payment of compensation of students for employment by employers participating in a program under this part.

(1) In general

The Secretary is authorized, from the amount available to carry out this section under section 1161n–4 of this title in each fiscal year and in accordance with the provisions of this part—

(A) to award grants to institutions of higher education or consortia of such institutions that have not received a grant under this paragraph in the ten-year period preceding the date for which a grant under this section is requested to pay the Federal share of the cost of planning, establishing, expanding, or carrying out programs of cooperative education by such institutions or consortia of institutions; and

(B) to award grants to institutions of higher education that are operating an existing cooperative education program as determined by the Secretary to pay the Federal share of the cost of planning, establishing, expanding, or carrying out programs of cooperative education by such institutions.

(2) Program requirement

Cooperative education programs assisted under this section shall provide alternating or parallel periods of academic study and public or private employment to give students work experiences related to their academic or occupational objectives and an opportunity to earn the funds necessary for continuing and completing their education.

(3) Amount of grants

(A) The amount of each grant awarded pursuant to paragraph (1)(A) to any institution of higher education or consortia of such institutions in any fiscal year shall not exceed $500,000.

(B)(i) Except as provided in clauses (ii) and (iii), the Secretary shall award grants in each fiscal year to each institution of higher education described in paragraph (1)(B) that has an application approved under subsection (b) in an amount that bears the same ratio to the amount reserved pursuant to section 1161n–1(a)(2) of this title for such fiscal year as the number of unduplicated students placed in cooperative education jobs during the preceding fiscal year by such institution of higher education (other than cooperative education jobs under section 1161n–3 of this title and as determined by the Secretary) bears to the total number of all such students placed in such jobs during the preceding fiscal year by all such institutions.
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(ii) No institution of higher education shall receive a grant pursuant to paragraph (1)(B) in any fiscal year in an amount that exceeds 25 percent of such institution’s cooperative education program’s personnel and operating budget for the preceding fiscal year.

(iii) The minimum annual grant amount that an institution of higher education is eligible to receive under paragraph (1)(B) is $1,000 and the maximum annual grant amount is $75,000.

(4) Limitation

The Secretary shall not award grants pursuant to subparagraphs (A) and (B) of paragraph (1) to the same institution of higher education or consortia of such institution in any one fiscal year.

(5) Uses

Grants awarded under paragraph (1)(B) shall be used exclusively—

(A) to expand the quality of and participation in a cooperative education program;

(B) for outreach to potential participants in new curricular areas; and

(C) for outreach to potential participants including underrepresented and nontraditional populations.

(b) Applications

Each institution of higher education or consortium of such institutions desiring to receive a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe. Each such application shall—

(1) set forth the program or activities for which a grant is authorized under this section;

(2) specify each portion of such program or activities which will be performed by a nonprofit organization or institution other than the applicant, and the amount of grant funds to be used for such program or activities;

(3) provide that the applicant will expend, during the fiscal year for which the grant is awarded for the purpose of such program or activities, not less than the amount expended for such purpose during the previous fiscal year;

(4) describe the plans which the applicant will carry out to assure, and contain a formal statement of the institution’s commitment that assures, that the applicant will continue the cooperative education program beyond the five-year period of Federal assistance described in subsection (c)(1) at a level that is not less than the total amount expended for such program during the first year such program was assisted under this section;

(5) provide that, in the case of an institution of higher education that provides a two-year program that is acceptable for full credit toward a bachelor’s degree, the cooperative education program will be available to students who are certificate or associate degree candidates and who carry at least one-half of the normal full-time academic workload;

(6) provide that the applicant will—

(A) make such reports as may be necessary to ensure that the applicant is complying with the provisions of this section, including reports for the second and each succeeding fiscal year for which the applicant receives a grant with respect to the impact of the cooperative education program in the previous fiscal year, including—

(i) the number of unduplicated student applicants in the cooperative education program;

(ii) the number of unduplicated students placed in cooperative education jobs;

(iii) the number of employers who have hired cooperative education students;

(iv) the income for students derived from working in cooperative education jobs; and

(v) the increase or decrease in the number of unduplicated students placed in cooperative education jobs in each fiscal year compared to the previous fiscal year; and

(B) keep such records as may be necessary to ensure that the applicant is complying with the provisions of this part, including the notation of cooperative education employment on the student’s transcript;

(7) describe the extent to which programs in the academic disciplines for which the application is made have satisfactorily met the needs of public and private sector employers;

(8) describe the extent to which the institution is committed to extending cooperative education on an institution-wide basis for all students who can benefit;

(9) describe the plans that the applicant will carry out to evaluate the applicant’s cooperative education program at the end of the grant period;

(10) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the applicant under this part;

(11) demonstrate a commitment to serving underserved populations at the institution; and

(12) include such other information as may be necessary to carry out the provisions of this part.

(c) Duration of grants; Federal share

(1) Duration of grants

No individual institution of higher education may receive, individually or as a participant in a consortium of such institutions—

(A) a grant pursuant to subsection (a)(1)(A) for more than five fiscal years; or

(B) a grant pursuant to subsection (a)(1)(B) for more than five fiscal years.

(2) Federal share

The Federal share of a grant under subsection (a)(1)(A) may not exceed—

(A) 85 percent of the cost of carrying out the program or activities described in the application in the first year the applicant receives a grant under this section;

(B) 70 percent of such cost in the second such year;

(C) 55 percent of such cost in the third such year;

(D) 40 percent of such cost in the fourth such year; and

(E) 25 percent of such cost in any succeeding fiscal year.
(E) 25 percent of such cost in the fifth such year.

(3) Special rule
Notwithstanding any other provision of law, the Secretary may not waive the provisions of paragraphs (1) and (2).

(d) Maintenance of effort
If the Secretary determines that a recipient of funds under this section has failed to maintain the fiscal effort described in subsection (b)(3), then the Secretary may elect not to make grant payments under this section to such recipient.

(e) Factors for special consideration of applications

(1) In general
In approving applications under this section, the Secretary shall give special consideration to applications from institutions of higher education or consortia of such institutions for programs that show the greatest promise of success based on—
(A) the extent to which programs in the academic discipline with respect to which the application is made have satisfactorily met the needs of public and private sector employers;
(B) the strength of the commitment of the institution of higher education or consortium of such institutions to cooperative education as demonstrated by the plans and formalized institutional commitment statement which such institution or consortium has made to continue the program after the termination of Federal financial assistance;
(C) the extent to which the institution or consortium of institutions is committed to extending cooperative education for students who can benefit; and
(D) such other factors as are consistent with the purpose of this part.

(2) Additional special consideration
The Secretary shall also give special consideration to applications from institutions of higher education or consortia of such institutions that demonstrate a commitment to serving underserved populations attending such institutions.

AMENDMENTS
Subsec. (e)(1)(D). Pub. L. 111–39, §801(11)(B), substituted “purpose of this part” for “purposes of this section”.

§ 1161n–3. Demonstration and innovation projects; training and resource centers; and research

(a) Authorization
From the amounts appropriated under section 1161n–4 of this title, the Secretary is authorized, in accordance with the provisions of this section, to make grants and enter into contracts—
(1) from the amounts available in each fiscal year under section 1161n–1(a)(3) of this title, for the conduct of demonstration projects designed to demonstrate or determine the effectiveness of innovative methods of cooperative education;
(2) from the amounts available in each fiscal year under section 1161n–1(a)(4) of this title, for the conduct of training and resource centers designed to—
(A) train personnel in the field of cooperative education;
(B) improve materials used in cooperative education programs if such improvement is conducted in conjunction with other activities described in this paragraph;
(C) provide technical assistance to institutions of higher education to increase the potential of the institution to continue to conduct a cooperative education program without Federal assistance;
(D) encourage model cooperative education programs that furnish education and training in occupations in which there is a national need;
(E) support partnerships under which an institution carrying out a comprehensive cooperative education program joins with one or more institutions of higher education in order to—
(i) assist the institution that is not the institution carrying out the cooperative education program to develop and expand an existing program of cooperative education; or
(ii) establish and improve or expand comprehensive cooperative education programs; and
(F) encourage model cooperative education programs in the fields of science and mathematics for women and minorities who are underrepresented in such fields; and
(3) from the amounts available in each fiscal year under section 1161n–1(a)(5) of this title, for the conduct of research relating to cooperative education.

(b) Administrative provision

(1) In general
To carry out this section, the Secretary may—
(A) make grants to or contracts with institutions of higher education or consortia of such institutions; and
(B) make grants to or contracts with other public or private nonprofit agencies or organizations, whenever such grants or contracts will contribute to the objectives of this section.
(2) Limitation
   (A) Contracts with institutions of higher education
      The Secretary may use not more than three percent of the amount appropriated to carry out this section in each fiscal year to enter into contracts described in paragraph (1)(A).

   (B) Contracts with other agencies or organizations
      The Secretary may use not more than three percent of the amount appropriated to carry out this section in each fiscal year to enter into contracts described in paragraph (1)(B).

(c) Supplement not supplant
   A recipient of a grant or contract under this section may use the funds provided only to supplement funds made available from non-Federal sources to carry out the activities supported by such grant or contract, and in no case to supplant such funds from non-Federal sources.

§ 1161n–4. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

PART O—COLLEGE PARTNERSHIP GRANTS

§ 1161o. College partnership grants authorized

(a) Grants authorized
   From the amount appropriated to carry out this section, the Secretary shall award grants to eligible partnerships for the purposes of developing and implementing articulation agreements.

(b) Eligible partnerships
   For purposes of this part, an eligible partnership shall include at least two institutions of higher education, or a system of institutions of higher education, and may include either or both of the following:

   (1) A consortia of institutions of higher education.
   (2) A State higher education agency.

(c) Priority
   The Secretary shall give priority to eligible partnerships that—

   (1) are located in a State that has employed strategies described in section 1083a(b)(1) of this title; or
   (2) include—

   (A) one or more junior or community colleges (as defined by section 1058(f) of this title) that award associate’s degrees; and
   (B) one or more institutions of higher education that offer a baccalaureate or post-baccalaureate degree not awarded by the institutions described in subparagraph (A) with which it is partnered.

(d) Mandatory use of funds
   Grants awarded under this part shall be used for—

   (1) the development of policies and programs to expand opportunities for students to earn bachelor’s degrees, by facilitating the transfer of academic credits between institutions and expanding articulation and guaranteed transfer agreements between institutions of higher education, including through common course numbering and general education core curriculum;
   (2) academic program enhancements; and
   (3) programs to identify and remove barriers that inhibit student transfers, including technological and informational programs.

(e) Optional use of funds
   Grants awarded under this part may be used for—

   (1) support services to students participating in the program, such as tutoring, mentoring, and academic and personal counseling; and
   (2) any service that facilitates the transition of students between the partner institutions.

(f) Prohibition
   No funds provided under this section shall be used to financially compensate an institution for the purposes of entering into an articulation agreement or for accepting students transferring into such institution.

(g) Applications
   Any eligible partnership that desires to obtain a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information or assurances as the Secretary may require.

(h) Definition
   For purposes of this section, the term “articulation agreement” means an agreement between institutions of higher education that specifies the acceptability of courses in transfer toward meeting specific degree requirements.

(i) Authorization of appropriations
   There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

§ 1161p. Grants to create bridges from jobs to careers

(a) Purpose
   The purpose of this section is to provide grants on a competitive basis to institutions of
higher education for the purpose of improving developmental education to help students move more rapidly into for-credit occupational courses and into better jobs that may require a certificate or degree.

(b) Authorization of program

From amounts appropriated to carry out this section, the Secretary shall award grants, on a competitive basis, to institutions of higher education, as defined in section 1001(a) of this title, to create workforce bridge programs between developmental courses and for-credit courses in occupational certificate programs that are articulated to degree programs. Such workforce bridge programs shall focus on—

(1) improving developmental education, including English language instruction, by customizing developmental education to student career goals; and

(2) helping students move rapidly from developmental coursework into for-credit occupational courses and through program completion.

c) Application

An institution of higher education desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

d) Priorities

The Secretary shall give priority to applications that—

(1) are from institutions of higher education in which not less than 50 percent of the institution’s entering first-year students who are subject to mandatory assessment are assessed as needing developmental courses to bring reading, writing, or mathematics skills up to college level; and

(2) propose to replicate practices that have proven effective with adults, or propose to collaborate with adult education providers.

e) Required activity

An institution of higher education that receives a grant under this section shall use the grant funds to create workforce bridge programs to customize developmental education curricula, including English language instruction, to reflect the content of for-credit occupational certificate or degree programs, or clusters of such programs, in which developmental education students are enrolled or plan to enroll. Such workforce bridge programs shall integrate the curricula and the instruction of the developmental and college-level coursework.

(f) Permissible activities

An institution of higher education that receives a grant under this section may use the grant funds to carry out one or more of the following activities:

(1) Designing and implementing innovative ways to improve retention in and completion of developmental education courses, including enrolling students in cohorts, accelerating course content, dually enrolling students in developmental and college-level courses, tutoring, providing counseling and other supportive services, and giving small, material incentives for attendance and performance.

(2) In consultation with faculty in the appropriate departments, reconfiguring courses offered on-site during standard academic terms for modular, compressed, or other alternative schedules, or for distance-learning formats, to meet the needs of working adults.

(3) Developing counseling strategies that address the needs of students in remedial education courses, and including counseling students on career options and the range of programs available, such as certificate programs that are articulated to degree programs and programs designed to facilitate transfer to four-year institutions of higher education.

(4) Improving the quality of teaching in remedial courses through professional development, reclassification of such teaching positions, or other means the institution of higher education determines appropriate.

(5) Any other activities the institution of higher education and the Secretary determine will promote retention of, and completion by, students attending institutions of higher education.

g) Grant period

Grants made under this section shall be for a period of not less than three years and not more than five years.

(h) Technical assistance

The Secretary shall provide technical assistance to recipients of, and applicants for, grants under this section.

(i) Report and summary

Each institution of higher education that receives a grant under this section shall report to the Secretary on the effectiveness of the program in enabling students to move rapidly from developmental coursework into for-credit occupational courses and through program completion. The Secretary shall summarize the reports, identify best practices, and disseminate the information from such summary and identification to the public.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


AMENDMENTS


EFFECTIVE DATE OF 2009 AMENDMENT


PART Q—RURAL DEVELOPMENT GRANTS FOR RURAL-SERVING COLLEGES AND UNIVERSITIES

§1161q. Grants to rural-serving institutions of higher education

(a) Purposes

The purposes of this section are—
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(1) to increase enrollment and graduation rates of secondary school graduates and non-
traditional students from rural areas at two-
year and four-year institutions of higher edu-
cation, and their articulation from two-year
degree programs into four-year degree pro-
grams; and

(2) to promote economic growth and develop-
ment in rural America through partnership
grants to consortia of rural-serving institu-
tions of higher education, local educational
agencies, and regional employers.

(b) Definitions

For the purposes of this section:

(1) Rural-serving institution of higher edu-
cation

The term “rural-serving institution of high-
er education” means an institution of higher
education that primarily serves rural areas.

(2) Rural area

The term “rural area” means an area that is
defined, identified, or otherwise recognized as
rural by a governmental agency of the State
in which the area is located.

(3) Nontraditional student

The term “nontraditional student” means
an individual who—

(A) delays enrollment in an institution of higher
education by three or more years after secondary school graduation;

(B) attends an institution of higher education part-time; or

(C) attends an institution of higher education and—

(i) works full-time;

(ii) is an independent student, as defined
in section 1067vv of this title;

(iii) has one or more dependents other
than a spouse;

(iv) is a single parent; or

(v) does not have a secondary school di-
ploma or the recognized equivalent of such
a diploma.

(4) Regional employer

The term “regional employer” means an em-
ployer within a rural area.

(c) Partnership

(1) Required partners

A rural-serving institution of higher edu-
cation, or a consortium of rural-serving insti-
tutions of higher education, that receives a
grant under this section shall carry out the
activities of the grant in partnership with—

(A) one or more local educational agencies
serving a rural area; and

(B) one or more regional employers or
local boards (as such term is defined in sec-
tion 2801 of title 29) serving a rural area.

(2) Optional partners

A rural-serving institution of higher edu-
cation, or a consortium of rural-serving insti-
tutions of higher education, that receives a
grant under this section, may carry out the
activities of the grant in partnership with—

(A) an educational service agency (as de-
defined in section 7801 of this title); or

(B) a nonprofit organization with dem-
onstrated expertise in rural education at the
secondary and postsecondary levels.

(d) Grants authorized

(1) In general

From amounts made available under sub-
section (g), the Secretary is authorized to
award grants, on a competitive basis, to eligi-
ble rural-serving institutions of higher edu-
cation or a consortium of such institutions, to
carry out the activities described in sub-
section (f).

(2) Duration

A grant awarded under this section shall be
awarded for a period not to exceed three years.

(3) Maximum and minimum grants

No grant awarded under this section shall be
less than $200,000.

(4) Special considerations

In awarding grants under this section, the
Secretary shall give special consideration to
applications that demonstrate the most poten-
tial and propose the most promising and inno-

vative approaches for—

(A) increasing the percentage of graduates
of rural secondary schools attending rural-

serving institutions of higher education;

(B) meeting the employment needs of re-
ge
dional employers with graduates of rural-
serving institutions of higher education;

(C) improving the health of the regional
economy of a rural area through a partner-
ship of local educational agencies serving
the rural area, rural-serving institutions of
higher education, and regional employers.

(5) Limitation

A rural-serving institution of higher edu-
cation shall not receive more than one grant
under this section.

(e) Applications

Each rural-serving institution of higher edu-
cation desiring a grant under this section shall
submit to the Secretary an application at such
time, in such manner, and containing such in-
formation as the Secretary may reasonably re-
quire.

(f) Required use of funds

A rural-serving institution of higher education
that receives a grant under this section shall use
grant funds for at least three of the following
four purposes:

(1) To improve postsecondary enrollment
rates for rural secondary school students at
rural-serving institutions of higher education,
which may include—

(A) programs to provide students and
families with counseling related to applying for
postsecondary education, and Federal and
State financial assistance for postsecondary
education;

(B) programs that provide students and
families of rural high schools access and ex-
posure to campuses, classes, programs, and
internships of rural-serving institutions of
higher education, including covering the
cost of transportation to and from such in-
stitutions; and
(C) other initiatives that assist students and families in applying for and developing interest in attending rural-serving institutions of higher education.

(2) To increase enrollment rates of nontraditional students in degree programs at rural-serving institutions of higher education, which may include—

(A) programs to provide nontraditional students with counseling related to applying for postsecondary education, and Federal and State financial assistance for postsecondary education;

(B) community outreach initiatives to encourage nontraditional students to enroll in a rural-serving institution of higher education; and

(C) programs to improve the enrollment of nontraditional students in two-year degree programs and the transition of nontraditional students articulating from two-year degree programs to four-year degree programs.

(3) To create or strengthen academic programs at rural-serving institutions of higher education to prepare graduates to enter into high-need occupations in the regional and local economies.

(4) To provide additional career training to students of rural-serving institutions of higher education in fields relevant to the regional economy.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART R—CAMPUS-BASED DIGITAL THEFT PREVENTION

§1161r. Campus-based digital theft prevention

(a) Program authority

From the amounts appropriated under subsection (d), the Secretary may make grants to institutions of higher education, or consortia of such institutions, and enter into contracts with such institutions, consortia, and other organizations, to develop, implement, operate, improve, and disseminate programs of prevention, education, and cost-effective technological solutions, to reduce and eliminate the illegal downloading and distribution of intellectual property. Such grants or contracts may also be used for the support of higher education centers that will provide training, technical assistance, evaluation, dissemination, and associated services and assistance to the higher education community as determined by the Secretary and institutions of higher education.

(b) Awards

Grants and contracts shall be awarded under this section on a competitive basis.

(c) Applications

An institution of higher education or a consortium of such institutions that desires to receive a grant or contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require by regulation.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART S—TRAINING FOR REALTIME WRITERS

§1161s. Program to promote training and job placement of realtime writers

(a) Authorization of grant program

(1) In general

From the amounts appropriated to carry out this section, the Secretary shall award grants, on a competitive basis, to eligible entities under paragraph (2) to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 613 of title 47 and the rules prescribed thereunder.

(2) Eligible entities

For purposes of this section, an eligible entity is a court reporting program that—

(A) has a curriculum capable of training realtime writers qualified to provide captioning services;

(B) is accredited by an accrediting agency or association recognized by the Secretary; and

(C) is participating in student aid programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(3) Priority in grants

In determining whether to make grants under this section, the Secretary shall give a priority to eligible entities that, as determined by the Secretary—

(A) possess the most substantial capability to increase their capacity to train realtime writers;

(B) demonstrate the most promising collaboration with educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or

(C) propose the most promising and innovative approaches for initiating or expanding training or job placement assistance efforts with respect to realtime writers.

(4) Duration of grant

A grant under this section shall be for a period of up to five years.

(5) Maximum amount of grant

The amount of a grant provided under this subsection to an eligible entity may not exceed $1,500,000 for the period of the grant.
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(b) Application

(1) In general

To receive a grant under subsection (a), an eligible entity shall submit an application to the Secretary at such time and in such manner as the Secretary may require. The application shall contain the information set forth under paragraph (2).

(2) Information

Information in the application of an eligible entity for a grant under subsection (a) shall include the following:

(A) A description of the training and assistance to be funded using the grant amount, including how such training and assistance will increase the number of realtime writers.

(B) A description of performance measures to be utilized to evaluate the progress of individuals receiving such training and assistance in matters relating to enrollment, completion of training, and job placement and retention.

(C) A description of the manner in which the eligible entity will ensure that recipients of scholarships, if any, funded by the grant will be employed and retained as realtime writers.

(D) A description of the manner in which the eligible entity intends to continue providing the training and assistance to be funded by the grant after the end of the grant period, including any partnerships or arrangements established for that purpose.

(E) A description of how the eligible entity will work with local boards (as defined in section 2801 of title 29) to ensure that training and assistance to be funded with the grant will further local workforce goals, including the creation of educational opportunities for individuals who are from economically disadvantaged backgrounds or are displaced workers.

(F) Additional information, if any, on the eligibility of the eligible entity for priority in the making of grants under subsection (a)(3).

(G) Such other information as the Secretary may require.

c) Use of funds

(1) In general

An eligible entity receiving a grant under subsection (a) shall use the grant amount for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including—

(A) recruitment;

(B) subject to paragraph (2), the provision of scholarships;

(C) distance learning;

(D) further developing and implementing both English and Spanish curricula to more effectively train individuals in realtime writing skills, and education in the knowledge necessary for the delivery of high quality closed captioning services;

(E) mentoring students to ensure successful completion of the realtime training and providing assistance in job placement;

(F) encouraging individuals with disabilities to pursue a career in realtime writing; and

(G) the employment and payment of personnel for the purposes described in this paragraph.

(2) Scholarships

(A) Amount

The amount of a scholarship under paragraph (1)(B) shall be based on the amount of need of the scholarship recipient for financial assistance, as determined in accordance with part E of subchapter IV.

(B) Agreement

Each recipient of a scholarship under paragraph (1)(B) shall enter into an agreement with the school in which the recipient is enrolled to provide realtime writing services for the purposes described in subsection (a)(1) for a period of time appropriate (as determined by the Secretary) for the amount of the scholarship received.

(C) Coursework and employment

The Secretary shall establish requirements for coursework and employment for recipients of scholarships under paragraph (1)(B), including requirements for repayment of scholarship amounts in the event of failure to meet such requirements for coursework and employment. The Secretary may waive, in whole or in part, the requirements for repayment of scholarship amounts on the basis of economic conditions which may affect the ability of scholarship recipients to find work as realtime writers.

(3) Administrative costs

The recipient of a grant under this section may not use more than five percent of the grant amount to pay administrative costs associated with activities funded by the grant. The Secretary shall use not more than five percent of the amount available for grants under this section in any fiscal year for administrative costs of the program.

(4) Supplement not supplant

Grant amounts under this section shall supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

d) Report

(1) In general

Each eligible entity receiving a grant under subsection (a) shall submit to the Secretary, at the end of the grant period, a report on the activities of such entity with respect to the use of grant amounts during the grant period.

(2) Report information

Each report of an eligible entity under paragraph (1) shall include—

(A) an assessment by the entity of the effectiveness of activities carried out using such funds in increasing the number of realtime writers, using the performance measures submitted by the eligible entity in the application for the grant under subsection (b)(2); and
(B) a description of the best practices identified by the eligible entity for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers.

(3) Summaries
The Secretary shall summarize the reports submitted under paragraph (2) and make such summary available on the Department’s website.

(e) Authorization of appropriations
There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART T—CENTERS OF EXCELLENCE FOR VETERAN STUDENT SUCCESS

§ 1161t. Model programs for Centers of Excellence for Veteran Student Success

(a) Purpose
It is the purpose of this section to encourage model programs to support veteran student success in postsecondary education by coordinating services to address the academic, financial, physical, and social needs of veteran students.

(b) Grants authorized
(1) In general
Subject to the availability of appropriations under subsection (f), the Secretary shall award grants to institutions of higher education to develop model programs to support veteran student success in postsecondary education.

(2) Grant period
A grant awarded under this section shall be awarded for a period of three years.

(c) Use of grants
(1) Required activities
An institution of higher education receiving a grant under this section shall use such grant to carry out a model program that includes—

(A) establishing a Center of Excellence for Veteran Student Success on the campus of the institution to provide a single point of contact to coordinate comprehensive support services for veteran students;

(B) establishing a veteran student support team, including representatives from the offices of the institution responsible for admissions, registration, financial aid, veterans benefits, academic advising, student health, personal or mental health counseling, career advising, disabilities services, and any other office of the institution that provides support to veteran students on campus;

(C) providing a coordinator whose primary responsibility is to coordinate the model program carried out under this section;

(D) monitoring the rates of veteran student enrollment, persistence, and completion; and

(E) developing a plan to sustain the Center of Excellence for Veteran Student Success after the grant period.

(2) Other authorized activities
An institution of higher education receiving a grant under this section may use such grant to carry out any of the following activities with respect to veteran students:

(A) Outreach and recruitment of such students.

(B) Supportive instructional services for such students, which may include—

(i) personal, academic, and career counseling, as an ongoing part of the program;

(ii) tutoring and academic skill-building instruction assistance, as needed; and

(iii) assistance with special admissions and transfer of credit from previous postsecondary education or experience.

(C) Assistance in obtaining student financial aid.

(D) Housing support for veteran students living in institutional facilities and commuting veteran students.

(E) Cultural events, academic programs, orientation programs, and other activities designed to ease the transition to campus life for veteran students.

(F) Support for veteran student organizations and veteran student support groups on campus.

(G) Coordination of academic advising and admissions counseling with military bases and national guard units in the area.

(H) Other support services the institution determines to be necessary to ensure the success of veterans in achieving educational and career goals.

(d) Application; selection
(1) Application
To be considered for a grant under this section, an institution of higher education shall submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) Selection considerations
In awarding grants under this section, the Secretary shall consider—

(A) the number of veteran students enrolled at an institution of higher education; and

(B) the need for model programs to address the needs of veteran students at a wide range of institutions of higher education, including the need to provide—

(i) an equitable distribution of such grants to institutions of higher education of various types and sizes;

(ii) an equitable geographic distribution of such grants; and

(iii) an equitable distribution of such grants among rural and urban areas.

(e) Evaluation and accountability plan
The Secretary shall develop an evaluation and accountability plan for model programs funded under this section to objectively measure the impact of such programs, including a measure of
whether postsecondary education enrollment, persistence, and completion for veterans increases as a result of such programs.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART U—UNIVERSITY SUSTAINABILITY PROGRAMS

§1161u. Sustainability planning grants authorized

(a) Program authorized

(1) In general

From the amounts appropriated to carry out this section, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall make grants to eligible entities to establish sustainability programs to design and implement sustainability practices, including in the areas of energy management, greenhouse gas emissions reductions, green building, waste management, purchasing, transportation, and toxics management, and other aspects of sustainability that integrate campus operations with multidisciplinary academic programs and are applicable to the private and government sectors.

(2) Period of grant

The provision of payments under a grant under paragraph (1) shall extend over a period of not more than four fiscal years.

(3) Definition of eligible entity

For purposes of this part, the term “eligible entity” means—

(A) an institution of higher education; or

(B) a nonprofit consortium, association, alliance, or collaboration operating in partnership with one or more institutions of higher education that received funds for the implementation of work associated with sustainability programs under this part.

(b) Applications

(1) In general

To receive a grant under subsection (a)(1), an eligible entity shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may reasonably require.

(2) Assurances

Such application shall include assurances that the eligible entity—

(A) has developed a plan, including an evaluation component, for the program component established pursuant to subsection (c);

(B) shall use Federal funds received from a grant under subsection (a) to supplement, not supplant, non-Federal funds that would otherwise be available for projects funded under this section;

(C) shall provide, with respect to any fiscal year in which such entity receives funds from a grant under subsection (a)(1), non-Federal funds or an in-kind contribution in an amount equal to 20 percent of funds from such grant, for the purpose of carrying out the program component established pursuant to subsection (c); and

(D) shall collaborate with business, government, and the nonprofit sectors in the development and implementation of its sustainability plan.

(c) Use of funds

(1) Individual institutions

Grants made under subsection (a) may be used by an eligible entity that is an individual institution of higher education for the following purposes:

(A) To develop and implement administrative and operations practices at an institution of higher education that test, model, and analyze principles of sustainability.

(B) To establish multidisciplinary education, research, and outreach programs at an institution of higher education that address the environmental, social, and economic dimensions of sustainability.

(C) To support research and teaching initiatives that focus on multidisciplinary and integrated environmental, economic, and social elements.

(D) To establish initiatives in the areas of energy management, greenhouse gas emissions reductions, green building, waste management, purchasing, toxics management, transportation, and other aspects of sustainability.

(E) To support student, faculty, and staff work at an institution of higher education to implement, research, and evaluate sustainable practices.

(F) To expand sustainability literacy on campus.

(G) To integrate sustainability curricula in all programs of instruction, particularly in business, architecture, technology, manufacturing, engineering, and science programs.

(2) Partnerships

Grants made under subsection (a) may be used by an eligible entity that is a nonprofit consortium, association, alliance, or collaboration operating in partnership with one or more institutions of higher education for the following purposes:

(A) To conduct faculty, staff, and administrator training on the subjects of sustainability and institutional change.

(B) To compile, evaluate, and disseminate best practices, case studies, guidelines and standards regarding sustainability.

(C) To conduct efforts to engage external stakeholders such as business, alumni, and accrediting agencies in the process of building support for research, education, and technology development for sustainability.

(D) To conduct professional development programs for faculty in all disciplines to enable faculty to incorporate sustainability content in their courses.

(E) To create the analytical tools necessary for institutions of higher education to
assess and measure their individual progress toward fully sustainable campus operations and fully integrating sustainability into the curriculum.

(F) To develop educational benchmarks for institutions of higher education to determine the necessary rigor and effectiveness of academic sustainability programs.

(d) Reports

An eligible entity that receives a grant under subsection (a) shall submit to the Secretary, for each fiscal year in which the entity receives amounts from such grant, a report that describes the work conducted pursuant to subsection (c), research findings and publications, administrative savings experienced, and an evaluation of the program.

(e) Allocation requirement

The Secretary may not make grants under subsection (a) to any eligible entity in a total amount that is less than $250,000 or more than $2,000,000.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART V—MODELING AND SIMULATION PROGRAMS

§ 1161v. Modeling and simulation

(a) Purpose; definition

(1) Purpose

The purpose of this section is to promote the study of modeling and simulation at institutions of higher education, through the collaboration with new and existing programs, and specifically to promote the use of technology in such study through the creation of accurate models that can simulate processes or recreate real life, by—

(A) establishing a task force at the Department of Education to raise awareness of and define the study of modeling and simulation;

(B) providing grants to institutions of higher education to develop new modeling and simulation degree programs; and

(C) providing grants for institutions of higher education to enhance existing modeling and simulation degree programs.

(2) Definition

In this section, the term “modeling and simulation” means a field of study related to the application of computer science and mathematics to develop a level of understanding of the interaction of the parts of a system and of a system as a whole.

(b) Establishment of task force

(1) In general

Subject to the availability of appropriations, the Secretary shall establish a task force within the Department to study modeling and simulation and to support the development of the modeling and simulation field. The activities of such task force shall include—

(A) helping to define the study of modeling and simulation (including the content of modeling and simulation classes and programs);

(B) identifying best practices for such study;

(C) identifying core knowledge and skills that individuals who participate in modeling and simulation programs should acquire; and

(D) providing recommendations to the Secretary with respect to—

(i) the information described in subparagraphs (A) through (C); and

(ii) a system by which grants under this section will be distributed.

(2) Task force membership

The membership of the task force under this subsection shall be composed of representatives from—

(A) institutions of higher education with established modeling and simulation degree programs;

(B) the National Science Foundation;

(C) Federal Government agencies that use modeling and simulation extensively, including the Department of Defense, the National Institutes of Health, the Department of Homeland Security, the Department of Health and Human Services, the Department of Energy, and the Department of Transportation;

(D) private industries with a primary focus on modeling and simulation;

(E) national modeling and simulation organizations; and

(F) the Office of Science and Technology Policy.

(c) Enhancing modeling and simulation at institutions of higher education

(1) Enhancement grants authorized

(A) In general

The Secretary is authorized to award grants, on a competitive basis, to eligible institutions to enhance modeling and simulation degree programs at such eligible institutions.

(B) Duration of grant

A grant awarded under this subsection shall be awarded for a three-year period, and such grant period may be extended for not more than two years if the Secretary determines that an eligible institution has demonstrated success in enhancing the modeling and simulation degree program at such eligible institution.

(C) Minimum grant amount

Subject to the availability of appropriations, a grant awarded to an eligible institution under this subsection shall not be less than $750,000.

(D) Non-Federal share

Each eligible institution receiving a grant under this subsection shall provide, from non-Federal sources, in cash or in-kind, an
amount equal to 25 percent of the amount of the grant to carry out the activities supported by the grant. The Secretary may waive the non-Federal share requirement under this subparagraph for an eligible institution if the Secretary determines a waiver to be appropriate based on the financial ability of the institution.

(2) Eligible institutions

For the purposes of this subsection, an eligible institution is an institution of higher education that—

(A) has an established modeling and simulation degree program, including a major, minor, or career-track program; or

(B) has an established modeling and simulation certificate or concentration program.

(3) Application

To be considered for a grant under this subsection, an eligible institution shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require. Such application shall include—

(A) a letter from the president or provost of the eligible institution that demonstrates the institution’s commitment to the enhancement of the modeling and simulation program at the institution of higher education;

(B) an identification of designated faculty responsible for the enhancement of the institution’s modeling and simulation program; and

(C) a detailed plan for how the grant funds will be used to enhance the modeling and simulation program of the institution.

(4) Uses of funds

A grant awarded under this subsection shall be used by an eligible institution to carry out the plan developed in accordance with paragraph (3)(C) to enhance modeling and simulation programs at the institution, which may include—

(A) in the case of an institution that is eligible under paragraph (2)(B), activities to assist in the establishment of a major, minor, or career-track modeling and simulation program at the eligible institution;

(B) expanding the multidisciplinary nature of the institution’s modeling and simulation programs;

(C) recruiting students into the field of modeling and simulation through the provision of fellowships or assistantships;

(D) creating new courses to complement existing courses and reflect emerging developments in the modeling and simulation field;

(E) conducting research to support new methodologies and techniques in modeling and simulation; and

(F) purchasing equipment necessary for modeling and simulation programs.

(d) Establishing modeling and simulation programs

(1) Establishment grants authorized

(A) In general

The Secretary is authorized to award grants to institutions of higher education to establish a modeling and simulation program, including a major, minor, career-track, certificate, or concentration program.

(B) Duration of grant

A grant awarded under this subsection shall be awarded for a three-year period, and such grant period may be extended for not more than two years if the Secretary determines that an eligible institution has demonstrated success in establishing a modeling and simulation degree program at such eligible institution.

(C) Minimum grant amount

Subject to the availability of appropriations, a grant awarded to an eligible institution under this subsection shall not be less than $750,000.

(D) Non-Federal share

Each eligible institution receiving a grant under this subsection shall provide, from non-Federal sources, in cash or in-kind, an amount equal to 25 percent of the amount of the grant to carry out the activities supported by the grant. The Secretary may waive the non-Federal share requirement under this subparagraph for an eligible institution if the Secretary determines a waiver to be appropriate based on the financial ability of the institution.

(2) Application

To apply for a grant under this subsection, an eligible institution shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require. Such application shall include—

(A) a letter from the president or provost of the eligible institution that demonstrates the institution’s commitment to the establishment of a modeling and simulation program at the institution of higher education;

(B) a detailed plan for how the grant funds will be used to establish a modeling and simulation program at the institution; and

(C) a description of how the modeling and simulation program established under this subsection will complement existing programs and fit into the institution’s current program and course offerings.

(3) Uses of funds

A grant awarded under this subsection may be used by an eligible institution to—

(A) establish, or work toward the establishment of, a modeling and simulation program, including a major, minor, career-track, certificate, or concentration program at the eligible institution;

(B) provide adequate staffing to ensure the successful establishment of the modeling and simulation program, which may include the assignment of full-time dedicated or supportive faculty; and
§ 1161w. Path to success

(a) Purpose

The purpose of this section is to encourage community supported programs that—

(1) leverage and enhance community support for at-risk young adults by facilitating the transition of such young adults who are eligible individuals into productive learning environments where such young adults can obtain the life, social, academic, career, and technical skills after being in detention, or incarcerated, particularly resources related to transition back into the community with the life, social, academic, career, and technical skills after being in detention, or incarcerated, particularly resources related to transition back into the community with

(c) Allowable uses of funds

A community college awarded a grant under this part may use such grant to—

(1) pay for tuition and transportation costs of eligible individuals;

(b) Reentry education program

(1) Grant program established

From the amounts appropriated under subsection (g), the Secretary is authorized to award grants to community colleges to enter into and maintain partnerships with juvenile detention centers and secure juvenile justice residential facilities to provide assistance, services, and education to eligible individuals who reenter the community and pursue, in accordance with the requirements of this section, at least one of the following:

(A) A certificate of completion for a specialized area of study, such as career and technical training and other alternative postsecondary educational programs.

(B) An associate’s degree.

(2) Grant period

A grant awarded under this part shall be for one four-year period, and may be renewed for an additional period as the Secretary determines to be appropriate.

(3) Application

A community college desiring to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require. Such application shall include—

(A) an assessment of the existing community resources available to serve at-risk youth;

(b) Reentry education program

(1) Grant program established

From the amounts appropriated under subsection (g), the Secretary is authorized to award grants to community colleges to enter into and maintain partnerships with juvenile detention centers and secure juvenile justice residential facilities to provide assistance, services, and education to eligible individuals who reenter the community and pursue, in accordance with the requirements of this section, at least one of the following:

(A) A certificate of completion for a specialized area of study, such as career and technical training and other alternative postsecondary educational programs.

(B) An associate’s degree.

(2) Grant period

A grant awarded under this part shall be for one four-year period, and may be renewed for an additional period as the Secretary determines to be appropriate.

(3) Application

A community college desiring to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require. Such application shall include—

(A) an assessment of the existing community resources available to serve at-risk youth;

(B) a detailed description of the program and activities the community college will carry out with such grant and

(C) a proposed budget describing how the community college will use the funds made available by such grant.

(4) Priority

In awarding grants under this part, the Secretary shall give priority to community colleges that propose to serve the highest number of priority individuals, and, among such community colleges, shall give priority to community colleges that the Secretary determines will best carry out the purposes of this part, based on the applications submitted in accordance with paragraph (3).

(e) Authorization of appropriations

There are authorized to be appropriated to the grant program under subsection (c) and the modeling and simulation program.

(C) purchase equipment necessary for a modeling and simulation program.
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out under subsection (c) shall—

(d) Education program requirements

An education program established and carried out under subsection (c) shall—

(1) include classes that are required for completion of a certificate, diploma, or degree described in subparagraph (A) or (B) of subsection (b)(1), including as appropriate courses necessary for the completion of a secondary school diploma or the recognized equivalent;

(2) provide a variety of academic programs, with various completion requirements, to accommodate the diverse academic backgrounds, learning styles, and academic and career interests of the eligible individuals who participate in the education program;

(3) offer flexible academic programs that are designed to improve the academic development and achievement of eligible individuals, and to avoid high attrition rates for such individuals; and

(4) provide for a uniquely designed education plan for each eligible individual participating in the program, which shall require such individual to receive, at a minimum, a certificate or degree described in subparagraph (A) or (B) of subsection (b)(1) to successfully complete such program.

(e) Reports

Each community college awarded a grant under this part shall submit to the Secretary a report—

(1) documenting the results of the program carried out with such grant; and

(2) evaluating the effectiveness of activities carried out through such program.

(f) Definitions

In this section:

(1) Community college

The term “community college” has the meaning given the term “junior or community college” in section 1058(f) of this title.

(2) Eligible individual

The term “eligible individual” means an individual who—

(A) is 16 to 25 years of age (inclusive); and

(B)(i) has been convicted of a criminal offense; and

(ii) is detained in, or has been released from, a juvenile detention center or secure juvenile justice residential facility.

(3) Gang-related offense

(A) In general

The term “gang-related offense” means an offense that involves the circumstances described in subparagraph (B) and that is—

(i) a Federal or State felony involving a controlled substance (as defined in section 802 of title 21) for which the maximum penalty is not less than five years;

(ii) a Federal or State crime of violence that has as an element the use or attempted use of physical force against the person of another for which the maximum penalty is not less than six months; or

(iii) a conspiracy to commit an offense described in clause (i) or (ii).

(B) Circumstances

The circumstances described in this subparagraph are that the offense described in subparagraph (A) was committed by a person whom—

(i) participates in a criminal street gang (as defined in section 522(a) of title 18) with knowledge that such gang’s members engage in or have engaged in a continuing series of offenses described in subparagraph (A); and

(ii) intends to promote or further the felonious activities of the criminal street gang or maintain or increase the person’s position in the gang.

(4) Priority individual

The term “priority individual” means an individual who—

(A) is an eligible individual;

(B) has been convicted of a gang-related offense; and

(C) has served or is serving a period of detention in a juvenile detention center or secure juvenile justice residential facility for such offense.

(5) Guidance counselor

The term “guidance counselor” means an individual who works with at-risk youth on a one-on-one basis, to establish a supportive relationship with such at-risk youth and to provide such at-risk youth with academic assistance and exposure to new experiences that enhance their ability to become responsible citizens.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

PART X—SCHOOL OF VETERINARY MEDICINE
COMPETITIVE GRANT PROGRAM

§ 1161x. School of veterinary medicine competitive
grant program

(a) In general

From the amounts appropriated under subsection (g), the Secretary of Health and Human Services shall award competitive grants to eligible entities for the purpose of improving public health preparedness through increasing the number of veterinarians in the workforce.

(b) Eligible entities

To be eligible to receive a grant under subsection (a), an entity shall—

(1) be—

(A) a public or other nonprofit school of veterinary medicine that is accredited by a nationally recognized accrediting agency or association recognized by the Secretary of Education pursuant to part G of subchapter IV;

(B) a public or nonprofit, department of comparative medicine, department of veterinary science, school of public health, or school of medicine that is accredited by a nationally recognized accrediting agency or association recognized by the Secretary of Education pursuant to part G of subchapter IV and that offers graduate training for veterinarians in a public health practice area as determined by the Secretary of Health and Human Services; or

(C) a public or nonprofit entity that—

(i) conducts recognized residency training programs for veterinarians that are approved by a veterinary specialty organization that is recognized by the American Veterinary Medical Association; and

(ii) offers postgraduate training for veterinarians in a public health practice area as determined by the Secretary of Health and Human Services; and

(2) prepare and submit to the Secretary of Health and Human Services an application, at such time, in such manner, and containing such information as the Secretary of Health and Human Services may require.

(c) Consideration of applications

The Secretary of Health and Human Services shall establish procedures to ensure that applications under subsection (b)(2) are rigorously reviewed and that grants are competitively awarded on—

(1) the ability of the applicant to increase the number of veterinarians who are trained in specified public health practice areas as determined by the Secretary of Health and Human Services;

(2) the ability of the applicant to increase capacity in research on high priority disease agents; or

(3) any other consideration the Secretary of Health and Human Services determines necessary.

(d) Preference

In awarding grants under subsection (a), the Secretary of Health and Human Services shall give preference to applicants that demonstrate a comprehensive approach by involving more than one school of veterinary medicine, department of comparative medicine, department of veterinary science, school of public health, school of medicine, or residency training program that offers postgraduate training for veterinarians in a public health practice area as determined by the Secretary of Health and Human Services.

(e) Use of funds

Amounts received under a grant under this section shall be used by a grantee to increase the number of veterinarians in the workforce through paying costs associated with the expansion of academic programs at schools of veterinary medicine, departments of comparative medicine, departments of veterinary science, or entities offering residency training programs, or academic programs that offer postgraduate training for veterinarians or concurrent training for veterinary students in specific areas of specialization, which costs may include minor renovation and improvement in classrooms, libraries, and laboratories.

(f) Definition of public health practice area

In this section, the term “public health practice area” includes the areas of bioterrorism and emergency preparedness, environmental health, food safety and food security, regulatory medicine, diagnostic laboratory medicine, and biomedical research.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years. Amounts appropriated under this subsection shall remain available until expended.


PART Y—EARLY FEDERAL PELL GRANT
COMMITMENT DEMONSTRATION PROGRAM

§ 1161y. Early Federal Pell Grant Commitment
Demonstration Program

(a) Demonstration program authority

(1) In general

The Secretary is authorized to carry out an Early Federal Pell Grant Commitment Demonstration Program under which—

(A) the Secretary awards grants to four State educational agencies, in accordance with paragraph (2), to pay the administrative expenses incurred in participating in the demonstration program under this section; and

(B) the Secretary awards Federal Pell Grants to participating students in accordance with this section and consistent with section 1070a of this title.

(2) Grants

(A) In general

From amounts appropriated under subsection (h) for a fiscal year, the Secretary is authorized to award grants to four State
educational agencies to enable the State educational agencies to pay the administrative expenses incurred in participating in the demonstration program under this section by carrying out a demonstration project under which eighth grade students described in subsection (b)(1)(B) receive a commitment early in the students’ academic careers to receive a Federal Pell Grant.

(B) Equal amounts

The Secretary shall award grants under this section in equal amounts to each of the four participating State educational agencies.

(b) Demonstration project requirements

Each of the four demonstration projects assisted under this section shall meet the following requirements:

(1) Participants

(A) In general

The State educational agency shall make participation in the demonstration project available to two cohorts of students, which shall consist of—

(i) one cohort of eighth grade students who begin participating in the first academic year for which funds have been appropriated to carry out this section; and

(ii) one cohort of eighth grade students who begin participating in the academic year succeeding the academic year described in clause (i).

(B) Students in each cohort

Each cohort of students shall consist of not more than 10,000 eighth grade students who qualify for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), who are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), shall be eligible to participate in the demonstration project.

(c) State educational agency applications

(1) In general

Each State educational agency desiring to participate in the demonstration program under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

(2) Contents

Each application shall include—

(A) a description of the proposed targeted information campaign for the demonstration project and a copy of the plan described in subsection (f)(2);

(B) a description of the student population that will receive an early commitment to receive a Federal Pell Grant under this section;

(C) an assurance that the State educational agency will fully cooperate with the ongoing evaluation of the demonstration project; and

(D) such other information as the Secretary may require.

(d) Selection considerations

(1) Selection of State educational agencies

In selecting State educational agencies to participate in the demonstration program under this section, the Secretary shall consider—

(A) the number and quality of State educational agency applications received;

(B) a State educational agency’s—

(i) financial responsibility;

(ii) administrative capability;

(iii) commitment to focusing resources, in addition to any resources provided on students who receive assistance under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.];

(iv) ability and plans to run an effective and thorough targeted information campaign for students served by local educational agencies eligible to participate in the demonstration project; and

(v) ability to ensure the participation in the demonstration project of a diverse group of students, including with respect to ethnicity and gender.

(2) Local educational agency

In selecting local educational agencies to participate in a demonstration project under this section, the State educational agency shall consider—
(A) the number and quality of local educational agency applications received;
(B) a local educational agency’s—
  (i) financial responsibility;
  (ii) administrative capability;
  (iii) commitment to focusing resources on students who receive assistance under part A of title I of the Elementary and Secondary Education Act of 1965;
  (iv) ability and plans to run an effective and thorough targeted information campaign for students served by the local educational agency; and
  (v) ability to ensure the participation in the demonstration project of a diverse group of students.

(e) Evaluation

(1) In general

From amounts appropriated under subsection (h) for a fiscal year, the Secretary shall reserve not more than $1,000,000 to award a grant or contract to an organization outside the Department for an independent evaluation of the impact of the demonstration program assisted under this section.

(2) Competitive basis

The grant or contract shall be awarded on a competitive basis.

(3) Matters evaluated

The evaluation described in this subsection shall—
  (A) determine the number of students who were encouraged by the demonstration program to pursue higher education;
  (B) identify the barriers to the effectiveness of the demonstration program;
  (C) assess the cost-effectiveness of the demonstration program in improving access to higher education;
  (D) identify the reasons why participants in the demonstration program either received or did not receive a Federal Pell Grant;
  (E) identify intermediate outcomes related to postsecondary education attendance, such as whether participants—
    (i) were more likely to take a college-preparatory curriculum while in secondary school;
    (ii) submitted any applications to institutions of higher education; and
    (iii) took the PSAT, SAT, or ACT;
  (F) identify the number of students participating in the demonstration program who pursued an associate’s degree or a bachelor’s degree, or other postsecondary education;
  (G) compare the findings of the demonstration program with respect to participants to comparison groups (of similar size and demographics) that did not participate in the demonstration program; and
  (H) identify the impact of the demonstration program on the parents of students eligible to participate in the program.

(4) Dissemination

The findings of the evaluation shall be reported to the Secretary, who shall widely disseminate the findings to the public.

(f) Targeted information campaign

(1) In general

Each State educational agency receiving a grant under this section shall, in cooperation with the participating local educational agencies within the State and the Secretary, develop a targeted information campaign for the demonstration project assisted under this section.

(2) Plan

Each State educational agency receiving a grant under this section shall include in the application submitted under subsection (c) a written plan for the State educational agency proposed targeted information campaign. The plan shall include the following:

(A) Outreach

A description of the outreach to students and the students’ families at the beginning and end of each academic year of the demonstration project, at a minimum.

(B) Distribution

A description of how the State educational agency plans to provide the outreach described in subparagraph (A) and to provide the information described in subparagraph (C).

(C) Information

The annual provision by the State educational agency to all students and families participating in the demonstration project of information regarding—
  (i) the estimated statewide average cost of attendance for an institution of higher education for each academic year, which cost data shall be disaggregated by—
   (I) type of institution, including—
     (aa) two-year public degree-granting institutions of higher education;
     (bb) four-year public degree-granting institutions of higher education; and
     (cc) four-year private degree-granting institutions of higher education;
   (II) component, including—
     (aa) tuition and fees; and
     (bb) room and board;
   (ii) Federal Pell Grants, including—
     (I) the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student may be eligible for each award year;
     (II) when and how to apply for a Federal Pell Grant; and
     (III) what the application process for a Federal Pell Grant requires;
   (iii) State-specific postsecondary education savings programs;
   (iv) State merit-based financial aid;
   (v) State need-based financial aid; and
   (vi) Federal financial aid available to students, including eligibility criteria for such aid and an explanation of the Federal financial aid programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, such as the Student Guide published by the Department (or any successor to such document).
(3) Cohorts

The information described in paragraph (2)(C) shall be provided annually to the two successive cohorts of students described in subsection (b)(1)(A) for the duration of the students’ participation in the demonstration project.

(4) Reservation

Each State educational agency receiving a grant under this section shall reserve not more than 15 percent of the grant funds received each fiscal year to carry out the targeted information campaign described in this subsection.

(g) Supplement, not supplant

A State educational agency shall use grant funds received under this section only to supplement the funds that would, in the absence of such grant funds, be made available from non-Federal sources for students participating in the demonstration project under this section, and not to supplant such funds.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(1)(B), (5), is act June 30, 1946, ch. 393, 50 Stat. 379, which is classified generally to chapter 13 (§ 1751 et seq.) of subchapter I of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.


Amendments

2010—Subsec. (f)(2)(C)(ii)(I). Pub. L. 111–152 substituted “the Federal Pell Grant amount, determined under section 1070a(b)(2)(A) of this title, for which a student may be eligible for each award year” for “the maximum Federal Pell Grant for each award year”.


Effective Date of 2010 Amendment

Amendment by Pub. L. 111–152 effective July 1, 2010, see section 2101(c) of Pub. L. 111–152, set out as a note under section 1070a of this title.

PART Z—HENRY KUALOHA GIUGNI KUPUNA MEMORIAL ARCHIVES

§ 1161z. Henry Kuualoha Giugni Kupuna Memorial Archives

(a) Grants authorized

From the amounts appropriated under subsection (c), the Secretary is authorized to award a grant to the University of Hawaii Academy for Creative Media for the establishment, maintenance, and periodic modernization of the Henry Kuualoha Giugni Kupuna Memorial Archives at the University of Hawaii.

(b) Use of funds

The Henry Kuualoha Giugni Kupuna Memorial Archives shall use the grant funds received under this section—

(1) to facilitate the acquisition of a secure web-accessible repository of Native Hawaiian historical data rich in ethnic and cultural significance to the United States for preservation and access by future generations;

(2) to award scholarships to facilitate access to postsecondary education for students who cannot afford such education;

(3) to support programmatic efforts associated with the web-based media projects of the archives;

(4) to create educational materials, from the contents of the archives, that are applicable to a broad range of indigenous students, such as Native Hawaiians, Alaskan Natives, and Native American Indians;

(5) to develop outreach initiatives that introduce the archival collections to elementary schools and secondary schools;

(6) to develop supplemental web-based resources that define terms and cultural practices innate to Native Hawaiians;

(7) to rent, lease, purchase, maintain, or repair educational facilities to house the archival collections;

(8) to rent, lease, purchase, maintain, or repair computer equipment for use by elementary schools and secondary schools in accessing the archival collections;

(9) to provide preservice and in-service teacher training to develop a core group of kindergarten through grade 12 teachers who are able to provide instruction in a way that is relevant to the unique background of indigenous students, such as Native Hawaiians, Alaskan Natives, and Native American Indians, in order to—

(A) facilitate greater understanding by teachers of the unique background of indigenous students; and

(B) improve student achievement; and

(10) to increase the economic and financial literacy of postsecondary education students through the dissemination of best practices used at other institutions of higher education regarding debt and credit management and economic decisionmaking.
(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.


PART AA—MASTERS AND POSTBACCALAUREATE PROGRAMS

§ 1161aa. Masters degree programs

In addition to any amounts appropriated under section 1136c of this title, there are authorized to be appropriated, and there are appropriated, out of any funds in the Treasury not otherwise appropriated, $11,500,000 for fiscal year 2009 and for each of the five succeeding fiscal years to carry out subpart 4 of part A of subchapter VII in order to provide grants under sections 1136a and 1136b of this title, in the minimum amount authorized under such sections, to all institutions eligible for grants under such sections.


§ 1161aa–1. Postbaccalaureate programs

In addition to any amounts appropriated under part B of subchapter V, there are authorized to be appropriated, and there are appropriated, out of any funds in the Treasury not otherwise appropriated, $11,500,000 for fiscal year 2009 and for each of the five succeeding fiscal years to carry out part B of subchapter V.


CHAPTER 29—INTERNATIONAL STUDIES AND RESEARCH

§ 1171. Omitted

CODIFICATION

Section, Pub. L. 89–698, §2, Oct. 29, 1966, 80 Stat. 1066, which set out the Congressional findings and declaration of purpose in providing for a program of international studies and research, was omitted in view of the repeal of the remaining sections of this chapter by Pub. L. 96–374, title VI, §601(c)(2), Oct. 3, 1980, 94 Stat. 1472.


EFFECTIVE DATE OF REPEAL

Sections repealed effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of this title.


Section. Pub. L. 89–698, title I, §104, Oct. 29, 1966, 80 Stat. 1068, prohibited Federal control of education curriculum, program of instruction, administration, personnel of any educational institution, selection of library resources, and content of any material developed or published, and was superseded by section 1232a of this title.


EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of this title.

CHAPTER 30—BASIC EDUCATION FOR ADULTS

SUBCHAPTER I—BASIC PROGRAM PROVISIONS


SHORT TITLE OF 1991 AMENDMENT


SHORT TITLE OF 1988 AMENDMENT

Section 2101 of Pub. L. 100–297 provided that part B (§§2101, 2102) of title II of Pub. L. 100–297, enacting this
chapter, was to be cited as the “Adult Education Amendments of 1988”.

SHORT TITLE

CONGRESSIONAL FINDINGS REGARDING NATIONAL LITERACY ACT OF 1991

DEFINITIONS

SUBCHAPTER II—STATE PROGRAMS
PART A—Basic State Grants


PART B—Programs for Corrections Education and Education for Other Institutionalized Individuals


PART C—State Administrative Responsibilities


PART D—Planning and Applications


search, development, demonstration, dissemination, and evaluation activities, prior to the general amendment of this chapter by Pub. L. 100–297.

**PART F—DEMONSTRATION PROJECTS**


**SUBSECTION III—WORKPLACE LITERACY AND ENGLISH LITERACY GRANTS**


Section 1213d, Pub. L. 89–750, title III, § 385, as added Pub. L. 100–297, title II, § 2102, Apr. 28, 1988, 102 Stat. 319, related to limitation on grants for sectarian instruction or religious worship or to a school or department of divinity.

FAMILY LITERACY PUBLIC BROADCASTING PROGRAM


CHAPTER 31—GENERAL PROVISIONS CONCERNING EDUCATION

 Sec.
 1221. Short title: applicability; definitions.
 1221–1. National policy with respect to equal educational opportunity.
 1221–2. National policy with respect to museums as educational institutions.

SUBCHAPTER I—FUNCTIONS OF DEPARTMENT OF EDUCATION

1221a to 1221e–1c. Repealed.

1221e–1d. Use of Council staff and facilities.

1221e–2. Repealed.

1221e–3. General authority of Secretary.


1221f to 1221l. Repealed.

1221j. Television program assistance.

SUBCHAPTER II—APPROPRIATIONS AND EVALUATIONS

PART I—APPROPRIATIONS

1222. Repealed.

1223. Forward funding.

1224. Repealed.

1225. Availability of appropriations on academic or school-year basis; additional period for obligation of funds.

1226. Repealed.

1226a. Contingent extension of programs.

1226a–1. Payments; installments, advances or reimbursable, and adjustments.

PART 2—PLANNING AND EVALUATION OF FEDERAL EDUCATION ACTIVITIES

1226b. Responsibility of States to furnish information.

1226c. Biennial evaluation report.

1226c–1. Availability of education reports, etc., to Congressional committees.

1226d. 1227. Repealed.

1228. Prohibition against use of appropriated funds for busing.

1228a. Equity for students, teachers, and other program beneficiaries.

1228b. Coordination.

1228c. Disclosure requirements.

SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

1230. Repealed.

PART 1—GENERAL AUTHORITY

1231. Joint funding of programs.

1231a. Collection and dissemination of information.

1231b, 1231b–1. Repealed.

1231c. Review of applications.

1231d. Advice, counsel, and technical assistance.

1231e. Repealed.

1231d. Parental involvement and dissemination.
§ 1221. Short title; applicability; definitions

(a) Short title

This chapter may be cited as the “General Education Provisions Act”.

(b) Applicability of chapter

(1) Except as otherwise provided, this chapter applies to each applicable program of the Department of Education.

(2) Except as otherwise provided, this chapter does not apply to any contract made by the Department of Education.

(c) Definitions

As used in this chapter, the following terms have the following meanings:

(1) The term “applicable program” means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary or the Department has administrative responsibility under the Department of Education Organization Act [20 U.S.C. 3401 et seq.] or under Federal law effective after the effective date of that Act.

(2) The term “applicable statute” means—

(A) the Act or the title, part, section, or any other subdivision of an Act, as the case may be, that authorizes the appropriation for an applicable program;

(B) this chapter; and

(C) any other statute that by its terms expressly controls the administration of an applicable program.

(3) The term “Secretary” means the Department of Education.

(d) Application of other laws unaffected

728, as amended, and which is classified generally to chapter 76 (§6101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of Title 42 and Tables.

**AMENDMENTS**

1994—Pub. L. 103–382 amended section generally, inserting provision that this chapter not apply to any contract made by the Department of Education, substituting definition of "Department" as meaning Department of Education for definition of "Director" as meaning Director of the National Institute of Education, striking out reference to the Civil Rights Act of 1964, adding references to title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, and striking out provision authorizing appropriations for any fiscal year of such sums as may be necessary to carry out the provisions of this chapter.

1974—Subsec. (a). Pub. L. 93–380 redesignated subsec. (d) as (a). Former subsec. (a) provisions "The provisions of this chapter shall apply to any program for which the Commissioner of Education has responsibility for administration, either as provided by statute or by delegation pursuant to statute. Amendments to Acts authorizing such programs shall not affect the applicability of this chapter unless so specified by such amendments" were incorporated in part in subsec. (b). Pub. L. 93–380 incorporated subsec. (a) provisions in subsec. (b), inserting introductory text "Except where otherwise specified," substituting "an administrative head of an education agency has administrative responsibility as provided by law or by delegation of authority pursuant to law" for "the Commissioner of Education has responsibility for administration, either as provided by statute or by delegation pursuant to statute."

Amending such programs shall not affect the applicability of this chapter unless so specified by such amendments. Former subsec. (b) definition provisions for "Commissioner", "Secretary", and "applicable program" incorporated in subsec. (c)(1).

Subsec. (c). Pub. L. 93–380 incorporated subsec. (b)(3), (1), (2) provisions in par. (1)(A), (D), (F), respectively; inserted in par. (1)(A) "under the terms of subsection (b) of this section,"; and added pars. (1)(B), (C), (E), (2), and (3). Former subsec. (c) provisions "There are here- by appropriated to be appropriated for any fiscal year, as part of the appropriations for salaries and expenses for the Office of Education, such sums as the Congress may determine to be necessary to carry out the provisions of this chapter," incorporated in subsec. (d).

Subsec. (d). Pub. L. 93–380 substituted subsec. (c) provisions in provisions designated as subsec. (d), inserting introductory text "Except as otherwise limited in this chapter," and deleting ", as part of the appropriations for salaries and expenses for the Office of Education," after "fiscal year."

Former subsec. (d) re-designated (a).


Subsecs. (b), (c). Pub. L. 91–230, §401(a)(2)(B), added subsecs. (b) and (c).

1968—Pub. L. 90–576 substituted general reference to "any program for which the Commissioner of Education has responsibility for administration, either as provided by statute or by delegation pursuant to statute" for specific references to "title I of the Elementary and Secondary Education Act of 1965 (title II of Pub. L. 89–272), title IV, VI, VII, and VIII of the Elementary and Secondary Education Act of 1965, and the Adult Education Act of 1966 (title III of the Elementary and Secondary Education Amendments of 1966)," as now in effect or hereafter from time to time amended, as the areas in which the provisions of this chapter shall apply and inserted provision that amendments to the programs covered shall not affect the applicability of this chapter unless so specified by such amendments.

**Effect Date of 1994 Amendment**

Section 3(a)(2) of Pub. L. 103–382 provided that: "Title II of this Act (§§211 to 272 of Pub. L. 103–382, see Tables for classification) and the amendments made by title II of this Act shall take effect on the date of enactment of this Act [Oct. 20, 1994], except that section 236 [enacting section 1228a of this title] (equity for students, teachers, and other program beneficiaries) of such title shall be effective—

"(A) July 1, 1995 for noncompetitive programs in which funds are allocated on the basis of a formula; and

"(B) for programs that are conducted on a competitive basis, with respect to appropriations for use under such programs in fiscal year 1995 and in subsequent fiscal years."

**Effect Date of 1974 Amendment**

Section 555(b) of Pub. L. 93–380 provided that: "The amendments made by subsection (a) [amending this section and section 1221p of this title] shall be effective on the tenth day after the date of enactment of this Act [Aug. 21, 1974]."

**Effect Date of 1968 Amendment**

Pub. L. 100–297, title III, §3401, Apr. 28, 1988, 102 Stat. 344, provided that: "This part [part C (§3401–3403) of title III of Pub. L. 100–297, amending sections 1221e and 1221e–1 of this title and enacting provisions set out as a note under section 1221–1 of this title] may be cited as the 'National Assessment of Educational Progress Improvement Act'."

**Effect Date of 1978 Amendment**

Pub. L. 95–561, title XII, §1211, Nov. 1, 1978, 92 Stat. 2338, provided that: "This part [enacting sections 1221–3 and 1231g of this title and amending section 1221e–1 of this title] may be cited as the 'Control of Paperwork Amendments of 1979'."

**Effect Date of 1974 Amendment**

Section 513(b)(2) of Pub. L. 93–380 provided that: "This section [enacting section 1223c of this title and provisions set out as a note under section 1232c of this title] may be cited as the 'Family Educational Rights and Privacy Act of 1974'."

**Executive Order No. 11761**


**Executive Order No. 12687**


§ 1221–1. National policy with respect to equal educational opportunity

Recognizing that the Nation's economic, political, and social security require a well-educated citizenry, the Congress (1) reaffirms, as a matter of high priority, the Nation's goal of equal educational opportunity, and (2) declares it to be
the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers.


**Codification**

Section was enacted as part of Education Amendments of 1974, and not as part of General Education Provisions Act which comprises this chapter.

**Effective Date**

Section 2(c) of Pub. L. 93–380 provided that:

“(1) Unless otherwise specified, each provision of this Act [see Tables for classification] and each amendment made by this Act shall be effective on and after the sixthtieth day after the enactment of this Act [Aug. 21, 1974].

“(2) In any case where the effective date for an amendment is expressly stated to be effective after June 30, 1973, or on July 1, 1973, such amendment shall be deemed to have been enacted on June 30, 1973.

**Study of Civilian Aviation Training Programs**


**National Commission on Independent Higher Education**

Pub. L. 102–325, title XIV, part B, July 23, 1992, 106 Stat. 824, as amended by Pub. L. 103–206, § 2(k)(12), Dec. 20, 1993, 107 Stat. 2486, provided that part B could be cited as the “National Independent Colleges and Universities Discovery Act”, provided for establishment, membership, etc., of National Commission on Independent Higher Education, which Commission was to develop factual base for understanding status of independent colleges and universities, their contributions to public priorities, and effects of national higher education policies on independent nonprofit sector, to review issuance of Federal regulations regarding independent colleges and universities, and suggest means by which independent colleges and universities can be held accountable for use of public resources without inappropriate intrusion into institutional autonomy, and to address the relationship between Federal and State policies in independent colleges and universities, particularly with respect to student access and choice, financial, institutional subsidies, and institutional accountability, and directed that the Commission terminate 3 years after July 23, 1992, prior to repeal by Pub. L. 105–332, § 6(b)(2), Oct. 31, 1998, 112 Stat. 3128.

**National Commission on Cost of Higher Education**

Pub. L. 102–325, title XIV, part C, July 23, 1992, 106 Stat. 827, as amended by Pub. L. 103–206, § 2(k)(12), Dec. 20, 1993, 107 Stat. 2486, provided for establishment, membership, etc., of National Commission on the Cost of Higher Education, which Commission was to make findings and specific recommendations regarding the increase in tuition costs compared with other commodities and services as well as methods of reducing increased tuition costs, administrative costs of colleges and universities and methods of reducing such costs, the extent to which Federal, State, and local regulations contribute to increased tuition costs and the increase in the cost of higher education, and extent to which the lack of student financial assistance programs contribute to increased tuition costs, and directed that the Commission cease to exist on the date that is 90 days after the Commission submits its final report, which report was to be submitted to the President and Congress not later than Sept. 1, 1994, prior to repeal by Pub. L. 105–332, § 6(b)(2), Oct. 31, 1998, 112 Stat. 3128.

**Education Council Act of 1991**

Pub. L. 102–62, June 27, 1991, 105 Stat. 303, as amended by Pub. L. 102–359, § 1, Aug. 26, 1992, 106 Stat. 962; Pub. L. 103–206, § 1, Aug. 1, 1994, 108 Stat. 1456; Pub. L. 103–382, title III, § 362, Oct. 20, 1994, 108 Stat. 3975, provided for establishment, membership, etc., of National Education Commission on Time and Learning, which Commission was to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, the extent and role of homework, how time is being used for academic subjects, year-round professional opportunities for teachers, and use of school facilities for extended learning programs, report to Congress and the Secretary on the results of the study not later than 2 years after the Commission concludes its first meeting, and terminate Sept. 30, 1994, and provided for establishment, membership, etc., of National Council on Education Standards and Testing, which Council was to advise the American people whether suitable specific education standards should be established for the knowledge and skills that students should possess and that schools should impart in order that American student leave grades 4, 8, and 12 demonstrating competency in challenging subject matters and whether an appropriate system of voluntary national tests or examination should be established to provide prompt and accurate information on the progress made towards specific education standards by individual students, schools, school systems, States, and the Nation as a whole, submit a final report, as soon as possible, but not later than Dec. 31, 1991, to Congress, Secretary of Education, and National Education Goals Panel, and cease to exist 90 days after submitting its final report.

**National Commission on Responsibilities for Financing Postsecondary Education**

Pub. L. 99–498, title XIII, § 1321, Oct. 17, 1986, 100 Stat. 1584, as amended by Pub. L. 101–324, July 6, 1990, 104 Stat. 300; Pub. L. 102–170, title III, § 306, Nov. 26, 1991, 105 Stat. 1136, established as an independent agency in executive branch a commission to be known as National Commission on Responsibilities for Financing Postsecondary Education, directed Commission to study and investigate extent to which (1) there is a consistent and coherent Federal policy regarding the appropriate family role in financing costs of postsecondary education for family members, (2) current Federal laws and regulations promote stated Federal policy, and (3) extent to which State laws which remove parental responsibilities for children over 18 years of age conflict with Federal policy in this area, directed Commission to (A) summarize appropriate findings of National Commission on Student Financial Assistance, (B) recommend to Congress a comprehensive analysis on extent to which consensus exists regarding appropriate role of family in financing postsecondary education, and (C) recommend changes in current law required to achieve desired Federal policy, and provided that Commission would terminate 2 years after first meeting of its member, prior to repeal by Pub. L. 105–332, § 6(a), Oct. 31, 1998, 112 Stat. 3127.

**Study of Classroom Use of Volunteers**

101 Stat. 362, directed National Academy of Sciences to conduct a thorough study of how volunteers could best be used in the classroom with the study to (1) feasibility of using recipients of student loans as part of repayment of such loans, (2) use of older Americans as such volunteers, (3) use of business persons and other professionals as volunteers, and (4) place of incentives to encourage volunteerism, and with National Academy of Sciences to prepare and submit to Congress a report, together with a description of programs on use of volunteers and with such recommendations as deemed appropriate not later than one year after entering into a contract to conduct the study, prior to repeal by Pub. L. 105–332, § 6(a), Oct. 31, 1998, 112 Stat. 3127.

**Native Hawaiian Education Study**

Pub. L. 96–374, title XIII, § 1331, Oct. 3, 1980, 94 Stat. 1499, established an Advisory Council on Native Hawaiian Education consisting of seven members appointed by Secretary of Education, after consultation with Governor of Hawaii, from among individuals who were professionals in various fields relating to human development, and who were familiar with educational problems of Native Hawaiians, to conduct a study to (A) evaluate effectiveness of State and federally assisted educational programs in serving Native Hawaiian children and extent to which such programs achieve their purposes with respect to such children, and (B) take into account special health, social, and psychological needs of Native Hawaiian children, and to submit a report to Secretary and to Congress not later than Jan. 31, 1983, containing findings and recommendations of the Council, with the Council to terminate 60 days after submission of its report.

**Appropriations Not Authorized for Native Hawaiian Education Study for Fiscal Year 1982, 1983, or 1984**


**Financing of Elementary and Secondary Education; Studies and Surveys; Advisory Panel; Reports**


**White House Conference on Education; Report of Findings and Recommendations; National Conference Committee; Establishment, Membership, Report to President and Congress, Travel Expenses; Apportionment of Funds; Authorization of Appropriations**


**§ 1221–2. National policy with respect to museums as educational institutions**

The Congress, recognizing——

(1) that museums serve as sources for schools in providing education for children,

(2) that museums provide educational services of various kinds for educational agencies and institutions and institutions of higher education, and

(3) that the expense of the educational services provided by museums is seldom borne by the educational agencies and institutions taking advantage of the museums’ resources, declares that it is the sense of the Congress that museums be considered educational institutions and that the cost of their educational services become more frequently borne by educational agencies and institutions benefiting from those services.


**Codification**

Section was enacted as part of Education Amendments of 1974, and not as part of General Education Provisions Act which comprises this chapter.

**Effective Date**

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93–380, set out as a note under section 1221–1 of this title.


**Subchapter I—Functions of Department of Education**


Effective Date of Repeal
Repeal effective Oct. 1, 1980, see section 1391(a) of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of this title.


Existing Grants and Contracts

Savings Provision
Pub. L. 103–227, title IX, § 914, Mar. 31, 1994, 108 Stat. 223, which provided that grants and contracts for the research and development centers and regional educational laboratories and Information Center Clearinghouses and regional educational laboratories assisted under this section as in effect on Mar. 30, 1994, would remain in effect until the termination date of such contracts, was repealed by Pub. L. 107–279, title IV, § 403(2), Nov. 5, 2002, 116 Stat. 1985.


§ 1221e–3. General authority of Secretary

The Secretary, in order to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, and subject to limitations as may be otherwise imposed by law, is authorized to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.


Codification
Section was enacted as part of the Higher Education Amendments of 1986, and not as part of the General Education Provisions Act which comprises this chapter.
$1221e-4

TITLE 20—EDUCATION


AMENDMENTS

1994—Pub. L. 103–382, §222, amended section generally, substituting single par. relating to general authority of Secretary for former subsecs. (a) to (d) relating to general authority of administrative heads of education agencies.

1978—Subsec. (a). Pub. L. 95–561, §1243(b), inserted “or by delegation of authority pursuant to law” after “vested in him by law” in provisions preceding par. (i) and, in par. (i), inserted “and governing the applicable programs administered by” after “the manner of operation of”.

Subsecs. (b) to (d). Pub. L. 95–561, §1244, added subsec. (b), redesignated former subsecs. (b) and (c) as (c) and (d), and in subsec. (d) as so redesignated substituted “For the purposes of this chapter” for “For the purposes of this section”.  

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1590 of Pub. L. 95–561, as amended by Pub. L. 96–46, §2(a)(10), Aug. 6, 1979, 93 Stat. 340, provided that: “(a) Except as otherwise specifically provided in this Act, the provisions of this Act and the amendments and repeals made by this Act [see Tables for classification] shall take effect October 1, 1978.  

“(b) The provisions of section 421(b)(2) [now 421(b)(2)] of the General Education Provisions Act [section 1225(b)(2) of this title], as added by section 1245 of this Act, shall not take effect with respect to the use of funds under section 421 of the Elementary and Secondary Education Act of 1965 [former section 3101 of this title] until October 1, 1980, except at the option of local educational agencies.”

EFFECTIVE DATE

Section 502(b) of Pub. L. 93–380 provided that: “The amendments made by this section [enacting this section and section 1221e–2 and amending sections 1221b and 1221e of this title] shall be effective on the tenth day after the date of enactment of this Act [Aug. 21, 1974].”

§1221e-4. Educational impact statement

Notwithstanding any other provision of law, no regulation affecting any institution of higher education in the United States, promulgated on or after October 3, 1980, shall become effective unless such agency causes to be published in the Federal Register a copy of such proposed regulation together with an educational impact assessment statement which shall determine whether any information required to be transmitted under such regulation is already being gathered by or is available from any other agency or authority of the United States. Notwithstanding the exception provided under section 553(b) of title 5, such statement shall be based upon the record established under the provisions of section 553 of title 5, compiled during the rulemaking proceeding regarding such regulation. (Pub. L. 90–247, title IV, §411, formerly §409, as added Pub. L. 96–374, title XIII, §1306, Oct. 3, 1980, 94 Stat. 1498; renumbered §411, Pub. L. 103–382, title II, §212(b)(1), Oct. 20, 1994, 108 Stat. 3913.)

CODIFICATION

October 3, 1980, referred to in text, was in the original “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 96–374, which enacted this section, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 411 of Pub. L. 90–247 was renumbered section 420, and is classified to section 1223 of this title. Another prior section 411 of Pub. L. 90–247 was classified to section 1222 of this title prior to repeal by Pub. L. 95–380. Another prior section 411 of Pub. L. 90–247 was renumbered section 490, and is classified to section 1231 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of this title.


EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.


§1221j. Television program assistance

(a) Granting and contracting authority

The Secretary of Education is authorized to make grants to and contracts with public and private agencies for the production, development, or distribution (or any combination thereof) of programs designed for television systems, whether broadcast or nonbroadcast.

(b) Administration and studies

The Secretary of Education shall be responsible for the administration of this section and shall also conduct surveys, research, and evaluation studies which may assist in decisions to support pilot programs for full scale production. (Pub. L. 95–561, title XV, §1527, Nov. 1, 1978, 92 Stat. 2579; Pub. L. 96–88, title III, §301, title V, §567, Oct. 17, 1979, 93 Stat. 677, 692.)

CODIFICATION

Section was enacted as part of Education Amendments of 1978, and not as part of General Education Provisions Act which comprises this chapter.

EFFECTIVE DATE

TRANSFER OF FUNCTIONS

“Secretary of Education” substituted for “Secretary” in subsec. (a) and “Assistant Secretary for Education” in subsec. (b), pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3941 and 3507 of this title and which transferred functions (relating to education) of Secretary of Health, Education, and Welfare, and functions of Assistant Secretary for Education, to Secretary of Education.

SUBCHAPTER II—APPROPRIATIONS AND EVALUATIONS

AMENDMENTS


PART 1—APPROPRIATIONS

AMENDMENTS


EFFECTIVE DATE OF REPEAL

Section repealed effective Aug. 21, 1974, see section 506(b) of Pub. L. 93–380, set out as an Effective Date of 1974 Amendment note under section 1225 of this title.

§ 1223. Forward funding

(a) To the end of affording the responsible Federal, State, and local officers adequate notice of available Federal financial assistance for carrying out ongoing education activities and projects, appropriations for grants, contracts, or other payments under any applicable program are authorized to be included in the appropriations Act for the fiscal year preceding the fiscal year during which such activities and projects shall be carried out.

(b) In order to effect a transition to the timing of appropriation action authorized by subsection (a) of this section, the application of this section may result in the enactment, in a fiscal year, of separate appropriations for an applicable program (whether in the same appropriations Act or otherwise) for two consecutive fiscal years.


PRIOR PROVISIONS

A prior section 420 of Pub. L. 90–247 was renumbered section 426, and is classified to section 1228 of this title.

AMENDMENTS

1994—Pub. L. 103–382, §231, amended section generally. Prior to amendment, section read as follows: “To the end of affording the responsible State, local, and Federal officers concerned adequate notice of available Federal financial assistance for education, appropriations for grants, contracts, or other payments under any applicable program are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application under such program will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.”

1970—Pub. L. 91–230 substituted “applicable program” and “under such program” for “Act referred to in section 1221 of this title” and “under any such Act”, respectively.

NATIONAL POLICY WITH RESPECT TO ADVANCE FUNDING OF EDUCATION PROGRAMS

Section 802 of Pub. L. 93–380 provided that: “The Congress declares it to be the policy of the United States to implement immediately and continually section 411 (now 420) of the General Education Provisions Act (this section), relating to advance funding for education programs, so as to afford responsible State, local, and Federal officers adequate notice of available Federal financial assistance for education authorized under this Act. Pub. L. 93–380, see Short Title of 1974 Amendment note set out under section 6301 of this title) and other Acts of Congress.’

Provision effective on and after sixthtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93–380, set out as an Effective Date note under section 1221–1 of this title.


EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 21, 1974, see section 506(b) of Pub. L. 93–380, set out as an Effective Date of 1974 Amendment note under section 1225 of this title.

§ 1225. Availability of appropriations on academic or school-year basis; additional period for obligation of funds

(a) Academic or differing fiscal year

Appropriations for any fiscal year for grants, loans, contracts, or other payments under any applicable program may, in accordance with regulations of the Secretary, be made available for obligation by the recipient on the basis of an academic or school year differing from such fiscal year.

(b) Succeeding fiscal year

(1) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this chapter is applicable during any fiscal year, which are not obligated and expended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal
year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year.

(2) Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with—

(A) the Federal statutory and regulatory provisions relating to such program which are in effect for such succeeding fiscal year, and

(B) any program plan or application submitted by such educational agencies or institutions for such program for such succeeding fiscal year.

c) Institution of judicial proceedings

If any funds appropriated to carry out any applicable program are not obligated pursuant to a spending plan submitted in accordance with section 1341(a) of title 31 and become available for obligation after the institution of a judicial proceeding seeking the release of such funds, then such funds shall be available for obligation and expenditure until the end of the fiscal year which begins after the termination of such judicial proceeding.


PRIOR PROVISIONS

A prior section 421 of Pub. L. 90–247 was classified to section 1230 of this title prior to repeal by Pub. L. 103–382.

Another prior section 421 of Pub. L. 90–247 was renumbered section 430, and is classified to section 1231 of this title.

Another prior section 421 of Pub. L. 90–247 was renumbered section 437, and is classified to section 1232 of this title.

AMENDMENTS


Subsec. (a). Pub. L. 103–382, § 232(b)(1), struck out “to educational agencies or institutions” after “other payments” and substituted “obligation” for “expenditure” and “recipient” for “agency or institution concerned”.

Subsec. (b). Pub. L. 103–382, § 232(b)(2), which directed the substitution in the original of “(b)(1) Notwithstanding” for ““(b) Notwithstanding”, could not be executed because the original already reads ““(b)(1) Notwithstanding””.


1978—Subsec. (b). Pub. L. 95–561 struck out “ending prior to October 1, 1979,” after “applicable during any fiscal year.” In existing provisions, designated existing provisions as thus amended as par. (1), and added par. (2).


1974—Subsec. (b). Pub. L. 93–380, § 506(a)(1)(E), substituted “1978” for “1973” and inserted “by educational agencies or institutions” and “by such agencies and institutions” after “obligated and expended” and “obligation and expenditure”, respectively.


1970—Pub. L. 91–230 substituted “applicable program” for “Act referred to in section 1221 of this title”, inserted “loans,” after “grants,” designated existing provisions as thus amended as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–561 effective Oct. 1, 1978, but the provisions of subsec. (b)(2) of this section not to take effect with respect to the use of funds under former section 3101 of this title until Oct. 1, 1980, except at the option of local educational agencies, see section 1530 of Pub. L. 95–561, as amended, set out as a note under section 1221e–3 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 506(b) of Pub. L. 93–380 provided that: “The amendments made by subsection (a) of this section [enacting sections 1226a to 1226d of this title, amending this section and section 1227 of this title, and repealing sections 1222 and 1224 of this title] shall become effective on the date of enactment of this Act [Aug. 21, 1974].”

INDOCHINESE REFUGEE CHILDREN EDUCATION ASSISTANCE PROGRAMS; APPLICABILITY OF CONTINGENT EXTENSION PROVISIONS


§ 1226a. Contingent extension of programs

(a) Automatic extension

The authorization of appropriations for, or duration of, an applicable program shall be automatically extended for one additional fiscal year unless Congress, in the regular session that ends prior to the beginning of the terminal fiscal year of such authorization or duration, has passed legislation that becomes law and extends or repeals the authorization or duration of such program.

(b) Amount of appropriation

The amount authorized to be appropriated for the period of automatic extension under subsection (a) of this section of an applicable program shall be the amount authorized to be ap-
proportioned for such program for the terminal fiscal year of the applicable program.

(c) Acts and determinations necessary for program continuation

If the Secretary is required, in the terminal fiscal year of an applicable program, to carry out certain acts or make certain determinations that are necessary for the continuation of such program, such acts or determinations shall be required to be carried out or made during the period of automatic extension under subsection (a) of this section.

(d) Application to commissions, councils, and committees required by law to terminate

This section shall not apply to the authorization of appropriations for a commission, council, or committee which is required by an applicable statute to terminate on a date certain.


Prior Provisions

A prior section 422 of Pub. L. 90–247 was renumbered section 431, and is classified to section 1231a of this title.

Another prior section 422 of Pub. L. 90–247 was renumbered section 436, and is classified to section 1232a of this title.

Amendments

1994—Pub. L. 103–382, §261(a), substituted “Secretary” for “Commissioner”.

Part 2—Planning and Evaluation of Federal Education Activities

Amendments


§1226b. Responsibility of States to furnish information

(a) Biennial reports; contents

Each State educational agency shall submit to the Secretary a report on or before March 15 of every second year. Each such report shall include—

(1) information with respect to the uses of Federal funds in such State in the two preceding fiscal years under any applicable program under the jurisdiction of the State educational agency; and

(2) information with respect to the uses of Federal funds in such State in the two preceding fiscal years under any Federal program administered by the State that provided grants or contracts to a local educational agency in the State.

(b) Additional contents

Each report submitted under subsection (a) of this section shall—

(1) list, with respect to each program for which information is provided, all grants made to and contracts entered into with local educational agencies and other public and private agencies and institutions within the State during each fiscal year concerned;

(2) analyze the information included in the report by local educational agency and by program;

(3) include the total amount of funds available to the State under each such program for each fiscal year concerned; and

(4) be made readily available by the State to local educational agencies and institutions within the State and to the public.
(c) Delinquent or incomplete reports

If the Secretary does not receive a report by the date required under subsection (a) of this section, or receives an incomplete report, the Secretary, not later than 30 days after such report is required to be submitted, shall take all reasonable measures to obtain the delinquent or incomplete information from the State educational agency.

(d) Availability of information

When the Secretary receives a report required under subsection (a) of this section, the Secretary shall provide such information to the National Center for Education Statistics, and shall make such information available, at a reasonable cost, to any individual who requests such information.

(e) Congressional telecommunications network

The Secretary shall consult with the Speaker and Minority Leader of the House of Representatives and the Majority and Minority Leaders of the Senate regarding the costs and feasibility of making the information described in subsection (a) of this section available as part of a telecommunications network that is readily accessible to every member of Congress and other interested parties.

(f) Reports by Secretary

On or before August 15 of each year in which reports are submitted under subsection (a) of this section, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. Such report shall include—

1. an analysis of the content and data quality of such reports;
2. a compilation of statistical data derived from such reports; and
3. information obtained by the Secretary with respect to—
   A. direct grants made to local educational agencies by the Federal Government; and
   B. contracts entered into between such agencies and the Federal Government.


Prior Provisions

Provisions similar to those in subsections (a), (b), and (f) of this section were contained in section 1221e–1a of this title prior to repeal by Pub. L. 103–382.


A prior section 424 of Pub. L. 90–247 was classified to section 1231b–1 of this title prior to repeal by Pub. L. 103–382.

Another prior section 424 of Pub. L. 90–247 was renumbered section 433, and is classified to section 1231c of this title.

Another prior section 424 of Pub. L. 90–247 was renumbered section 434, and was classified to section 1232c of this title prior to repeal by Pub. L. 95–561.
§ 1226c–1. Availability of education reports, etc., to Congressional committees

Any evaluation report or data or information collected in preparation of such report, which is paid for with appropriated funds, shall be made available, upon request, within 4 days to the chairman and ranking minority member of the Committee on Education and Labor of the Senate, and of the Committee on Labor and Human Resources of the Senate.


CODIFICATION

Section was enacted as part of Education Amendment of 1978, and not as part of General Education Provisions Act which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103–437 substituted “Labor and Human Resources” for “Human Resources”.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.
Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95–561, set out as an Effective Date of 1978 Amendment note under section 1221e–3 of this title.


§ 1228. Prohibition against use of appropriated funds for busing

No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, ex-
cept for funds appropriated pursuant to title VIII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.], but not including any portion of such funds as are attributable to children counted under section 8003(d) of such Act [20 U.S.C. 7703(d)] or residing on property described in section 8013(10) of such Act [20 U.S.C. 7713(10)].


REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title VIII of the Act is classified generally to subchapter VIII (§ 7701 et seq.) of this title or section 1231c of this title.

Another prior section 434 of Pub. L. 90–247 was renumbered section 1231d of this title.

Another prior section 427 of Pub. L. 90–247 was renumbered section 1231e of this title.

AMENDMENTS

2000—Pub. L. 106–398 substituted “section 8003(d) of such Act” for “subsections (d) and (g) of section 8003 of such Act”.

1994—Pub. L. 103–382, § 261(b), substituted “title VIII of the Elementary and Secondary Education Act of 1965” for “subchapter I of chapter 13 of this title” and “subsections (d) and (g) of section 8003 of such Act or residing on property described in section 8013(10) of such Act” for “subparagraph (C) of section 238(d)(2) of this title or section 241(h)(2) of this title”.

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93–380, set out as an Effective Date of 1994 Amendment note under section 1221 of this title.

§ 1228a. Equity for students, teachers, and other program beneficiaries

(a) Purpose

The purpose of this section is to assist the Department in implementing the Department’s mission to ensure equal access to education and to promote educational excellence throughout the Nation, by—

(1) ensuring equal opportunities to participate for all eligible students, teachers, and other program beneficiaries in any project or activity carried out under an applicable program; and

(2) promoting the ability of such students, teachers, and beneficiaries to meet high standards.

(b) Requirement to develop steps to ensure equity

The Secretary shall require each applicant for assistance under an applicable program (other than an individual) to develop and describe in such applicant’s application the steps such applicant proposes to take to ensure equitable access to, and equitable participation in, the project or activity to be conducted with such assistance, by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age.

(c) Establishment of criteria

The Secretary may establish criteria and provide technical assistance for meeting the requirements of this section.

(d) Effect on other laws

Nothing in this section shall be construed to alter in any way the rights or responsibilities established under the laws cited in section 1221(d) of this title.

PRIOR PROVISIONS

A prior section 427 of Pub. L. 90–247 was renumbered section 434, and is classified to section 1231d of this title.

Another prior section 427 of Pub. L. 90–247 was renumbered section 429, and was classified to section 1231f of this title prior to repeal by Pub. L. 103–382.

EFFECTIVE DATE

Section effective July 1, 1995, for noncompetitive programs in which funds are allocated on the basis of a formula and for programs that are conducted on a competitive basis, with respect to appropriations for use under such programs in fiscal year 1995 and in subsequent fiscal years, see section 3(a)(2) of Pub. L. 103–382, set out as an Effective Date of 1994 Amendment note under section 1221 of this title.

§ 1228b. Coordination

The National Assessment Governing Board, the Advisory Council on Education Statistics, the National Education Goals Panel, and any other board established to analyze, address, or approve education content or student performance standards and assessments shall coordinate and interact with one another in order to ensure that each such entity does not duplicate activities to assist the States in reforming their educational systems.


PRIOR PROVISIONS

A prior section 428 of Pub. L. 90–247 was renumbered section 435, and is classified to section 1231e of this title.

AMENDMENTS

1996—Pub. L. 104–134 struck out “the National Education Standards and Improvement Council,” before “and any other board”.

§ 1228c. Disclosure requirements

(a) In general

Each educational organization, prior to enrolling a minor and prior to accepting funds for the
cost of a minor’s participation in an educational program operated by such organization, shall disclose the following information in written form to the minor or the minor’s parent.

(1) Method of solicitation and selection

The method of solicitation and selection of participants in the educational program, including—

(A) the origin of any mailing list used for such solicitation and selection;
(B) any recruitment through a local school official, teacher, or school personnel, including any compensation or other benefit offered to such official, teacher, or personnel for the recommendation of a minor for participation in the educational program;
(C) any open enrollment activity, including the method of outreach; and
(D) any cooperation with, or sponsorship by, a membership organization, including a description of the cooperation or sponsorship and the name of each such organization.

(2) Cost and fees

Information regarding the cost of the educational program and information regarding the distribution of any enrollment fee, including—

(A) the amount paid for, and the percentage of the total educational program cost of, each feature of the educational program, including—

(i) food;
(ii) lodging;
(iii) transportation;
(iv) program staffing;
(v) textbooks, syllabi, or other scholastic educational program materials;
(vi) speaker fees; and
(vii) administrative expenses, including expenses related to—
(I) the preparation of nonscholastic educational program materials;
(II) the provision of financial assistance;
(III) mailing list rental or other recruitment activity; and
(IV) administrative salaries and consulting fees;

(B) the identity of the organization or business providing each of the features described in clauses (i) through (vii) of subparagraph (A); and

(C) the nature of any relationship of any board member, officer, or employee of the educational organization to any organization or business described in subparagraph (B), including the salary or other compensation paid by such organization or business to such board member, officer, or employee.

(b) Nondiscriminatory enrollment and service policy

(1) In general

Each educational organization shall include a verifiable statement in all enrollment or recruitment material that the educational organization does not—

(A) fail or refuse to hire, or discharge, any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment; or
(B) exclude any student from participation in an educational program, discriminate against any student in providing the benefits associated with such program (including any scholarship or financial assistance, and use of any facility), or subject the student to discrimination under such program, on the basis of race, disability, or residence in a low-income area.

(2) Construction

Nothing in this subsection shall be construed to entitle a student to—

(A) participation in an educational program or any benefit associated with such program; or
(B) a waiver of any fee charged for such participation or benefit.

(c) Enforcement

The Secretary shall—

(1)(A) widely disseminate information about the requirements of this section to State and local school officials and parents; and
(B) require educational organizations to submit appropriate information or assurances regarding such organizations’ compliance with this section; and
(2) take whatever other steps the Secretary determines are appropriate to enforce this section, including—

(A) promulgating regulations;
(B) establishing a complaint process;
(C) referring complaints to the relevant Federal, State, or local authorities for appropriate action;
(D) alerting educational agencies, schools, and parents to the practices of educational organizations that violate the provisions of this section; and
(E) imposing civil fines (not to exceed $1,000 per violation) on educational organizations that knowingly violate this section.

(d) Definitions

As used in this section:

(1) Disability

The term “disability” has the same meaning given to such term by section 12102(2) of title 42.

(2) Educational organization

(A) Except as provided in subparagraphs (B) and (C), the term “educational organization” means any organization or entity that—

(i) provides an educational program for a fee; and
(ii) recruits students through means such as commercial media, direct mailings, school recruitment programs, school administrators, teachers or staff, or current or former participants in an educational program offered by such organization or entity.

(B) The definition in subparagraph (A) shall not include—

(i) a local educational agency, State educational agency, a State department of education, or an elementary or secondary
school as defined by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(ii) an institution of higher education as defined by section 1001 of this title; or

(iii) a local organization sponsored by an elementary or secondary school, a recreational organization, an entertainment organization, a local sports activity group, or a social club.

(C) For the purpose of subsection (a) of this section only, such term does not include an organization or entity that provides an educational program if such organization or entity—

(i) recruits, for participation in such program, solely through a local school official; and

(ii) does not offer a local school official, teacher, or other school personnel compensation (other than compensation for actual expenses incurred in performing chapernon activities or for participating in separate, professionally-staffed teacher training and technical assistance seminars and workshops related to such program) or any other benefit for such recruitment.

(3) Educational program

(A) Except as provided in subparagraph (B), the term “educational program” means a special honors program, seminar, citizenship experience, government study program, educational vacation, student exchange program, or other educational experience or honor—

(i) that is generally directed toward minors or secondary school students;

(ii) for which a tuition or enrollment fee is charged;

(iii) that is offered away from a student’s regular place of school attendance;

(iv) that includes not less than one supervised night away from home; and

(v) that is intended to enhance a student’s regular course of study.

(B) Such term does not include a recreational program, or a social or religious activity.

(4) Local school official

The term “local school official” means the highest administrative official serving a school district, or such individual’s designee.

(5) Minor

The term “minor” means an individual who has not attained the age of 18 years.

(6) Membership organization

The term “membership organization” includes any organization that maintains a membership list or collects dues or membership fees from its members.

(7) Recreational organization

The term “recreational organization” includes any organization or entity that has as its primary function pleasure, amusement, or sports activities.

1 So in original. The comma probably should not appear.

(8) Recreational program

The term “recreational program” includes any activity or service that is intended as an entertainment pastime.


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 429 of Pub. L. 90–247 was classified to section 1323f of this title prior to repeal by Pub. L. 103–382.

AMENDMENTS


EFFECTIVE DATE OF 1998 AMENDMENT


SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

AMENDMENTS


§ 1230. Joint funding of programs

(a) Joint projects; transfers of appropriations; contracts or grants; criteria

(1) The Secretary is authorized to enter into arrangements with other Federal agencies to jointly carry out projects of common interest, to transfer to such agencies funds appropriated under any applicable program, and to receive and use funds from such agencies, for projects of common interest.

(2) Funds transferred or received pursuant to paragraph (1) shall be used only in accordance with the statutes authorizing the appropriation of such funds, and shall be made available by contract or grant only to recipients eligible to receive such funds under such statutes.
(3) If the Secretary enters into an agreement under this subsection for the administration of a project, the agency administering the project shall use such agency's procedures to award contracts or grants and to administer such awards, unless the parties to the agreement specify the use of procedures of another agency that is a party to the agreement.

(4) If the Secretary has entered into an agreement authorized under this subsection and the Secretary and the heads of the other agencies participating in the agreement determine that joint funding is necessary to address a special need consistent with the purposes and authorized activities of each program that provides funding under the joint project, the Secretary and the heads of the other participating agencies may develop a single set of criteria for the jointly funded project and require each applicant for such project to submit a single application for review by the participating agencies.

(b) Joint applications

The Secretary may develop the criteria for, and require the submission of, joint applications under two or more applicable programs under which funds are awarded on a competitive basis, and may jointly review and approve such applications separately from other applications under such programs, when the Secretary determines that such joint awards are necessary to address a special need consistent with the purposes and authorized activities of each such program. Any applicant for such a joint award shall meet the eligibility requirements of each such program.

(c) Limitations on joint funding

The Secretary may not construe the provisions of this section to take precedence over a limitation on joint funding contained in an applicable statute.

(d) Congressional notice

(1) The Secretary shall provide notice to the Committee on Education and Labor of the House of Representatives and to the Committee on Labor and Human Resources of the Senate of each joint funding agreement made with other Federal agencies not later than 60 days after the making of such agreements.

(2) Such notice shall include—

(A) a description of the purpose and objectives of the joint funding arrangement;

(B) the amounts and sources, by program, of the funds dedicated to such arrangement; and

(C) the criteria developed to govern the award of contracts and grants.


PRIOR PROVISIONS

A prior section 430 of Pub. L. 90–247 was renumbered section 436, and is classified to section 1231g of this title.

AMENDMENTS

1994—Pub. L. 103–382, § 241, amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to administration of education programs, delegations of authority, utilization of services and facilities of other agencies, and consolidation of programs.


CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1972 AMENDMENT; INCONSISTENT PROVISIONS INEFFECTIVE

Section 302(c) of Pub. L. 92–318 provided that: "The provisions of section 421(c) [now 430(c)] of the General Education Provisions Act [subsec. (c) of this section] shall be effective upon the date of enactment of this Act [June 23, 1972]. No provision of any law which is inconsistent with such section 421(c) shall be effective nor shall any such provision control to the extent of such inconsistency, unless such a law is enacted after the date of enactment of this Act."
1976—Subsec. (b). Pub. L. 94–482 substituted “June 30” for “March 31”.
1972—Subsec. (a)(4). Pub. L. 92–318, §301(b)(2)(B), sub-
stituted “(as set forth in section 1221c(a) of this title)” for “(as set forth in section 1 of this title)”.

Effective Date of 1976 Amendment
Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise pro-
vided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for
authorization of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1001 of this
title.

Effective Date of 1972 Amendment
Section 301(b)(2)(B) of Pub. L. 92–318 provided that the amendment made by Pub. L. 92–318 is effective July 1,
1972.

Evaluation Practices and Procedures at National, State, and Local Levels for Federally Funded Elementary and Secondary Education Programs; Report to Congress
93 Stat. 677, 692, directed Secretary of Education to conduct a study of evaluation practices and procedures at the
national, State, and local levels with respect to federally funded elementary and secondary educational programs and
include in the first annual report to Congress submitted more than eighteen months after Nov. 1, 1978, proposals and
recommendations for the revision or modification of any part or all of such practices and procedures.


Section 1231b, Pub. L. 90–247, title IV, §423, formerly

1979, 93 Stat. 677, 692, related to compilation of assisted innovative projects.

§ 1231b–2. Review of applications
(a) Persons aggrieved; final State educational agency actions; hearing; ruling and reasons for ruling; rescission of final actions
In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be exp-
dended in accordance with a State plan approved by the Secretary, any applicant or recipient aggri-
grieved by the final action of the State educational agency, and alleging a violation of State or Federal law, rules, regulations, or
guidelines governing the applicable program, in (1) disapproving or failing to approve its applica-
tion or program in whole or part, (2) failing to provide funds in amounts in accord with the require-
ments of laws and regulations, (3) ordering, in accordance with a final State audit resolution deter-
mination, the repayment of misspent or misapplied Federal funds, or (4) determining fur-
ther assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request, the
State educational agency shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing, the
State educational agency shall issue its written ruling, including reasons therefor. If it deter-
mines such final action was contrary to Federal or State law, or the rules, regulations, and
guidelines governing such applicable program, it shall rescind such final action.

(b) Appeals to Secretary; persons aggrieved; notice; orders prescribing appropriate agency actions; finality of agency fact findings; interim orders pending appeal or review
Any applicant or recipient aggrieved by the failure of a State educational agency to rescind its final action after a review under subsection (a) of this section may appeal such action to the Secretary. An appeal under this subsection may be taken only if notice of such appeal is filed with the Secretary within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its re-
view under subsection (a) of this section. If, on such appeal, the Secretary determines the final action of the State educational agency was con-
trary to Federal law, or the rules, regulations, and guidelines governing the applicable pro-
gram, he shall issue an order to the State educational agency prescribing appropriate action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Secretary may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

(c) Records; availability
Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

(d) Termination of assistance for noncompliance with provisions or orders
If any State educational agency fails or refuses to comply with any provision of this section, or with any order of the Secretary under subsection (b) of this section, the Secretary shall forthwith terminate all assistance to the State educational agency under the applicable program affected or issue such other orders as the Secretary may deem appropriate to achieve such compliance.

AMENDMENTS

1994—Subsec. (a), Pub. L. 103–382, §243(1)(C), (D), inserted comma after “the hearing” in third sentence and substituted “guidelines governing such applicable program, it,” for “guidelines, governing such applicable program,” in fourth sentence.

Pub. L. 103–382, §243(1)(A), (B), substituted “Secretary, any applicant” for “Commissioner, and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965, any applicant”.

Subsec. (b), Pub. L. 103–382, §243(2), substituted “Secretary” for “Commissioner” wherever appearing.

Subsec. (d), Pub. L. 103–382, §243(3), substituted “Secretary under” for “Commissioner under” and “Secretary shall” for “Commissioner’s shall” and inserted before period at end “or issue such other orders as the Secretary may deem appropriate to achieve such compliance”.

1978—Subsec. (a), Pub. L. 95–561 added cl. (3) relating to the ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misspent Federal funds, and redesignated former cl. (3) as (4).

EFFECTIVE DATE OF 1978 AMENDMENT


EFFECTIVE DATE

Section 508(b) of Pub. L. 93–380 provided that: “The amendments made by subsection (a) [enacting this section and section 1231b–1 of this title] shall be effective on the date of enactment of this Act [Aug. 21, 1974].”

§1231c. Advice, counsel, and technical assistance

(a) State educational agencies, institutions of higher education

For the purpose of carrying out more effectively Federal education programs, the Secretary is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, institutions of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools—

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of, applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

(b) Cost allocation, collection, etc., by local educational agencies

The Secretary shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will ensure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

(c) Dissemination

In awarding contracts and grants for the development of curricula or instructional materials, the Secretary and the Director of the National Institute of Education shall—

(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in such dissemination;

(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

(3) insure that grants to public agencies and nonprofit private organizations and contracts with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the curricula and instructional materials will reach the target populations for which they were developed.

(d) Annual report by Secretary

The Secretary’s annual report shall contain a statement of the Secretary’s activities under this section.


PRIOR PROVISIONS

A prior section 433 of Pub. L. 90–247 was renumbered section 439, and is classified to section 1232b of this title.

Another prior section 433 of Pub. L. 90–247 was renumbered section 443, and was classified to section 1232b of this title prior to repeal by Pub. L. 103–382.

AMENDMENTS

1978—Subsecs. (c), (d). Pub. L. 95–561 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1978 AMENDMENT


TRANSFER OF FUNCTIONS

“Secretary” and “Secretary’s”, meaning the Secretary of Education, substituted for “Commissioner” and “Commissioner’s”, respectively, in subsecs. (a) to (d) pursuant to sections 361(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 341(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

NATIONAL INSTITUTE OF EDUCATION

The National Institute of Education consisting of a National Council on Educational Research and a Direc-
tor of the Institute was established by section 1232e of this title which, as amended generally by Pub. L. 99–498, title XIV, §1401(a), Oct. 7, 1986, 100 Stat. 1589, provides objectives and duties for the Office of Educational Research and Improvement and established the National Advisory Council on Educational Research and Improvement, and section 410(b) of Pub. L. 99–498 transferred the property and records of the National Institute of Education to the Office of Educational Research and Improvement.


§ 1231d. Parental involvement and dissemination

In the case of any applicable program in which the Secretary determines that parental participation at the State or local level would increase the effectiveness of the program in achieving its purposes, the Secretary shall promulgate regulations with respect to such program setting forth criteria designed to encourage such participation. If the program for which such determination is made provides for payments to local educational agencies, applications for such payments shall—

1. set forth such policies and procedures as will ensure that programs and projects assisted under the application have been planned and developed, and will be operated, in consultation with, and with the involvement of, parents of the children to be served by such programs and projects;

2. be submitted with assurance that such parents have had an opportunity to present their views with respect to the application; and

3. set forth policies and procedures for adequate dissemination of program plans and evaluations to such parents and the public.


PRIOR PROVISIONS

A prior section 434 of Pub. L. 90–247 was renumbered section 440, and is classified to section 1232c of this title.

Another prior section 434 of Pub. L. 90–247 was renumbered section 444, and is classified to section 1232c of this title prior to repeal by Pub. L. 103–382.

The prior section 434 of Pub. L. 90–247 was classified to section 1232c of this title prior to repeal by Pub. L. 95–561.

AMENDMENTS

1994—Pub. L. 103–382, §244, substituted “Secretary determines” for “Commissioner determines” and “the Secretary shall” for “he shall” and inserted “is made” after “such determination”.

§ 1231e. Use of funds withheld

(a) At any time that the Secretary makes an allotment or reallocation to any State under any applicable program, the Secretary shall reduce such allotment or reallocation by such amount as the Secretary determines such allotment or reallocation would have been reduced, had the data on which such allotment or reallocation is based excluded all data relating to local educational agencies of the State that, on the date of the Secretary’s action, are ineligible to receive the Federal financial assistance involved because of failure to comply with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], section 794 of title 29, or the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.].

(b) The Secretary may use any funds withheld under subsection (a) of this section—

1. to increase the allotments or reallocations of local educational agencies within the State that are not described in subsection (a) of this section, or the allotments or reallocation of all States, in accordance with the Federal law governing the program; or

2. for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964 [42 U.S.C. 2000c–4], or for any other program administered by the Department that is designed to enhance equity in education or redress discrimination on the basis of race, color, national origin, sex, age, or disability.


REFERENCES IN TEXT


The Education Amendments of 1972, referred to in subsec. (a), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§6101 et seq.) of this title. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this Title 42 and Tables.

PRIOR PROVISIONS

A prior section 435 of Pub. L. 90–247 was renumbered section 441, and is classified to section 1232d of this title.

Another prior section 435 of Pub. L. 90–247 was renumbered section 445, and is classified to section 1233d of this title.

A prior section 435 of Pub. L. 90–247 was renumbered section 448, and is classified to section 1233c of this title.

A prior section 435 of Pub. L. 90–247 was renumbered section 452, and is classified to section 1233b of this title.

A prior section 435 of Pub. L. 90–247 was renumbered section 456, and is classified to section 1233a–1 of this title.

A prior section 435 of Pub. L. 90–247 was renumbered section 460, and is classified to section 1232b of this title.


PART 2—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

§ 1231g. Applications

(a) Submission and amendments of applications

Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, the Secretary is authorized to provide for the submission of applications for assistance effective for more than one fiscal year under any applicable program with whatever amendments to such applications being required as the Secretary determines essential.

(b) Uniform dates

The Secretary shall, insofar as is practicable, establish uniform dates during the year for the submission of applications under all applicable programs and for the approval of such applications.

(c) Development of common applications

The Secretary shall, insofar as is practicable, develop and require the use of—

(1) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies pursuant to some objective formula, and such application shall be used as the single application for as many of these programs as is practicable;

(2) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies on a competitive or discretionary basis, and such application shall be used as the single application for as many of such programs as is practicable;

(3) a common application for grants to local educational agencies in applicable programs which are directly administered by the Secretary, and such application shall be used as the single application for as many of such programs as is practicable.


Prior Provisions

A prior section 436 of Pub. L. 90–247 was renumbered section 442, and is classified to section 1232e of this title.

Another prior section 436 of Pub. L. 90–247 was renumbered section 446, and was classified to section 1233e of this title prior to repeal by Pub. L. 103–382.

AMENDMENTS


Subsec. (a). Pub. L. 103–382, § 246(1), substituted “for more than one fiscal year” for “for three fiscal years”.

Effective Date

Section effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95–561, set out as an Effective Date of 1978 Amendment note under section 1221e–3 of this title.

§ 1232. Regulations

(a) “Regulation” defined

For the purpose of this section, the term “regulation” means any generally applicable rule, regulation, guideline, interpretation, or other requirement that—

(1) is prescribed by the Secretary or the Department; and

(2) has legally binding effect in connection with, or affecting, the provision of financial assistance under any applicable program.

(b) Citation of authority

Regulations shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority on which such provision is based.

(c) Uniform application

All regulations shall be uniformly applied and enforced throughout the 50 States.

(d) Application of exemption

The exemption for public property, loans, grants and benefits in section 553(a)(2) of title 5 shall apply only to regulations—

(1) that govern the first grant competition under a new or substantially revised program authority as determined by the Secretary; or

(2) where the Secretary determines that the requirements of this subsection will cause extreme hardship to the intended beneficiaries of the program affected by such regulations.

(e) Schedule for promulgation of final regulations

Not later than 60 days after the date of enactment of any Act, or any portion of any Act, affecting the administration of any applicable program, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Secretary plans to promulgate final regulations that the Secretary determines are necessary to implement such Act or portion of such Act. Such schedule shall provide that all such final regulations shall be promulgated within 360 days after the date of enactment of such Act or portion of such Act.

(f) Transmittal of final regulations

Concurrently with the publication of any final regulations, the Secretary shall transmit a copy
of such final regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate.


PRIOR PROVISIONS

A prior section 437 of Pub. L. 90–247 was renumbered section 443, and is classified to section 1232f of this title.

Another prior section 437 of Pub. L. 90–247 was renumbered section 406A, and was classified to section 1232e–1a of this title prior to repeal by Pub. L. 103–382.

Another prior section 437 of Pub. L. 90–247 was renumbered section 447, and was classified to section 1233f of this title prior to repeal by Pub. L. 103–382.

AMENDMENTS

1994—Pub. L. 103–437 which directed that section 431(b)(2)(B), (d)(2), and (g) of Pub. L. 90–247 be amended by substituting “Labor and Human Resources” for “Labor and Public Welfare”, could not be executed because this section, which was section 431 of Pub. L. 90–247, was renumbered section 437 and amended generally by Pub. L. 103–382.

Pub. L. 103–382, § 247, amended section generally. Prior to amendment, section consisted of subssecs. (a) to (g) relating to promulgation of regulations by Secretary, and their publication, application, disapproval by Congress, and modification subsequent to disapproval.

1981—Subsec. (d)(1), Pub. L. 97–35 substituted “final regulation (except expected family contribution schedules and any amendments thereto promulgated pursuant to sections 1078(a)(2)(D) and (E) and 1088(a)(1) of this title) as required” for “final regulation as required”.

1980—Subsec. (d)(1), Pub. L. 96–374 inserted “, in whole or in part,” after “disapprove such final regulations.”

1976—Subsec. (a). Pub. L. 94–482, § 405(a)(1), added par. (1), designated existing provisions which constituted entire subsection as par. (2) and, as so redesignated, struck out applicability to rules, guidelines, interpretations, or orders.

Subsec. (b)(1), Pub. L. 94–482, § 405(b)(1), substituted “proposed regulation for ‘standard, rule, regulation, or requirement of general applicability’”.


Subsec. (e), Pub. L. 94–482, § 405(e)(6), substituted “regulation for ‘final regulation’” wherever appearing and “final regulation” for “proposed standard, rule, regulation, or requirement of general applicability.”

Subsec. (g), Pub. L. 94–482, § 405(f), substituted “final regulations” for “rules, regulations, and guidelines” wherever appearing.

1975—Subsec. (d)(1). Pub. L. 94–142, § 7(a)(1)(A), (b), inserted “final” before “standard” wherever appearing in existing provisions and inserted provisions covering the effect of the failure of Congress to adopt the concurrent resolution with respect to any final standard, rule, regulation, or requirement.

Subsec. (d)(2). Pub. L. 94–142, § 7(a)(2), (3), substituted “objection to the final standard” for “objection to the proposed standard”, “effective date of the final standard” for “effective date of the standard”, and “In no event shall the final standard” for “In no event shall the standard”.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives changed to Committee on Education and Labor by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 540(a) of Pub. L. 97–35 provided that the amendment made by Pub. L. 97–35 is effective Oct. 1, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT


EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 8 of Pub. L. 94–142 provided that:

“(a) Notwithstanding any other provision of law, the amendments made by sections 2(a), 2(b), and 2(c) [amending sections 1411 and 1412 of this title as in effect through Sept. 30, 1977, and amending provisions set out as notes under sections 1411 to 1413 of this title] shall take effect on July 1, 1975.

“(b) The amendments made by sections 2(d), 2(e), 3, 6, and 7 [enacting sections 1485 and 1496 of this title, amending this section and sections 1412 and 1453 of this title, enacting provisions set out as a note under section 1411 of this title, and amending provisions set out as a note under section 1490 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1975].

“(c) The amendments made by sections 4 and 5(a) [enacting sections 1415 to 1420 of this title and amending sections 1401, 1411, 1412, 1413, and 1414 of this title] shall take effect on October 1, 1977, except that the provisions of clauses (A), (C), (D), and (E) of paragraph (2) of section 612 of the Act [section 1412 of this title], as amended by this Act, section 617(a)(1)(D) of the Act [section 1417(a)(1)(D) of this title], as amended by this Act, section 617(b) of the Act [section 1417(b) of this title], as amended by this Act, and section 619(a) of the Act [section 1419(a) of this title], as amended by this Act, shall take effect on the date of the enactment of this Act [Nov. 29, 1975].

“(d) The provisions of section 5(b) [amending section 1411 of this title and enacting provisions set out as notes under section 1411 of this title] shall take effect...
on the date of the enactment of this Act [Nov. 29, 1975]."

**Effective Date of 1974 Amendment**

Section 509(b) of Pub. L. 93–380 provided that: "The amendment made by paragraph (2) of subsection (a) [amending this section] shall be effective on the date of enactment of this [Aug. 21, 1974] and shall be effective with respect to the provisions of this Act [see Short Title note set out under section 821 of this title]."

**STUDY AND REPORT ON RULES AND REGULATIONS**

Pub. L. 92–318, title V, § 503, June 23, 1972, 86 Stat. 346, provided for a study by the Commissioner of all rules, regulations, etc., in connection with the administration of any program to which the General Education Provisions Act [this chapter] applies, with a report to be submitted to Congress not later than one year after June 23, 1972. Such section further mandated the publication of all rules, regulations, etc., in the Federal Register not later than 60 days after submission of such report, followed by a public hearing on such matters within the 60 day period following such publication. Such section then required a subsequent report to the relevant Congressional Committees on such hearings, and a republication of all rules and regulations in the Federal Register, such republished rules, etc., to supersede all preceding rules and regulations.


**Effective Date of Repeal**

Repeal effective July 1, 1985, see section 711(b) of Pub. L. 98–511, set out as an Effective Date of 1984 Amendment note under section 1226c of this title.

§ 1232a. Prohibition against Federal control of education

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.


**Prior Provisions**

A prior section 438 of Pub. L. 90–247 was renumbered section 444, and is classified to section 1232g of this title.

Another prior section 438 of Pub. L. 90–247 was renumbered section 448, and was classified to section 1233g of this title prior to repeal by Pub. L. 103–382.

**AMENDMENTS**


**Effective Date of 1976 Amendment**

Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective January 1, 1976, for those amendments providing for appropriations of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1901 of this title.

§ 1232b. Labor standards

All laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.


**References in Text**

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

**Codification**


**Prior Provisions**

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

**AMENDMENTS**

1994—Pub. L. 103–382, § 231(d), substituted "All laborers" for "Except for emergency relief under section 241–1 of this title, all laborers"."
§ 1232c. State agency monitoring and enforcement

(a) State plan

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

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

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

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

(b) State enforcement of Federal requirements

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

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

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

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

(c) Withholding of payments

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


Prior Provisions


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

Amendments

1994—Pub. L. 103–382, § 261(e)(1), struck out “educational” after “State” in section catchline. Subsec. (a), Pub. L. 103–382, § 261(e)(2)(A), substituted “Secretary” for “Commissioner” wherever appearing. Subsecs. (b), (c), Pub. L. 103–382, § 261(e)(2)(B), (C), redesignated provision following par. (3) of subsec. (b) as subsec. (c) and substituted “subsection (b)(3)” for “paragraph (3)”.

Effective Date

Section 1261 of Pub. L. 95–561 provided that: “The amendments made by section 1231 [enacting this section and sections 1232d, 1232e, and 1232f of this title and amending section 1088f–1 of this title] shall take effect with respect to appropriations for fiscal year 1980 and subsequent fiscal years. The amendments made by section 1232 [enacting sections 1234, 1234a, 1234b, 1234c, 1234d, and 1234e of this title] shall take effect 120 days after the enactment of this Act [Nov. 1, 1978].”

Applicability of Administrative Procedure to Office of Education or Actions by Commissioner Unaffected by Subsections (b) to (e)

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

§ 1232d. Single State application

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

In the case of any State which applies, contracts, or submits a plan for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject to the provisions of part C of title V of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7221 et seq.]) to the Secretary a general application containing the assurances set forth in subsection (b) of this section. Such application may be submitted jointly for all programs covered by the application, or it may be submitted sepa-
rately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(b) Assurances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Effective term of general application

Each general application submitted under this section shall remain in effect for the duration of any program it covers. The Secretary shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.


References in Text


Codification

A prior section 1232d was renumbered by Pub. L. 95–561, § 1231(a)(1), and was transferred to section 1228a–1 of this title.
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Prior Provisions

Another prior section 441 of Pub. L. 90–247 was classified to section 1233 of this title prior to repeal by Pub. L. 103–382.

Amendments


Effective Date of 2002 Amendment

Pub. L. 107–110, title X, § 1062(2), Jan. 8, 2002, 115 Stat. 2087, provided that the amendment made by section 1062(2) is effective as of the date of enactment of Pub. L. 100–297, which was approved Apr. 28, 1988.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–297 effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100–297, set out as a note under section 1234 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98–511, set out as a note under section 1236c of this title.

Effective Date

Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub. L. 95–561, set out as a note under section 1232c of this title.

§ 1232e. Single local educational agency application

(a) General application to State agency or board

Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b) of this section. That application shall cover the participation by that local educational agency in all such programs.

(b) Assurances

The general application submitted by a local educational agency under subsection (a) of this section shall set forth assurances—

(1) that the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided to the local educational agency under each program, and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

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

(4) that the local educational agency will make reports to the State agency or board and to the Secretary as may reasonably be necessary to enable the State agency or board and the Secretary to perform their duties and that the local educational agency will maintain such records, including the records required under section 1232f of this title, and provide access to those records, as the State agency or board or the Secretary deem necessary to perform their duties;

(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) that in the case of any project involving construction—

(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

(B) in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under section 794 of title 29 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by individuals with disabilities;

(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and

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

(c) Effective term of general application

A general application submitted under this section shall remain in effect for the duration of
the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.


Prior Provisions


A prior section 442 of Pub. L. 90–247 was classified to section 1233a of this title prior to repeal by Pub. L. 103–382.

Amendments

1994—Subsec. (a). Pub. L. 103–382, §212(b)(1), substituted “that local educational agency” for “that local education agency”.

Subsec. (b)(2). Pub. L. 103–382, §261(g)(2)(A), inserted comma after “program”.


Pub. L. 103–382, §212(b)(3)(B), made technical amendment to reference to section 1232f of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(7)(B). Pub. L. 103–382, §261(g)(2)(C), substituted “individuals with disabilities” for “handicapped individuals”.


Effective Date of 1984 Amendment


Effective Date

Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub. L. 95–561, set out as a note under section 1232c of this title.

PART 4—RECORDS; PRIVACY; LIMITATION ON WITHHOLDING FEDERAL FUNDS

§ 1232f. Records

(a) Records kept by recipient; full disclosure; maintenance period

Each recipient of Federal funds under any applicable program through any grant, subgrant, cooperative agreement, loan, or other arrangement shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective financial or programmatic audit. The recipient shall maintain such records for three years after the completion of the activity for which the funds are used.

(b) Audit examination

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit examination, to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements to which reference is made in subsection (a) of this section, or which may relate to the compliance of the recipient with any requirement of an applicable program.


Prior Provisions

A prior section 443 of Pub. L. 90–247 was classified to section 1233b of this title prior to repeal by Pub. L. 103–382.

Amendments

1994—Subsec. (a). Pub. L. 103–382, §248(1), substituted “grant, subgrant, cooperative agreement, loan, or other arrangement” for “grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency)”, inserted “financial or programmatic” before “audit.”, and substituted “three years” for “five years”.

Subsec. (b). Pub. L. 103–382, §248(2), substituted “to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements” for “to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements”.

Effective Date

Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub. L. 95–561, set out as a note under section 1232c of this title.

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonable time for such access; hearings; written explanations by parents; definitions

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.
(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student’s right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student’s education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term “educational agency or institution” means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term “education records” means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term “education records” does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or by a physician that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person’s capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity for purposes other than those for which they were specifically intended.

(5)(A) For the purposes of this section the term “directory information” relating to a student includes the following: the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent’s prior consent.

(6) For the purposes of this section, the term “student” includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.
(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C)(i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons;

(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on whom the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena; and

(K) the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of State and local educational and other agencies and institutions receiving funding or providing benefits of 1 or more programs authorized under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that—

(i) any data collected under this subparagraph shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and

(ii) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is per-
mitted under paragraph (1) of this subsection, unless—

(A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with a judicial order or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student’s education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to persons, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)(A) Nothing in this section shall be construed to prohibit an educational institution from disclosing to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an educational institution from disclosing to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution’s rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of title 42 concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(c) Surveys or data-gathering activities; regulations

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students’ rather than parents’ permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is
attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from—

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general

Nothing in this Act or the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student’s education record, if—

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(ii) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a) of this section.

(j) Investigation and prosecution of terrorism

(1) In general

Notwithstanding subsections (a) through (i) of this section or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18, or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval

(A) In general.—An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution

An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) Record-keeping

Subsection (b)(4) of this section does not apply to education records subject to a court order under this subsection.


REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(1)(K), is act June 30, 1946, ch. 409, §208, 60 Stat. 397, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.


Prior Provisions

Prior to the Act, the predecessor to section 1232c of this title was section 14071 of title 20, section 1232c of this title prior to repeal by Pub. L. 103–382.

AMENDMENTS

2010—Subsec. (b)(1)(K). Pub. L. 111–296, which directed that par. (1) be amended by adding subpar. (K) “‘at the end’, by adding subpar. (K) after subpar. (J), to reflect the probable intent of Congress.


1998—Subsec. (b)(1)(C). Pub. L. 105–244, §851(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ‘‘authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities, under the conditions set forth in paragraph (3) of this subsection’’.

Subsec. (b)(6). Pub. L. 105–244, §851(2), designated existing provisions as subpar. (A), substituted ‘‘or a nonforcible sex offense, the final results for ‘‘the results’’, substituted ‘‘such crime or offense’’ for ‘‘such crime’’ in two places, and added subpars. (B) and (C).


Subsec. (a)(1)(C). Pub. L. 103–382, §249(1)(A)(i), (iii), redesignated subpar. (B) as (C) and substituted ‘‘paragraph (D)’’ for ‘‘paragraph (C)’’ in cl. (iii). Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 103–382, §249(1)(A)(ii), (iv), redesignated subpar. (C) as (D) and substituted ‘‘paragraph (C)’’ for ‘‘paragraph (B)’’.

Subsec. (a)(2). Pub. L. 103–382, §249(1)(B), substituted ‘‘privacy rights’’ for ‘‘privacy or other rights’’.


Subsec. (b)(1)(A). Pub. L. 103–382, §249(2)(A)(i), inserted before semicolon ‘‘, including the educational interests of the child for whom consent would otherwise be required’’.

Subsec. (b)(1)(C). Pub. L. 103–382, §261(b)(2)(A), substituted ‘‘or (iii)’’ for ‘‘(iii) an administrative head of an education agency (as defined in section 1221e–3(c) of this title), or (iv)’’.

Subsec. (b)(1)(E). Pub. L. 103–382, §249(2)(A)(ii), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ‘‘State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974’’.

Subsec. (b)(1)(H). Pub. L. 103–382, §261(b)(2)(B), substituted ‘‘the Internal Revenue Code of 1968’’ for ‘‘the Internal Revenue Code of 1954’’, which for purposes of codification was translated as ‘‘title 26’’ thus requiring no change in text.


Subsec. (b)(2). Pub. L. 103–382, §249(2)(B)(i), which directed amendment of matter preceding subpar. (A) by substituting ‘‘, unless—’’ for the period, was executed by substituting a comma for the period before ‘‘unless—’’ to reflect the probable intent of Congress.

Subsec. (b)(2)(B). Pub. L. 103–382, §249(2)(B)(ii), inserted ‘‘except as provided in paragraph (1)(J),’’ before ‘‘such information’’.

Subsec. (b)(3). Pub. L. 103–382, §261(b)(2)(C), substituted ‘‘or (C)’’ for ‘‘(C) an administrative head of an education agency or (D)’’ and ‘‘education programs’’ for ‘‘education program’’.

Subsec. (b)(4). Pub. L. 103–382, §249(2)(C), inserted at end ‘‘If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.’’

Subsec. (c). Pub. L. 103–382, §249(3), substituted ‘‘Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which’’ for ‘‘The Secretary shall adopt appropriate regulations to’’.

Subsec. (d). Pub. L. 103–382, §261(h)(3), inserted a comma after ‘‘education’’.

Subsec. (e). Pub. L. 103–382, §249(4), inserted ‘‘effectively’’ before ‘‘informs’’.

Subsec. (f). Pub. L. 103–382, §261(h)(4), struck out ‘‘, or an administrative head of an education agency, after “The Secretary” and substituted “enforce this section” for “enforce provisions of this section”, ‘‘in accordance with’’ for “according to the provisions of”, and ‘‘comply with this section’’ for “comply with the provisions of this section”’.

Subsec. (g). Pub. L. 103–382, §261(h)(5), struck out ‘‘of Health, Education, and Welfare” after ‘‘the Department” and ‘‘the provisions of” after “adjudicating violations of’’.


1992—Subsec. (a)(4)(B)(ii). Pub. L. 102–325 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ‘‘If the personnel of a law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to other individuals except—’’.

Subsec. (a)(5)(A). Pub. L. 102–325 added cl. (i) generally. Prior to amendment, cl. (i) read as follows: ‘‘If the personnel of a law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to other individuals except—’’.


Subsec. (a)(1)(C). Pub. L. 103–382, §249(1)(A)(iii), redesignated subpar. (B) as (C) and substituted ‘‘paragraph (D)’’ for ‘‘paragraph (C)’’ in cl. (iii). Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 103–382, §249(1)(A)(ii), redesignated subpar. (C) as (D) and substituted ‘‘paragraph (C)’’ for ‘‘paragraph (B)’’.
available to persons other than law enforcement officials of the same jurisdiction.”

1974—Subsec. (a)(1). Pub. L. 93-568, §2(a)(1)(A)–(C), (2)(A)–(C), (3), designated existing par. (1) as subpar. (A), substituted reference to educational agencies and institutions for reference to state or local educational agencies, institutions of higher education, community colleges, schools, agencies offering preschool programs, and other educational institutions, substituted the generic term education records for the enumeration of such records, and extended the right to inspect and review such records to parents of children who have been in attendance, and added subpars. (B) and (C).

Subsec. (a)(2). Pub. L. 93-568, §2(a)(4), substituted provisions making the availability of funds to educational agencies and institutions conditional on the granting of an opportunity for a hearing to parents of students who are or have been in attendance at such institution or agency to challenge the contents of the student’s education records for provisions granting the parents an opportunity for such hearing, and inserted provisions authorizing insertion into the records a written explanation of the parents respecting the content of such records.


Subsec. (b)(1). Pub. L. 93-568, §2(a)(1)(D), (2)(D), (6), (8)(A)–(C), (10)(A), in provisions preceding subpar. (A), substituted “educational agency or institution which has a policy of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section)” for “state or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of permitting the release of personally identifiable information contained therein”, in subpar. (A), substituted “educational agency, who have been determined by such agency or institution to have” for “educational agency who have”, in subpar. (B), substituted the student seeks or intends to” for “the student intends to”, in subpar. (C), substituted reference to “section 409 of this Act” for reference to “section 409 of this Act” which for purposes of codification has been translated as “section 1221e–3(c) of this title”, and added subpars. (E) to (I).

Subsec. (b)(2). Pub. L. 93-568, §2(a)(1)(E), (2)(E), substituted “educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection” for “state or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any person other than those listed in subsection (b)(1) of this section”.

Subsec. (b)(3). Pub. L. 93-568, §2(a)(8)(D), substituted “information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements” for “data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected”.

Subsec. (b)(4). Pub. L. 93-568, §2(a)(9), substituted provisions that each educational agency or institution maintain a record, kept with the education records of each student, indicating specifically the legitimate educational or other interest of the person seeking such information, and that the form shall be available to parents and school officials having responsibility for record maintenance as a means of auditing the operation of the system.

Subsec. (e). Pub. L. 93-568, §2(a)(1)(F), substituted “to any educational agency or institution unless such agency or institution” for “unless the recipient of such funds”.

Subsec. (g). Pub. L. 93-568, §2(a)(7), (10)(B), struck out reference to sections 1232c and 1232f of this title and inserted provisions that except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Effective Date of 2010 Amendment
Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of Title 42, the Public Health and Welfare.

Effective Date of 2002 Amendment
Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

Effective Date of 1998 Amendment
Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

Effective Date of 1992 Amendment
Section 1555(b) of Pub. L. 102-325 provided that: “The amendment made by this section [amending this section] shall take effect on the date of enactment of this Act [July 23, 1992].”

Effective Date of 1979 Amendment

Effective Date of 1974 Amendment
Section 2(b) of Pub. L. 93-568 provided that: “The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974.”

Effective Date
Section 513(b)(1) of Pub. L. 93-380 provided that: “The provisions of this section [enacting this section and provisions set out as a note under section 1221 of this title] shall become effective ninety days after the date of enactment [Aug. 21, 1974] of this section 438 [now 444] of the General Education Provisions Act [this section].”

§ 1232h. Protection of pupil rights
(a) Inspection of instructional materials by parents or guardians

All instructional materials, including teacher’s manuals, films, tapes, or other supple-
mentary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.

(b) Limits on survey, analysis, or evaluations

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

(1) political affiliations or beliefs of the student or the student’s parent;
(2) mental or psychological problems of the student or the student’s family;
(3) sex behavior or attitudes;
(4) illegal, anti-social, self-incriminating, or demeaning behavior;
(5) critical appraisals of other individuals with whom respondents have close family relationships;
(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
(7) religious practices, affiliations, or beliefs of the student or student’s parent; or
(8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

c) Development of local policies concerning student privacy, parental access to information, and administration of certain physical examinations to minors

(1) Development and adoption of local policies

Except as provided in subsections (a) and (b) of this section, a local educational agency that receives funds under any applicable program shall develop and adopt policies, in consultation with parents, regarding the following:

(A)(i) The right of a parent of a student to inspect, upon the request of the parent, a survey created by a third party before the survey is administered or distributed by a school to a student; and
(ii) any applicable procedures for granting a request by a parent for reasonable access to such survey within a reasonable period of time after the request is received.

(B) Arrangements to protect student privacy that are provided by the agency in the event of such collection, disclosure, or use.

(1) The collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose), including arrangements to protect student privacy that are provided by the agency in the event of such collection, disclosure, or use.

(2) Any applicable procedures for granting a request by a parent for reasonable access to such instrument within a reasonable period of time after the request is received.

(2) Parental notification

(A) Notification of policies

The policies developed by a local educational agency under paragraph (1) shall provide for reasonable notice of the adoption or continued use of such policies directly to the parents of students enrolled in schools served by that agency. At a minimum, the agency shall—

(i) provide such notice at least annually, at the beginning of the school year, and within a reasonable period of time after any substantive change in such policies; and
(ii) offer an opportunity for the parent (and for purposes of an activity described in subparagraph (C)(i), in the case of a student of an appropriate age, the student) to opt the student out of participation in an activity described in subparagraph (C).

(B) Notification of specific events

The local educational agency shall directly notify the parent of a student, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when activities described in subparagraph (C) are scheduled, or expected to be scheduled.
(C) Activities requiring notification

The following activities require notification under this paragraph:

(i) Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose);

(ii) The administration of any survey containing one or more items described in clauses (i) through (viii) of paragraph (1)(B);

(iii) Any nonemergency, invasive physical examination or screening that is—

(I) required as a condition of attendance;

(II) administered by the school and scheduled by the school in advance; and

(III) not necessary to protect the immediate health and safety of the student, or of other students.

(3) Existing policies

A local educational agency need not develop and adopt new policies if the State educational agency or local educational agency has in place, on January 8, 2002, policies covering the requirements of paragraph (1). The agency shall provide reasonable notice of such existing policies to parents and guardians of students, in accordance with paragraph (2).

(4) Exceptions

(A) Educational products or services

Paragraph (1)(E) does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions, such as the following:

(i) College or other postsecondary education recruitment, or military recruitment.

(ii) Book clubs, magazines, and programs providing access to low-cost literary products.

(iii) Curriculum and instructional materials used by elementary schools and secondary schools.

(iv) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments.

(v) The sale by students of products or services to raise funds for school-related or education-related activities.

(vi) Student recognition programs.

(B) State law exception

The provisions of this subsection—

(i) shall not be construed to preempt applicable provisions of State law that require parental notification; and

(ii) do not apply to any physical examination or screening that is permitted or required by an applicable State law, including physical examinations or screenings that are permitted without parental notification.

(5) General provisions

(A) Rules of construction

(i) This section does not supersede section 1232g of this title.

(ii) Paragraph (1)(D) does not apply to a survey administered to a student in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(B) Student rights

The rights provided to parents under this section transfer to the student when the student turns 18 years old, or is an emancipated minor (under an applicable State law) at any age.

(C) Information activities

The Secretary shall annually inform each State educational agency and each local educational agency of the educational agency’s obligations under this section and section 1232g of this title.

(D) Funding

A State educational agency or local educational agency may use funds provided under part A of title V of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 1221 et seq.] to enhance parental involvement in areas affecting the in-school privacy of students.

(6) Definitions

As used in this subsection:

(A) Instructional material

The term “instructional material” means instructional content that is provided to a student, regardless of its format, including printed or representational materials, audiovisual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

(B) Invasive physical examination

The term “invasive physical examination” means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

(C) Local educational agency

The term “local educational agency” means an elementary school, secondary school, school district, or local board of education that is the recipient of funds under an applicable program, but does not include a postsecondary institution.

(D) Parent

The term “parent” includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with
whom the child lives, or a person who is legally responsible for the welfare of the child).

(E) Personal information
The term “personal information” means individually identifiable information including—
(i) a student or parent’s first and last name;
(ii) a home or other physical address (including street name and the name of the city or town);
(iii) a telephone number; or
(iv) a Social Security identification number.

(F) Student
The term “student” means any elementary school or secondary school student.

(G) Survey
The term “survey” includes an evaluation.

(d) Notice
Educational agencies and institutions shall give parents and students effective notice of their rights under this section.

(e) Enforcement
The Secretary shall take such action as the Secretary determines appropriate to enforce this section, except that action to terminate assistance provided under an applicable program shall be taken only if the Secretary determines that—
(1) there has been a failure to comply with such section; and
(2) compliance with such section cannot be secured by voluntary means.

(f) Office and review board
The Secretary shall establish or designate an office and review board within the Department of Education to investigate, process, review, and adjudicate violations of the rights established under this section.


References in Text

Prior Provisions
A prior section 445 of Pub. L. 90–247 was classified to section 1233d of this title prior to repeal by Pub. L. 103–382.

Amendments
2002—Subsec. (b)(1) to (8). Pub. L. 107–110, § 1061(1), added paras. (1) to (8) and struck out former paras. (1) to (7) which read as follows:

“(1) political affiliations;
“(2) mental and psychological problems potentially embarrassing to the student or his family;
“(3) sex behavior and attitudes;
“(4) illegal, anti-social, self-incriminating and demeaning behavior;
“(5) critical appraisals of other individuals with whom respondents have close family relationships;
“(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
“(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Subsec. (c) to (f). Pub. L. 107–110, § 1061(2), (3), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1994—Pub. L. 103–227 amended section generally, substituting in subsec. (a), provisions relating to inspection of instructional materials by parents or guardians for similar provisions, in subsec. (b), provisions relating to limits on survey, analysis, or evaluations for provisions relating to psychiatric or psychological examinations, testing, or treatment, and adding subsecs. (c) to (e).

1978—Pub. L. 95–561 designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 2002 Amendment
Amendment by Pub. L. 107–110 effective Jan. 9, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

Effective Date of 1978 Amendment

Effective Date
Section 514(b) of Pub. L. 93–380 provided that: ‘‘The amendment made by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974].’’

$ 1232i. Limitations on withholding of Federal assistance
(a) Refusal to supply personal data on students or families

Except as provided in section 1232g(b)(1)(D) of this title, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.
(b) Noncompliance with nondiscrimination provisions of Federal law

The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

c) Failure to comply with imposition of quotas

It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 446 of Pub. L. 90–247 was classified to section 1233e of this title prior to repeal by Pub. L. 103–382.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–382, § 212(b)(3)(C), made technical amendment to reference to section 1233(e)(1)(D) of this title to reflect renumbering of corresponding section of original act.

1976—Pub. L. 94–482 designated existing provisions as subsec. (a) and added subssecs. (b) and (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section 515(b) of Pub. L. 93–380 provided that: 'The amendment made by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974].'

§ 1232j.

Prohibition on federally sponsored testing

(a) General prohibition

Notwithstanding any other provision of Federal law and except as provided in subsection (b) of this section, no funds provided to the Department of Education or to an applicable program, may be used to pilot test, field test, implement, administer or distribute in any way any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

(b) Exceptions

Subsection (a) of this section shall not apply to the Third International Mathematics and Science Study or other international comparative assessments developed under the authority of section 9543(a)(6) of this title and administered to only a representative sample of pupils in the United States and in foreign nations.


PRIOR PROVISIONS

A prior section 447 of Pub. L. 90–247 was classified to section 1233f of this title prior to repeal by Pub. L. 103–382.

Prior sections 1233 to 1233h comprising a former subchapter IV of this chapter were repealed by Pub. L. 103–382, title II, § 212(a)(2), Oct. 29, 1994, 108 Stat. 3913.


§ 1234

TITLE 20—EDUCATION

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AMENDMENTS


§ 1234. Office of Administrative Law Judges

(a) Establishment; duties

The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this subchapter referred to as the ‘‘Office’’) which shall conduct—

(1) recovery of funds hearings pursuant to section 1234a of this title,

(2) withholding hearings pursuant to section 1234d of this title,

(3) cease and desist hearings pursuant to section 1234e of this title, and

(4) other proceedings designated by the Secretary.

(b) Appointment

The administrative law judges (hereinafter ‘‘judges’’) of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5.

(c) Employment requirements; chief judge

The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates’ experience in State or local educational agencies and their knowledge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

(d) Assignment of judges

For the purposes of conducting hearings described in subsection (a) of this section, the chief judge shall assign a judge to each case or class of cases. A judge shall be disqualified in any case in which the judge has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party’s attorney as to make it improper for the judge to be assigned to the case.

(e) Review and evidentiary functions

The judge shall review and may require that evidence be taken on the sufficiency of the pre-
judge determines that the discovered information is likely to elicit relevant information with respect to an issue in the case, is not sought primarily for the purposes of delay or harassment, and would serve the ends of justice, the judge may order a party to—

(A) produce relevant documents;
(B) answer written interrogatories that inquire into relevant matters; and
(C) have depositions taken.

The judge shall set a time limit of 90 days on the discovery period. The judge may extend this period for good cause shown. At the request of any party, the judge may establish a specific schedule for the conduct of discovery.

(2) In order to carry out the provisions of subsections (f)(1) and (g)(1) of this section, the judge is authorized to issue subpoenas and apply to the appropriate court of the United States for enforcement of a subpoena. The court may enforce the subpoena as if it pertained to a proceeding before that court.

(h) Mediation of disputes

The Secretary shall establish a process for the voluntary mediation of disputes pending before the Office. The mediator shall be agreed to by all parties involved in mediation and shall be independent of the parties to the dispute. In the mediation of disputes the Secretary shall consider mitigating circumstances and proportion of harm pursuant to section 1234b of this title. In accordance with rule 408 of the Federal Rules of Evidence, evidence of conduct or statements made in compromise negotiations shall not be admissible in proceedings before the Office. Mediation shall be limited to 120 days, except that the mediator may grant extensions of such period.

(i) Professional personnel; employment, assignment, or transfer

The Secretary shall employ, assign, or transfer sufficient professional personnel, including judges of the Office, to ensure that all matters brought before the Office may be dealt with in a timely manner.


References in Text

The Federal Rules of Evidence, referred to in subsec. (h), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Amendments


Effective Date of 1988 Amendment

Section 3501(b) of Pub. L. 100–297 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting sections 1234f to 1234i of this title and amending this section and sections 1232d and 1234a to 1234e of this title] shall not apply to any case in which the recipient, prior to the effective date of this part, received a written notice that such recipient must return funds to the Department."

Effective Date

Subchapter effective 120 days after Nov. 1, 1978, see section 1261 of Pub. L. 95–561, set out as a note under section 1232c of this title.

§ 1234a. Recovery of funds

(a) Preliminary departmental decision; grounds of determination; notice requirements; prima facie case; amount of funds recoverable

(1) Whenever the Secretary determines that a recipient of a grant or cooperative agreement under an applicable agreement has—

(A) failed to discharge its obligation to account properly for funds under the grant or cooperative agreement, or has otherwise failed to discharge its obligation to account properly for funds under the grant or cooperative agreement;

(b) Review of preliminary departmental decision; form and contents of application for review; inadequate preliminary decisions; duties of recipient to subrecipients after preliminary decision; burden of proof

(1) A recipient that has received written notice of a preliminary departmental decision and that desires to have such decision reviewed by the Office shall submit to the Office an application for review not later than 60 days after receipt of notice of the preliminary departmental decision. The application shall be in the form and contain the information specified by the Office. As expeditiously as possible, the Office shall return to the Secretary for such action as the Secretary considers appropriate any preliminary departmental decision which the Office determines does not meet the requirements of subsection (a)(2) of this section.

(2) In cases where the preliminary departmental decision requests a recovery of funds from a State recipient, that State recipient may not recover funds from an affected local educational agency unless that State recipient has—

(A) transmitted a copy of the preliminary departmental decision to any affected sub-
recipient within 10 days of the date that the State recipient in a State administered program received such written notice; and
(B) consulted with each affected subrecipient to determine whether the State recipient should submit an application for review under paragraph (1).

(3) In any proceeding before the Office under this section, the burden shall be upon the recipient to demonstrate that it should not be required to return the amount of funds for which recovery is sought in the preliminary departmental decision under subsection (a) of this section.

(c) Time for hearing

A hearing shall be set 90 days after receipt of a request for review of a preliminary departmental decision by the Office, except that such 90-day requirement may be waived at the discretion of the judge for good cause.

(d) Review of findings of fact in preliminary decision; conclusiveness; remand; new or modified findings

(1) Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown, may remand the case to the Office to take further evidence, and the Office may thereupon make new or modified findings of fact and may modify its previous action. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(2) During the conduct of such review, there shall not be any ex parte contact between the Secretary and individuals representing the Department or the recipient.

(e) Time for filing petition for review of preliminary decision

Parties to the proceeding shall have 30 days to file a petition for review of a decision of the administrative law judges with the Office of the Secretary.

(f) Stay of collection or other adverse action by Secretary against recipient

(1) If a recipient submits a timely application for review of a preliminary departmental decision, the Secretary shall take no collection action until the decision of the Office upholding the preliminary Department decision in whole or in part becomes final agency action under subsection (g) of this section.

(2) If a recipient files a timely petition for judicial review under section 1234g of this title, the Secretary shall take no collection action until judicial review is completed.

(3) The filing of an application for review under paragraph (1) or a petition for judicial review under paragraph (2) shall not affect the authority of the Secretary to take any other adverse action under this subchapter against the recipient.

(g) Preliminary decision as final agency action

A decision of the Office regarding the review of a preliminary departmental decision shall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

(1) modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary's action, or

(2) remands the decision to the Office.

(h) Publication of decisions as final agency actions

The Secretary shall publish decisions that have become final agency action under subsection (g) of this section in the Federal Register or in another appropriate publication within 60 days.

(i) Collection amounts and procedures

The amount of a preliminary departmental decision under subsection (a) of this section for which review has not been requested in accordance with subsection (b) of this section, and the amount sustained by a decision of the Office or the Secretary which becomes final agency action under subsection (g) of this section, may be collected by the Secretary in accordance with chapter 37 of title 31.

(j) Compromise of preliminary departmental decisions; preconditions; notice requirements

(1) Notwithstanding any other provision of law, the Secretary may, subject to the notice requirements of paragraph (2), compromise any preliminary departmental decision under this section which does not exceed the amount agreed to be returned by more than $200,000, if the Secretary determines that (A) the collection of any or all or the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the preliminary departmental decision has been corrected and will not recur.

(2) Not less than 45 days prior to the exercise of the authority to compromise a preliminary departmental decision pursuant to paragraph (1), the Secretary shall publish in the Federal Register a notice of intention to do so. The notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

(k) Limitation period respecting return of funds

No recipient under an applicable program shall be liable to return funds which were expended in a manner not authorized by law more than 5 years before the recipient received written notice of a preliminary departmental decision.

(l) Foregoing of interest during period of administrative review

No interest shall be charged arising from a claim during the administrative review of the preliminary departmental decision.

(AMENDMENTS)

1994—Subsec. (a)(2). Pub. L. 103–382, § 250(a)(1), substituted “establishing a prima facie case for the recov-
ery of funds, including an analysis reflecting the value of the program services actually obtained in a determination of harm to the Federal interest." for "stating a prima facie case for the recovery of funds." Subsec. (b)(1). Pub. L. 103–382, §250(a)(2), substituted "60 days" for "30 days".

Subsec. (d). Pub. L. 103–382, §250(a)(3), designated existing provisions as subpar. (1) and added subpar. (2).


**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–297 effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100–297, set out as a note under section 1234 of this title.

§ 1234b. Measure of recovery

(a) Amount returned proportionate to extent of harm violation caused to an identifiable Federal interest; reduction; determination of identifiable Federal interest

(1) A recipient determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, shall be required to return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. Such amount shall be reduced in whole or in part by an amount that is proportionate to the extent the mitigating circumstances caused the violation.

(2) For the purpose of paragraph (1), an identifiable Federal interest includes, but is not limited to, serving only eligible beneficiaries; providing only authorized services or benefits; complying with expenditure requirements and conditions (such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements); preserving the integrity of planning, application, recordkeeping, and reporting requirements; and maintaining accountability for the use of funds.

(b) Reduction or waiver of amount based on mitigating circumstances; burden of proof; determination of mitigating circumstances; weight, etc., of written request for guidance

(1) When a State or local educational agency is determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, and mitigating circumstances exist, as described in paragraph (2), the judge shall reduce such amount by an amount that is proportionate to the extent the mitigating circumstances caused the violation. Furthermore, the judge is authorized to determine that no recovery is justified when mitigating circumstances warrant. The burden of demonstrating the existence of mitigating circumstances shall be upon the State or local educational agency.

(2) For the purpose of paragraph (1), mitigating circumstances exist only when it would be unjust to compel the recovery of funds because the State or local educational agency—

(A) actually and reasonably relied upon erroneous written guidance provided by the Department;

(B) made an expenditure or engaged in a practice after—

(i) the State or local educational agency submitted to the Secretary, in good faith, a written request for guidance with respect to the expenditure or practice at issue, and

(ii) a Department official did not respond within 90 days of receipt by the Department of such request; or

(C) actually and reasonably relied upon a judicial decree issued to the recipient.

(3) A written request for guidance as described in paragraph (2) sent by certified mail (return receipt requested) shall be conclusive proof of receipt by the Department.

(4) If the Secretary responds to a written request for guidance described in paragraph (2)(B) more than 90 days after its receipt, the State or local educational agency that submitted the request shall comply with the guidance received at the earliest practicable time.

(5) In order to demonstrate the existence of the mitigating circumstances described in paragraph (2)(B), the State or local educational agency shall demonstrate that—

(A) the written request for guidance accurately described the proposed expenditure or practice and included the facts necessary for a determination of its legality; and

(B) the written request for guidance contained a certification by the chief legal officer of the State educational agency that such officer had examined the proposed expenditure or practice and believed the proposed expenditure or practice was permissible under then applicable State and Federal law; and

(C) the State or local educational agency reasonably believed that the proposed expenditure or practice was permissible under then applicable State and Federal law.

(6) The Secretary shall disseminate to State educational agencies responses to written requests for guidance, described in paragraph (5), that reflect significant interpretations of applicable law or policy.

(e) Review of written requests for guidance on periodic basis

The Secretary shall periodically review the written requests for guidance submitted under this section to determine the need for new or supplementary regulatory or other guidance under applicable programs.


**Amendments**


**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–297 effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100–297, set out as a note under section 1234 of this title.
§ 1234c. Remedies for existing violations

(a) Whenever the Secretary has reason to believe that any recipient of funds under any applicable program is failing to comply substantially with any requirement of law applicable to such funds, the Secretary may—

(1) withhold further payments under that program, as authorized by section 1234d of this title;
(2) issue a complaint to compel compliance through a cease and desist order of the Office, as authorized by section 1234e of this title;
(3) enter into a compliance agreement with a recipient to bring it into compliance, as authorized by section 1234f of this title; or
(4) take any other action authorized by law with respect to the recipient.

(b) Any action, or failure to take action, by the Secretary under this section shall not preclude the Secretary from seeking a recovery of funds under section 1234a of this title.

§ 1234d. Withholding

(a) Discretionary authority over further payments under applicable program

In accordance with section 1234c of this title, the Secretary may withhold from a recipient, in whole or in part, further payments (including payments for administrative costs) under an applicable program.

(b) Notice requirements

Before withholding payments, the Secretary shall notify the recipient, in writing, of—

1. the intent to withhold payments;
2. the factual and legal basis for the Secretary’s belief that the recipient has failed to comply substantially with a requirement of law; and
3. an opportunity for a hearing to be held on a date at least 30 days after the notification has been sent to the recipient.

(c) Hearing

The hearing shall be held before the Office and shall be conducted in accordance with the rules prescribed pursuant to subsections (f) and (g) of section 1234 of this title.

(d) Suspension of payments, authorities, etc.

Pending the outcome of any hearing under this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

(e) Findings of fact

Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown, may remand the case to the Office to take further evidence, and the Office may thereafter make new or modified findings of fact and may modify its previous action. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(f) Final agency action

The decision of the Office in any hearing under this section shall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

1. modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary’s action; or
2. remands the decision of the Office.

§ 1234e. Cease and desist orders

(a) Issuance and contents of complaint

In accordance with section 1234c of this title, the Secretary may issue to a recipient under an applicable program a complaint which—

1. describes the factual and legal basis for the Secretary’s belief that the recipient is failing to comply substantially with a requirement of law; and
2. contains a notice of a hearing to be held before the Office on a date at least 30 days after the service of the complaint.

(b) Appearance contesting order

The recipient upon which a complaint has been served shall have the right to appear before the Office on the date specified and to show cause why an order should not be entered by the Office requiring the recipient to cease and desist from the violation of law charged in the complaint.

(c) Report; issuance of cease and desist order

The testimony in any hearing held under this section shall be reduced to writing and filed with the Office. If upon that hearing the Office
is of the opinion that the recipient is in viola-
tion of any requirement of law as charged in the
complaint, the Office shall—
(1) make a report in writing stating its find-
ings of fact; and
(2) issue to the recipient an order requiring
the recipient to cease and desist from the
practice, policy, or procedure which resulted
in the violation.

(d) Report and order as final agency action
The report and order of the Office under this
section shall become the final agency action
when the recipient receives the report and order.

(e) Enforcement of final order
The Secretary may enforce a final order of the
Office under this section which becomes final
agency action by—
(1) withholding from the recipient any por-
tion of the amount payable to it, including the
amount payable for administrative costs, under
the applicable program; or
(2) certifying the facts to the Attorney Gen-
eral who shall cause an appropriate proceeding
to be brought for the enforcement of the order.

Amendments
1988—Pub. L. 100–297 amended section generally, sub-
stituting provisions relating to cease and desist orders
for provisions relating to use of recovered funds. See
section 1234h of this title.

Effective Date of 1988 Amendment
Amendment by Pub. L. 100–297 effective 180 days after
Apr. 28, 1988, but not applicable to recipients receiving
written notice to return funds prior to that date, see
section 3501(b) of Pub. L. 100–297, set out as an Effective Date of 1988 Amend-
ment note under section 1234 of this title.

§ 1234g. Judicial review

(a) Recipients entitled to review; stay of action
by Secretary
Any recipient of funds under an applicable
program that would be adversely affected by a
final agency action under section 1234a, 1234d, or
1234e of this title, and any State entitled to re-
ceive funds under a program described in section
1232d(a) of this title whose application has been
disapproved by the Secretary, shall be entitled
to judicial review of such action in accordance
with the provisions of this section. The Sec-
retary may not take any action on the basis of
a final agency action until judicial review is
completed.

(b) Petition for review; filing of record
A recipient that desires judicial review of an
action described in subsection (a) of this section
shall, within 60 days of that action, file with the
United States Court of Appeals for the circuit in
which that recipient is located, a petition for re-
view of such action. A copy of the petition shall
be transmitted by the clerk of the court to the
Secretary. The Secretary shall file in the court
the record of the proceedings on which the ac-
tion was based, as provided in section 2112 of
title 28.

(c) Findings of fact
The findings of fact by the Office, if supported
by substantial evidence, shall be conclusive; but
the court, for good cause shown, may remand
the case to the Office to take further evidence,
and the Office may make new or modified find-
ings of fact and may modify its previous action,
and shall certify to the court the record of the
further proceedings. Such new or modified find-
ings of fact shall likewise be conclusive if supported by substantial evidence.

(d) Scope of review; review by Supreme Court

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


AMENDMENTS
1994—Subsec. (a). Pub. L. 103–382 made technical amendment to reference to section 1232d(a) of this title to reflect renumbering of corresponding section of original act.

EFFECTIVE DATE
Section effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1234h of this title.

§ 1234h. Use of recovered funds

(a) Repayment to recipient; factors considered

Whenever the Secretary recovers funds paid to a recipient under a grant or cooperative agreement made under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds if the Secretary determines that—

(1) the practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program, provided that the recipient was notified of any noncompliance with such requirements and given a reasonable period of time to remedy such noncompliance;

(2) the recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

(b) Terms and conditions of repayment

Any payments by the Secretary under this section shall be subject to such other terms and conditions as the Secretary considers necessary to accomplish the purposes of the affected programs, including—

(1) the submission of periodic reports on the use of funds provided under this section; and

(2) consultation by the recipient with students, parents, or representatives of the population that will benefit from the payments.

(c) Availability of funds

Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than three fiscal years following the later of—

(1) the fiscal year in which final agency action under section 1234a(e) of this title is taken; or

(2) if such recipient files a petition for judicial review, the fiscal year in which final judicial action under section 1234g of this title is taken.

(d) Publication in Federal Register of notice of intent to enter into repayment arrangement

At least 30 days prior to entering into an arrangement under this section, the Secretary shall publish in the Federal Register a notice of intent to enter into such an arrangement and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least 30 days to submit comments to the Secretary regarding the proposed arrangement.


AMENDMENTS
1994—Subsec. (a)(1). Pub. L. 103–382, § 250(b)(1), inserted before semicolon ‘‘, provided that the recipient was notified of any noncompliance with such requirements and given a reasonable period of time to remedy such noncompliance’’.

Subsec. (c). Pub. L. 103–382, § 250(b)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ‘‘Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than 3 fiscal years following the fiscal year in which final agency action under section 1234a(e) of this title is taken.’’

EFFECTIVE DATE
Section effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1234h of this title.

§ 1234i. Definitions

For purposes of this subchapter:

(1) The term ‘‘recipient’’ means a recipient of a grant or cooperative agreement under an applicable program.

(2) The term ‘‘applicable program’’ excludes programs authorized by the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.] and assistance programs provided under the Act of September 30, 19501 (Public Law 874, 81st Congress), and the Act of September 23, 19501 (Public Law 815, 81st Congress).


1 See References in Text note below.
work-study programs for vocational education students.


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CODIFICATION


§ 1400. Short title; findings; purposes

(a) Short title

This chapter may be cited as the "Individuals with Disabilities Education Act".

(b) Omitted

with Disabilities Education Act''.


SUBCHAPTER I—GENERAL PROVISIONS

§ 1400. Short title; findings; purposes

(a) Short title

This chapter may be cited as the "Individuals with Disabilities Education Act".

(b) Omitted

(c) Findings

Congress finds the following:

1. Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

2. Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

3. Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

4. However, the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

5. Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to—

(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful performance outcomes to participate in the education of their children at school and at home;

(C) coordinating this chapter with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

6. While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

7. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

8. Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.
(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes. 

(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

(B) America’s ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

(C) Minority children comprise an increasing percentage of public school students.

(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation’s students from non-English language backgrounds.

(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) African-American children are identified as having intellectual disabilities and emotional disturbance at rates greater than their White counterparts.

(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

(E) Studies have found that schools with predominantly White students and teachers have placed disproportionately high numbers of their minority students into special education.

(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this chapter, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

(d) Purposes

The purposes of this chapter are—

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.


REFERENCES IN TEXT


The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(5)(C), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, which is classified generally to chapter 70 (§ 6301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

CROSS REFERENCE


PRIOR PROVISIONS


amendment of subchapters I to IV of this chapter by Pub. L. 105–17. This section had been classified as a note under former section 1401 of this title prior to being amended by Pub. L. 94–142.

**AMENDMENTS**

2010—Subsec. (c)(12)(C). Pub. L. 111–256 substituted “having intellectual disabilities” for “having mental retardation”.

**EFFECTIVE DATE**


“(a) PARTS A, B, AND C, AND SUBPART 1 OF PART D.—

“(1) IN GENERAL.—Except as provided in paragraph (2), parts A, B, and C, and subpart 1 of part D of the Individuals with Disabilities Education Act [subchapters I, II, and III and part A of subchapter IV of this chapter], as amended by title I, shall take effect on July 1, 2005.

“(2) HIGHLY QUALIFIED DEFINITION.—Subparagraph (A), and subparagraphs (C) through (F), of section 602(10) of the Individuals with Disabilities Education Act [20 U.S.C. 1401(10)], as amended by title I, shall take effect on the date of enactment of this Act [Dec. 3, 2004] for purposes of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.].

“(b) SUBPARTS 2, 3, AND 4 OF PART D.—Subparts 2, 3, and 4 of part D of the Individuals with Disabilities Education Act [parts B, C, and D of subchapter IV of this chapter], as amended by title I, shall take effect on the date of enactment of this Act [Dec. 3, 2004].”

**SHORT TITLE OF 2010 AMENDMENT**

Pub. L. 111–256, §1, Oct. 5, 2010, 124 Stat. 2643, provided that: “This Act [enacting this section, sections 1140, 1401, and 7512 of this title, sections 705, 764, and 791 of Title 29, Labor, and sections 217a–1, 247b–4, 285g, 285g–2, 291k, 294c, and 3001–30 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section, and amending provisions set out as notes under sections 285f, 285g, 3001–1, and 2000f of Title 42] may be cited as ‘Rosa’s Law’.”

**SHORT TITLE OF 2004 AMENDMENT**

Pub. L. 108–446, §1, Dec. 3, 2004, 118 Stat. 2647, provided that: “This Act [enacting subchapters I to IV of this chapter, part E of subchapter I of chapter 76 of this title, sections 9567 to 9567b of this title, amending sections 927, 1087ee, 4304, 5802, 6103, 6311, 6317, 7221f, 7223b, 6511, 6515, 9516, and 9685 of this title, sections 2164 of Title 10, Armed Forces, section 121 of Title 17, Copyrights, sections 721, 725, 772, and 773 of Title 29, Labor, and sections 280c–6, 290bb–25, 2901r–1, 2901r–2, 13960, 1396n, 5011, 9635, 9636, 9837, 12511, 15025, and 15004 of Title 42, The Public Health and Welfare, repealing section 1444 of this title, redesignating former part E of subchapter I of chapter 76 of this title as part F, omitting sections 1445, 1450, and 1483 to 1487 of this title, enacting provisions set out as notes under this section and section 9567b of this title, and amending provisions set out as a note under section 285g of Title 42] may be cited as the ‘Individuals with Disabilities Education Improvement Act of 2004’.”

**SHORT TITLE OF 1997 AMENDMENT**

Pub. L. 105–17, §1, June 4, 1997, 111 Stat. 37, provided that: “This Act [enacting subchapters III and V to IX of this chapter, and enacting provisions set out as notes under this section and sections 1431 and 1451 of this title] may be cited as the ‘Individuals with Disabilities Education Act Amendments of 1997’.”

**SHORT TITLE OF 1991 AMENDMENT**

REGULATIONS
Pub. L. 111–256, §3, Oct. 5, 2010, 124 Stat. 2645, provided that: “For purposes of regulations issued to carry out a provision amended by this Act [see Short Title of 2010 Amendment note above]—

“(1) before the regulations are amended to carry out this Act—

“(A) a reference in the regulations to mental retardation shall be considered to be a reference to an intellectual disability; and

“(B) a reference in the regulations to the mentally retarded, or individuals who are mentally retarded, shall be considered to be a reference to individuals with intellectual disabilities; and

“(2) in amending the regulations to carry out this Act, a Federal agency shall ensure that the regulations clearly state—

“(A) that an intellectual disability was formerly termed mental retardation; and

“(B) that individuals with intellectual disabilities were formerly termed individuals who are mentally retarded.”

CONSTRUCTION OF 2010 AMENDMENT
Pub. L. 111–256, §4, Oct. 5, 2010, 124 Stat. 2645, provided that: “This Act [see Short Title of 2010 Amendment note above] shall be construed to make amendments to provisions of Federal law to substitute the term ‘an intellectual disability’ for ‘mental retardation’, and ‘individuals with intellectual disabilities’ for ‘individuals who are mentally retarded’, without any intent to—

“(1) change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions; or

“(2) compel States to change terminology in State laws for individuals covered by a provision amended by this Act.”

TRANITION

“(1) IN GENERAL.—The Secretary of Education (in this section referred to as ‘the Secretary’) shall take such steps as are necessary to provide for the orderly transition from the Individuals with Disabilities Education Act [this chapter], as such Act was in effect on the day preceding the date of enactment of this Act [Dec. 3, 2004], to the Individuals with Disabilities Education Act [this chapter] and part E of the Education Sciences Reform Act of 2002 [20 U.S.C. 9567 et seq.], as amended by this Act.

“(2) LIMITATION.—The Secretary’s authority in paragraph (1) shall terminate 1 year after the date of enactment of this Act.

“(b) MULTI-YEAR AWARDS.—Notwithstanding any other provision of law, the Secretary may award funds appropriated under part D of the Individuals with Disabilities Education Act [subchapter IV of this chapter] to make continuation awards for projects that were funded under section 618 [20 U.S.C. 1418], and part D, of the Individuals with Disabilities Education Act (as such section and part were in effect on September 30, 2004), in accordance with the terms of the original awards.

“(c) RESEARCH.—Notwithstanding section 302(b) [set out as a note above] or any other provision of law, the Secretary may award funds that are appropriated under the Department of Education Appropriations Act, 2005 (Pub. L. 108–447, div. F, title III, 118 Stat. 3172, see Tables for classification) for special education research under either of the headings ‘Special Education’ or ‘Institute of Education Sciences’ in accordance with sections 672 and 674 of the Individuals with Disabilities Education Act [20 U.S.C. 1472, 1474], as such sections were in effect on October 1, 2004.”

REFERENCES TO EDUCATION OF THE HANDICAPPED ACT

DEFINITIONS
Pub. L. 111–256, §2(k), Oct. 5, 2010, 124 Stat. 2644, provided that: “For purposes of each provision amended by this section (amending this section, sections 1140, 1141, and 7512 of this title, sections 705, 764, and 791 of Title 29, Labor, and sections 217a–1, 247–4, 285g, 285g–2, 291k, 294e, and 300d–52 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under sections 280f, 283g, 3000–1, and 2000f of Title 42)—

“(1) a reference to ‘an intellectual disability’ shall mean a condition previously referred to as ‘mental retardation’, or a variation of this term, and shall have the same meaning with respect to programs, or qualifications for programs, for individuals with such a condition; and

“(2) a reference to individuals with intellectual disabilities shall mean individuals who were previously referred to as individuals who are ‘individuals with mental retardation’ or ‘the mentally retarded’, or variations of those terms.”

§ 1401. Definitions
Except as otherwise provided, in this chapter:

(1) Assistive technology device

(A) In general

The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(2) Assistive technology service

The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child’s customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.
(3) Child with a disability

(A) In general

The term “child with a disability” means a child—

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) Core academic subjects

The term “core academic subjects” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

(5) Educational service agency

The term “educational service agency”—

(A) means a regional public multiservice agency—

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) Elementary school

The term “elementary school” means a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(7) Equipment

The term “equipment” includes—

(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(8) Excess costs

The term “excess costs” means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under subchapter II;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; and

(iii) under parts A and B of title III of that Act [20 U.S.C. 6811 et seq., 6891 et seq.]; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(9) Free appropriate public education

The term “free appropriate public education” means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(10) Highly qualified

(A) In general

For any special education teacher, the term “highly qualified” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801], except that such term also—

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) Requirements for special education teachers

When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with
resolution to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law:

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor’s degree.

(C) Special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311(b)(1)], such term means the teacher, whether new or not new to the profession, may either—

(i) meet the applicable requirements of section 9101 of such Act [20 U.S.C. 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) Special education teachers teaching multiple subjects

When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either—

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this section or subchapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) Definition for purposes of the ESEA

A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(11) Homeless children

The term “homeless children” has the meaning given the term “homeless children and youths” in section 11434a of title 42.

(12) Indian

The term “Indian” means an individual who is a member of an Indian tribe.

(13) Indian tribe

The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(14) Individualized education program; IEP

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title.

(15) Individualized family service plan

The term “individualized family service plan” has the meaning given the term in section 1436 of this title.

(16) Infant or toddler with a disability

The term “infant or toddler with a disability” has the meaning given the term in section 1432 of this title.

(17) Institution of higher education

The term “institution of higher education” includes

(A) has the meaning given the term in section 1001 of this title; and

(B) also includes any college or university receiving funding from the Secretary of the Interior under the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801 et seq.].

(18) Limited English proficient

The term “limited English proficient” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

(19) Local educational agency

(A) In general

The term “local educational agency” means a public board of education or other
public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(B) Educational service agencies and other public institutions or agencies

The term includes—
(i) an educational service agency; and
(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA funded schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(20) Native language

The term “native language”, when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

(21) Nonprofit

The term “nonprofit”, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(22) Outlying area

The term “outlying area” means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(23) Parent

The term “parent” means—
(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
(B) a guardian (but not the State if the child is a ward of the State);
(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
(D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

(24) Parent organization

The term “parent organization” has the meaning given in the term in section 1471(g) of this title.

(25) Parent training and information center

The term “parent training and information center” means a center assisted under section 1471 or 1472 of this title.

(26) Related services

(A) In general

The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(27) Secondary school

The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(28) Secretary

The term “Secretary” means the Secretary of Education.

(29) Special education

The term “special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—
(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(B) instruction in physical education.

(30) Specific learning disability

(A) In general

The term “specific learning disability” means a disorder in 1 or more of the basic psychological processes involved in under-
standing or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(31) State

The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(32) State educational agency

The term “State educational agency” means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(33) Supplementary aids and services

The term “supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title.

(34) Transition services

The term “transition services” means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(35) Universal design

The term “universal design” has the meaning given in the term in section 3002 of title 29.

(36) Ward of the State

(A) In general

The term “ward of the State” means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) Exception

The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

References in Text

The Elementary and Secondary Education Act of 1965, referred to in par. (13), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, which is classified generally to chapter 70 (§ 6301 et seq.) of this title. Part A of title I of the Act is classified generally to part A (§ 6311 et seq.) of subchapter I of chapter 70 of this title. Parts A and B of title III of the Act are classified generally to parts A (§ 6811 et seq.) and B (§ 6891 et seq.), respectively, of subchapter III of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.


Prior Provisions


Amendments


2008—Par. (17)(B). Pub. L. 110–315 substituted “college or university” for “community college” and “the Trib-
ally Controlled Colleges and Universities Assistance Act of 1978” for “the Tribally Controlled College or University Assistance Act of 1978”.

**Effective Date**

Section effective July 1, 2005, except that subparagraphs (C) through (F) of par. (10) of this section are effective Dec. 3, 2004, for purposes of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), see section 302(a) of Pub. L. 108–446, out as a note under section 1400 of this title.

**Definitions**

For meaning of references to an intellectual disability and to individuals with intellectual disabilities in provisions amended by section 2 of Pub. L. 111–256, see section 2(k) of Pub. L. 111–256, set out as a note under section 1400 of this title.

§ 1402. Office of Special Education Programs

(a) **Establishment**

There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in the Department for administering and carrying out this chapter and other programs and activities concerning the education of children with disabilities.

(b) **Director**

The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

(c) **Voluntary and uncompensated services**

Notwithstanding section 1342 of title 31, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this chapter.


**Prior Provisions**


§ 1403. Abrogation of State sovereign immunity

(a) **In general**

A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter.

(b) **Remedies**

In a suit against a State for a violation of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

(c) **Effective date**

Subsections (a) and (b) apply with respect to violations that occur in whole or part after October 30, 1990.


**Prior Provisions**


§ 1404. Acquisition of equipment; construction or alteration of facilities

(a) **In general**

If the Secretary determines that a program authorized under this chapter will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

(b) **Compliance with certain regulations**

Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities”); or

(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).


**Prior Provisions**


§ 1405. Employment of individuals with disabilities

The Secretary shall ensure that each recipient of assistance under this chapter makes positive
efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this chapter.


PRIOR PROVISIONS


§ 1406. Requirements for prescribing regulations

(a) In general

In carrying out the provisions of this chapter, the Secretary shall issue regulations under this chapter only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this chapter.

(b) Protections provided to children

The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this chapter that—

(1) violates or contradicts any provision of this chapter; or

(2) procedurally or substantively lessens the protections provided to children with disabilities under this chapter, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

(c) Public comment period

The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under subchapter II or subchapter III on which an opportunity for public comment is otherwise required by law.

(d) Policy letters and statements

The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

(1) violate or contradict any provision of this chapter; or

(2) establish a rule that is required for compliance with, and eligibility under, this chapter without following the requirements of section 533 of title 5.

(e) Explanation and assurances

Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under subchapter II shall include an explanation in the written response that—

(1) such response is provided as informal guidance and is not legally binding;

(2) when required, such response is issued in compliance with the requirements of section 533 of title 5; and

(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

(f) Correspondence from Department of Education describing interpretations of this chapter

(1) In general

The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this chapter or the regulations implemented pursuant to this chapter.

(2) Additional information

For each item of correspondence published in a list under paragraph (1), the Secretary shall—

(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 533 of title 5.


PRIOR PROVISIONS


§ 1407. State administration

(a) Rulemaking

Each State that receives funds under this chapter shall—

(1) ensure that any State rules, regulations, and policies relating to this chapter conform to the purposes of this chapter;

(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this chapter and Federal regulations; and

(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this chapter.
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(b) Support and facilitation

State rules, regulations, and policies under this chapter shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.


Prior Provisions


§ 1408. Paperwork reduction

(a) Pilot program

(1) Purpose

The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this chapter, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

(2) Authorization

(A) In general

In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, subchapter II for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

(B) Exception

The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

(C) Rule of construction

Nothing in this section shall be construed to—

(i) affect the right of a child with a disability to receive a free appropriate public education under subchapter II; and

(ii) permit a State or local educational agency to waive procedural safeguards under section 1415 of this title.

(3) Proposal

(A) In general

A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

(B) Content

The proposal shall include—

(i) a list of any statutory requirements of, or regulatory requirements relating to, subchapter II that the State desires the Secretary to waive, in whole or in part; and

(ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

(4) Termination of waiver

The Secretary shall terminate a State’s waiver under this section if the Secretary determines that the State—

(A) needs assistance under section 1416(d)(2)(A)(i) of this title and that the waiver has contributed to or caused such need for assistance;

(B) needs intervention under section 1416(d)(2)(A)(iii) of this title or needs substantial intervention under section 1416(d)(2)(A)(iv) of this title; or

(C) failed to appropriately implement its waiver.

(b) Report

Beginning 2 years after December 3, 2004, the Secretary shall include in the annual report to Congress submitted pursuant to section 3486 of this title information related to the effectiveness of waivers granted under subsection (a), including any specific recommendations for broader implementation of such waivers, in—

(1) reducing—

(A) the paperwork burden on teachers, principals, administrators, and related service providers; and

(B) noninstructional time spent by teachers in complying with subchapter II;

(2) enhancing longer-term educational planning;

(3) improving positive outcomes for children with disabilities;

(4) promoting collaboration between IEP Team members; and

(5) ensuring satisfaction of family members.


Prior Provisions


§ 1409. Freely associated States

The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this chapter to the extent that such grants continue to be available to States and local educational agencies under this chapter.


Prior Provisions

§ 1411. Authorization; allotment; use of funds; authorization of appropriations

(a) Grants to States

(1) Purpose of grants

The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this subchapter.

(2) Maximum amount

The maximum amount of the grant a State may receive under this section—

(A) for fiscal years 2005 and 2006 is—

(i) the number of children with disabilities in the State who are receiving special education and related services—

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

(B) for fiscal year 2007 and subsequent fiscal years is—

(i) the number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

(iii) the rate of annual change in the sum of—

(I) 85 percent of such State’s population described in subsection (d)(3)(A)(i)(II); and

(II) 15 percent of such State’s population described in subsection (d)(3)(A)(i)(III).

(b) Outlying areas and freely associated States; Secretary of the Interior

(1) Outlying areas and freely associated States

(A) Funds reserved

From the amount appropriated for any fiscal year under subsection (1), the Secretary shall reserve not more than 1 percent, which shall be used—

(i) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this subchapter, but only if the freely associated State meets the applicable requirements of this subchapter, as well as the requirements of section 1411(b)(2)(C) of this title as such section was in effect on the day before December 3, 2004.

(B) Special rule

The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

(C) Definition

In this paragraph, the term “freely associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(2) Secretary of the Interior

From the amount appropriated for any fiscal year under subsection (1), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (h).

(c) Technical assistance

(1) In general

The Secretary may reserve not more than 1⁄2 of 1 percent of the amounts appropriated under this subchapter for each fiscal year to provide technical assistance activities authorized under section 1416(i) of this title.

(2) Maximum amount

The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(d) Allocations to States

(1) In general

After reserving funds for technical assistance, and for payments to the outlying areas, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

(2) Special rule for use of fiscal year 1999 amount

If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State’s amount for fiscal year 1999, solely for the purpose of calculating the State’s allocation in that subsequent year under paragraph (3) or (4), by...
subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(3) Increase in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocation of increase

(i) In general

Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

(I) to each State the amount the State received under this section for fiscal year 1999;

(II) 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this subchapter; and

(III) 15 percent of those remaining funds to States on the basis of the States’ relative populations of children described in subclause (II) who are living in poverty.

(ii) Data

For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Limitations

Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) Preceding year allocation

No State’s allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) Minimum

No State’s allocation shall be less than the greatest of—

(I) the sum of—

(aa) the amount the State received under this section for fiscal year 1999; and

(bb) 1½ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

(II) the sum of—

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of—

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

(iii) Maximum

Notwithstanding clause (ii), no State’s allocation under this paragraph shall exceed the sum of—

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(C) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(4) Decrease in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Amounts greater than fiscal year 1999 allocations

If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

(i) the amount the State received under this section for fiscal year 1999; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(B) Amounts equal to or less than fiscal year 1999 allocations

(i) In general

If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

(ii) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

(e) State-level activities

(1) State administration

(A) In general

For the purpose of administering this subchapter, including paragraph (3), section 1419
of this title, and the coordination of activities under this subchapter with, and providing technical assistance to, other programs that provide services to children with disabilities—

(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this subchapter for fiscal year 2004 or $800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year or $35,000, whichever is greater.

(B) Cumulative annual adjustments

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust—

(i) the maximum amount the State was eligible to reserve for State administration under this subchapter for fiscal year 2004; and

(ii) $800,000,

by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(C) Certification

Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 1412(a)(12)(A) of this title are current.

(D) Subchapter III

Funds reserved under subparagraph (A) may be used for the administration of subchapter III, if the State educational agency is the lead agency for the State under such subchapter.

(2) Other State-level activities

(A) State-level activities

(i) In general

Except as provided in clause (iii), for the purpose of carrying out State-level activities under this subchapter, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State’s allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(ii) Small State adjustment

Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than $350,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State’s allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(iii) Exception

If a State does not reserve funds under paragraph (3) for a fiscal year, then—

(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting “8.0 percent” for “10 percent”; and

(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting “9.5 percent” for “10.5 percent”.

(B) Required activities

Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation;

(ii) To establish and implement the mediation process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel;

(C) Authorized activities

Funds reserved under subparagraph (A) may be used to carry out the following activities:

(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

(vi) Development and implementation of transition programs, including coordina-
tion of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

(vii) To assist local educational agencies in meeting personnel shortages.

(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 6311(b) and 7301 of this title.

(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 6316(e) of this title to children with disabilities, in schools or local educational agencies identified for improvement under section 6316 of this title on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 6311(b)(2)(G) of this title.

(3) Local educational agency risk pool

(A) In general

(i) Reservation of funds

For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)—

(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

(ii) Definition of local educational agency

In this paragraph the term “local educational agency” includes a charter school that is a local educational agency, or a consortium of local educational agencies.

(B) Limitation on uses of funds

(i) Establishment of high cost fund

A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

(ii) Innovative and effective cost sharing

A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

(C) State plan for high cost fund

(i) Definition

The State educational agency shall establish the State’s definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

(ii) State plan

The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, an annual review, and amend as necessary, a State plan for the high cost fund. Such State plan shall—

(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum—

(aa) addresses the financial impact a high need child with a disability has on the budget of the child’s local educational agency; and

(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 7801 of this title) in that State;

(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

(iii) Public availability

The State shall make its final State plan publicly available not less than 30 days before the beginning of the school year, in-
including dissemination of such information on the State website.

(D) Disbursements from the high cost fund

(i) In general

Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

(ii) Use of disbursements

Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

(iii) Appropriate costs

The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child’s IEP.

(E) Legal fees

The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a free appropriate public education for such child.

(F) Assurance of a free appropriate public education

Nothing in this paragraph shall be construed—

(i) to limit or condition the right of a child with a disability who is assisted under this subchapter to receive a free appropriate public education pursuant to section 1412(a)(1) of this title in the least restrictive environment pursuant to section 1412(a)(5) of this title; or

(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

(G) Special rule for risk pool and high need assistance programs in effect as of January 1, 2004

Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

(H) Medicaid services not affected

Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(I) Remaining funds

Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

(4) Inapplicability of certain prohibitions

A State may use funds the State reserves under paragraphs (1) and (2) without regard to—

(A) the prohibition on commingling of funds in section 1412(a)(17)(B) of this title; and

(B) the prohibition on supplanting other funds in section 1412(a)(17)(C) of this title.

(5) Report on use of funds

As part of the information required to be submitted to the Secretary under section 1412 of this title, each State shall annually describe how amounts under this section—

(A) will be used to meet the requirements of this chapter; and

(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

(6) Special rule for increased funds

A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

(7) Flexibility in using funds for subchapter III

Any State eligible to receive a grant under section 1419 of this title may use funds made available under paragraph (1)(A), subsection (f)(3), or section 1419(f)(5) of this title to develop and implement a State policy jointly with the lead agency under subchapter III and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III to children with disabilities who are eligible for services under section 1419 of this title and who previously received services under subchapter III until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(f) Subgrants to local educational agencies

(1) Subgrants required

Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that

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(2) Procedure for allocations to local educational agencies

For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

(A) Base payments

The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 1411(d) of this title as section 1411(d) was then in effect.

(B) Allocation of remaining funds

After making allocations under subparagraph (A), the State shall—

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(3) Reallocation of funds

If a State educational agency determines that a local educational agency is inadequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this subchapter that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

(g) Definitions

In this section:

(1) Average per-pupil expenditure in public elementary schools and secondary schools in the United States

The term “average per-pupil expenditure in public elementary schools and secondary schools in the United States” means—

(A) without regard to the source of funds—

(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

(ii) any direct expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(2) State

The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) Use of amounts by Secretary of the Interior

(1) Provision of amounts for assistance

(A) In general

The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) for that fiscal year. Of the amount described in the preceding sentence—

(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

(B) Calculation of number of children

In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (referred to in this subsection as the “BIA”) schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to October 7, 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this subchapter for those children, in accordance with paragraph (2).

(C) Additional requirement

With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this subchapter are implemented.

(2) Submission of information

The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 1412 of this title (including monitoring and evaluation activities) and 1413 of this title;
(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this subchapter with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in subparagraph (A);

(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 1418 of this title;

(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this subchapter, and will fulfill its duties under this subchapter.

(3) Applicability

The Secretary shall withhold payments under this subchapter with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 1418(e)(6) of this title.

(4) Payments for education and services for Indian children with disabilities aged 3 through 5

(A) In general

With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 450b of title 25) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

(B) Distribution of funds

The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(C) Submission of information

To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

(D) Use of funds

The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The tribe or tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(E) Biennial report

To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

(F) Prohibitions

None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(5) Plan for coordination of services

The Secretary of the Interior shall develop and implement a plan for the coordination of
services for all Indian children with disabilities residing on reservations covered under this chapter. Such plan shall provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State educational agencies and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(6) Establishment of advisory board

To meet the requirements of section 1412(a)(21) of this title, the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 1441 of this title in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(B) advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in this subsection;

(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

(E) provide assistance in the preparation of information required under paragraph (2)(D).

(7) Annual reports

(A) In general

The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(B) Availability

The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

(i) Authorization of appropriations

For the purpose of carrying out this subchapter, other than section 1419 of this title, there are authorized to be appropriated—

(1) $12,358,376,571 for fiscal year 2005;

(2) $14,648,647,143 for fiscal year 2006;

(3) $16,938,917,714 for fiscal year 2007;

(4) $19,229,188,286 for fiscal year 2008;

(5) $21,519,458,857 for fiscal year 2009;

(6) $23,809,729,429 for fiscal year 2010;

(7) $26,100,000,000 for fiscal year 2011; and

(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.


REFERENCES IN TEXT


PRIOR PROVISIONS


EFFECTIVE DATE

Subchapter effective July 1, 2005, see section 302(a) of Pub. L. 108–446, set out as a note under section 1400 of this title.

§1412. State eligibility

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits...
a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) Free appropriate public education

(A) In general

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

(I) were not actually identified as being a child with a disability under section 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

(C) State flexibility

A State that provides early intervention services in accordance with subchapter III to a child who is eligible for services under section 1419 of this title, is not required to provide such child with a free appropriate public education.

(2) Full educational opportunity goal

The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(3) Child find

(A) In general

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) Construction

Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.

(4) Individualized education program

An individualized education program, or an individualized family service plan that meets the requirements of section 1436(d) of this title, is developed, reviewed, and revised for each child with a disability in accordance with section 1414(d) of this title.

(5) Least restrictive environment

(A) In general

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) Additional requirement

(i) In general

A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child’s IEP.

(ii) Assurance

If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

(6) Procedural safeguards

(A) In general

Children with disabilities and their parents are afforded the procedural safeguards required by section 1415 of this title.

(B) Additional procedural safeguards

Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this chapter will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child’s native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.
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(7) Evaluation

Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 1414 of this title.

(8) Confidentiality

Agencies in the State comply with section 1417(c) of this title (relating to the confidentiality of records and information).

(9) Transition from subchapter III to preschool programs

Children participating in early intervention programs assisted under subchapter III, and who will participate in preschool programs assisted under this subchapter, experience a smooth and effective transition to those preschool programs in a manner consistent with section 1437(a)(9) of this title. By the third birthday of such a child, an individualized education program or, if consistent with sections 1414(d)(2)(B) and 1436(d) of this title, an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 1435(a)(10) of this title.

(10) Children in private schools

(A) Children enrolled in private schools by their parents

(i) In general

To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this subchapter by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this subchapter.

(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

(ii) Child find requirement

(I) In general

The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary and secondary schools.

(II) Equitable participation

The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

(III) Activities

In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

(IV) Cost

The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

(V) Completion period

Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

(iii) Consultation

To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding—

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the deter-
ministration of how the amount was calculated;
(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.
(iv) Written affirmation
When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.
(v) Compliance
(I) In general
A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.
(II) Procedure
If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.
(vi) Provision of equitable services
(I) Directly or through contracts
The provision of services pursuant to this subparagraph shall be provided—
(aa) by employees of a public agency;
or
(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.
(II) Secular, neutral, nonideological
Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.
(vii) Public control of funds
The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer the funds and property.
(B) Children placed in, or referred to, private schools by public agencies
(i) In general
Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.
(ii) Standards
In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.
(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency
(i) In general
Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agen-
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who previously received special education

(ii) Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitation on reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if—

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

(II) if, prior to the parents’ removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) Exception

Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

(I) shall not be reduced or denied for failure to provide such notice if—

(aa) the school prevented the parent from providing such notice;

(bb) the parents had not received notice, pursuant to section 1415 of this title, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

(11) State educational agency responsible for general supervision

(A) In general

The State educational agency is responsible, for ensuring that—

(i) the requirements of this subchapter are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency—

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency; and

(iii) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(B) Limitation

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

(C) Exception

Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this subchapter are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(12) Obligations related to and methods of ensuring services

(A) Establishing responsibility for services

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:
(i) Agency financial responsibility

An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child’s IEP).

(ii) Conditions and terms of reimbursement

The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency disputes

Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of services procedures

Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of public agency

(i) In general

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 1401(1) relating to assistive technology devices, 1401(2) relating to assistive technology services, 1401(26) relating to related services, 1401(33) relating to supplementary aids and services, and 1401(34) of this title relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) Reimbursement for services by public agency

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child’s IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) Special rule

The requirements of subparagraph (A) may be met through—

(i) State statute or regulation:

(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

(13) Procedural requirements relating to local educational agency eligibility

The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this subchapter without first affording that agency reasonable notice and an opportunity for a hearing.

(14) Personnel qualifications

(A) In general

The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(B) Related services personnel and paraprofessionals

The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that—

(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this subchapter to be used to assist in the provision of special education and related services under this subchapter to children with disabilities.
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(15) Performance goals and indicators

The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(C) Qualifications for special education teachers

The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 6319(a)(2) of this title.

(D) Policy

In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this subchapter to children with disabilities.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this subchapter.

(16) Participation in assessments

(A) In general

All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 6311 of this title, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

(B) Accommodation guidelines

The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

(C) Alternate assessments

(i) In general

The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(ii) Requirements for alternate assessments

The guidelines under clause (i) shall provide for alternate assessments that—

(I) are aligned with the State’s challenging academic content standards and challenging student academic achievement standards; and

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 6311(b)(1) of this title, measure the achievement of children with disabilities against those standards.

(iii) Conduct of alternate assessments

The State conducts the alternate assessments described in this subparagraph.

(D) Reports

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about
an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

(E) Universal design
The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

(17) Supplementation of State, local, and other Federal funds
(A) Expenditures
Funds paid to a State under this subchapter will be expended in accordance with all the provisions of this subchapter.

(B) Prohibition against commingling
Funds paid to a State under this subchapter will not be commingled with State funds.

(C) Prohibition against supplantation and conditions for waiver by Secretary
Except as provided in section 1413 of this title, funds paid to a State under this subchapter will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this subchapter and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(18) Maintenance of State financial support
(A) In general
The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) Reduction of funds for failure to maintain support
The Secretary shall reduce the allocation of funds under section 1411 of this title for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) Waivers for exceptional or uncontrollable circumstances
The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this subchapter.

(D) Subsequent years
If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State’s support.

(19) Public participation
Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(20) Rule of construction
In complying with paragraphs (17) and (18), a State may not use funds paid to it under this subchapter to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

(21) State advisory panel
(A) In general
The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) Membership
Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including—

(i) parents of children with disabilities (ages birth through 26);

(ii) individuals with disabilities;

(iii) teachers;

(iv) representatives of institutions of higher education that prepare special education and related services personnel;

(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);

(vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
(viii) representatives of private schools and public charter schools;

(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(x) a representative from the State child welfare agency responsible for foster care; and

(xi) representatives from the State juvenile and adult corrections agencies.

(C) Special rule
A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(D) Duties
The advisory panel shall—

(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 1418 of this title;

(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this subchapter; and

(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

(22) Suspension and expulsion rates

(A) In general
The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

(i) among local educational agencies in the State; or

(ii) compared to such rates for non-disabled children within such agencies.

(B) Review and revision of policies
If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs; the use of positive behavioral interventions and supports; and procedural safeguards, to ensure that such policies, procedures, and practices comply with this chapter.

(23) Access to instructional materials

(A) In general
The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

(B) Rights of State educational agency
Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(C) Preparation and delivery of files
If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after December 3, 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to—

(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(D) Assistive technology
In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

(E) Definitions
In this paragraph:

(i) National Instructional Materials Access Center
The term “National Instructional Materials Access Center” means the center established pursuant to section 1474(e) of this title.

(ii) National Instructional Materials Accessibility Standard
The term “National Instructional Materials Accessibility Standard” has the meaning given the term in section 1474(e)(3)(A) of this title.

(iii) Specialized formats
The term “specialized formats” has the meaning given the term in section 1474(e)(3)(D) of this title.

(24) Overidentification and disproportionality
The State has in effect, consistent with the purposes of this chapter and with section
1418(d) of this title, policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 1410 of this title.

(25) Prohibition on mandatory medication

(A) In general

The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 1414 of this title, or receiving services under this chapter.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations or views of parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

(b) State educational agency as provider of free appropriate public education or direct services

If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

(1) shall comply with any additional requirements of section 1413(a) of this title, as if such agency were a local educational agency; and

(2) may use amounts that are otherwise available to such agency under this subchapter to serve those children without regard to section 1413(a)(2)(A)(i) of this title (relating to excess costs).

(c) Exception for prior State plans

(1) In general

If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter by a Federal court or a State’s highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State’s compliance with this subchapter.

(d) Approval by the Secretary

(1) In general

If the Secretary determines that a State is eligible to receive a grant under this subchapter, the Secretary shall notify the State of that determination.

(2) Notice and hearing

The Secretary shall not make a final determination that a State is not eligible to receive a grant under this subchapter until after providing the State—

(A) with reasonable notice; and

(B) with an opportunity for a hearing.

(e) Assistance under other Federal programs

Nothing in this chapter permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq.] with respect to the provision of a free appropriate public education for children with disabilities in the State.

(f) By-pass for children in private schools

(1) In general

If, on December 2, 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

(2) Payments

(A) Determination of amounts

If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

(i) the total amount received by the State under this subchapter for such fiscal year; by

(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 1418 of this title.

(B) Withholding of certain amounts

Pending final resolution of any investigation or complaint that may result in a deter-
mination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

(C) Period of payments

The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

(3) Notice and hearing

(A) In general

The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary’s designee to show cause why such action should not be taken.

(B) Review of action

If a State educational agency is dissatisfied with the Secretary’s final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the further proceedings on which the Secretary based the Secretary’s action, as provided in section 2112 of title 28.

(C) Review of findings of fact

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

(D) Jurisdiction of court of appeals; review by United States Supreme Court

Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.


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REFERENCES IN TEXT


For the effective date of the Individuals with Disabilities Education Improvement Act of 2004, referred to in subsec. (c)(1), (3), see section 302(a), (b) of Pub. L. 108–446, set out as an Effective Date note under section 1400 of this title.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§701 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS


§1413. Local educational agency eligibility

(a) In general

A local educational agency is eligible for assistance under this subchapter for a fiscal year if such agency submits a plan that provides as necessary to pay the cost of services described in subparagraph (A).

(1) Consistency with State policies

The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 1412 of this title.

(2) Use of amounts

(A) In general

Amounts provided to the local educational agency under this subchapter shall be expended in accordance with the applicable provisions of this subchapter and—

(i) shall be used only to pay the excess costs of providing special education and
related services to children with disabilities;

(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(B) Exception

Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

(ii) a decrease in the enrollment of children with disabilities;

(iii) the termination of the obligation of the agency, consistent with this subchapter, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

(I) has left the jurisdiction of the agency;

(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

(III) no longer needs such program of special education; or

(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(C) Adjustment to local fiscal effort in certain fiscal years

(i) Amounts in excess

Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 1411(f) of this title exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

(ii) Use of amounts to carry out activities under ESEA

If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(iii) State prohibition

Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 1416 of this title, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

(iv) Special rule

The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

(D) Schoolwide programs under title I of the ESEA

Notwithstanding subparagraph (A) or any other provision of this subchapter, a local educational agency may use funds received under this subchapter for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6314], except that the amount so used in any such program shall not exceed—

(i) the number of children with disabilities participating in the schoolwide program; multiplied by

(ii)(I) the amount received by the local educational agency under this subchapter for that fiscal year; divided by

(II) the number of children with disabilities in the jurisdiction of that agency.

(3) Personnel development

The local educational agency shall ensure that all personnel necessary to carry out this subchapter are appropriately and adequately prepared, subject to the requirements of section 1412(a)(14) of this title and section 2122 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6622].

(4) Permissive use of funds

(A) Uses

Notwithstanding paragraph (2)(A) or section 1412(a)(17)(B) of this title (relating to commingled funds), funds provided to the local educational agency under this subchapter may be used for the following activities:

(i) Services and aids that also benefit non-disabled children

For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

(ii) Early intervening services

To develop and implement coordinated, early intervening educational services in accordance with subsection (f).
(iii) High cost education and related services

To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

(B) Administrative case management

A local educational agency may use funds received under this subchapter to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

(5) Treatment of charter schools and their students

In carrying out this subchapter with respect to charter schools that are public schools of the local educational agency, the local educational agency—

(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

(B) provides funds under this subchapter to those charter schools—

(i) on the same basis as the local educational agency provides funds to the local educational agency’s other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(ii) at the same time as the agency distributes other Federal funds to the agency’s other public schools, consistent with the State’s charter school law.

(6) Purchase of instructional materials

(A) In general

Not later than 2 years after December 3, 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 1412(a)(23) of this title.

(B) Rights of local educational agency

Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(7) Information for State educational agency

The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this subchapter, including, with respect to paragraphs (15) and (16) of section 1412(a) of this title, information relating to the performance of children with disabilities participating in programs carried out under this subchapter.

(8) Public information

The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this subchapter.

(9) Records regarding migratory children with disabilities

The local educational agency shall cooperate in the Secretary’s efforts under section 1308 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6396) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

(b) Exception for prior local plans

(1) In general

If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this subchapter.

(2) Modification made by local educational agency

Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

(3) Modifications required by State educational agency

If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter by Federal or State courts, or there is an official finding of noncompliance with Federal or
State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency’s compliance with this subchapter or State law.

(c) Notification of local educational agency or State agency in case of ineligibility

If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

(d) Local educational agency compliance

(1) In general

If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

(2) Additional requirement

Any State agency or local educational agency in receipt of a notice described in paragraph (1), the State educational agency shall consider any decision made in a hearing pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

(3) Consideration

In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 1415 of this title that is adverse to the local educational agency or State agency involved in that decision.

(e) Joint establishment of eligibility

(1) Joint establishment

(A) In general

A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(B) Charter school exception

A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

(2) Amount of payments

If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 1411(f) of this title if such agencies were eligible for such payments.

(3) Requirements

Local educational agencies that establish joint eligibility under this subsection shall—

(A) adopt policies and procedures that are consistent with the State’s policies and procedures under section 1412(a) of this title; and

(B) be jointly responsible for implementing programs that receive assistance under this subchapter.

(4) Requirements for educational service agencies

(A) In general

If an educational service agency is required by State law to carry out programs under this subchapter, the joint responsibilities given to local educational agencies under this subchapter shall—

(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

(ii) be carried out only by that educational service agency.

(B) Additional requirement

Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 1412(a)(3) of this title.

(f) Early intervening services

(1) In general

A local educational agency may not use more than 15 percent of the amount such agency receives under this subchapter for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(2) Activities

In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include—
(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Construction

Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this subchapter.

(4) Reporting

Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on—

(A) the number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this chapter during the preceding 2-year period.

(5) Coordination with Elementary and Secondary Education Act of 1965

Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

(g) Direct services by the State educational agency

(1) In general

A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

(A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;

(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

(2) Manner and location of education and services

The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this subchapter.

(h) State agency eligibility

Any State agency that desires to receive a subgrant for any fiscal year under section 1411(f) of this title shall demonstrate to the satisfaction of the State educational agency that—

(1) all children with disabilities who are participating in programs and projects funded under this subchapter receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this subchapter; and

(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

(i) Disciplinary information

The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child’s records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

(j) State agency flexibility

(1) Adjustment to State fiscal effort in certain fiscal years

For any fiscal year for which the allotment received by a State under section 1411 of this title exceeds the amount the State received for the previous fiscal year and if the State in school year 2000-2001 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 1412(a) of this title, may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.
(2) Prohibition

Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this subchapter, or that the State needs assistance, intervention, or substantial intervention under section 1416(d)(2)(A) of this title, the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

(3) Education activities

If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or to support need based student or teacher higher education programs.

(4) Report

For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

(5) Limitation

Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this chapter and State funds received from the State educational agency.


REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(2)(C)(i)(I), (b)(5), and (j)(3), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of this title. For complete classification of this Act to which is classified generally to chapter 70 (§ 6301 et seq.), see Short Title note set out under section 1401 of this title.

For the effective date of the Individuals with Disabilities Education Improvement Act of 2004, referred to in subsec. (b)(1), (3), see section 302(a), (b) of Pub. L. 108–446, set out as an Effective Date note under section 1401 of this title.

PRIOR PROVISIONS


§1414. Evaluations, eligibility determinations, individualized education programs, and educational placements

(a) Evaluations, parental consent, and reevaluations

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this subchapter.

(B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) Procedures

(i) In general

Such initial evaluation shall consist of procedures—

(I) to determine whether a child is a child with a disability (as defined in 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) Exception

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if—

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.
(D) Parental consent

(i) In general

(I) Consent for initial evaluation

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(II) Consent for services

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

(ii) Absence of consent

(I) For initial evaluation

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

(II) For services

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

(III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) Consent for wards of the State

(I) In general

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) Exception

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) Rule of construction

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(2) Reevaluations

(A) In general

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation

A reevaluation conducted under subparagraph (A) shall occur—

(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall—
(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—
(i) whether the child is a child with a disability; and
(ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements
Each local educational agency shall ensure that—

(A) assessments and other evaluation materials used to assess a child under this section—
(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
(iii) are used for purposes for which the assessments or measures are valid and reliable;
(iv) are administered by trained and knowledgeable personnel; and
(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) Determination of eligibility and educational need
Upon completion of the administration of assessments and other evaluation measures—

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination
In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinative factor for such determination is—

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title);

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) Specific learning disabilities
(A) In general
Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability;

(B) Additional authority
In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) Additional requirements for evaluation and reevaluations
(1) Review of existing evaluation data
As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including—
(i) evaluations and information provided by the parents of the child;
(ii) current classroom-based, local, or State assessments, and classroom-based observations; and
(iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine—
(i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental needs of the child;

(iii) whether the child needs special education and related services, or in the case
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(2) Source of data

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child’s parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child’s educational needs, the local educational agency—

(A) shall notify the child’s parents of—

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child’s educational needs; and

(B) shall not be required to conduct such an assessment unless requested to by the child’s parents.

(5) Evaluations before change in eligibility

(A) In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception

(i) In general

The evaluation described in subparagraph (A) shall not be required before the termination of a child’s eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.

(d) Individualized education programs

(1) Definitions

In this chapter:

(A) Individualized education program

(i) In general

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

(I) a statement of the child’s present levels of academic achievement and functional performance, including—

(aa) how the child’s disability affects the child’s involvement and progress in the general education curriculum;

(bb) for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities; and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including academic and functional goals, designed to—

(aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and

(bb) meet each of the child’s other educational needs that result from the child’s disability;

(III) a description of how the child’s progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

(aa) to advance appropriately toward attaining the annual goals; and

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extra-
curricular and other nonacademic activities; and
(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;
(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);
(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and
(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—
(AA) the child cannot participate in the regular assessment; and
(BB) the particular alternate assessment selected is appropriate for the child;
(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and
(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—
(aa) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and
(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child’s rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.
(ii) Rule of construction
Nothing in this section shall be construed to require—
(I) that additional information be included in a child’s IEP beyond what is explicitly required in this section; and
(II) the IEP Team to include information under 1 component of a child’s IEP that is already contained under another component of such IEP.
(B) Individualized education program team
The term “individualized education program team” or “IEP Team” means a group of individuals composed of—
(i) the parents of a child with a disability;
(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;
(iv) a representative of the local educational agency who—
(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
(II) is knowledgeable about the general education curriculum; and
(III) is knowledgeable about the availability of resources of the local educational agency;
(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);
(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
(vii) whenever appropriate, the child with a disability.
(C) IEP Team attendance
(i) Attendance not necessary
A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting.
(ii) Excusal
A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if—
(I) the parent and the local educational agency consent to the excusal; and
(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.
(iii) Written agreement and consent required
A parent’s agreement under clause (i) and consent under clause (ii) shall be in writing.
(D) IEP Team transition
In the case of a child who was previously served under subchapter III, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the subchapter III service coordinator or other representatives of the subchapter III system to assist with the smooth transition of services.
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(2) Requirement that program be in effect
(A) In general
At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency’s jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) Program for child aged 3 through 5
In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 1436 of this title, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is—

(i) consistent with State policy; and
(ii) agreed to by the agency and the child’s parents.

(C) Program for children who transfer school districts
(i) In general
(I) Transfer within the same State
In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) Transfer outside State
In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(ii) Transmittal of records
To facilitate the transition for a child described in clause (i)—

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(ii) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(3) Development of IEP
(A) In general
In developing each child’s IEP, the IEP Team, subject to subparagraph (C), shall consider—

(i) the strengths of the child;
(ii) the concerns of the parents for enhancing the education of their child;
(iii) the results of the initial evaluation or most recent evaluation of the child; and
(iv) the academic, developmental, and functional needs of the child.

(B) Consideration of special factors
The IEP Team shall—

(i) in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child’s IEP;

(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and

(v) consider whether the child needs assistive technology devices and services.

(C) Requirement with respect to regular education teacher
A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).
(D) Agreement

In making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child’s current IEP.

(E) Consolidation of IEP Team meetings

To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(F) Amendments

Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

(4) Review and revision of IEP

(A) In general

The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

(i) reviews the child’s IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address—

(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

(IV) the child’s anticipated needs; or

(V) other matters.

(B) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

(5) Multi-year IEP demonstration

(A) Pilot program

(i) Purpose

The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

(ii) Authorization

In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

(B) Report

Beginning 2 years after December 3, 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives
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Procedural safeguards

(a) Establishment of procedures

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include the following:

1. So in original. Probably should be “section”.

2. So in original. Probably should be capitalized.
(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child’s care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

(A) proposes to initiate or change; or

(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with subsection (e).

(6) An opportunity for any party to present a complaint—

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action.

(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) which shall remain confidential—

(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

(ii) that shall include—

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of title 42), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) Notification requirements

(1) Content of prior written notice

The notice required by subsection (b)(3) shall include—

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency’s proposal or refusal.

(2) Due process complaint notice

(A) Complaint

The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A)
(B) Response to complaint
   (i) Local educational agency response
      (I) In general
      If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—
         (aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;
         (bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;
         (cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
         (dd) a description of the factors that are relevant to the agency’s proposal or refusal.
      (II) Sufficiency
      A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent’s due process complaint notice was insufficient where appropriate.
   (ii) Other party response
      Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint.
   (C) Timing
      The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.
   (D) Determination
      Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.
   (E) Amended complaint notice
      (i) In general
      A party may amend its due process complaint notice only if—
         (I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or
         (II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.
      (ii) Applicable timeline
      The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).
   (d) Procedural safeguards notice
      (1) In general
      (A) Copy to parents
      A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—
         (i) upon initial referral or parental request for evaluation;
         (ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and
         (iii) upon request by a parent.
      (B) Internet website
      A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.
      (2) Contents
      The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—
         (A) independent educational evaluation;
         (B) prior written notice;
         (C) parental consent;
         (D) access to educational records;
         (E) the opportunity to present and resolve complaints, including—
            (i) the time period in which to make a complaint;
            (ii) the opportunity for the agency to resolve the complaint; and
            (iii) the availability of mediation;
         (F) the child’s placement during pendency of due process proceedings;
         (G) procedures for students who are subject to placement in an interim alternative educational setting;
         (H) requirements for unilateral placement by parents of children in private schools at public expense;
         (I) due process hearings, including requirements for disclosure of evaluation results and recommendations;
         (J) State-level appeals (if applicable in that State);
         (K) civil actions, including the time period in which to file such actions; and
         (L) attorneys’ fees.
      (e) Mediation
      (1) In general
      Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.
(2) Requirements

Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent’s right to a due process hearing under subsection (f), or to deny any other rights afforded under this subchapter; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) Opportunity to meet with a disinterested party.—A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

(i) a parent training and information center or community parent resource center in the State established under section 1471 or 1472 of this title; or

(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) List of qualified mediators.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) Costs.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Scheduling and location.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Written agreement.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) Mediation discussions.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(f) Impartial due process hearing

(1) In general

(A) Hearing

Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(B) Resolution session

(i) Preliminary meeting

Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

(I) within 15 days of receiving notice of the parents’ complaint;

(II) which shall include a representative of the agency who has decision-making authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

(ii) Hearing

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence.

(iii) Written settlement agreement

In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) Review period

If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement’s execution.
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(2) Disclosure of evaluations and recommendations

(A) In general

Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party’s evaluations, that the party intends to use at the hearing.

(B) Failure to disclose

A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitations on hearing

(A) Person conducting hearing

A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

(i) not be—

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

(ii) possess knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State courts;

(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) Subject matter of hearing

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) Timeline for requesting hearing

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency’s withholding of information from the parent that was required under this subchapter to be provided to the parent.

(E) Decision of hearing officer

(i) In general

Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(g) Appeal

(1) In general

If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such hearing may appeal such findings and decision to the State educational agency.

(2) Impartial review and independent decision

The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

(h) Safeguards

Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and
(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—
   (A) shall be made available to the public consistent with the requirements of section 1417(b) of this title (relating to the confidentiality of data, information, and records); and
   (B) shall be transmitted to the advisory panel established pursuant to section 1412(a)(21) of this title.

(i) Administrative procedures

(1) In general
   (A) Decision made in hearing
      A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).
   (B) Decision made at appeal
      A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

(2) Right to bring civil action
   (A) In general
      Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.
   (B) Limitation
      The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.
   (C) Additional requirements
      In any action brought under this paragraph, the court—
      (i) shall receive the records of the administrative proceedings;
      (ii) shall hear additional evidence at the request of a party; and
      (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees
   (A) In general
      The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.
   (B) Award of attorneys' fees
      (i) In general
      In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—
      (I) to a prevailing party who is the parent of a child with a disability;
      (II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who failed to provide a child with a free appropriate public education under this Act; or
      (III) to a prevailing State educational agency or local educational agency against the attorney of a parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
   (ii) Rule of construction
      Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) Determination of amount of attorneys' fees
      Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) Prohibition of attorneys' fees and related costs for certain services
   (i) In general
      Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—
      (I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
      (II) the offer is not accepted within 10 days; and
      (III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) IEP Team meetings
      Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

(iii) Opportunity to resolve complaints
      A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—
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(I) a meeting convened as a result of an administrative hearing or judicial action; or

(II) an administrative hearing or judicial action for purposes of this paragraph.

(E) Exception to prohibition on attorneys’ fees and related costs

Notwithstanding subparagraph (D), an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys’ fees

Except as provided in subparagraph (G), whenever the court finds that—

(i) the parent, or the parent’s attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding;

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys’ fees awarded under this section.

(G) Exception to reduction in amount of attorneys’ fees

The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) Maintenance of current educational placement

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child’s current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child’s disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

(II) if the conduct in question was the direct result of the local educational agency’s failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the
child, the conduct shall be determined to be a manifestation of the child’s disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child’s disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, in cases where a child—

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

(i) the parent of the child has expressed concern in writing to supervisory or ad-
ministrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, the agency shall notify the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this chapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions

In this subsection:

(A) Controlled substance

The term “controlled substance” means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug

The term “illegal drug” means a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act [21 U.S.C. 801 et seq.] or under any other provision of Federal law.

(C) Weapon

The term “weapon” has the meaning given the term “dangerous weapon” under section 930(g)(2) of title 18.

(D) Serious bodily injury

The term “serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18.

(f) Rule of construction

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(m) Transfer of parental rights at age of majority

(1) In general

A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) the agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this subchapter transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this subchapter transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under
§ 1416. Monitoring, technical assistance, and enforcement

(a) Federal and State monitoring

(1) In general

The Secretary shall—

(A) monitor implementation of this subchapter through—

(i) oversight of the exercise of general supervision by the States, as required in section 1412(a)(11) of this title; and

(ii) the State performance plans, described in subsection (b);

(B) enforce this subchapter in accordance with subsection (e); and

(C) require States to—

(i) monitor implementation of this subchapter by local educational agencies; and

(ii) enforce this subchapter in accordance with paragraph (3) and subsection (e).

(2) Focused monitoring

The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this subchapter, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) Monitoring priorities

The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment;

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 1401(34) and 1437(a)(9) of this title;

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive areas of review

The Secretary shall consider other relevant information and data, including data provided by States under section 1418 of this title.

(b) State performance plans

(1) Plan

(A) In general

Not later than 1 year after December 3, 2004, each State shall have in place a per-
formance plan that evaluates that State’s efforts to implement the requirements and purposes of this subchapter and describes how the State will improve such implementation.

(B) Submission for approval
Each State shall submit the State’s performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

(C) Review
Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

(2) Targets
(A) In general
As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

(B) Data collection
(i) In general
Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

(ii) Rule of construction
Nothing in this chapter shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this subchapter.

(C) Public reporting and privacy
(i) In general
The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this subchapter.

(ii) Report
(A) Public report
The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State’s performance plan. The State shall make the State’s performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

(B) State performance report
The State shall report annually to the Secretary on the performance of the State under the State’s performance plan.

(iii) Privacy
The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(e) Approval process
(1) Deemed approval
The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

(2) Disapproval
The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

(3) Notification
If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—
(A) give the State notice and an opportunity for a hearing; and
(B) notify the State of the finding, and in such notification shall—
(i) cite the specific provisions in the plan that do not meet the requirements; and
(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

(4) Response
If the State responds to the Secretary’s notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the Secretary makes a written determination, the Secretary shall approve or disapprove such plan prior to the later of—
(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or
(B) the expiration of the 120-day period described in paragraph (1).

(5) Failure to respond
If the State does not respond to the Secretary’s notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

(d) Secretary’s review and determination
(1) Review
The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) Determination
(A) In general
Based on the information provided by the State in the State performance report, infor-
mation obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

(i) meets the requirements and purposes of this subchapter;
(ii) needs assistance in implementing the requirements of this subchapter;
(iii) needs intervention in implementing the requirements of this subchapter; or
(iv) needs substantial intervention in implementing the requirements of this subchapter.

(B) Notice and opportunity for a hearing

For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

(e) Enforcement

(1) Needs assistance

If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(i) in implementing the requirements of this subchapter, the Secretary shall take 1 or more of the following actions:

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under subchapter IV, and private providers of scientifically based technical assistance.

(B) Direct the use of State-level funds under section 1411(e) of this title on the area or areas in which the State needs assistance.

(2) Needs intervention

If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this subchapter, the following shall apply:

(A) The Secretary may take any of the actions described in paragraph (1).
(B) The Secretary shall take 1 or more of the following actions:

(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.
(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act [20 U.S.C. 1234f], if the Secretary has reason to believe that the State cannot correct the problem within 1 year.
(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State’s funds under section 1411(e) of this title, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.
(v) Withhold, in whole or in part, any further payments to the State under this subchapter pursuant to paragraph (5).
(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) Needs substantial intervention

Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this subchapter or that there is a substantial failure to comply with any condition of a State educational agency’s or local educational agency’s eligibility under this subchapter, the Secretary shall take 1 or more of the following actions:

(B) Withhold, in whole or in part, any further payments to the State under this subchapter.
(C) Refer the case to the Office of the Inspector General at the Department of Education.
(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(4) Opportunity for hearing

(A) Withholding funds

Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

(B) Suspension

Pending the outcome of any hearing to withhold payments under subsection (b), the
Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this subchapter, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this subchapter should not be suspended.

(5) Report to Congress

The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) Nature of withholding

(A) Limitation

If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—

(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary’s determination under subsection (d)(2); or

(ii) that the State educational agency shall not make further payments under this subchapter to specified State agencies or local educational agencies that caused or were involved in the Secretary’s determination under subsection (d)(2).

(B) Withholding until rectified

Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) payments to the State under this subchapter shall be withheld in whole or in part; and

(ii) payments by the State educational agency under this subchapter shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary’s determination under subsection (d)(2), as the case may be.

(7) Public attention

Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

(8) Judicial review

(A) In general

If any State is dissatisfied with the Secretary’s action with respect to the eligibility of the State under section 1412 of this title, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary’s action was based, as provided in section 2112 of title 28.

(B) Jurisdiction; review by United States Supreme Court

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

(C) Standard of review

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

(f) State enforcement

If a State educational agency determines that a local educational agency is not meeting the requirements of this subchapter, including the targets in the State’s performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency’s maintenance of effort under section 1413(a)(2)(C) of this title for any fiscal year.

(g) Rule of construction

Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act [20 U.S.C. 1221 et seq.] to monitor and enforce the requirements of this chapter.

(h) Divided State agency responsibility

For purposes of this section, where responsibility for ensuring that the requirements of this subchapter are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 1412(a)(11)(C) of this title, the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this subchapter are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this subchapter, except that—

(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 1411 of this title to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency re-
sponsible for the failure to comply with this subchapter.

(i) Data capacity and technical assistance review

The Secretary shall—

(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

(2) provide technical assistance (from funds reserved under section 1411(c) of this title), where needed, to improve the capacity of States to meet the data collection requirements.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 1417. Administration

(a) Responsibilities of Secretary

The Secretary shall—

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

(A) the education of children with disabilities; and

(B) carrying out this subchapter; and

(2) provide short-term training programs and institutes.

(b) Prohibition against Federal mandates, direction, or control

Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

(c) Confidentiality

The Secretary shall take appropriate action, in accordance with section 1232g of this title, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this subchapter.

(d) Personnel

The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a), under section 1418 of this title, and under part D of subchapter IV, without regard to the provisions of title 5 relating to appointments in the competitive service and without regard to chapter 53 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than 20 such personnel shall be employed at any time.

(e) Model forms

Not later than the date that the Secretary publishes final regulations under this chapter, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

(1) a model IEP form;

(2) a model individualized family service plan (IFSP) form;

(3) a model form of the notice of procedural safeguards described in section 1415(d) of this title; and

(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 1415 of this title that is consistent with the requirements of this subchapter and is sufficient to meet such requirements.


REFERENCES IN TEXT

The provisions of title 5 relating to appointments in the competitive service, referred to in subsec. (d), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.


PRIOR PROVISIONS


§ 1418. Program information

(a) In general

Each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and
disability category, who are in each of the following separate categories:

(i) Receiving a free appropriate public education.

(ii) Participating in regular education.

(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

(iv) For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services.

(v)(I) Removed to an interim alternative educational setting under section 1415(k)(1) of this title.

(II) The acts or items precipitating those removals.

(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

(B) The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.

(C) The number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

(F) The number of due process complaints filed under section 1415 of this title and the number of hearings conducted.

(G) The number of hearings requested under section 1415(k) of this title and the number of changes in placements ordered as a result of those hearings.

(H) The number of mediations held and the number of settlement agreements reached through such mediations.

(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 1432 of this title), and who are receiving early intervention services under subchapter III.

(3) Any other information that may be required by the Secretary.

(b) Data reporting

(1) Protection of identifiable data

The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

(2) Sampling

The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

(c) Technical assistance

The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this chapter.

(d) Disproportionality

(1) In general

Each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to—

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 1401(3) of this title; 

(B) the placement in particular educational settings of such children; and

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) Review and revision of policies, practices, and procedures

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall—

(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this chapter;

(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 1413(f) of this title to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).


PRIOR PROVISIONS


§ 1419. Preschool grants

(a) In general

The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this subchapter—

(1) to children with disabilities aged 3 through 5, inclusive; and

(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

(b) Eligibility

A State shall be eligible for a grant under this section if such State—

(1) is eligible under section 1412 of this title to receive a grant under this subchapter; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

(c) Allocations to States

(1) In general

The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

(2) Increase in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocation

(i) In general

Except as provided in subparagraph (B), the Secretary shall—

(I) allocate to each State the amount the State received under this section for fiscal year 1997;

(II) allocate 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged 3 through 5; and

(III) allocate 15 percent of those remaining funds to States on the basis of the States’ relative populations of all children aged 3 through 5 who are living in poverty.

(ii) Data

For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Limitations

Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) Preceding years

No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) Minimum

No State's allocation shall be less than the greatest of—

(I) the sum of—

(aa) the amount the State received under this section for fiscal year 1997; and

(bb) ½ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

(II) the sum of—

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of—

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(iii) Maximum

Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(C) Ratable reductions

If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(3) Decrease in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocations

If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

(i) the amount the State received under this section for fiscal year 1997; and

(ii) an amount that bears the same relation to any remaining funds as the in-
increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(B) Ratable reductions If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

(d) Reservation for State activities

(1) In general Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

(2) Amount described For each fiscal year, the Secretary shall determine to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(A) the percentage increase, if any, from the preceding fiscal year in the State’s allocation under this section; or

(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(e) State administration

(1) In general For the purpose of administering this section (including the coordination of activities under this subchapter with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

(2) Administration of subchapter III Funds described in paragraph (1) may also be used for the administration of subchapter III.

(f) Other State-level activities Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

(1) for support services (including establishing and implementing the mediation process required by section 1415(e) of this title), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

(2) for direct services for children eligible for services under this section;

(3) for activities at the State and local levels to meet the performance goals established by the State under section 1412(a)(15) of this title;

(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year;

(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III to children with disabilities who are eligible for services under this section and who previously received services under subchapter III until such children enter, or are eligible under State law to enter, kindergarten; or

(6) at the State’s discretion, to continue service coordination or case management for families who receive services under subchapter III.

(g) Subgrants to local educational agencies

(1) Subgrants required Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 1413 of this title, as such section was then in effect.

(A) Base payments The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 1419(c)(3) of this title, as such section was then in effect.

(B) Allocation of remaining funds After making allocations under subparagraph (A), the State shall—

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency’s jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(2) Reallocation of funds If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

(h) Subchapter III inapplicable Subchapter III does not apply to any child with a disability receiving a free appropriate
public education, in accordance with this subchapter, with funds received under this section.

(i) State defined

In this section, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary.


PRIOR PROVISIONS


SUBSECTION III—INFANTS AND TODDLERS WITH DISABILITIES

§ 1431. Findings and policy

(a) Findings

Congress finds that there is an urgent and substantial need—

(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child’s first 3 years of life;

(2) to reduce the educational costs to our society, including our Nation’s schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(3) to maximize the potential for individuals with disabilities to live independently in society;

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities and;

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner
(b) Policy

It is the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.


PRIOR PROVISIONS


EFFECTIVE DATE

Subchapter effective July 1, 2005, see section 302(a) of Pub. L. 108–446, set out as a note under section 1400 of this title.

§ 1432. Definitions

In this subchapter:

(1) At-risk infant or toddler

The term ‘‘at-risk infant or toddler’’ means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

(2) Council

The term ‘‘council’’ means a State interagency coordinating council established under section 1441 of this title.

(3) Developmental delay

The term ‘‘developmental delay’’, when used with respect to an individual residing in a State, has the meaning given such term by the State under section 1435(a)(1) of this title.

(4) Early intervention services

The term ‘‘early intervention services’’ means developmental services that—

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

(1) physical development;

(2) cognitive development;

(3) communication development;

(4) social or emotional development; or

(5) adaptive development;

(D) meet the standards of the State in which the services are provided, including the requirements of this subchapter;

(E) include—

(i) family training, counseling, and home visits;

(ii) special instruction;

(iii) speech-language pathology and audiology services, and sign language and cued language services;

(iv) occupational therapy;

(v) physical therapy;

(vi) psychological services;

(vii) service coordination services;

(viii) medical services only for diagnostic or evaluation purposes;

(ix) early identification, screening, and assessment services;

(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

(xi) social work services;

(xii) vision services;

(xiii) assistive technology devices and assistive technology services; and

(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant’s or toddler’s family to receive another service described in this paragraph;

(F) are provided by qualified personnel, including—

(i) special educators;

(ii) speech-language pathologists and audiologists;

(iii) occupational therapists;

(iv) physical therapists;

(v) psychologists;

(vi) social workers;

(vii) nurses;

(viii) registered dietitians;

(ix) family therapists;

(x) vision specialists, including ophthalmologists and optometrists;

(xi) orientation and mobility specialists; and

(xii) pediatricians and other physicians;

(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and
(H) are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.

(5) Infant or toddler with a disability

The term "infant or toddler with a disability"—

(A) means an individual under 3 years of age who needs early intervention services because the individual—

(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(B) may also include, at a State's discretion—

(i) at-risk infants and toddlers; and

(ii) children with disabilities who are eligible for services under section 1419 of this title and who previously received services under this subchapter until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this subchapter serving such children shall include—

(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this subchapter or participate in preschool programs under section 1419 of this title.


PRIOR PROVISIONS


§1434. Eligibility

In order to be eligible for a grant under section 1433 of this title, a State shall provide assurances to the Secretary that the State—

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

(2) has in effect a statewide system that meets the requirements of section 1435 of this title.


PRIOR PROVISIONS


§1435. Requirements for statewide system

(a) In general

A statewide system described in section 1433 of this title shall include, at a minimum, the following components:

(1) A rigorous definition of the term "developmental delay" that will be used by the State in carrying out programs under this subchapter in order to appropriately identify infants and toddlers with disabilities that are in need of services under this subchapter.

(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers...
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with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 1436 of this title, including service coordination services in accordance with such service plan.

(5) A comprehensive child find system, consistent with subchapter II, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this subchapter that will reduce the need for future services.

(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this subchapter and of services under section 1419 of this title, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that—

(A) shall include—

(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this subchapter; and

(iii) training personnel to coordinate transition services for infants and toddlers served under this subchapter from a program providing early intervention services under this subchapter and under subchapter II (other than section 1419 of this title), to a preschool program receiving funds under section 1419 of this title, or another appropriate program; and

(B) may include—

(i) training personnel to work in rural and inner-city areas; and

(ii) training personnel in the emotional and social development of young children.

(9) Policies and procedures relating to the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification of this title, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this subchapter (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this subchapter to infants and toddlers with disabilities.

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration and supervision of programs and activities receiving assistance under section 1433 of this title, and the monitoring of programs and activities used by the State to carry out this subchapter, whether or not such programs or activities are receiving assistance made available under section 1433 of this title, to ensure that the State complies with this subchapter;

(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

(C) the assignment of financial responsibility in accordance with section 1437(a)(2) of this title to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this subchapter in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this subchapter, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this sub-
chapter in accordance with section 1440(a) of this title.

(13) Procedural safeguards with respect to programs under this subchapter, as required by section 1439 of this title.

(14) A system for compiling data requested by the Secretary under section 1438 of this title that relates to this subchapter.

(15) A State interagency coordinating council that meets the requirements of section 1441 of this title.

(16) Policies and procedures to ensure that, consistent with section 1436(d)(5) of this title—

(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

(b) Policy

In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

(c) Flexibility to serve children 3 years of age until entrance into elementary school

(1) In general

A statewide system described in section 1433 of this title may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 1419 of this title and previously received services under this subchapter, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this subchapter until such children enter, or are eligible under State law to enter, kindergarten.

(2) Requirements

If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—

(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—

(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under subchapter II; and

(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under subchapter II, including—

(I) types of services and the locations at which the services are provided;

(II) applicable procedural safeguards; and

(III) possible costs (including any fees to be charged to families as described in section 1432(4)(B) of this title), if any, to parents of infants or toddlers with disabilities;

(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under subchapter II;

(D) all early intervention services outlined in the child’s individualized family service plan under section 1436 of this title are continued while any eligibility determination is being made for services under this subsection;

(E) the parents of infants or toddlers with disabilities (as defined in section 1432(5)(A) of this title) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

(F) the requirements under section 1437(a)(9) of this title shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 10402 of title 42).

(3) Reporting requirement

If a statewide system includes a State policy described in paragraph (1), the States shall submit to the Secretary, in the States’s report under section 1437(b)(4)(A) of this title, a report on the number and percentage of children with disabilities who are eligible for services under section 1419 of this title but whose parents choose for such children to continue to receive early intervention services under this subchapter.

(4) Available funds

If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 1432(4)(B) of this title.
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(5) Rules of construction

(A) Services under subchapter II

If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 1419 of this title shall not be required to provide the child with a free appropriate public education under subchapter II for the period of time in which the child is receiving services under this subchapter.

(B) Services under this subchapter

Nothing in this subsection shall be construed to require a provider of services under this subchapter to provide a child served under this subchapter with a free appropriate public education.


PRIOR PROVISIONS


AMENDMENTS


§ 1436. Individualized family service plan

(a) Assessment and program development

A statewide system described in section 1433 of this title shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

(b) Periodic review

The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) Promptness after assessment

The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) Content of plan

The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literate and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this subchapter) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

(e) Parental consent

The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.
§ 1437. State application and assurances

(a) Application

A State desiring to receive a grant under section 1433 of this title shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1433 of this title;

(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this subchapter pursuant to section 1440(b) of this title are current as of the date of submission of the certification;

(3) information demonstrating eligibility of the State under section 1434 of this title, including—

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 1433 of this title; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this subchapter;

(6) a description of the State policies and procedures that require the referral for early intervention services under this subchapter of a child under the age of 3 who—

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

(7) a description of the procedure used to ensure that resources are made available under this subchapter for all geographic areas within the State;

(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this subchapter, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(9) a description of the policies and procedures to be used—

(A) to ensure a smooth transition for toddlers receiving early intervention services under this subchapter (and children receiving those services under section 1435(c) of this title) to preschool, school, other appropriate services, or exiting the program, including a description of how—

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 1435(a)(10) of this title will—

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under subchapter II, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under subchapter II, to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

(10) a description of State efforts to promote collaboration among Early Head Start programs under section 9840a of title 42, early education and child care programs, and services under this subchapter; and

(11) such other information and assurances as the Secretary may reasonably require.

(b) Assurances

The application described in subsection (a)—

(1) shall provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State will be expended in accordance with this subchapter;

(2) shall contain an assurance that the State will comply with the requirements of section 1440 of this title;

(3) shall provide satisfactory assurance that the control of funds provided under section 1443 of this title, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this subchapter and that a public agency will administer such funds and property;
(4) shall provide for—
   (A) making such reports in such form and
       containing such information as the Sec-
       retary may require to carry out the Sec-
       retary’s functions under this subchapter;
       and
   (B) keeping such reports and affording
       such access to the reports as the Secretary
       may find necessary to ensure the correctness
       and verification of those reports and proper
       disbursement of Federal funds under this
       subchapter;
(5) provide satisfactory assurance that Fed-
       eral funds made available under section 1443 of
       this title to the State—
           (A) will not be commingled with State
               funds; and
           (B) will be used so as to supplement the
               level of State and local funds expended
               for infants and toddlers with disabilities and
               their families and in no case to supplant
               those State and local funds;
(6) shall provide satisfactory assurance that
       such fiscal control and fund accounting pro-
       cedures will be adopted as may be necessary
       to ensure proper disbursement of, and account-
       ing for, Federal funds paid under section 1443 of
       this title to the State;
(7) shall provide satisfactory assurance that
       policies and procedures have been adopted to
       ensure meaningful involvement of underserved
       groups, including minority, low-income, home-
       less, and rural families and children with dis-
       abilities who are wards of the State, in the
       planning and implementation of all the re-
       quirements of this subchapter; and
(8) shall contain such other information and
       assurances as the Secretary may reasonably
       require by regulation.
(c) Standard for disapproval of application
   The Secretary may not disapprove such an
   application unless the Secretary determines, after
   notice and opportunity for a hearing, that the appli-
   cation fails to comply with the require-
   ments of this section.
(d) Subsequent State application
   If a State has on file with the Secretary a pol-
   icy, procedure, or assurance that demonstrates
   that the State meets a requirement of this sec-
   tion, including any policy or procedure filed
   under this subchapter (as in effect before De-
   cember 3, 2004), the Secretary shall consider the
   State to have met the requirement for purposes
   of receiving a grant under this subchapter.
(e) Modification of application
   An application submitted by a State in ac-
   cordance with this section shall remain in effect
   until the State submits to the Secretary such
   modifications as the State determines nec-
   essary. This section shall apply to a modifica-
   tion of an application to the same extent and in
   the same manner as this section applies to the
   original application.
(f) Modifications required by the Secretary
   The Secretary may require a State to modify
   its application under this section, but only to
   the extent necessary to ensure the State’s com-
   pliance with this subchapter, if—
   (1) an amendment is made to this chapter, or
       a Federal regulation issued under this chapter;
   (2) a new interpretation of this chapter is
       made by a Federal court or the State’s highest
       court; or
   (3) an official finding of noncompliance with
       Federal law or regulations is made with re-
       spect to the State.
(Pub. L. 91–230, title VI, §637, as added Pub. L.
PRIOR PROVISIONS
A prior section 1437, Pub. L. 91–230, title VI, §637, as
112, related to State application and assurances, prior
 to the general amendment of subchapters I to IV of this
chapter by Pub. L. 108–446.
§ 1438. Uses of funds
In addition to using funds provided under sec-
ction 1433 of this title to maintain and implement
the statewide system required by such section, a
State may use such funds—
   (1) for direct early intervention services for
       infants and toddlers with disabilities, and
       their families, under this subchapter that are
       not otherwise funded through other public or
       private sources;
   (2) to expand and improve on services for in-
       fants and toddlers and their families under
       this subchapter that are otherwise available;
   (3) to provide a free appropriate public edu-
       cation, in accordance with subchapter II, to
       children with disabilities from their third
       birthday to the beginning of the following
       school year;
   (4) with the written consent of the parents,
       to continue to provide early intervention serv-
       ices under this subchapter to children with
       disabilities from their 3rd birthday until such
       children enter, or are eligible under State law
to enter, kindergarten, in lieu of a free appro-
       priate public education provided in accordance
       with subchapter II; and
   (5) in any State that does not provide serv-
       ices for at-risk infants and toddlers under sec-
       tion 1437(a)(4) of this title, to strengthen the
       statewide system by initiating, expanding, or
       improving collaborative efforts related to at-
       risk infants and toddlers, including establish-
       ing linkages with appropriate public or private
       community-based organizations, services, and
       personnel for the purposes of—
           (A) identifying and evaluating at-risk in-
               diants and toddlers;
           (B) making referrals of the infants and
               toddlers identified and evaluated under sub-
               paragraph (A); and
           (C) conducting periodic follow-up on each
               such referral to determine if the status of
               the infant or toddler involved has changed
               with respect to the eligibility of the infant
               or toddler for services under this subchapter.
(Pub. L. 91–230, title VI, §638, as added Pub. L.
PRIOR PROVISIONS
A prior section 1438, Pub. L. 91–230, title VI, §638, as
114, related to uses of funds, prior to the general
amendment of subchapters I to IV of this chapter by
§ 1439. Procedural safeguards

(a) Minimum procedures

The procedural safeguards required to be included in a statewide system under section 1435(a)(13) of this title shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this subchapter in accordance with State law without jeopardizing other early intervention services under this subchapter.

(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents’ native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to use mediation in accordance with section 1415 of this title, except that—

(A) any reference in the section to a State educational agency shall be considered to be a reference to a State’s lead agency established or designated under section 1435(a)(10) of this title;

(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State’s lead agency under this subchapter, as the case may be; and

(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(b) Services during pendency of proceedings

During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.


PRIOR PROVISIONS


§ 1440. Payor of last resort

(a) Nonsubstitution

Funds provided under section 1443 of this title may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this subchapter, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 1443 of this title may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

(b) Obligations related to and methods of ensuring services

(1) Establishing financial responsibility for services

(A) In general

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

(i) the provision of, and financial responsibility for, services provided under this subchapter; and

(ii) such services are consistent with the requirements of section 1435 of this title and the State’s application pursuant to section 1437 of this title, including the provision of such services during the pendency of any such dispute.
§ 1441. State interagency coordinating council

(a) Establishment

(1) In general

A State that desires to receive financial assistance under this subchapter shall establish a State interagency coordinating council.

(2) Appointment

The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

(b) Composition

(1) In general

The council shall be composed as follows:

(A) Parents

Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

(B) Service providers

Not less than 20 percent of the members shall be public or private providers of early intervention services.

(C) State legislature

Not less than 1 member shall be from the State legislature.

(D) Personnel preparation

Not less than 1 member shall be involved in personnel preparation.

(E) Agency for early intervention services

Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

(F) Agency for preschool services

Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.
(G) State medicaid agency
Not less than 1 member shall be from the agency responsible for the State medicaid program.

(H) Head Start agency
Not less than 1 member shall be a representative from a Head Start agency or program in the State.

(I) Child care agency
Not less than 1 member shall be a representative from a State agency responsible for child care.

(J) Agency for health insurance
Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

(K) Office of the Coordinator of Education of Homeless Children and Youth
Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

(L) State foster care representative
Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.

(M) Mental health agency
Not less than 1 member shall be a representative from the State agency responsible for children’s mental health.

(2) Other members
The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

(c) Meetings
The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) Management authority
Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this subchapter to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this subchapter.

(e) Functions of council
(1) Duties
The council shall—
(A) advise and assist the lead agency designated or established under section 1435(a)(10) of this title in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;
(B) advise and assist the lead agency in the preparation of applications and amendments thereto;
(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and
(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(f) Conflict of interest
No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.


Prior Provisions


§ 1442. Federal administration
Sections 1416, 1417, and 1418 of this title shall, to the extent not inconsistent with this subchapter, apply to the program authorized by this subchapter, except that—
(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State’s lead agency established or designated under section 1435(a)(10) of this title;
§ 1443. Allocation of funds

(a) Reservation of funds for outlying areas

(1) In general

From the sums appropriated to carry out this subchapter for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this subchapter.

(2) Consolidation of funds

The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this subchapter.

(b) Payments to Indians

(1) In general

The Secretary shall, subject to this subchapter, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 450b of title 25), or consortia of the above entities for the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States for grants to the Indian children operated under this subchapter.

(2) Allocation

For each fiscal year, the Secretary of the Interior shall allocate the entire payment received under paragraph (1) to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) Information

To receive a payment under this subchapter, the tribe, tribal organization, or consortium shall provide such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

(4) Use of funds

The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this subchapter. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) Reports

To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subchapter, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers contacted and receiving services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 1411(h)(3)(E) of this title. The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) Prohibited uses of funds

None of the funds under this subchapter may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) State allotments

(1) In general

Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.
(2) Minimum allotments
Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—
(A) \( \frac{1}{2} \) of 1 percent of the remaining amount described in paragraph (1); or
(B) $500,000.

(3) Ratable reduction
(A) In general
If the sums made available under this subsection for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

(B) Additional funds
If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

(4) Definitions
In this subsection—
(A) the terms "infants" and "toddlers" mean children under 3 years of age; and
(B) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) Reallotment of funds
If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from that State in accordance with such subsection.

(e) Reservation for State incentive grants
(1) In general
For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 1444 of this title exceeds $400,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 1435(c) of this title in order to facilitate the implementation of such policy.

(2) Amount of grant
(A) In general
Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

(B) Maximum amount
No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

(3) Carryover of amounts
(A) First succeeding fiscal year
Pursuant to section 1225(b) of this title, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

(B) Second succeeding fiscal year
Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 1433 of this title (from their allotments under this section) during such second succeeding fiscal year.


REFERENCES IN TEXT

PRIOR PROVISIONS


§1444. Authorization of appropriations
For the purpose of carrying out this subchapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.


PRIOR PROVISIONS
§ 1450

SUBCHAPTER IV—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

§ 1450. Findings

Congress finds the following:

(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling those children to lead productive and independent adult lives.

(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations, working together and implementing comprehensive strategies that improve educational results for children with disabilities.

(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

(4) An effective educational system serving students with disabilities should—

(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system

(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and in the community.

(5) The availability of an adequate number of qualified personnel is critical—

(A) to serve effectively children with disabilities;

(B) to assume leadership positions in administration and direct services;

(C) to provide teacher training; and

(D) to conduct high quality research to improve special education.

(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to form successful teaching practices and model curricula for educating children with disabilities.

(9) Training, technical assistance, support, and dissemination activities are necessary to ensure that subchapters II and III are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

(10) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

(11) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

(D) providing such parents information on their rights, protections, and responsibilities under this chapter and in the transitions described in section 1473(b)(6) of this title;

(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

(12) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school per-
sonnel, and others through curricula, services, and assistive technologies.


**TRANSITION PROVISIONS**

Pub. L. 105–17, title II, §202, June 4, 1997, 111 Stat. 156, provided that: "Notwithstanding any other provision of law, beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of the Individuals with Disabilities Education Act [this subchapter] to make continuation awards for projects that were funded under section 618 [former 20 U.S.C. 1418] and parts C through G of such Act [former subchapters III to VII of this chapter] (as in effect on September 30, 1997)."

**PART A—STATE PERSONNEL DEVELOPMENT GRANTS**

§1451. Purpose; definition of personnel; program authority

(a) Purpose

The purpose of this part is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

(b) Definition of personnel

In this part the term "personnel" means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

(c) Competitive grants

(1) In general

Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 1455 of this title, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than $100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 1453 of this title.

(2) Priority

In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

(A) are in States with the greatest personnel shortages; or

(B) demonstrate the greatest difficulty meeting the requirements of section 1412(a)(14) of this title.

(3) Minimum amount

The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

(A) not less than $500,000, nor more than $4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(B) not less than $80,000 in the case of an outlying area.

(4) Increase in amount

The Secretary may increase the amounts of grants under paragraph (4) to account for inflation.

(5) Factors

The Secretary shall determine the amount of a grant under paragraph (1) after considering—

(A) the amount of funds available for making the grants;

(B) the relative population of the State or outlying area;

(C) the types of activities proposed by the State or outlying area;

(D) the alignment of proposed activities with section 1412(a)(14) of this title;

(E) the alignment of proposed activities with the State plans and applications submitted under sections 6311 and 6612, respectively, of this title; and

(F) the use, as appropriate, of scientifically based research activities.

(d) Formula grants

(1) In general

Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 1455 of this title, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than $100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this part, an amount that bears the same relation to the amount remaining as the amount the State received under section 1411(d) of this title for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this part) under section 1411(d) of this title for that fiscal year.

(2) Minimum allotments for States that received competitive grants

(A) In general

The amount allotted under this subsection to any State educational agency that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be not less than the amount specified for that fiscal year in the State educational agency’s grant award document under that subsection.

(B) Special rule

Each such State educational agency shall use the minimum amount described in subparagraph (A) for the activities described in the State educational agency’s competitive grant award document for that year, unless the Secretary approves a request from the State educational agency to spend the funds on other activities.

(3) Minimum allotment

The amount of any State educational agency’s allotment under this subsection for any fiscal year shall not be less than—
(A) the greater of $500,000 or ½ of 1 percent of the total amount available under this sub-section for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(B) $90,000, in the case of an outlying area.

(4) Direct benefit

In using grant funds allotted under paragraph (1), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State.

(e) Continuation awards

(1) In general

Notwithstanding any other provision of this part, from funds appropriated under section 1455 of this title for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State educational agency (at the request of the State educational agency) that received a multi-year award under this subchapter (as this subchapter was in effect on the day before December 3, 2004), to enable the State educational agency to carry out activities in accordance with the terms of the multi-year award.

(2) Prohibition

A State educational agency that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this part for that fiscal year.


PRIOR PROVISIONS


§ 1452. Eligibility and collaborative process

(a) Eligible applicants

A State educational agency may apply for a grant under this part for a grant period of not less than 1 year and not more than 5 years.

(b) Partners

(1) In general

In order to be considered for a grant under this part, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including—

(A) not less than 1 institution of higher education;

(B) the State agencies responsible for administering subchapter III, early education, child care, and vocational rehabilitation programs.

(2) Other partners

In order to be considered for a grant under this part, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

(A) the Governor;

(B) parents of children with disabilities ages birth through 26;

(C) parents of nondisabled children ages birth through 26;

(D) individuals with disabilities;

(E) parent training and information centers or community parent resource centers funded under sections 1471 and 1472 of this title, respectively;

(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(G) personnel as defined in section 1451(b) of this title;

(H) the State advisory panel established under subchapter II;

(I) the State interagency coordinating council established under subchapter III;

(J) individuals knowledgeable about vocational education;

(K) the State agency for higher education;

(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

(N) other individuals.

(3) Required partner

If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall—

(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

(B) ensure that any activities the State educational agency will carry out under this part that are within that partner's jurisdiction (which may include activities described in section 1454(b) of this title) are carried out by that partner.


PRIOR PROVISIONS


Effective date

Part effective July 1, 2005, see section 302(a) of Pub. L. 108–446, set out as a note under section 1400 of this title.


PRIOR PROVISIONS


§1453. Applications

(a) In general

(1) Submission

A State educational agency that desires to receive a grant under this part shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

(2) State plan

The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

(A) is designed to enable the State to meet the requirements of section 1412(a)(14) of this title and section 1435(a)(8) and (9) of this title;

(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(i) current and anticipated personnel vacancies and shortages; and

(ii) the number of preservice and inservice programs; and


(3) Requirement

The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

(b) Elements of State personnel development plan

Each State personnel development plan under subsection (a)(2) shall—

(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

(A) the nature and extent of the partnership described in section 1452(b) of this title and the respective roles of each member of the partnership, including the partner described in section 1452(b)(3) of this title if applicable; and

(B) how the State educational agency will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(2) describe how the strategies and activities described in paragraph (4) will be coordinated with activities supported with other public resources (including part B [subchapter II] and part C [subchapter III] funds retained for use at the State level for personnel and professional development purposes) and private resources;

(3) describe how the State educational agency will align its personnel development plan under this part with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311, 6612];

(4) describe those strategies the State educational agency will use to address the professional development and personnel needs identified under subsection (a)(2) and how such strategies will be implemented, including—

(A) a description of the programs and activities to be supported under this part that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(B) how such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 1462 of this title;

(5) provide an assurance that the State educational agency will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(6) provide an assurance that the State educational agency will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

(7) describe how the State educational agency will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

(8) describe the steps the State educational agency will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

(9) describe how the State educational agency will assess, on a regular basis, the extent to which the strategies implemented under this part have been effective in meeting the performance goals described in section 1412(a)(15) of this title.

(c) Peer review

(1) In general

The Secretary shall use a panel of experts who are competent, by virtue of their training,
expertise, or experience, to evaluate applications for grants under section 1451(c)(1) of this title.

(2) Composition of panel
A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

(3) Payment of fees and expenses of certain members
The Secretary may use available funds appropriated to carry out this part to pay the expenses and fees of panel members who are not employees of the Federal Government.

(d) Reporting procedures
Each State educational agency that receives a grant under this part shall submit annual performance reports to the Secretary. The reports shall—

(1) describe the progress of the State educational agency in implementing its plan;
(2) analyze the effectiveness of the State educational agency’s activities under this part and of the State educational agency’s strategies for meeting its goals under section 1412(a)(15) of this title; and
(3) identify changes in the strategies used by the State educational agency and described in subsection (b)(4), if any, to improve the State educational agency’s performance.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 1454. Use of funds
(a) Professional development activities
A State educational agency that receives a grant under this part shall use the grant funds to support activities in accordance with the State’s plan described in section 1453 of this title, including 1 or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—
(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;
(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 7911 of this title; and
(C) encourage collaborative and consultative models of providing early intervention, special education, and related services.
(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—
(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;
(B) to enhance learning by children with disabilities; and
(C) to effectively communicate with parents.
(3) Providing professional development activities that—
(A) improve the knowledge of special education and regular education teachers concerning—
(i) the academic and developmental or functional needs of students with disabilities; or
(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;
(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, para-professionals, concerning effective instructional practices, and that—
(i) provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;
(ii) involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;
(iii) provide training in methods of—
(I) positive behavioral interventions and supports to improve student behavior in the classroom;
(II) scientifically based reading instruction, including early literacy instruction;
(III) early and appropriate interventions to identify and help children with disabilities;
(IV) effective instruction for children with low incidence disabilities;
(V) successful transitioning to post-secondary opportunities; and
(VI) using classroom-based techniques to assist children prior to referral for special education;
(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;
(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and
(vi) provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students;
(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and
(D) train early intervention, preschool, and related services providers, and other relevant school personnel, in conducting effective individualized family service plan (IFSP) meetings.
(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers, including programs that provide—
(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;
(B) induction and support for special education teachers during their first 3 years of employment as teachers; or
(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.
(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—
(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 7801 of this title; and
(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning;
(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including para-professionals and primary referral sources, such as—
(A) professional development programs to improve the delivery of early intervention services;
(B) initiatives to promote the recruitment and retention of early intervention personnel; and
(C) interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) Other activities
A State educational agency that receives a grant under this part shall use the grant funds to support activities in accordance with the State's plan described in section 1453 of this title, including 1 or more of the following:
(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—
(A) special education and regular education teachers have—
(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and
(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;
(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and
(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.
(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.
(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.
(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.
(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965 [20 U.S.C. 1021 et seq.].
(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teach-
ers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this part may lead to the weakening of any State teaching certification or licensing requirement.

(7) Assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under, section 6613(c)(18) of this title to benefit special education teachers.

c) Contracts and subgrants

A State educational agency that receives a grant under this part—

(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this part; and

(2) may award contracts and subgrants to other public and private entities, including the lead agency under subchapter III, to carry out the State plan.

d) Use of funds for professional development

A State educational agency that receives a grant under this part shall—

(1) not less than 90 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

(2) not more than 10 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

e) Grants to outlying areas

Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this part.


References in Text


Prior Provisions


Another prior section 1454, Pub. L. 91–230, title VI, §655, as added Pub. L. 129, set out minimum State grant amounts, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108–446.

§1455. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 2005 through 2010.


Prior Provisions


Part B—Personnel Preparation, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

§1461. Purpose; definition of eligible entity

(a) Purpose

The purpose of this part is—

(1) to provide Federal funding for personnel preparation, technical assistance, model demonstration projects, information dissemination, and studies and evaluations, in order to improve early intervention, educational, and transitional results for children with disabilities; and

(2) to assist State educational agencies and local educational agencies in improving their education systems for children with disabilities.

(b) Definition of eligible entity

(1) In general

In this part, the term "eligible entity" means—

(A) a State educational agency;

(B) a local educational agency;

(C) a public charter school that is a local educational agency under State law;

(D) an institution of higher education;
(E) a public agency not described in subparagraphs (A) through (D);
(F) a private nonprofit organization;
(G) an outlying area;
(H) an Indian tribe or a tribal organization (as defined under section 450b of title 25); or
(I) a for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this part.

(2) Special rule
The Secretary may limit which eligible entities described in paragraph (1) are eligible for a grant, contract, or cooperative agreement under this part to 1 or more of the categories of eligible entities described in paragraph (1).


PRIOR PROVISIONS


§1462. Personnel development to improve services and results for children with disabilities

(a) In general
The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to carry out 1 or more of the following objectives:

(1) To help address the needs identified in the State plan described in section 1453(a)(2) of this title for highly qualified personnel, as defined in section 1451(b) of this title, to work with infants or toddlers with disabilities, or children with disabilities, 430b of title 25; or the qualifications described in section 1412(a)(14) of this title.

(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

(5) To ensure that all special education teachers are highly qualified.

(b) Personnel development; enhanced support for beginning special educators

(1) In general
In carrying out this section, the Secretary shall support activities—

(A) for personnel development, including activities for the preparation of personnel who will serve children with high incidence and low incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and

(B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).

(2) Personnel development
In carrying out paragraph (1)(A), the Secretary shall support not less than 1 of the following activities:

(A) Assisting effective existing, improving existing, or developing new, collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that incorporate best practices and scientifically based research, where applicable, in providing special education and general
education teachers, principals, administrators, and related services personnel with the knowledge and skills to effectively support students with disabilities, including—

(i) working collaboratively in regular classroom settings;
(ii) using appropriate supports, accommodations, and curriculum modifications;
(iii) implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, inappropriate overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children;
(iv) effectively working with and involving parents in the education of their children;
(v) utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom;
(vi) effectively constructing IEPs, participating in IEP meetings, and implementing IEPs;
(vii) preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.]; and
(viii) working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7113(d)(1)(A)(ii)] of the assessment results of the disaggregated subgroup of students with disabilities.

(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.

(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

(E) In the case of principals and superintendents, providing activities to promote instructional leadership and improved collaboration between general educators, special education teachers, and related services personnel.

(F) Supporting institutions of higher education with minority enrollments of not less than 25 percent for the purpose of preparing personnel to work with children with disabilities.

(G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

(H) Providing continuous personnel preparation, training, and professional development designed to provide support and improve the qualifications of personnel who provide related services to children with disabilities, including to enable such personnel to obtain advanced degrees.

(3) Enhanced support for beginning special educators

In carrying out paragraph (1)(B), the Secretary shall support not less than 1 of the following activities:

(A) Enhancing and restructuring existing programs or developing preservice teacher education programs to prepare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs.

(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that—

(i) consist of not less than—

(I) 1 or more institutions of higher education with special education personnel preparation programs;

(II) 1 or more local educational agencies that serve high numbers or percent-ages of low-income students; or

(III) 1 or more elementary schools or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities;

(ii) may include other entities eligible for assistance under this subchapter; and

(iii) provide—

(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty.

(c) Low incidence disabilities; authorized activities

(1) In general

In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.
(2) Authorized activities
Activities that may be carried out under this subsection include activities such as the following:

(A) Preparing persons who—
(i) have prior training in educational and other related service fields; and
(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 1414(d) of this title, or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 1436 of this title.

(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—
(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and
(ii) to improve communication with parents.

(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

(G) Preparing personnel who provide services to children with low incidence disabilities and limited English proficient children.

(3) Definition
In this section, the term “low incidence disability” means—

(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

(B) a significant cognitive impairment; or

(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

(4) Selection of recipients
In selecting eligible entities for assistance under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

(B) A demonstration of an effective collaboration between an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with low incidence disabilities.

(5) Preparation in use of braille
The Secretary shall ensure that all recipients of awards under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille, will prepare those individuals to provide those services in Braille.

(d) Leadership preparation; authorized activities
(1) In general
In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

(2) Authorized activities
Activities that may be carried out under this subsection include activities such as the following:

(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, related services faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities, including children with disabilities who are limited English proficient children.

(e) Applications
(1) In general
An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Identified State needs
(A) Requirement to address identified needs
An application for assistance under subsection (b), (c), or (d) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the eligible entity proposes to serve.

(B) Cooperation with State educational agencies
An eligible entity that is not a local educational agency or a State educational agen-
§ 1463

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The Secretary shall include in the eligible entity’s application information demonstrating to the satisfaction of the Secretary that the eligible entity and 1 or more State educational agencies or local educational agencies will cooperate in carrying out and monitoring the proposed project.

(3) Acceptance by States of personnel preparation requirements

The Secretary may require eligible entities to provide in the eligible entities’ applications assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities.

(f) Selection of recipients

(1) Impact of project

In selecting eligible entities for assistance under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

(2) Requirement for eligible entities to meet State and professional qualifications

The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible entities that meet State personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities.

(3) Preferences

In selecting eligible entities for assistance under this section, the Secretary may give preference to eligible entities that are institutions of higher education that are—

(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

(g) Scholarships

The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), and (d).

(h) Service obligation

(1) In general

Each application for assistance under subsections (b), (c), and (d) shall include an assurance that the eligible entity will ensure that individuals who receive a scholarship under the proposed project agree to subsequently provide special education and related services to children with disabilities, or in the case of leadership personnel to subsequently work in the appropriate field, for a period of 2 years for every year for which the scholarship was received or repay all or part of the amount of the scholarship, in accordance with regulations issued by the Secretary.

(2) Special rule

Notwithstanding paragraph (1), the Secretary may reduce or waive the service obligation requirement under paragraph (1) if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.

(3) Secretary’s responsibility

The Secretary—

(A) shall ensure that individuals described in paragraph (1) comply with the requirements of that paragraph; and

(B) may use not more than 0.5 percent of the funds appropriated under subsection (i) for each fiscal year, to carry out subparagraph (A), in addition to any other funds that are available for that purpose.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2005 through 2010.


References in text


Prior provisions


§ 1463. Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research

(a) In general

The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, support model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

(b) Required activities

Funds received under this section shall be used to support activities to improve services
provided under this chapter, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

(1) implementing effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

(2) improving the alignment, compatibility, and development of valid and reliable assessments and alternate assessments for assessing adequate yearly progress, as described under section 6311(b)(2)(B) of this title;

(3) providing training for both regular education teachers and special education teachers to address the needs of students with different learning styles;

(4) disseminating information about innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and identifying positive academic and social learning opportunities, that—

(A) provide effective transitions between educational settings or from school to post school settings; and

(B) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

(5) applying scientifically based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

(c) Authorized activities

Activities that may be carried out under this section include activities to improve services provided under this chapter, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

(1) applying and testing research findings in typical settings where children with disabilities receive services to determine the usefulness, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;

(2) supporting and promoting the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

(3) promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, and evaluation of such reforms;

(4) enabling professionals, parents of children with disabilities, and other persons to learn about, and implement, the findings of scientifically based research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities;

(5) conducting outreach, and disseminating information, relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to personnel who provide services to children with disabilities;

(6) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

(7) promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;

(8) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

(A) to schools and agencies serving deaf-blind children and their families;

(B) to programs and agencies serving other groups of children with low incidence disabilities and their families;

(C) addressing the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

(9) demonstrating models of personnel preparation to ensure appropriate placements and services for all students and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and

(10) disseminating information on how to reduce inappropriate racial and ethnic disproportionalities identified under section 1418 of this title.

(d) Balance among activities and age ranges

In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges of children with disabilities.

(e) Linking States to information sources

In carrying out this section, the Secretary shall support projects that link States to technical assistance resources, including special education and general education resources, and shall make research and related products available through libraries, electronic networks, parent training projects, and other information sources, including through the activities of the National Center for Education Evaluation and Regional Assistance established under part D of the Education Sciences Reform Act of 2002 [20 U.S.C. 9561 et seq.].

(f) Applications

(1) In general

An eligible entity that wishes to receive a grant, or enter into a contract or cooperative
agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Standards

To the maximum extent feasible, each eligible entity shall demonstrate that the project described in the eligible entity's application is supported by scientifically valid research that has been carried out in accordance with the standards for the conduct and evaluation of all relevant research and development established by the National Center for Education Research.

(3) Priority

As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment.


REFERENCES IN TEXT


§ 1464. Studies and evaluations

(a) Studies and evaluations

(1) Delegation

The Secretary shall delegate to the Director of the Institute of Education Sciences responsibility to carry out this section, other than subsections (d) and (e).

(2) Assessment

The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded to eligible entities on a competitive basis, assess the progress in the implementation of this chapter, including the effectiveness of State and local efforts to provide—

(A) a free appropriate public education to children with disabilities; and

(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to the infants and toddlers.

(b) Assessment of national activities

(1) In general

The Secretary shall carry out a national assessment of activities carried out with Federal funds under this chapter in order—

(A) to determine the effectiveness of this chapter in achieving the purposes of this chapter;

(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this chapter more effectively; and

(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this chapter more effectively.

(2) Scope of assessment

The national assessment shall assess activities supported under this chapter, including—

(A) the implementation of programs assisted under this chapter and the impact of such programs on addressing the developmental needs of, and improving the academic achievement of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments;

(B) the types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

(C) the implementation of the professional development activities assisted under this chapter and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

(D) the effectiveness of schools, local educational agencies, States, other recipients of assistance under this chapter, and the Secretary in achieving the purposes of this chapter by—

(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments as compared to nondisabled children, and the performance of children with disabilities on alternate assessments;

(ii) improving the participation of children with disabilities in the general education curriculum;

(iii) improving the transitions of children with disabilities at natural transition points;

(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate; and

(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

(vi) addressing the reading and literacy needs of children with disabilities;

(vii) reducing the inappropriate overidentification of children, especially minority and limited English proficient children, as having a disability; and

(viii) improving the participation of parents of children with disabilities in the education of their children; and

(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities, including mediation.

(3) Interim and final reports

The Secretary shall submit to the President and Congress—

(A) an interim report that summarizes the preliminary findings of the assessment not later than 3 years after December 3, 2004; and
(B) a final report of the findings of the assessment not later than 5 years after December 3, 2004.

c) Study on ensuring accountability for students who are held to alternative achievement standards

The Secretary shall carry out a national study or studies to examine—
1. the criteria that States use to determine—
   A) eligibility for alternate assessments; and
   B) the number and type of children who take those assessments and are held accountable to alternative achievement standards;
2. the validity and reliability of alternate assessment instruments and procedures;
3. the alignment of alternate assessments and alternative achievement standards to State academic content standards in reading, mathematics, and science; and
4. the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

d) Annual report

The Secretary shall provide an annual report to Congress that—
1. summarizes the research conducted under part E of the Education Sciences Reform Act of 2002 (20 U.S.C. 9567 et seq.);
2. analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 1418 of this title;
3. summarizes the studies and evaluations conducted under this section and the timeline for their completion;
4. describes the extent and progress of the assessment of national activities; and
5. describes the findings and determinations resulting from reviews of State implementation of this chapter.

e) Authorized activities

In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—
1. analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;
2. analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;
3. assess educational and transitional services and results for children with disabilities from minority backgrounds, including—
   A) data on—
   i. the number of minority children who are referred for special education evaluation;
   ii. the number of minority children who are receiving special education and related services and their educational or other service placement;
   B) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and
   C) the number of minority children who drop out of the educational system; and
   D) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;
4. measure educational and transitional services and results for children with disabilities served under this chapter, using longitudinal studies that—
   A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this chapter, using a national, representative sample of distinct age cohorts and disability categories; and
   B) examine educational results, transition services, postsecondary placement, and employment status for individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this chapter; and
   C) the criteria that States use to determine eligibility for alternate assessments;
   D) the validity and reliability of alternate assessment instruments and procedures;
   E) the alignment of alternate assessments and alternative achievement standards to State academic content standards in reading, mathematics, and science; and
   F) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

f) Study

The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 1435(c)(1) of this title and on the effects of those policies.

REFERENCES IN TEXT


§1465. Interim alternative educational settings, behavioral supports, and systemic school interventions

(a) Program authorized

The Secretary may award grants, and enter into contracts and cooperative agreements, to support safe learning environments that support academic achievement for all students by—
1. improving the quality of interim alternative educational settings; and
2. providing increased behavioral supports and research-based, systemic interventions in schools.

(b) Authorized activities

In carrying out this section, the Secretary may support activities to—
1. establish, expand, or increase the scope of behavioral supports and systemic interventions by providing for effective, research-based practices, including—
   A) training for school staff on early identification, prereferral, and referral procedures;
(B) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;
(C) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;
(D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;
(E) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or
(F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or
(2) improve interim alternative educational settings by—
(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;
(B) attracting and retaining a high quality, diverse staff;
(C) providing for referral to counseling services;
(D) utilizing research-based interventions, curriculum, and practices;
(E) allowing students to use instructional technology that provides individualized instruction;
(F) ensuring that the services are fully consistent with the goals of the individual student’s IEP;
(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;
(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or
(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.
(c) Definition of eligible entity
In this section, the term “eligible entity” means—
(1) a local educational agency; or
(2) a consortium consisting of a local educational agency and 1 or more of the following entities:
(A) another local educational agency.
(B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed.
(C) an institution of higher education.
(D) a community mental health provider.
(E) an educational service agency.
(d) Applications
Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall—
(1) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require; and
(2) involve parents of participating students in the design and implementation of the activities funded under this section.
(e) Report and evaluation
Each eligible entity receiving a grant under this section shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.
§ 1466. Authorization of appropriations
(a) In general
There are authorized to be appropriated to carry out this part (other than section 1462 of this title) such sums as may be necessary for each of the fiscal years 2005 through 2010.
(b) Reservation
From amounts appropriated under subsection (a) for fiscal year 2005, the Secretary shall reserve $1,000,000 to carry out the study authorized in section 1464(c) of this title. From amounts appropriated under subsection (a) for a succeeding fiscal year, the Secretary may reserve an additional amount to carry out such study if the Secretary determines the additional amount is necessary.
PART C—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES
§ 1470. Purposes
The purposes of this part are to ensure that—
(1) children with disabilities and their parents receive training and information designed to assist the children in meeting developmental and functional goals and challenging academic achievement goals, and in preparing to lead productive independent adult lives;
(2) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this chapter, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;
(3) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such personnel in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and
§ 1471. Parent training and information centers

(a) Program authorized

(1) In general

The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

(2) Definition of parent organization

In this section, the term “parent organization” means a private nonprofit organization (other than an institution of higher education) that—

(A) has a board of directors—
   (i) the majority of whom are parents of children with disabilities ages birth through 26; and
   (ii) that includes—
      (I) individuals working in the fields of special education, related services, and early intervention; and
      (II) individuals with disabilities; and
   (iii) the parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(B) has as its mission serving families of children with disabilities who—
   (i) are ages birth through 26; and
   (ii) have the full range of disabilities described in section 1401(3) of this title.

(b) Required activities

Each parent training and information center that receives assistance under this section shall—

(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—
   (A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and
   (B) be prepared to lead productive independent adult lives, to the maximum extent possible;

(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 1401(3) of this title;

(3) ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

(4) assist parents to—

(A) better understand the nature of their children’s disabilities and their educational, developmental, and transitional needs;

(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(C) participate in decisionmaking processes and the development of individualized education programs under subchapter II and individualized family service plans under subchapter III;

(D) obtain appropriate information about the range, type, and quality of—
   (i) options, programs, services, technologies, practices and interventions based on scientifically based research, to the extent practicable; and
   (ii) resources available to assist children with disabilities and their families in school and at home;

(E) understand the provisions of this chapter for the education of, and the provision of early intervention services to, children with disabilities;

(F) participate in activities at the school level that benefit their children; and

(G) participate in school reform activities;

(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 1415(e)(2) of this title, individuals who meet with parents to explain the mediation process to the parents;

(6) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 1415(e) of this title;

(7) assist parents and students with disabilities to understand their rights and responsibilities under this chapter, including those under section 1415(m) of this title upon the student’s reaching the age of majority (as appropriate under State law);

(8) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this chapter, including the resolution session described in section 1415(e) of this title;

(9) assist parents in understanding, preparing for, and participating in, the process described in section 1415(f)(1)(B) of this title;

(10) establish cooperative partnerships with community parent resource centers funded under section 1472 of this title;

(11) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 1463 of this title and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 1401(3) of this title; and

(12) annually report to the Secretary on—
§ 1472

COMMUNITY PARENT RESOURCE CENTERS

(a) Program authorized

(1) In general

The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support community parent resource centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

(A) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(B) to be prepared to lead productive independent adult lives, to the maximum extent possible.

(2) Definition of local parent organization

In this section, the term “local parent organization” means a parent organization, as defined in section 1471(a)(2) of this title, that—

(A) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

(B) has as its mission serving parents of children with disabilities who—

(i) are ages birth through 26; and

(ii) have the full range of disabilities described in section 1401(3) of this title.

(b) Required activities

Each community parent resource center assisted under this section shall—

(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 1471(b) of this title;

(3) establish cooperative partnerships with the parent training and information centers funded under section 1471 of this title; and

(4) be designed to meet the specific needs of families who experience significant isolation.
§ 1473. Technical assistance for parent training and information centers

(a) Program authorized

(1) In general

The Secretary may provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under section 1472 of this title. The Secretary shall support activities to promote the development, demonstration, and use of technology.

(b) Authorized activities

The Secretary may provide technical assistance to a parent training and information center or a community parent resource center under this section in areas such as—

(1) effective coordination of parent training efforts;
(2) dissemination of scientifically based research and information;
(3) promotion of the use of technology, including assistive technology devices and assistive technology services;
(4) reaching underserved populations, including parents of low-income and limited English proficient children with disabilities;
(5) including children with disabilities in general education programs;
(6) facilitation of transitions from—
   (A) early intervention services to preschool;
   (B) preschool to elementary school;
   (C) elementary school to secondary school; and
   (D) secondary school to postsecondary environments; and
(7) promotion of alternative methods of dispute resolution, including mediation.

(c) Collaboration with the resource centers

Each eligible entity receiving an award under subsection (a) shall develop collaborative agreements with the geographically appropriate regional resource center and, as appropriate, the regional educational laboratory supported under section 9564 of this title, to further parent and professional collaboration.
disabilities in order to maximize their academic and functional skills.

(c) Educational media services
(1) In general
In carrying out this section, the Secretary shall support—
(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;
(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—
(i) television programs;
(ii) videos;
(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or
(iv) news (but only until September 30, 2006);
(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and
(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools, postsecondary schools, and graduate schools.

(2) Limitation
The video description, open captioning, or closed captioning described in paragraph (1)(B) shall be provided only when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

(d) Applications
(1) In general
Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under subsection (b) or (c) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Special rule
For the purpose of an application for an award to carry out activities described in subsection (c)(1)(D), such eligible entity shall—
(A) be a national, nonprofit entity with a proven track record of meeting the needs of students with print disabilities through services described in subsection (c)(1)(D);
(B) have the capacity to produce, maintain, and distribute in a timely fashion, up-to-date textbooks in digital audio formats to qualified students; and
(C) have a demonstrated ability to significantly leverage Federal funds through other public and private contributions, as well as through the expansive use of volunteers.

(e) National Instructional Materials Access Center
(1) In general
The Secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the “National Instructional Materials Access Center” not later than 1 year after December 3, 2004.

(2) Duties
The duties of the National Instructional Materials Access Center are the following:
(A) To receive and maintain a catalog of print instructional materials prepared in the National Instructional Materials Accessibility Standard, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies.
(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.
(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under sections 1412(a)(23) and 1413(a)(6) of this title.

(3) Definitions
In this subsection:
(A) Blind or other persons with print disabilities
The term “blind or other persons with print disabilities” means children served under this chapter and who may qualify in accordance with the Act entitled “An Act to provide books for the adult blind”, approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.
(B) National Instructional Materials Accessibility Standard
The term “National Instructional Materials Accessibility Standard” means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.
(C) Print instructional materials
The term “print instructional materials” means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.
(D) Specialized formats
The term “specialized formats” has the meaning given the term in section 121(d)(3) of title 17.

(4) Applicability
This subsection shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard was published in the Federal Register.
(5) Liability of the Secretary

Nothing in this subsection shall be construed to establish a private right of action against the Secretary for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the duties of such center, or to otherwise authorize a private right of action related to the performance by such center, including through the application of the rights of children and parents established under this chapter.

(6) Inapplicability

Subsections (a) through (d) shall not apply to this subsection.


REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(3)(A), was in the original “this Act” and was translated as reading “this title”, meaning title VI of Pub. 91-230, as amended, which enacted, which is classified generally to sections 135a and 135b of Title 2, The Congress. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS


§ 1475. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 2005 through 2010.


PRIOR PROVISIONS


PART D—GENERAL PROVISIONS

§ 1481. Comprehensive plan for parts B and C

(a) Comprehensive plan

(1) In general

After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under parts B and C in order to enhance the provision of early intervention services, educational services, related services, and transitional services to children with disabilities under subchapters II and III. To the extent practicable, the plan shall be coordinated with the plan developed pursuant to section 9512(c) of this title and shall include mechanisms to address early intervention, educational, related service and transitional services which are identified by State educational agencies in applications submitted for State personnel development grants under part A and for grants under parts B and C.

(2) Public comment

The Secretary shall provide a public comment period of not less than 45 days on the plan.

(3) Distribution of funds

In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds awarded under parts B and C are used to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

(4) Reports to Congress

The Secretary shall annually report to Congress on the Secretary's activities under parts B and C, including an initial report not later than 12 months after December 3, 2004.

(b) Assistance authorized

The Secretary is authorized to award grants to, or enter into contracts or cooperative agree-
ments with, eligible entities to enable the eligible entities to carry out the purposes of such parts in accordance with the comprehensive plan described in subsection (a).

(c) Special populations

(1) Application requirement

In making an award of a grant, contract, or cooperative agreement under part B or C, the Secretary shall, as appropriate, require an eligible entity to demonstrate how the eligible entity will address the needs of children with disabilities from minority backgrounds.

(2) Required outreach and technical assistance

Notwithstanding any other provision of this chapter, the Secretary shall reserve not less than 2 percent of the total amount of funds appropriated to carry out parts B and C for either or both of the following activities:

(A) Providing outreach and technical assistance to historically Black colleges and universities, and to institutions of higher education with minority enrollments of not less than 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this part.

(B) Enabling historically Black colleges and universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities, if the historically Black colleges and universities and the institutions of higher education described in subparagraph (A) meet the criteria established by the Secretary under this part.

(d) Priorities

The Secretary, in making an award of a grant, contract, or cooperative agreement under part B or C, may, without regard to the rulemaking procedures under section 553 of title 5, limit competitions to, or otherwise give priority to—

(1) projects that address I or more—

(A) age ranges;

(B) disabilities;

(C) school grades;

(D) types of educational placements or early intervention environments;

(E) types of services;

(F) content areas, such as reading; or

(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

(2) projects that address the needs of children based on the severity or incidence of their disability;

(3) projects that address the needs of—

(A) low achieving students;

(B) underserved populations;

(C) children from low income families;

(D) limited English proficient children;

(E) unserved and underserved areas;

(F) rural or urban areas;

(G) children whose behavior interferes with their learning and socialization;

(H) children with reading difficulties;

(I) children in public charter schools;

(J) children who are gifted and talented; or

(K) children with disabilities served by local educational agencies that receive payments under title VIII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.];

(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

(6) projects that promote the development and use of technologies with universal design, assistive technology devices, and assistive technology services to maximize children with disabilities’ access to and participation in the general education curriculum; and

(7) any activity that is authorized in part B or C.

(e) Eligibility for financial assistance

No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under part B or C that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 1419(b) of this title.


REFERENCES IN TEXT

Section 9667(b)(c) of this title, referred to in subsec. (a)(1), was in the original “section 178(c) of the Education Sciences Reform Act of 2002”, meaning section 178(c) of Pub. L. 107–279, which was translated as reading section 177(c) of Pub. L. 107–279, to reflect the probable intent of Congress, because Pub. L. 107–279 does not contain a section 178 and section 177(c) of that Act requires development of a plan.


Prior Provisions


§ 1482. Administrative provisions

(a) Applicant and recipient responsibilities

(1) Development and assessment of projects

The Secretary shall require that an applicant, and a recipient of, a grant, contract,
or cooperative agreement for a project under part B or C—

(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

(2) Additional responsibilities

The Secretary may require a recipient of a grant, contract, or cooperative agreement under part B or C to—

(A) share in the cost of the project;

(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

(C) disseminate such findings and products; and

(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

(b) Application management

(1) Standing panel

(A) In general

The Secretary shall establish and use a standing panel of experts who are qualified, by virtue of their training, expertise, or experience, to evaluate each application under part B or C that requests more than $75,000 per year in Federal financial assistance.

(B) Membership

The standing panel shall include, at a minimum—

(i) individuals with knowledge and experience necessary to integrate and apply scientifically based research targeted to the improvement of special education programs and services;

(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

(vii) individuals who are parents of children with disabilities ages birth through 26 who are benefitting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

(viii) individuals with disabilities.

(C) Term

No individual shall serve on the standing panel for more than 3 consecutive years.

(2) Peer-review panels for particular competitions

(A) Composition

The Secretary shall ensure that each subpanel selected from the standing panel that reviews an application under part B or C includes—

(i) individuals with knowledge and expertise on the issues addressed by the activities described in the application; and

(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

(B) Federal employment limitation

A majority of the individuals on each subpanel that reviews an application under part B or C shall be individuals who are not employees of the Federal Government.

(3) Use of discretionary funds for administrative purposes

(A) Expenses and fees of non-Federal panel members

The Secretary may use funds available under part B or C to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

(B) Administrative support

The Secretary may use not more than 1 percent of the funds appropriated to carry out part B or C to pay non-Federal entities for administrative support related to management of applications submitted under part B or C, respectively.

(c) Program evaluation

The Secretary may use funds made available to carry out part B or C to evaluate activities carried out under part B or C, respectively.

(d) Minimum funding required

(1) In general

Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, not less than the following amounts are provided under parts B and C to address the following needs:

(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deafness.

(B) $4,000,000 to address the educational, related services, and transitional needs of children with deaf-blindness.

(C) $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced for the fiscal year.


CHAPTER 34—NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE


**TRANSFER OF FUNCTIONS**

For provisions relating to the transfer of functions, personnel, and property of the National Commission on Libraries and Information Science, and treatment of references thereto, see section 401(b), (c), (d) of Pub. L. 93–278, May 10, 1974, 88 Stat. 121, related to eligibility for assistance.


**CHAPTER 35—ENVIRONMENTAL EDUCATION**

Codification

The Environmental Education Act, which comprised this chapter, contained appropriation authorizations for fiscal years 1972 to 1977. The Act was superseded by part H of title III of Pub. L. 89–10, as added by Pub. L. 92–381, title III, §301(a), Nov. 1, 1972, 86 Stat. 360, related to availability of funds for educational television.

**$§ 1531 to 1536. Omitted**

Codification


§ 1651

TITLE 20—EDUCATION

Page 944


Effective Date of Repeal

Section 601(b)(2) of Pub. L. 95–561 provided that the repeal is effective Sept. 30, 1979.

CHAPTER 37—ASSIGNMENT OR TRANSPORTATION OF STUDENTS

Sec.

1651. Prohibition against assignment or transportation of students to overcome racial imbalance

1652. Prohibition against busing.

1653. Omitted.

1654. Intervention authorization in implementation of court orders.

1655. Uniform rules of evidence of racial discrimination.

1656. Prohibition against official or court orders to achieve racial balance or insure compliance with constitutional standards applicable to entire United States.

§ 1651. Prohibition against assignment or transportation of students to overcome racial imbalance

No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.


REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended, known as the Education Amendments of 1972. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

§ 1652. Prohibition against busing

(a) Use of appropriated funds for busing

No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials. No such funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(b) Rules, regulations, orders, etc., for busing

No officer, agent, or employee of the Department of Education, the Department of Justice, or any other Federal agency shall, by rule, regulation, order, guideline, or otherwise (1) urge, persuade, induce, or require any local education agency, or any private nonprofit agency, institution, or organization to use any funds derived from any State or local sources for any purpose, unless constitutionally required, for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal funds under any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) on the part of a Federal officer or employee. No officer, agent, or employee of the Department of Education or any other Federal agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process; or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(c) “Applicable program” defined


REFERENCES IN TEXT


Transfer of Functions

“Department of Education” substituted for “Department of Health, Education, and Welfare (including the Office of Education)” in subsec. (b) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 341 and 3507 of this title and which transferred functions and offices (relating to education) of Department of Health, Education, and Welfare, including Office of Education, to Department of Education.

§ 1653. Omitted

Codification

Section, Pub. L. 92–318, title VIII, §803, June 23, 1972, 86 Stat. 372, provided that the effectiveness of orders of district courts requiring transfer or transportation of students for purposes of achieving a balance among students with respect to race, sex, religion, or socio-economic status, be postponed until all appeals in connection with such orders have been exhausted or until...
§ 1654. Intervention authorization in implementation of court orders

A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educational process.


§ 1655. Uniform rules of evidence of racial discrimination

The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning students to public schools shall be uniform throughout the United States.


§ 1656. Prohibition against official or court orders to achieve racial balance or insure compliance with constitutional standards applicable to entire United States

The proviso of section 407(a) of the Civil Rights Act of 1964 [42 U.S.C. 2000c–6(a)] providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school system, public school and public school board, as defined by title IV [42 U.S.C. 2000c et seq.], under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.


REFERENCES IN TEXT


CHAPTER 38—DISCRIMINATION BASED ON SEX OR BLINDNESS

§ 1681. Sex

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of under-
graduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations
this section shall not apply to membership practices—
(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or
(B) of the Young Men’s Christian Association, Young Women’s Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences
this section shall not apply to—
(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
(B) any program or activity of any secondary school or educational institution specifically for—
(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions
this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institution of higher education scholarship awards in “beauty” pageants
this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance
Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) “Educational institution” defined
For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

§ 1685. Authority under other laws unaffected

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract or grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.


DELEGATION OF FUNCTIONS

Functions of President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to Attorney General, see section 1–102 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out under section 2000d–1 of Title 42, The Public Health and Welfare.

§ 1683. Judicial review

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.


CODIFICATION

“Section 1682 of this title”, where first appearing, substituted in text for “section 1002” as conforming to intent of Congress as Pub. L. 92–318 was enacted without any section 1002 and subsequent text refers to “section 902”, which is classified to section 1682 of this title.

§ 1684. Blindness or visual impairment; prohibition against discrimination

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

§ 1686. Interpretation with respect to living facilities

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

§ 1687. Interpretation of “program or activity”

For the purposes of this chapter, the term “program or activity” and “program” mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other post-secondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of this title), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

AMENDMENTS


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

FINDINGS OF CONGRESS

Section 2 of Pub. L. 100–259 provided that: “The Congress finds that—


“(2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.”

CONSTRUCTION


ABORTION NEUTRALITY

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of this title.
§ 1688. Neutrality with respect to abortion

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original ‘‘this title’’, meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

CONSTRUCTION

This section not to be construed to extend application of Education Amendments of 1972, Pub. L. 92–318, to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a note under section 1687 of this title.

ABORTION NEUTRALITY

Section 8 of Pub. L. 100–259 provided that: ‘‘No provision of this Act [or any amendment made by this Act [see Short Title of 1988 Amendment note under section 1681 of this title] shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds [sic] to perform or pay for an abortion.’’

CHAPTER 39—EQUAL EDUCATIONAL OPPORTUNITIES AND TRANSPORTATION OF STUDENTS

SUBCHAPTER I—EQUAL EDUCATIONAL OPPORTUNITIES

PART 1—POLICY AND PURPOSE

§ 1701. Congressional declaration of policy

The Congress declares it to be the policy of the United States that—

(a) Entitlement to equal educational opportunity; neighborhood as appropriate basis

The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

(2) the neighborhood is the appropriate basis for determining public school assignments.

(b) Purpose

In order to carry out this policy, it is the purpose of this subchapter to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.


EFFECTIVE DATE

Chapter effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93–380, set out as a note under section 1221–1 of this title.

SHORT TITLE

Section 201 of title II of Pub. L. 93–380 provided that: ‘‘This title [enacting this chapter and section 1228 of
this title and amending section 1608 of this title] may be cited as the ‘Equal Educational Opportunities Act of 1974.’”

§ 1702. Congressional findings

(a) Dual school systems as denial of equal protection; depletion of financial resources of local educational agencies; transportation of students; inadequacy of guidelines

The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

(2) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, “incomplete and imperfect,” and have not established, a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) Necessity of Congress to specify appropriate remedies for elimination of dual school systems

For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems, except that the provisions of this chapter are not intended to modify or diminish the authority of the courts of the United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States.


§ 1703. Denial of equal educational opportunity prohibited

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this subchapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.


§ 1704. Balance not required

The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.


§ 1705. Assignment on neighborhood basis not a denial of equal educational opportunity

Subject to the other provisions of this subchapter, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating stu-
§ 1706. Civil actions by individuals denied equal educational opportunities or by Attorney General

An individual denied an equal educational opportunity, as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this chapter referred to as the “Attorney General”), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.


PART 3—ENFORCEMENT

§ 1707. Population changes without effect, per se, on school population changes

When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.


§ 1708. Jurisdiction of district courts

The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 1706 of this title.


§ 1709. Intervention by Attorney General

Whenever a civil action is instituted under section 1706 of this title by an individual, the Attorney General may intervene in such action upon timely application.


§ 1710. Civil actions by Attorney General; notice of violations; certification respecting undertaking appropriate remedial action

The Attorney General shall institute a civil action under section 1706 of this title before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part 2 of this subchapter; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.


PART 4—REMEDIES

§ 1712. Formulating remedies; applicability

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 1714 of this title;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 1714 and 1715 of this title.


§ 1713. Priority of remedies

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall, pursuant to section 1713 of this title.


§ 1714. Transportation of students

(a) Limitation to school closest or next closest to place of residence

No court, department, or agency of the United States shall, pursuant to section 1713 of this
§ 1715 TITLE 20—EDUCATION Page 952
title, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

(b) Health risks; impingement on educational process

No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

(c) School population changes resulting from population changes

When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.


§ 1715. District lines

In the formulation of remedies under section 1712 or 1713 of this title the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.


§ 1716. Voluntary adoption of remedies

Nothing in this subchapter prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this subchapter nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this subchapter, if such plan is voluntarily proposed by the appropriate educational agency.


§ 1717. Reopening proceedings

A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, or an educational agency subject to a court order or a desegregation plan under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] in effect on August 21, 1974, and intended to end segregation of students on the basis of race, color, or national origin, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educational process.


References in Text

(c) The term “segregation” means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin.

(d) The term “desegregation” means desegregation as defined by section 2000c(b) of title 42.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student’s transportation is paid by such agency.


REFERENCES IN TEXT
Section 801 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (a) and (b), is section 801, title VIII, of Pub. L. 89–10, which was formerly classified to section 881 of this title. Section 801 of that Act was renumbered section 1001 of title X by Pub. L. 95–561, title VIII, §801(1), (2), Nov. 1, 1978, 92 Stat. 2284, and was reclassified to section 3381 of this title. Section 1001 was subsequently renumbered section 8001 and amended generally by Pub. L. 100–297, title I, §1002, Apr. 28, 1988, 102 Stat. 293, and, as so amended, did not contain subsections or specific definitions. Section 8001 was subsequently omitted in the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, §103, Oct. 20, 1994, 108 Stat. 3519. For definitions, see section 7801 of this title.

PART 6—MISCELLANEOUS PROVISIONS

§1721. Separability
If any provision of this subchapter or of any amendment made by this subchapter, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this subchapter and of the amendments made by this subchapter and of the application of such provision to other persons or circumstances shall not be affected thereby.


REFERENCES IN TEXT
This subchapter, referred to in text, was in the original “this part”, meaning part A of title II of Pub. L. 93–380, Aug. 21, 1974, 88 Stat. 519, which is classified generally to this subchapter.

SUBCHAPTER II—ASSIGNMENT AND TRANSPORTATION OF STUDENTS

§1751. Prohibition against assignment or transportation of students to overcome racial imbalance
No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.


REFERENCES IN TEXT

§1752. Appeals from Federal district court transfer or transportation orders affecting school attendance areas and achieving balancing of students; postponement of Federal court orders pending exercise of appellate remedy; expiration of section
Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on June 30, 1978.


§1753. Uniform rules of evidence requirement
The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning students to public schools shall be uniform throughout the United States.


§1754. Provisions respecting transportation of pupils to achieve racial balance and judicial power to insure compliance with constitutional standards applicable to the entire United States
The proviso of section 407(a) of the Civil Rights Act of 1964 [42 U.S.C. 2000c–6(a)] providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and to every public school system, public school and public school board, as defined by title IV [42 U.S.C. 2000c et seq.], under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States, regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.


§1755. Additional priority of remedies after finding of de jure segregation
Notwithstanding any other provision of law, after June 30, 1974 no court of the United States shall order the implementation of any plan to
§ 1756 Remedies with respect to school district lines

In the formulation of remedies under this chapter the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn, or maintained or crossed for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin, or where it is established that, as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.


§ 1757. Prohibition of forced busing during school year

(a) Congressional findings

The Congress finds that—

(1) the forced transportation of elementary and secondary school students in implementation of the constitutional requirement for the desegregation of such schools is controversial and difficult under the best planning and administration; and

(2) the forced transportation of elementary and secondary school students after the commencement of an academic school year is educationally unsound and administratively inefficient.

(b) Student transportation orders incidental to student transfers pursuant to school desegregation plans effective beginning with academic school year

Notwithstanding any other provisions of law, no order of a court, department, or agency of the United States, requiring the transportation of any student incident to the transfer of that student from one elementary or secondary school to another such school in a local educational agency pursuant to a plan requiring such transportation for the racial desegregation of any school in that agency, shall be effective until the beginning of an academic school year.

(c) “Academic school year” defined

For the purpose of this section, the term “academic school year” means, pursuant to regulations promulgated by the Secretary, the customary beginning of classes for the school year at an elementary or secondary school of a local educational agency for a school year that occurs not more often than once in any twelve-month period.

(d) Orders subject to provisions of section

The provisions of this section apply to any order which was not implemented at the beginning of the 1974–1975 academic year.
PART B—LIBRARIES AND LEARNING RESOURCES

§ 1821. Omitted

CODIFICATION

PART C—EDUCATIONAL INNOVATION AND SUPPORT

§§ 1831, 1832. Omitted

CODIFICATION


SUBCHAPTER II—SPECIAL PROJECTS


Section 1851, act July 26, 1964, ch. 576, § 2, as added Aug. 21, 1974, Pub. L. 93–380, title IV, § 402(a)(1), 88 Stat. 544, set out Congressional statement of purpose in making provision for special projects to experiment with new educational and administrative methods, techniques, and practices, to meet special or unique educational needs or problems, and to place special emphasis on national education priorities.


EFFECTIVE DATE OF REPEAL
Section 301(b)(2) of Pub. L. 95–561 provided that the repeal is effective Sept. 30, 1979.

SUBCHAPTER III—PREFERENTIAL PROGRAMS


Section 1861, Pub. L. 93–380, title IV, § 402(b), Aug. 21, 1974, 88 Stat. 545, related to reservation and apportionment of funds for certain authorized and described programs.


EFFECTIVE DATE OF REPEAL
Section 301(b)(1) of Pub. L. 95–561 provided that the repeal is effective Sept. 30, 1979.

§ 1865. Transferred

CODIFICATION


EFFECTIVE DATE OF REPEAL
Section 301(b)(1) of Pub. L. 95–561 provided that the repeal is effective Sept. 30, 1979.

CHAPTER 41—NATIONAL READING IMPROVEMENT PROGRAM


EFFECTIVE DATE OF REPEAL
Repeal effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95–561, set out as an Effective Date of 1978 Amendment note under section 1221e–3 of this title.

SUBCHAPTER I—READING IMPROVEMENT PROJECTS


EFFECTIVE DATE OF REPEAL
Repeal effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95–561, set out as an Effective Date of 1978 Amendment note under section 1221e–3 of this title.

SUBCHAPTER II—STATE READING IMPROVEMENT PROGRAMS


CHAPTER 42—HARRY S TRUMAN MEMORIAL SCHOLARSHIPS

Sec. 2001. Congressional statement of findings.


2003. Other Federal memorials prohibited.


2005. Truman scholars.

2006. Selection of scholars.


2008. Scholarship conditions.


2009a. Investment of amounts appropriated and contributed to Harry S Truman Memorial Scholarship Trust Fund.

2010. Payment to Trust Fund; Board requests binding on Secretary.


§ 2001. Congressional statement of findings

The Congress finds that—

because a high regard for the public trust and a lively exercise of political talents were outstanding characteristics of the thirty-third President of the United States;

because a special interest of the man from Independence in American history and a broad knowledge and understanding of the American political and economic system gained by study and experience in county and National Government culminated in the leadership of America remembered for the quality of his character, courage, and commonsense;

because of the desirability of encouraging young people to recognize and provide service in the highest and best traditions of the American political system at all levels of government, it is especially appropriate to honor former President Harry S Truman through the creation of a perpetual education scholarship program to develop increased opportunities for young Americans to prepare and pursue careers in public service.


Short Title
Section 1 of Pub. L. 93–642 provided: “That this Act [enacting this chapter] may be cited as the ‘Harry S Truman Memorial Scholarship Act’.”

§ 2002. Definitions

As used in this chapter, the term—

(1) “Board” means the Board of Trustees of the Harry S Truman Scholarship Foundation;

(2) “Foundation” means the Harry S Truman Scholarship Foundation;

(3) “fund” means the Harry S Truman Memorial Scholarship Fund;

(4) “institution of higher education” means any such institution as defined by section 1001 of this title;

(5) “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands; and

(6) “Secretary” means the Secretary of the Treasury.
§ 2003. Other Federal memorials prohibited

The Harry S Truman Scholarship Program as authorized by this chapter shall be the sole Federal memorial to President Harry S Truman.


§ 2004. Harry S Truman Scholarship Foundation

(a) Establishment

There is established, as an independent establishment of the executive branch of the United States Government, the Harry S Truman Scholarship Foundation.

(b) Board of Trustees; membership

(1) The Foundation shall be subject to the supervision and direction of a Board of Trustees. The Board shall be composed of thirteen members, as follows:

(A) two Members of the Senate, one from each political party, to be appointed by the President of the Senate;

(B) two Members of the House of Representatives, one from each political party, to be appointed by the Speaker;

(C) eight members, not more than four of whom shall be of the same political party, to be appointed by the President with the advice and consent of the Senate, of whom one shall be a chief executive officer of a State, one a chief executive officer of a city or county, one a member of a Federal court, one a member of a State court, one a person active in post-secondary education, and three representatives of the general public; and

(D) the Secretary of Education or his designee, who shall serve ex officio as a member of the Board, but shall not be eligible to serve as Chairman.

(c) Term of office

The term of office of each member of the Board shall be six years; except that (1) the members first taking office shall serve as designated by the President, four for terms of two years, five for terms of four years, and four for terms of six years, and (2) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and shall be appointed in the same manner as the original appointment for that vacancy was made.

(d) Compensation

Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.


§ 2005. Truman scholars

(a) Basis for award

The Foundation is authorized to award scholarships to persons who demonstrate outstanding potential for and who plan to pursue a career in public service. Award recipients shall be known as Truman scholars.

(b) Maximum period of award

Scholarships under this chapter shall be awarded for such periods as the Foundation may prescribe but not to exceed four academic years.

(c) Recipient's choice of institution

A student awarded a scholarship under this chapter may attend any institution of higher education offering courses of study, training, or other educational activities designed to prepare persons for a career in public service as determined pursuant to criteria established by the Foundation.

(d) Encouragement of recipient to pursue public service career

Each student awarded a scholarship under this chapter must have indicated a serious intent to enter the public service upon the completion of his or her educational program. Each institution of higher education at which such a student is in attendance will make reasonable continuing efforts to encourage such a student to enter the public service upon completing his or her educational program.


§ 2006. Selection of scholars

(a) Nationwide competition

The Foundation is authorized, either directly or by contract, to provide for the conduct of a nationwide competition for the purpose of selecting Truman scholars.

(b) Procedures

The Foundation shall adopt selection procedures which shall assure that at least one Truman scholar shall be selected each year from each State in which there is at least one resident applicant who meets the minimum criteria established by the Foundation.

§ 2007. Stipends

Each student awarded a scholarship under this chapter shall receive a stipend which shall not exceed the cost to such student for tuition, fees, books, room and board, or $10,000 (adjusted annually to reflect increases, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics) whichever is less for each academic year of study.


AMENDMENTS
1985—Pub. L. 99–159 increased amount from $5,000 to $10,000 with provision for annual adjustments.

§ 2008. Scholarship conditions

(a) Satisfactory proficiency and devotion of full time to study or research; unapproved employment

A student awarded a scholarship under the provisions of this chapter shall continue to receive the payments provided in this chapter only during such periods as the Foundation finds that he or she is maintaining satisfactory proficiency and devoting full time to study or research designed to prepare him or her for a career in public service and is not otherwise engaging in gainful employment other than employment approved by the Foundation pursuant to regulation.

(b) Reports; certification by official of institution

The Foundation is authorized to require reports containing such information in such form and to be filed at such times as the Foundation determines to be necessary from any student awarded a scholarship under the provisions of this chapter. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such student is making satisfactory progress in, and is devoting essentially full time to, study or research.

§ 2009. Harry S Truman Memorial Scholarship Trust Fund

(a) Establishment

There is established in the Treasury of the United States a trust fund to be known as the Harry S Truman Memorial Scholarship Trust Fund. The fund shall consist of amounts appropriated to it by section 203 of this title.

(b) Investment in interest-bearing obligations

It shall be the duty of the Secretary to invest in full the amounts appropriated to the fund. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue or at the market price, is not in the public interest.

(c) Sale and redemption of obligations

Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) Credit to the fund of interest and proceeds of sale or redemption

The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.


CODIFICATION

§ 2009a. Investment of amounts appropriated and contributed to Harry S Truman Memorial Scholarship Trust Fund

Notwithstanding section 2009(b) of this title, on and after December 26, 2007, at the request of the Board of Trustees of the Harry S Truman Scholarship Foundation, it shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated and contributed to the Harry S Truman Memorial Scholarship Trust Fund, as provided in such section. All requests of the Board of Trustees to the Secretary provided for in this section shall be binding on the Secretary.


CODIFICATION
Section was enacted as part of the Financial Services and General Government Appropriations Act, 2008, and also as part of the Consolidated Appropriations Act, 2008, and not as part of the Harry S Truman Memorial Scholarship Act which comprises this chapter.

§ 2009b. Payment to Trust Fund; Board requests binding on Secretary

For payment to the Harry S Truman Scholarship Foundation Trust Fund, established by sec-
tion 2009 of this title, $500,000, to remain available until expended: Provided, That on or after March 11, 2009, all requests of the Board of Trustees to the Secretary of the Treasury provided for in this section shall be binding on the Secretary, including requests for the issuance at par of special obligations exclusively to the fund as provided for in section 2009(b) of this title, which the Secretary shall implement without regard to the determination related to the public interest required by the last sentence of that section.


Codification

Section was enacted as part of the Financial Services and General Government Appropriations Act, 2009, and also as part of the Omnibus Appropriations Act, 2009, and not as part of the Harry S Truman Memorial Scholarship Act which comprises this chapter.

§ 2010. Expenditures and audit of Trust Fund

(a) Authorization of funding

The Secretary is authorized to pay to the Foundation from the interest and earnings of the fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the purposes of this chapter.

(b) Access to books, records, etc., by Government Accountability Office

The activities of the Foundation under this chapter may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Foundation, pertaining to such activities and necessary to facilitate the audit.


Amendments


§ 2011. Executive Secretary of Foundation

(a) Appointment; functions

There shall be an Executive Secretary of the Foundation who shall be appointed by the Board. The Executive Secretary shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board. The Executive Secretary shall carry out such other functions consistent with the provisions of this chapter as the Board shall delegate.

(b) Compensation

The Executive Secretary of the Foundation shall be compensated at the rate specified for employees placed in grade 18 of the General Schedule set forth in section 5332 of title 5.


References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2012. Administrative provisions

(a) Powers of Foundation

In order to carry out the provisions of this chapter, the Foundation is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees other than the Executive Secretary be compensated at a rate to exceed the rate provided for employees in grade 15 of the General Schedule set forth in section 5332 of title 5;

(2) procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for grade GS–18 in section 5332 of such title;

(3) prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(4) receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) enter into contracts, grants, or other arrangements, or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds, and without regard to section 6101 of title 41;

(7) make advances, progress, and other payments which the Board deems necessary under this chapter without regard to the provisions of section 3324(a) and (b) of title 31;

(8) rent office space in the District of Columbia; and

(9) make other necessary expenditures.

(b) Annual report to Congress

The Foundation shall submit to the President and to the Congress an annual report of its operations under this chapter.


Codification


In subsec. (a)(7), “section 3324(a) and (b) of title 31” substituted for “section 3648 of the Revised Statutes, as

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 193 of House Document No. 103–7.

References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out as a note under section 5376 of Title 5.

§ 2013. Authorization of appropriations

There are authorized to be appropriated $30,000,000 to the fund.


CHAPTER 43—AMERICAN FOLKLIFE PRESERVATION

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
2101. Congressional declaration of findings and purpose.
2102. Definitions.
2103. American Folklife Center.
2104. Functions of Center.
2105. Limitations on contracts.
2106. Administration.
2107. Authorization of appropriations.

SUBCHAPTER II—VETERANS’ ORAL HISTORY

2141. Findings; purpose.
2142. Establishment of program at American Folklife Center to collect video and audio recordings of histories of veterans.
2143. Private support.
2144. Authorization of appropriations.

SUBCHAPTER I—GENERAL PROVISIONS

§ 2101. Congressional declaration of findings and purpose

(a) The Congress hereby finds and declares—

1. that the diversity inherent in American folklife has contributed greatly to the cultural richness of the Nation and has fostered a sense of individuality and identity among the American people;

2. that the history of the United States effectively demonstrates that building a strong nation does not require the sacrifice of cultural differences;

3. that American folklife has a fundamental influence on the desires, beliefs, values, and character of the American people;

4. that it is appropriate and necessary for the Federal Government to support research and scholarship in American folklife in order to contribute to an understanding of the complex problems of the basic desires, beliefs, and values of the American people in both rural and urban areas;

5. that the encouragement and support of American folklife, while primarily a matter for private and local initiative, is also an appropriate matter of concern to the Federal Government; and

6. that it is in the interest of the general welfare of the Nation to preserve, support, revitalize, and disseminate American folklife traditions and arts.

(b) It is therefore the purpose of this subchapter to establish in the Library of Congress an American Folklife Center to preserve and present American folklife.


SHORT TITLE


(Pub. L. 106–380, § 1, Oct. 27, 2000, 114 Stat. 1447, provided that: ‘‘This Act [enacting subchapter II of this chapter] may be cited as the ‘Veterans’ Oral History Project Act.’’

FINDINGS AND PURPOSE OF 1998 AMENDMENT


“(1) FINDINGS.—Congress makes the following findings:

“(A) The American Folklife Center in the Library of Congress was created by Congress in 1976, building on the vast expertise and archival material existing at the Library since 1928.

“(B) As an instrumentality of the Congress, it is fitting that the American Folklife Center should have a direct and close relationship with the representatives of the people, who are best able to oversee the ongoing activities of the Center to preserve and promote the cultural traditions of the people, and to ensure that the resources of the Center be readily available to all Americans.

“(C) In over 20 years since its creation, the American Folklife Center in the Library of Congress has—

“(i) increased the size of the Archive of Folk Culture from 500,000 to 1,500,000 multi-format ethnographic items;

“(ii) engaged in 15 cultural surveys and field documentation projects in all regions of the country;

“(iii) provided publications, documentary equipment on loan, and advisory and reference service to persons and institutions in all 50 States;

“(iv) produced exhibitions and other educational programs on American Folklife at the Library and around the country;

“(v) begun sharing its unique collections in digital form via the Internet; and

“(vi) served as a national center for the professions of folklore, ethnomusicology, and cultural studies.

“(D) Congress has consistently provided encouragement and support of American Folklife as an appropriate matter of concern to the Federal Government, passing legislation to reauthorize the Center eight times since its creation in 1976.

“(E) The American Folklife Center is the only unit in the Library of Congress which is not permanently authorized. Since its establishment in 1976, the Center’s collections and activities have been fully and successfully integrated into the Library of Congress.

“IT IS IN THE INTEREST OF THE GENERAL WELFARE OF THE NATION TO PROVIDE FOR THE REAUTHORIZATION OF THE AMERICAN FOLKLIFE CENTER IN THE LIBRARY OF CONGRESS TO PRESERVE AND PRESENT AMERICAN FOLKLIFE.”

§ 2102. Definitions

As used in this subchapter—
§ 2103. American Folklife Center

(a) Establishment

There is hereby established in the Library of Congress an American Folklife Center.

(b) Board of Trustees; composition; regional balance

(1) The Center shall be under the direction of a Board of Trustees. The Board shall be composed as follows:

(A) four members appointed by the President from among individuals who are officials of Federal departments and agencies concerned with some aspect of American Folklife traditions and arts;

(B) four members appointed by the President pro tempore of the Senate from among individuals from private life who are widely recognized by virtue of their scholarship, experience, creativity, or interest in American Folklife traditions and arts, and four members appointed by the Speaker of the House of Representatives from among individuals such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, handicraft; these expressions are mainly learned orally, by imitation, or in performance, and are generally maintained without benefit of formal instruction or institutional direction;

(C) four members appointed by the Librarian of Congress from among individuals who are officials of Congress from among individuals who are widely recognized by virtue of their scholarship, experience, creativity, or interest in American Folklife traditions and arts; and

(D) seven ex officio members including—

(i) the Librarian of Congress;

(ii) the Secretary of the Smithsonian Institution;

(iii) the Chairman of the National Endowment for the Arts;

(iv) the Chairman of the National Endowment for the Humanities;

(v) the President of the American Folklore Society;

(vi) the President of the Society for Ethnomusicology; and

(vii) the Director of the Center.

(2) In making appointments from private life under paragraph (1)(B) and (C), the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Librarian of Congress shall give due consideration to the appointment of individuals who collectively will provide appropriate diversity and regional balance on the Board. Not more than three of the members appointed by the President pro tempore of the Senate or by the Speaker of the House of Representatives may be affiliated with the same political party.

(3) In making appointments under paragraph (1)(C), the Librarian of Congress shall include at least two members who direct or are members of the boards of major American folklife organizations other than the American Folklife Center and the Society for Ethnomusicology.

(c) Term of office

The term of office of each appointed member of the Board shall be six years; except that (1)(A) the members first appointed under clause (1) of subsection (b) of this section shall serve as designated by the President, one for a term of two years, two for a term of four years, and one for a term of six years, and (B) the members first appointed under clause (2) of subsection (b) of this section shall serve as jointly designated by the President pro tempore of the Senate and the Speaker of the House of Representatives, two for terms of two years, four for terms of four years, and two for terms of six years; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term to which his predecessor was appointed shall be appointed for the remainder of such term. Members appointed by the President under clause (1) of subsection (b) of this section shall serve only during the time they are officials of Federal departments and agencies concerned with some aspect of American folklife traditions and arts.

(d) Reimbursement for expenses

Members of the Board shall serve without pay, but members who are not regular full-time employees of the United States may, at the discretion of the Librarian, be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Board.

(e) Chairman; Vice Chairman; election; vacancies; quorum; annual meeting

(1) The Librarian shall call the first meeting of the Board, at which the first order of business shall be the election of a Chairman and a Vice Chairman, who shall serve for a term of one year. Thereafter each Chairman and Vice Chairman shall be elected for a term of two years. The Vice Chairman shall perform the duties of the Chairman in his absence. In case of a vacancy occurring in the chairmanship or vice-
chairmanship, the Board shall elect a member to fill the vacancy for the remainder of the unexpired term.

(2) A majority of the members of the Board currently serving shall constitute a quorum.

(3) The Board shall meet at least once each fiscal year.

(f) Director; appointment and compensation

After consultation with the Board, the Librarian shall appoint the Director of the Center. The basic pay of the Director shall be at an annual rate that is not less than an amount equal to 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule nor more than an amount equal to the pay payable under level IV of the Executive Schedule under section 5315 of title 5.

(g) Duties of Director

The Director shall be the chief executive officer of the Center. Subject to the direction of the Board and the general supervision of the Librarian, the Director shall have responsibility for carrying out functions of the Center, and shall have authority over all personnel and activities of the Center.


REFERENCES IN TEXT

The General Schedule, referred to in subsec. (f), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–275, § 312(b)(1)(A), added subsec. (b) and struck out former subsec. (b) which read as follows: “The Center shall be under the direction of a Board of Trustees. The Board shall be composed as follows—

“(1) four members appointed by the President from among individuals who are officials of Federal departments and agencies concerned with some aspect of American folklife traditions and arts;

“(2) four members appointed by the President pro tempore of the Senate from among individuals from private life who are widely recognized by virtue of their scholarship, experience, creativity, or interest in American folklife traditions and arts, and four members appointed by the Speaker of the House of Representatives from among such individuals;

“(3) the Librarian of Congress;

“(4) the Secretary of the Smithsonian Institution;

“(5) the Chairman of the National Endowment for the Arts;

“(6) the Chairman of the National Endowment for the Humanities; and

“(7) the Director of the Center.

In making appointments from private life under clause 2, the President pro tempore of the Senate and the Speaker of the House of Representatives shall give due consideration to the appointment of individuals who collectively will provide appropriate regional balance on the Board. Not more than three of the members appointed by the President pro tempore of the Senate or by the Speaker of the House of Representatives may be affiliated with the same political party.”

Subsec. (d). Pub. L. 105–275, § 312(b)(1)(B), added subsec. (d) and struck out former subsec. (d) which read as follows: “Members of the Board who are not regular full-time employees of the United States shall be entitled, while serving on business of the Center, to receive compensation at rates fixed by the Librarian, but not exceeding $100 per diem, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.”

Subsec. (e). Pub. L. 105–275, § 312(b)(1)(C), added subsec. (e) and struck out former subsec. (e) which read as follows: “After consultation with the Board, the Librarian shall appoint the Director of the Center. The basic pay of the Director shall be at a per year rate not to exceed GS–18 of the General Schedule under section 5332 of title 5. The Librarian upon the recommendation of the Director shall appoint a Deputy Director of the Center. The basic pay of the Deputy Director shall be fixed at a rate not to exceed GS–18 of the General Schedule under section 5332 of such title.”

Subsec. (g). Pub. L. 105–275, § 312(b)(1)(D), added subsec. (g) and struck out former subsec. (g) which read as follows: “After consultation with the Board, with the approval of the Librarian, the Director shall perform such functions as the Director, with the approval of the Librarian, may prescribe, and shall serve as Acting Director during the absence or disability of the Director or in the event of a vacancy in the office of the Director.”

1978—Subsec. (c). Pub. L. 95–259 inserted provision limiting time of service of members appointed by the President to the time they are officials of Federal departments and agencies concerned with some aspect of American folklife traditions and arts.

BOARD OF TRUSTEES, TRANSITION PERIOD

Pub. L. 105–275, title III, § 312(d), Oct. 21, 1998, 112 Stat. 2460, provided that: “The term of office of members of the Board of Trustees appointed by the Librarian of Congress under the amendments made by subsection (b)(1) [amending this section] shall be 6 years, except that of the four members first appointed by the Librarian, one shall serve for a term of 2 years, two for a term of 4 years, and one for a term of 6 years.”

§ 2104. Functions of Center

(a) Contracts; national archive and center for American folklife; loan of items in archive; procurement, display, etc., of items in archive; miscellaneous programs

The Librarian is authorized to—

(1) enter into, in conformity with Federal procurement statutes and regulations, contracts with individuals and groups for programs for the—

(A) initiation, encouragement, support, organization, and promotion of research, scholarship, and training in American folklife;

(B) initiation, promotion, support, organization, and production of live performances, festivals, exhibits, and workshops related to American folklife;

(C) purchase, receipt, production, arrangement for, and support of the production of exhibitions, displays, publications, and presentations (including presentations by still and motion picture films, and audio and visual magnetic tape recordings) which represent or illustrate some aspect of American folklife; and

(D) purchase, production, arrangement for, and support of the production of exhibitions, projects, presentations, and materials especially designed for classroom use represent-
§ 2105. Limitations on contracts

(a) Time

No payment shall be made pursuant to this subchapter to carry out any research or training over a period in excess of two years, except that with the concurrence of at least two-thirds of the members of the Board of the Center such research or training may be carried out over a period of not to exceed five years.

(b) Items excluded

Assistance pursuant to this subchapter shall not cover the cost of land acquisition, construction, building acquisitions, or acquisition of major equipment.

(c) Former Government employees

No individual formerly in the employment of the Federal Government shall be eligible to receive any assistance pursuant to this subchapter, or to serve as a trustee of the Center in the two-year period following the termination of such employment.


§ 2106. Administration

(a) Regulations; receipt of money and other property; compensation of personnel; services of experts and consultants; contracts; payments

In addition to any authority vested in it by other provisions of this subchapter, the Librarian of Congress, in carrying out the Center's functions, is authorized to—

(1) prescribe such regulations as he deems necessary;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be for the purposes of the Center and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions, without reference to Federal property disposal statutes;

(3) in the discretion of the Board of Trustees, receive (and use, sell, or otherwise dispose of, in accordance with clause (2)) money and other property donated, bequeathed, or devised to the Center with a condition or restriction, including a condition that the Center use other funds of the Center for the purpose of the gift;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this subchapter in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that the Librarian of Congress may appoint and fix the compensation of a reasonable number of personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates;

(5) obtain the services of experts and consultants in accordance with the provisions of section 2109 of title 5;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(7) enter into contracts to carry out the provisions of this subchapter, and such contracts may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds and in conformity with section 6101 of title 41; and

(8) make advances, progress, and other payments which the Board deems necessary under this subchapter in conformity with the provisions of section 3324(a) and (b) of title 31.

(b) Annual report to Congress

The Director shall submit to the Librarian for inclusion in the annual report of the Library of Congress references in text.


§ 2106. Administration

(a) Regulations; receipt of money and other property; compensation of personnel; services of experts and consultants; contracts; payments

In addition to any authority vested in it by other provisions of this subchapter, the Librarian of Congress, in carrying out the Center's functions, is authorized to—

(1) prescribe such regulations as he deems necessary;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be for the purposes of the Center and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions, without reference to Federal property disposal statutes;

(3) in the discretion of the Board of Trustees, receive (and use, sell, or otherwise dispose of, in accordance with clause (2)) money and other property donated, bequeathed, or devised to the Center with a condition or restriction, including a condition that the Center use other funds of the Center for the purpose of the gift;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this subchapter in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that the Librarian of Congress may appoint and fix the compensation of a reasonable number of personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates;

(5) obtain the services of experts and consultants in accordance with the provisions of section 2109 of title 5;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(7) enter into contracts to carry out the provisions of this subchapter, and such contracts may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds and in conformity with section 6101 of title 41; and

(8) make advances, progress, and other payments which the Board deems necessary under this subchapter in conformity with the provisions of section 3324(a) and (b) of title 31.

(b) Annual report to Congress

The Director shall submit to the Librarian for inclusion in the annual report of the Library of Congress references in text.


§ 2106. Administration

(a) Regulations; receipt of money and other property; compensation of personnel; services of experts and consultants; contracts; payments

In addition to any authority vested in it by other provisions of this subchapter, the Librarian of Congress, in carrying out the Center's functions, is authorized to—

(1) prescribe such regulations as he deems necessary;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be for the purposes of the Center and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions, without reference to Federal property disposal statutes;

(3) in the discretion of the Board of Trustees, receive (and use, sell, or otherwise dispose of, in accordance with clause (2)) money and other property donated, bequeathed, or devised to the Center with a condition or restriction, including a condition that the Center use other funds of the Center for the purpose of the gift;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this subchapter in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that the Librarian of Congress may appoint and fix the compensation of a reasonable number of personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates;

(5) obtain the services of experts and consultants in accordance with the provisions of section 2109 of title 5;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(7) enter into contracts to carry out the provisions of this subchapter, and such contracts may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds and in conformity with section 6101 of title 41; and

(8) make advances, progress, and other payments which the Board deems necessary under this subchapter in conformity with the provisions of section 3324(a) and (b) of title 31.

(b) Annual report to Congress

The Director shall submit to the Librarian for inclusion in the annual report of the Library of Congress references in text.

Congress to the Congress an annual report of the operations of the Center under this subchapter, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as the Center deems appropriate.


REFERENCES IN TEXT

For Federal property disposal statutes, referred to in subsec. (a)(2), see, generally, subtitle I of Title 40, Public Buildings, Property, and Works.

Codification


In subsec. (a)(8), “section 3324(a) and (b) of title 31” substituted for “section 3648 of the Revised Statutes, as amended (31 U.S.C. 529)” on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1267, the first section of which enacted Title 31, Money and Finance.

Amendments

1998—Subsec. (a)(4). Pub. L. 105–275 struck out before semicolon at end “; but no individual so appointed shall receive compensation in excess of the rate received by the Deputy Director of the Center”.

§2107. Authorization of appropriations

There are authorized to be appropriated to the Center to carry out this subchapter such sums as may be necessary for each fiscal year.


Amendments

1998—Pub. L. 105–275 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to the Center to carry out this subchapter such sums as may be necessary for each of the fiscal years 1997 and 1998.”

1996—Pub. L. 104–197 substituted “Authority of appropriations” for “Authorization” in section catchline and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to the Center to carry out this subchapter such sums as may be necessary for each of the fiscal years 1997 and 1998.”

CONGRESSIONAL RECORD

§2141. Findings; purpose

(a) Findings

Congress finds as follows:

(1) Military service during a time of war is the highest sacrifice a citizen may make for his or her country.

(2) 4,700,000 Americans served in World War I, 16,500,000 Americans served in World War II, 6,800,000 Americans served in the Korean Conflict, 9,200,000 Americans served in the Vietnam Conflict, 3,800,000 Americans served in the Persian Gulf War, and countless other Americans served in military engagements overseas throughout the 20th century.

(3) The Department of Veterans Affairs reports that there are almost 19,000,000 veterans living in this Nation today.

(4) Today there are only approximately 2,400 living veterans of World War I, and of the some 6,000,000 veterans of World War II alive today, almost 1,500 die each day.

(5) Oral histories are of immeasurable value to historians, researchers, authors, journalists, film makers, scholars, students, and citizens of all walks of life.

(6) War veterans possess an invaluable resource in their memories of the conflicts in which they served, and can provide a rich history of our Nation and its people through the
retelling of those memories, yet frequently those who served during times of conflict are reticent to family and friends about their experiences.

(7) It is in the Nation’s best interest to collect and catalog oral histories of American war veterans so that future generations will have original sources of information regarding the lives and times of those who served in war and the conditions under which they endured, so that Americans will always remember those who served in war and may learn first-hand of the heroics, tediousness, horrors, and triumphs of war.

(8) The Library of Congress, as the Nation’s oldest Federal cultural institution and largest and most inclusive library in human history (with nearly 119,000,000 items in its multi-media collection) is an appropriate repository to collect, preserve, and make available to the public an archive of these oral histories. The Library’s American Folklife Center has expertise in the management of documentation projects and experience in the development of cultural and educational programs for the public.

(b) Purpose

It is the purpose of this subchapter to create a new federally sponsored, authorized, and funded program that will coordinate at a national level the collection of video and audio recordings of personal histories and testimonials of American war veterans, and to assist and encourage local efforts to preserve the memories of the heroics war veterans so that Americans of all current and future generations may hear directly from veterans and better appreciate the sacrifices made by those who served in uniform during wartime.


SHORT TITLE

For short title of this subchapter as the ‘‘Veterans’ Oral History Project Act’’, see section 1 of Pub. L. 106–380, set out as a note under section 2101 of this title.

§ 2142. Establishment of program at American Folklife Center to collect video and audio recordings of histories of veterans

(a) In general

The Director of the American Folklife Center at the Library of Congress shall establish an oral history program—

(1) to collect video and audio recordings of personal histories and testimonials of veterans of the Armed Forces who served during a period of war;

(2) to create a collection of the recordings obtained (including a catalog and index) which will be available for public use through the National Digital Library of the Library of Congress and such other methods as the Director considers appropriate to the extent feasible subject to available resources; and

(3) to solicit, reproduce, and collect written materials (such as letters and diaries) relevant to the personal histories of veterans of the Armed Forces who served during a period of war and to catalog such materials in a manner the Director considers appropriate, consistent with and complimentary to the efforts described in paragraphs (1) and (2).

(b) Use of and consultation with other entities

The Director may carry out the activities described in paragraphs (1) and (3) of subsection (a) of this section through agreements and partnerships entered into with other government and private entities, and may otherwise consult with interested persons (within the limits of available resources) and develop appropriate guidelines and arrangements for soliciting, acquiring, and making available recordings under the program under this subchapter.

(c) Timing

As soon as practicable after October 27, 2000, the Director shall begin collecting video and audio recordings under subsection (a)(1) of this section, and shall attempt to collect the first such recordings from the oldest veterans.


§ 2143. Private support

(a) Acceptance of donations

The Librarian of Congress may solicit and accept donations of funds and in-kind contributions to carry out the oral history program under section 2142 of this title.

(b) Establishment of separate gift account

There is established in the Treasury (among the accounts of the Library of Congress) a gift account for the oral history program under section 2142 of this title.

(c) Dedication of funds

Notwithstanding any other provision of law—

(1) any funds donated to the Librarian of Congress to carry out the oral history program under section 2142 of this title shall be deposited entirely into the gift account established under subsection (b) of this section;

(2) the funds contained in such account shall be used solely to carry out the oral history program under section 2142 of this title; and

(3) the Librarian of Congress may not deposit into such account any funds donated to the Librarian which are not donated for the exclusive purpose of carrying out the oral history program under section 2142 of this title.


§ 2144. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter—

(1) $250,000 for fiscal year 2001; and

(2) such sums as may be necessary for each succeeding fiscal year.

(5) providing technical assistance that—
   (A) promotes leadership, initial preparation, and professional development at the State and local levels; and
   (B) improves the quality of career and technical education teachers, faculty, administrators, and counselors;

(6) supporting partnerships among secondary schools, postsecondary institutions, baccalaureate degree granting institutions, area career and technical education schools, local workforce investment boards, business and industry, and intermediaries; and

(7) providing individuals with opportunities throughout their lifetimes to develop, in conjunction with other education and training programs, the knowledge and skills needed to keep the United States competitive.


Prior Provisions

Short Title of 2006 Amendment
Pub. L. 109–270, §1(a), Aug. 12, 2006, 120 Stat. 683, provided that: "This Act [see Tables for classification] may be cited as the 'Carl D. Perkins Career and Technical Education Improvement Act of 2006'.''

Short Title of 1996 Amendment

Short Title of 1990 Amendment

Short Title of 1988 Amendment
Pub. L. 90–576, §1, Oct. 16, 1968, 82 Stat. 1064, provided that: "This Act [enacting sections 6, 1119c to 1119c–4, 1226, 1241 to 1248, 1261 to 1264, 1281 to 1284, 1301 to 1305, 1321 to 1323, 1341, 1351 to 1355, 1371 to 1374, and 1391 of this title, amending sections 237, 237 note, 238, 239, 240, 241, 439, 431, 425, 423 note, 425, 425 note, 426, 441, 442, 442 note, 443, 444, 462, 464, 481, 482, 482 note, 483, 484, 491, 511, 521, 541, 551, 561, 563, 586, 589, 611, 633, 644, 645, 1202, and 1221 of this title, repealing sections 151, 151 note, 151 to 156, 15aa to 151j, 15aaa to 15ggg, 30, 31 to 33, and 34 of this title and section 1667 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 6, 11, 240, 436, 1202, 1321, and 2301 of this title and section 2309 of Title 22, The Public Health and Welfare may be cited as the 'Vocational Education Amendments of 1988.'"

Short Title

Title

Vocational Education Policy
Section 6 of Pub. L. 98–524 provided that: "It is the sense of the Congress that effective vocational education programs are essential to our future as a free and democratic society; that such programs are best administered by local communities, and community colleges school boards, where the primacy of parental control can be emphasized with a minimum of Federal interference; and that as a means to strengthening vocational education and training programs, nongovernmental alternatives promoting links between public school needs and private sector sources of support should be encouraged and implemented.''

§ 2302. Definitions

Unless otherwise specified, in this chapter:

(1) Administration

The term "administration", when used with respect to an eligible agency or eligible recipient, means activities necessary for the proper and efficient performance of the eligible agency or eligible recipient's duties under this chapter, including the supervision of such activities. Such term does not include curriculum development activities, personnel development, or research activities.

(2) All aspects of an industry

The term "all aspects of an industry" means strong experience in, and comprehensive understanding of, the industry that the individual is preparing to enter, including information as described in section 2328 of this title.

(3) Area career and technical education school

The term "area career and technical education school" means—

(A) a specialized public secondary school used exclusively or principally for the provision of career and technical education to individuals who are available for study in preparation for entering the labor market;

(B) the department of a public secondary school exclusively or principally used for providing career and technical education in not fewer than 5 different occupational fields to individuals who are available for study in preparation for entering the labor market;

(C) a public or nonprofit technical institution or career and technical education school used exclusively or principally for the provision of career and technical education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market, if the institution or school admits, as regular students, individuals who have completed secondary school and individuals who have left secondary school; or

(D) the department or division of an institution of higher education, that operates under the policies of the eligible agency and that provides career and technical education in not fewer than 5 different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if the department or division admits,
as regular students, both individuals who have completed secondary school and individuals who have left secondary school.

(4) Articulation agreement

The term “articulation agreement” means a written commitment—

(A) that is agreed upon at the State level or approved annually by the lead administrators of—

(i) a secondary institution and a post-secondary educational institution; or

(ii) a subbaccalaureate degree granting postsecondary educational institution and a baccalaureate degree granting post-secondary educational institution; and

(B) to a program that is—

(i) designed to provide students with a nonduplicative sequence of progressive achievement leading to technical skill proficiency, a credential, a certificate, or a degree; and

(ii) linked through credit transfer agreements between the 2 institutions described in clause (i) or (ii) of subparagraph (A) (as the case may be).

(5) Career and technical education

The term “career and technical education” means organized educational activities that—

(A) offer a sequence of courses that—

(i) provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(ii) provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(iii) may include prerequisite courses (other than a remedial course) that meet the requirements of this subparagraph; and

(B) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

(6) Career and technical student organization

(A) In general

The term “career and technical student organization” means an organization for individuals enrolled in a career and technical education program that engages in career and technical education activities as an integral part of the instructional program.

(B) State and national units

An organization described in subparagraph (A) may have State and national units that aggregate the work and purposes of instruction in career and technical education at the local level.

(7) Career guidance and academic counseling

The term “career guidance and academic counseling” means guidance and counseling that—

(A) provides access for students (and parents, as appropriate) to information regarding career awareness and planning with respect to an individual’s occupational and academic future; and

(B) provides information with respect to career options, financial aid, and post-secondary options, including baccalaureate degree programs.

(8) Charter school

The term “charter school” has the meaning given the term in section 7221i of this title.

(9) Cooperative education

The term “cooperative education” means a method of education for individuals who, through written cooperative arrangements between a school and employers, receive instruction, including required rigorous and challenging academic courses and related career and technical education instruction, by alternation of study in school with a job in any occupational field, which alternation—

(A) shall be planned and supervised by the school and employer so that each contributes to the education and employability of the individual; and

(B) may include an arrangement in which work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(10) Displaced homemaker

The term “displaced homemaker” means an individual who—

(A)(i) has worked primarily without remuneration to care for a home and family, and for that reason has diminished marketable skills;

(ii) has been dependent on the income of another family member but is no longer supported by that income; or

(iii) is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) not later than 2 years after the date on which the parent applies for assistance under such title; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(11) Educational service agency

The term “educational service agency” has the meaning given the term in section 7801 of this title.

(12) Eligible agency

The term “eligible agency” means a State board designated or created consistent with State law as the sole State agency responsible for the administration of career and technical education in the State or for the supervision of the administration of career and technical education in the State.

(13) Eligible institution

The term “eligible institution” means—

(A) a public or nonprofit private institution of higher education that offers career
and technical education courses that lead to technical skill proficiency, an industry-recognized credential, a certificate, or a degree;

(B) a local educational agency providing education at the postsecondary level;

(C) an area career and technical education school providing education at the postsecondary level;

(D) a postsecondary educational institution controlled by the Bureau of Indian Affairs or operated by or on behalf of any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Act of April 16, 1934 (25 U.S.C. 452 et seq.);

(E) an educational service agency; or

(F) a consortium of 2 or more of the entities described in subparagraphs (A) through (E).

(14) Eligible recipient
The term “eligible recipient” means—

(A) a local educational agency (including a public charter school that operates as a local educational agency), an area career and technical education school, an educational service agency, or a consortium, eligible to receive assistance under section 2351 of this title; or

(B) an eligible institution or consortium of eligible institutions eligible to receive assistance under section 2352 of this title.

(15) Governor
The term “Governor” means the chief executive officer of a State.

(16) Individual with limited English proficiency
The term “individual with limited English proficiency” means a secondary school student, an adult, or an out-of-school youth, who has limited ability in speaking, reading, writing, or understanding the English language, and—

(A) whose native language is a language other than English; or

(B) who lives in a family or community environment in which a language other than English is the dominant language.

(17) Individual with a disability
(A) In general
The term “individual with a disability” means an individual with any disability (as defined in section 12102 of title 42).

(B) Individuals with disabilities
The term “individuals with disabilities” means more than 1 individual with a disability.

(18) Institution of higher education
The term “institution of higher education” has the meaning given in the term in section 1001 of this title.

(19) Local educational agency
The term “local educational agency” has the meaning given in section 7801 of this title.

(20) Non-traditional fields
The term “non-traditional fields” means occupations or fields of work, including careers in computer science, technology, and other current and emerging high skill occupations, for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work.

(21) Outlying area
The term “outlying area” means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(22) Postsecondary educational institution
The term “postsecondary educational institution” means—

(A) an institution of higher education that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor’s degree;

(B) a tribally controlled college or university;

(C) a nonprofit educational institution offering certificate or apprenticeship programs at the postsecondary level.

(23) Postsecondary education tech prep student
The term “postsecondary education tech prep student” means a student who—

(A) has completed the secondary education component of a tech prep program; and

(B) has enrolled in the postsecondary education component of a tech prep program at an institution of higher education described in clause (i) or (ii) of section 2373(a)(1)(B) of this title.

(24) School dropout
The term “school dropout” means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

(25) Scientifically based research
The term “scientifically based research” means research that is carried out using scientifically based research standards, as defined in section 9501 of this title.

(26) Secondary education tech prep student
The term “secondary education tech prep student” means a secondary education student who has enrolled in 2 courses in the secondary education component of a tech prep program.

(27) Secondary school
The term “secondary school” has the meaning given in section 7801 of this title.

(28) Secretary
The term “Secretary” means the Secretary of Education.

(29) Special populations
The term “special populations” means—

(A) individuals with disabilities;

(B) individuals from economically disadvantaged families, including foster children;

(C) individuals preparing for non-traditional fields.
(D) single parents, including single pregnant women;
(E) displaced homemakers; and
(F) individuals with limited English proficiency.

(30) State
The term "State", unless otherwise specified, means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.

(31) Support services
The term "support services" means services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

(32) Tech prep program
The term "tech prep program" means a tech prep program described in section 2373(c) of this title.

(33) Tribally controlled college or university
The term "tribally controlled college or university" has the meaning given the term in section 1801(a) of title 25.

(34) Tribally controlled postsecondary career and technical institution
The term "tribally controlled postsecondary career and technical institution" means an institution of higher education (as defined in section 1001 of this title, except that subsection (a)(2) of such section shall be deemed applicable and the reference to Secretary in subsection (a)(2) of such section shall not be applicable) that—
(A) is formally controlled, or has been formally sanctioned or chartered, by the governing body of an Indian tribe or Indian tribes;
(B) offers a technical degree or certificate granting program;
(C) is governed by a board of directors or trustees, a majority of whom are Indians;
(D) demonstrates adherence to stated goals, a philosophy, or a plan of operation, that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurs and self-sustaining economic infrastructures on reservations;
(E) has been in operation for at least 3 years;
(F) holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary career and technical education; and
(G) enrolls the full-time equivalent of not less than 100 students, of whom a majority are Indians.

Amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 22, The Council of the United States. For complete classification of this Act to the Code, see section 1305 of Title 22 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in par. (13)(D), is this chapter (as amended by the Carl D. Perkins Career and Technical Education Improvement Act of 1998) from any authority under the provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998, as in effect on the day before August 12, 2006. The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of this chapter (as amended by the Carl D. Perkins Career and Technical Education Improvement Act of 2006) from any authority under the provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998, as in effect on the day before August 12, 2006. The Secretary shall give each eligible agency the opportunity to submit a transition plan for the first fiscal year following August 12, 2006.

(A) holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary career and technical education; and
(B) enrolls the full-time equivalent of not less than 100 students, of whom a majority are Indians.

Amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 22, The Council of the United States. For complete classification of this Act to the Code, see section 1305 of Title 22 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in par. (13)(D), is this chapter (as amended by the Carl D. Perkins Career and Technical Education Improvement Act of 1998) from any authority under the provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998, as in effect on the day before August 12, 2006. The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of this chapter (as amended by the Carl D. Perkins Career and Technical Education Improvement Act of 2006) from any authority under the provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998, as in effect on the day before August 12, 2006. The Secretary shall give each eligible agency the opportunity to submit a transition plan for the first fiscal year following August 12, 2006.

References in Text
§ 2304. Privacy

(a) GEPA

Nothing in this chapter shall be construed to supersede the privacy protections afforded parents and students under section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(b) Prohibition on development of national database

Nothing in this chapter shall be construed to permit the development of a national database of personally identifiable information on individuals receiving services under this chapter.


PRIOR PROVISIONS


§ 2305. Limitation

All of the funds made available under this chapter shall be used in accordance with the requirements of this chapter.


PRIOR PROVISIONS


§ 2306. Special rule

In the case of a local community in which no employees are represented by a labor organization, for purposes of this chapter, the term “representatives of employees” shall be substituted for “labor organization”.


PRIOR PROVISIONS


§ 2306a. Prohibitions

(a) Local control

Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this chapter, except as required under sections 2322(b), 2391(b), and 2413 of this title.

(b) No preclusion of other assistance

Any State that declines to submit an application to the Secretary for assistance under this chapter shall not be precluded from applying for assistance under any other program administered by the Secretary.

(c) Prohibition on requiring Federal approval or certification of standards

Notwithstanding any other provision of Federal law, no State shall be required to have academic and career and technical content standards or student academic and career and technical achievement standards approved or certified by the Federal Government, in order to receive assistance under this chapter.

(d) Rule of construction

Nothing in this section shall be construed to affect the requirements under section 2323 of this title.

(e) Coherent and rigorous content

For the purposes of this chapter, coherent and rigorous content shall be determined by the State consistent with section 6311(b)(1)(D) of this title.


PRIOR PROVISIONS

A prior section 8 of Pub. L. 88–210 was classified to section 2307 of this title prior to the general amendment of this chapter by Pub. L. 109–270.

§ 2307. Authorization of appropriations

There is authorized to be appropriated to carry out this chapter (other than sections 2324, 2327, and 2328 of this title, and subchapter II) such sums as may be necessary for each of the fiscal years 2007 through 2012.


PRIOR PROVISIONS


§ 2308. Interdepartmental Task Force on Vocational Education and Related Programs

(a) Establishment

There is established the Interdepartmental Task Force on Vocational Education and Related Programs (in this section referred to as the ”Task Force”).

(b) Membership

The Task Force shall consist of the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and such other personnel of the Department of Education, the Department of Labor, and the Department of Health and Human Services as the Secretaries consider appropriate.

(c) Duties

The Task Force shall—

(1) examine principal data required for programs under the Adult Education Act, the Carl D. Perkins Vocational and Applied Technology Education Act, the Job Training Partnership Act, the Rehabilitation Act of 1973, and the Wagner-Peyser Act [29 U.S.C. 49 et seq.];
(2) examine possible common objectives, definitions, measures, and standards for such programs; and

(3) consider integration of research and development conducted with Federal assistance in the area of vocational education and related areas, including areas of emerging technologies.


REFERENCES IN TEXT

The Adult Education Act, referred to in subsec. (c)(1), was Pub. L. 89–575, Nov. 3, 1966, 80 Stat. 1216, as amended, which was classified generally to chapter 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, which was classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. For complete classification of Pub. L. 88–210 to the Code, see Short Title note set out under section 701 of Title 29 and Tables.


The Wagner-Peyser Act, referred to in subsec. (c)(1), is act June 6, 1933, ch. 34, 48 Stat. 113, as amended, which is classified principally to chapter 15 (§1601 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 29 and Tables.

Codification

Section was enacted as part of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, and not as part of the Carl D. Perkins Career and Technical Education Act of 2006 which comprises this chapter.

Section was formerly classified to section 2303 of this title.

Prior Provisions

Prior sections 2311 to 2313 were omitted in the general amendment of this chapter by Pub. L. 105–332.


Amendments

1995—Subsec. (d). Pub. L. 104–66 struck out heading and text of subsec. (d). Text read as follows: "The Task Force shall, every 2 years, submit a report on its findings to the appropriate committees of the Congress."

SUBCHAPTER I—CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

PART A—ALLOTMENT AND ALLOCATION

§ 2321. Reservations and State allotment

(a) Reservations and State allotment

(1) Reservations

From the sum appropriated under section 2307 of this title for each fiscal year, the Secretary shall reserve—

(A) 0.13 percent to carry out section 2325 of this title; and

(B) 1.50 percent to carry out section 2326 of this title, of which—

(i) 1.25 percent of the sum shall be available to carry out section 2326(b) of this title; and

(ii) 0.25 percent of the sum shall be available to carry out section 2326(h) of this title.

(2) State allotment formula

Subject to paragraphs (3), (4), and (5), from the remainder of the sum appropriated under section 2307 of this title and not reserved under paragraph (1) for a fiscal year, the Secretary shall allot to a State for the fiscal year—

(A) an amount that bears the same ratio to 50 percent of the sum being allotted as the product of the population aged 15 to 19 inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(B) an amount that bears the same ratio to 20 percent of the sum being allotted as the product of the population aged 20 to 24 inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;
(C) an amount that bears the same ratio to 15 percent of the sum being allotted as the product of the population aged 25 to 65, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State’s allotment ratio bears to the sum of the corresponding products for all the States; and

(D) an amount that bears the same ratio to 15 percent of the sum being allotted as the amounts allotted to the State under subparagraphs (A), (B), and (C) for such years bears to the sum of the amounts allotted to all the States under subparagraphs (A), (B), and (C) for such year.

(3) Minimum allotment for years with no additional funds

(A) In general

Notwithstanding any other provision of law and subject to subparagraphs (B) and (C), and paragraph (5), for a fiscal year for which there are no additional funds (as such term is defined in paragraph (4)(D)), no State shall receive for such fiscal year under this subsection less than 1/2 of 1 percent of the amount appropriated under section 2307 of this title and not reserved under paragraph (1) for such fiscal year; and

(B) Requirement

No State, by reason of the application of subparagraph (A), shall receive for a fiscal year more than 150 percent of the amount the State received under this subsection for the preceding fiscal year.

(C) Special rule

(i) In general

Subject to paragraph (5), no State, by reason of the application of subparagraph (A), shall be allotted for a fiscal year more than the lesser of—

(I) 150 percent of the amount that the State received in the preceding fiscal year; and

(II) the amount calculated under clause (ii).

(ii) Amount

The amount calculated under this clause shall be determined by multiplying—

(I) the number of individuals in the State counted under paragraph (2) in the preceding fiscal year; by

(II) 150 percent of the national average per pupil payment made with funds available under this section for that year.

(4) Minimum allotment for years with additional funds

(A) In general

Subject to subparagraph (B) and paragraph (5), for a fiscal year for which there are additional funds, no State shall receive for such fiscal year under this subsection less than 1/2 of 1 percent of the amount appropriated under section 2307 of this title and not reserved under paragraph (1) for such fiscal year. Amounts necessary for increasing such payments to States to comply with the preceding sentence shall be obtained by ratably reducing the amounts to be paid to other States.

(B) Special rule

In the case of a qualifying State, the minimum allotment under subparagraph (A) for a fiscal year for the qualifying State shall be the lesser of—

(i) 1/2 of 1 percent of the amount appropriated under section 2307 of this title and not reserved under paragraph (1) for such fiscal year; and

(ii) the sum of—

(I) the amount the qualifying State was allotted under paragraph (2) for fiscal year 2006 (as such paragraph was in effect on the day before August 12, 2006); and

(II) the product of—

(aa) 1/2 of the additional funds; multiplied by

(bb) the quotient of—

(1) the qualifying State’s ratio described in subparagraph (C) for the fiscal year for which the determination is made; divided by

(BB) the sum of all such ratios for all qualifying States for the fiscal year for which the determination is made.

(C) Ratio

For purposes of subparagraph (B)(ii)(II)(bb)(AA), the ratio for a qualifying State for a fiscal year shall be 1.00 less the quotient of—

(i) the amount the qualifying State was allotted under paragraph (2) for fiscal year 2006 (as such paragraph was in effect on the day before August 12, 2006); divided by

(ii) 1/2 of 1 percent of the amount appropriated under section 2307 of this title and not reserved under paragraph (1) for the fiscal year for which the determination is made.

(D) Definitions

In this paragraph:

(i) Additional funds

The term “additional funds” means the amount by which—

(I) the sum appropriated under section 2307 of this title and not reserved under paragraph (1) for a fiscal year; exceeds

(II) the sum of—

(aa) the amount allotted under paragraph (2) for fiscal year 2006 (as such paragraph was in effect on the day before August 12, 2006); and

(bb) the amount reserved under paragraph (1)(C) for fiscal year 2006 (as such paragraph (1)(C) was in effect); and

(cc) $827,671.

(ii) Qualifying State

The term “qualifying State” means a State (except the United States Virgin Is-
lands) that, for the fiscal year for which a determination under this paragraph is made, would receive, under the allotment formula under paragraph (2) (without the application of this paragraph and paragraphs (3) and (5)), an amount that would be less than the amount the State would receive under subparagraph (A) for such fiscal year.

(5) Hold harmless
(A) In general
No State shall receive an allotment under this section for a fiscal year that is less than the allotment the State received under part A of title I of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2311 et seq.) (as such part was in effect on the day before October 31, 1998) for fiscal year 1998.

(B) Ratable reduction
If for any fiscal year the amount appropriated for allotments under this section is insufficient to satisfy the provisions of subparagraph (A), the payments to all States under such subparagraph shall be ratably reduced.

(b) Reallotment
If the Secretary determines that any amount of any State's allotment under subsection (a) for any fiscal year will not be required for such fiscal year for carrying out the activities for which such amount has been allotted, the Secretary shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation. Any such reallocation among other States shall make such amount available for reallocation.

(c) Allotment ratio
(1) In general
The allotment ratio for any State shall be 1.00 less the product of—
(A) 0.50; and
(B) the quotient obtained by dividing the per capita income for the State by the per capita income for all the States (exclusive of the Commonwealth of Puerto Rico and the United States Virgin Islands), except that—
(i) the allotment ratio in no case shall be more than 0.60 or less than 0.40; and
(ii) the allotment ratio for the Commonwealth of Puerto Rico and the United States Virgin Islands shall be 0.60.

(2) Promulgation
The allotment ratios shall be promulgated by the Secretary for each fiscal year between October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be computed on the basis of the average of the appropriate per capita incomes for the 3 most recent consecutive fiscal years for which satisfactory data are available.

(3) Definition of per capita income
For the purpose of this section, the term "per capita income" means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

(4) Population determination
For the purposes of this section, population shall be determined by the Secretary on the basis of the latest estimates available to the Department of Education.

(d) Definition of State
For the purpose of this section, the term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

References in Text
Paragraphs (1)(C) and (2), as such paragraphs were in effect on the day before August 12, 2006, referred to in subsec. (a)(4)(B)(ii)(I), (C)(i), (D)(i)(II)(aa), (bb), mean paragraphs (1)(C) and (2) of section 2321(a) of this title, as added by Pub. L. 105–332, §1(b), Oct. 31, 1998, 112 Stat. 3083; as amended, prior to the general amendment of this chapter by Pub. L. 109–270, §1(b), Aug. 12, 2006, 120 Stat. 691.

Prior Provisions


§ 2322. Within State allocation
(a) In general
From the amount allotted to each State under section 2321 of this title for a fiscal year, the eligible agency shall make available—
(1) not less than 85 percent for distribution under section 2331 or 2332 of this title, of which not more than 10 percent of the 85 percent may be used in accordance with subsection (c);
(2) not more than 10 percent to carry out State leadership activities described in section 2344 of this title, of which—
(A) an amount equal to not more than 1 percent of the amount allotted to the State.
under section 2321 of this title for the fiscal year shall be made available to serve individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities; and (B) not less than $60,000 and not more than $150,000 shall be available for services that prepare individuals for non-traditional fields; and
(3) an amount equal to not more than 5 percent, or $250,000, whichever is greater, for administration of the State plan, which may be used for the costs of—
(A) developing the State plan;
(B) reviewing a local plan;
(C) monitoring and evaluating program effectiveness;
(D) assuring compliance with all applicable Federal laws;
(E) providing technical assistance; and
(F) supporting and developing State data systems relevant to the provisions of this chapter.
(b) Matching requirement
Each eligible agency receiving funds made available under subsection (a)(3) shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds received under subsection (a)(3).
(c) Reserve
From amounts made available under subsection (a)(1) to carry out this subsection, an eligible agency may award grants to eligible recipients for career and technical education activities described in section 2355 of this title in—
(1) rural areas;
(2) areas with high percentages of career and technical education students; and
(3) areas with high numbers of career and technical education students.

§ 2323. Accountability

(a) Purpose
The purpose of this section is to establish and support State and local performance accountability systems, comprised of the activities described in this section, to assess the effectiveness of the State and the eligible recipients of the State in achieving statewide progress in career and technical education, and to optimize the return of investment of Federal funds in career and technical education activities.

(b) State performance measures
(1) In general
Each eligible agency, with input from eligible recipients, shall establish performance measures for a State that consist of—
(A) the core indicators of performance described in subparagraphs (A) and (B) of paragraph (2);
(B) any additional indicators of performance (if any) identified by the eligible agency under paragraph (2)(C); and
(C) a State adjusted level of performance described in paragraph (3)(A) for each core indicator of performance, and State levels of performance described in paragraph (3)(B) for each additional indicator of performance.
(2) Indicators of performance
(A) Core indicators of performance for career and technical education students at the secondary level
Each eligible agency shall identify in the State plan core indicators of performance for career and technical education students at the secondary level that are valid and reliable, and that include, at a minimum, measures of each of the following:
(i) Student attainment of challenging academic content standards and student academic achievement standards, as adopted by a State in accordance with section 6311(b)(1) of this title and measured by the State determined proficient levels on the academic assessments described in section 6311(b)(3) of this title.
(ii) Student attainment of career and technical skill proficiencies, including student achievement on technical assessments, that are aligned with industry-recognized standards, if available and appropriate.
(iii) Student rates of attainment of each of the following:
(I) A secondary school diploma.
(II) A General Education Development (GED) credential, or other State-recognized equivalent (including recognized alternative standards for individuals with disabilities).
(III) A proficiency credential, certificate, or degree, in conjunction with a secondary school diploma (if such credential, certificate, or degree is offered by the State in conjunction with a secondary school diploma).
(iv) Student graduation rates (as described in section 6311(b)(2)(C)(vi) of this title).
(v) Student placement in postsecondary education or advanced training, in military service, or in employment.
(vi) Student participation in and completion of career and technical education programs that lead to non-traditional fields.
(B) Core indicators of performance for career and technical education students at the postsecondary level
Each eligible agency shall identify in the State plan core indicators of performance
for career and technical education students at the postsecondary level that are valid and reliable, and that include, at a minimum, measures of each of the following:

(i) Student attainment of challenging career and technical skill proficiencies, including student achievement on technical assessments, that are aligned with industry-recognized standards, if available and appropriate.

(ii) Student attainment of an industry-recognized credential, a certificate, or a degree.

(iii) Student retention in postsecondary education or transfer to a baccalaureate degree program.

(iv) Student placement in military service or apprenticeship programs or placement or retention in employment, including placement in high skill, high wage, or high demand occupations or professions.

(v) Student participation in, and completion of, career and technical education programs that lead to employment in non-traditional fields.

(C) Additional indicators of performance

An eligible agency, with input from eligible recipients, may identify in the State plan additional indicators of performance for career and technical education activities authorized under this subchapter, such as attainment of self-sufficiency.

(D) Existing indicators

If a State has developed, prior to the date of enactment of the Carl D. Perkins Career and Technical Education Improvement Act of 2006 [August 12, 2006], State career and technical education performance measures that meet the requirements of this section (as amended by such Act), the State may use such performance measures to measure the progress of career and technical education students.

(E) State role

Indicators of performance described in this paragraph shall be established solely by each eligible agency with input from eligible recipients.

(F) Alignment of performance indicators

In the course of developing core indicators of performance and additional indicators of performance, an eligible agency shall, to the greatest extent possible, align the indicators so that substantially similar information gathered for other State and Federal programs, or for any other purpose, is used to meet the requirements of this section.

(3) State levels of performance

(A) State adjusted levels of performance for core indicators of performance

(i) In general

Each eligible agency, with input from eligible recipients, shall establish in the State plan submitted under section 2342 of this title, levels of performance for each of the core indicators of performance described in subparagraphs (A) and (B) of paragraph (2) for career and technical education activities authorized under this subchapter. The levels of performance established under this subparagraph shall, at a minimum—

(I) be expressed in a percentage or numerical form, so as to be objective, quantifiable, and measurable; and

(II) require the State to continually make progress toward improving the performance of career and technical education students.

(ii) Identification in the State plan

Subject to section 2303 of this title, each eligible agency shall identify, in the State plan submitted under section 2342 of this title, levels of performance for each of the core indicators of performance for the first 2 program years covered by the State plan.

(iii) Agreement on State adjusted levels of performance for first 2 years

The Secretary and each eligible agency shall reach agreement on the levels of performance for each of the core indicators of performance, for the first 2 program years covered by the State plan, taking into account the levels identified in the State plan under clause (ii) and the factors described in clause (vi). The levels of performance agreed to under this clause shall be considered to be the State adjusted level of performance for the State for such years and shall be incorporated into the State plan prior to the approval of such plan.

(iv) Role of the Secretary

The role of the Secretary in the agreement described in clauses (iii) and (v) is limited to reaching agreement on the percentage or number of students who attain the State adjusted levels of performance.

(v) Agreement on State adjusted levels of performance for subsequent years

Prior to the third and fifth program years covered by the State plan, the Secretary and each eligible agency shall reach agreement on the State adjusted levels of performance for each of the core indicators of performance for the corresponding subsequent program years covered by the State plan, taking into account the factors described in clause (vi). The State adjusted levels of performance agreed to under this clause shall be considered to be the State adjusted levels of performance for the State for such years and shall be incorporated into the State plan.

(vi) Factors

The agreement described in clause (iii) or (v) shall take into account—

(I) how the levels of performance involved compare with the State adjusted levels of performance established for other States, taking into account factors including the characteristics of participants when the participants entered the program and the services or instruction to be provided; and
(II) the extent to which such levels of performance promote continuous improvement on the indicators of performance by such State.

(vii) Revisions

If unanticipated circumstances arise in a State resulting in a significant change in the factors described in clause (vi), the eligible agency may request that the State adjusted levels of performance agreed to under clause (iii) or (v) be revised. The Secretary shall issue objective criteria and methods for making such revisions.

(B) Levels of performance for additional indicators

Each eligible agency shall identify in the State plan State levels of performance for each of the additional indicators of performance described in paragraph (2)(C). Such levels shall be considered to be the State levels of performance for purposes of this subchapter.

(4) Local levels of performance

(A) Local adjusted levels of performance for core indicators of performance

(i) In general

Each eligible recipient shall agree to accept the State adjusted levels of performance established under paragraph (3) as local adjusted levels of performances, or negotiate with the State to reach agreement on new local adjusted levels of performance, for each of the core indicators of performance described in subparagraphs (A) and (B) of paragraph (2) for career and technical education activities authorized under this subchapter. The levels of performance established under this subparagraph shall, at a minimum—

(I) be expressed in a percentage or numerical form, consistent with the State levels of performance established under paragraph (3), so as to be objective, quantifiable, and measurable; and

(II) require the eligible recipient to continually make progress toward improving the performance of career and technical education students.

(ii) Identification in the local plan

Each eligible recipient shall identify, in the local plan submitted under section 2354 of this title, levels of performance for each of the core indicators of performance for the first 2 program years covered by the local plan.

(iii) Agreement on local adjusted levels of performance for first 2 years

The eligible agency and each eligible recipient shall reach agreement, as described in clause (i), on the eligible recipient’s levels of performance for each of the core indicators of performance for the first 2 program years covered by the local plan, taking into account the levels identified in the local plan under clause (ii) and the factors described in clause (v). The levels of performance agreed to under this clause shall be considered to be the local adjusted levels of performance for the eligible recipient for such years and shall be incorporated into the local plan prior to the approval of such plan.

(iv) Agreement on local adjusted levels of performance for subsequent years

Prior to the third and fifth program years covered by the local plan, the eligible agency and each eligible recipient shall reach agreement on the local adjusted levels of performance for each of the core indicators of performance for the corresponding subsequent program years covered by the local plan, taking into account the factors described in clause (v). The local adjusted levels of performance agreed to under this clause shall be considered to be the local adjusted levels of performance for the eligible recipient for such years and shall be incorporated into the local plan.

(v) Factors

The agreement described in clause (iii) or (iv) shall take into account—

(I) how the levels of performance involved compare with the local adjusted levels of performance established for other eligible recipients in the State, taking into account factors including the characteristics of participants when the participants entered the program and the services or instruction to be provided; and

(II) the extent to which the local adjusted levels of performance promote continuous improvement on the core indicators of performance by the eligible recipient.

(vi) Revisions

If unanticipated circumstances arise with respect to an eligible recipient resulting in a significant change in the factors described in clause (v), the eligible recipient may request that the local adjusted levels of performance agreed to under clause (iii) or (iv) be revised. The eligible agency shall issue objective criteria and methods for making such revisions.

(B) Levels of performance for additional indicators

Each eligible recipient may identify, in the local plan, local levels of performance for any additional indicators of performance described in paragraph (2)(C). Such levels shall be considered to be the local levels of performance for purposes of this subchapter.

(C) Local report

(i) Content of report

Each eligible recipient that receives an allocation described in section 2322 of this title shall annually prepare and submit to the eligible agency a report, which shall include the data described in clause (ii)(I), regarding the progress of such recipient in achieving the local adjusted levels of performance on the core indicators of performance.
(ii) Data
Except as provided in clauses (iii) and (iv), each eligible recipient that receives an allocation described in section 2322 of this title shall—

1. Disaggregate data for each of the indicators of performance under paragraph (2) for the categories of students described in section 6311(h)(1)(C)(i) of this title and section 2302(29) of this title that are served under this chapter;

2. Identify and quantify any disparities or gaps in performance between any such category of students and the performance of all students served by the eligible recipient under this chapter.

(iii) Nonduplication
The eligible agency shall ensure, in a manner that is consistent with the actions of the Secretary under subsection (c)(3), that each eligible recipient does not report duplicative information under this section.

(iv) Rules for reporting of data
The disaggregation of data under clause (ii) shall not be required when the number of students in a category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about an individual student.

(v) Availability
The report described in clause (i) shall be made available to the public through a variety of formats, including electronically through the Internet.

(c) Report

(1) In general
Each eligible agency that receives an allotment under section 2321 of this title shall annually prepare and submit to the Secretary a report regarding—

A. The progress of the State in achieving the State adjusted levels of performance on the core indicators of performance; and

B. Information on the levels of performance achieved by the State with respect to the additional indicators of performance, including the levels of performance for special populations.

(2) Data
Except as provided in paragraphs (3) and (4), each eligible agency that receives an allotment under section 2321 or 2371 of this title shall—

A. Disaggregate data for each of the indicators of performance under subsection (b)(2) for the categories of students described in section 6311(h)(1)(C)(i) of this title and section 2302(29) of this title that are served under this chapter;

B. Identify and quantify any disparities or gaps in performance between any such category of students and the performance of all students served by the eligible agency under this chapter, which shall include a quantifiable description of the progress each such category of students served by the eligible agency under this chapter has made in meeting the State adjusted levels of performance.

(3) Nonduplication
The Secretary shall ensure that each eligible agency does not report duplicative information under this section.

(4) Rules for reporting of data
The disaggregation of data under paragraph (2) shall not be required when the number of students in a category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about an individual student.

(5) Information dissemination
The Secretary—

A. Shall make the information contained in such reports available to the general public through a variety of formats, including electronically through the Internet;

B. Shall disseminate State-by-State comparisons of the information; and

C. Shall provide the appropriate committees of Congress with copies of such reports.


REFERENCES IN TEXT
This section (as amended by such Act), referred to in subsec. (b)(2)(D), is the section as added by Pub. L. 109–270.

§ 2324. National activities

(a) Program performance information

(1) In general
The Secretary shall collect performance information and, report on, the condition of career and technical education and on the effectiveness of State and local programs, services, and activities carried out under this subchapter in order to provide the Secretary and Congress, as well as Federal, State, local, and tribal agencies, with information relevant to improvement in the quality and effectiveness of career and technical education. The Secretary shall report annually to Congress on the Secretary's aggregate analysis of performance information collected each year pursuant to this subchapter, including an analysis of performance data regarding special populations.

(2) Compatibility
The Secretary shall, to the extent feasible, ensure that the performance information system is compatible with other Federal information systems.
(3) Assessments

As a regular part of its assessments, the National Center for Education Statistics shall collect and report information on career and technical education for nationally representative samples of students. Such assessment may include international comparisons in the aggregate.

(b) Miscellaneous provisions

(1) Collection of information at reasonable cost

The Secretary shall take such action as may be necessary to secure at reasonable cost the information required by this subchapter. To ensure reasonable cost, the Secretary, in consultation with the National Center for Education Statistics, the Office of Vocational and Adult Education, and an entity assisted under section 2328 of this title (if applicable), shall determine the methodology to be used and the frequency with which information is to be collected.

(2) Cooperation of States

All eligible agencies receiving assistance under this chapter shall cooperate with the Secretary in implementing the information systems developed pursuant to this chapter.

(c) Single plan for research, development, dissemination, evaluation, and assessment

(1) In general

The Secretary, directly or through grants, contracts, or cooperative agreements, carry out research, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to the career and technical education programs under this chapter. The Secretary shall develop a single plan for such activities.

(2) Plan

Such plan shall—

(A) identify the career and technical education activities described in paragraph (1) that the Secretary will carry out under this section;

(B) describe how the Secretary will evaluate such career and technical education activities in accordance with subsection (d)(2); and

(C) include such other information as the Secretary determines to be appropriate.

(d) Advisory panel; evaluation; reports

(1) Independent advisory panel

(A) In general

The Secretary shall appoint an independent advisory panel to advise the Secretary on the implementation of the assessment described in paragraph (2), including the issues to be addressed and the methodology of the studies involved to ensure that the assessment adheres to the highest standards of quality.

(B) Members

The advisory panel shall consist of—

(i) educators, administrators, State directors of career and technical education, and chief executives, including those with expertise in the integration of academic and career and technical education;

(ii) experts in evaluation, research, and assessment;

(iii) representatives of labor organizations and businesses, including small businesses, economic development entities, and workforce investment entities;

(iv) parents;

(v) career guidance and academic counseling professionals; and

(vi) other individuals and intermediaries with relevant expertise.

(C) Independent analysis

The advisory panel shall transmit to the Secretary, the relevant committees of Congress, and the Library of Congress an independent analysis of the findings and recommendations resulting from the assessment described in paragraph (2).

(D) FACA

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the panel established under this paragraph.

(2) Evaluation and assessment

(A) In general

From amounts made available under subsection (e), the Secretary shall provide for the conduct of an independent evaluation and assessment of career and technical education programs under this chapter, including the implementation of the Carl D. Perkins Career and Technical Education Improvement Act of 2006, to the extent practicable, through studies and analyses conducted independently through grants, contracts, and cooperative agreements that are awarded on a competitive basis.

(B) Contents

The assessment required under subparagraph (A) shall include descriptions and evaluations of—

(i) the extent to which State, local, and tribal entities have developed, implemented, or improved State and local career and technical education programs assisted under this chapter;

(ii) the preparation and qualifications of teachers and faculty of career and technical education (such as meeting State established teacher certification or licensing requirements), as well as shortages of such teachers and faculty;

(iii) academic and career and technical education achievement and employment outcomes of career and technical education, including analyses of

(I) the extent and success of the integration of rigorous and challenging academic and career and technical education for students participating in career and technical education programs, including a review of the effect of such integration on the academic and technical proficiency achievement of such students (including the number of such students receiving a secondary school diploma); and
(II) the extent to which career and technical education programs prepare students, including special populations, for subsequent employment in high skill, high wage occupations (including those in which mathematics and science skills are critical), or for participation in post-secondary education;

(iv) employer involvement in, and satisfaction with, career and technical education programs and career and technical education students’ preparation for employment;

(v) the participation of students in career and technical education programs;

(vi) the use of educational technology and distance learning with respect to career and technical education and tech prep programs; and

(vii) the effect of State and local adjusted levels of performance and State and local levels of performance on the delivery of career and technical education services, including the percentage of career and technical education and tech prep students meeting the adjusted levels of performance described in section 2323 of this title.

(C) Reports

(i) In general

The Secretary shall submit to the relevant committees of Congress—

(I) an interim report regarding the assessment on or before January 1, 2010; and

(II) a final report, summarizing all studies and analyses that relate to the assessment and that are completed after the interim report, on or before July 1, 2011.

(ii) Prohibition

Notwithstanding any other provision of law, the reports required by this subsection shall not be subject to any review outside the Department of Education before their transmittal to the relevant committees of Congress and the Secretary, but the President, the Secretary, and the independent advisory panel established under paragraph (1) may make such additional recommendations to Congress with respect to the assessment as the President, the Secretary, or the panel determine to be appropriate.

(3) Collection of State information and report

(A) In general

The Secretary may collect and disseminate information from States regarding State efforts to meet State adjusted levels of performance described in section 2323(b) of this title.

(B) Report

The Secretary shall gather any information collected pursuant to subparagraph (A) and submit a report to the relevant committees in Congress.

(4) Research

(A) In general

From amounts made available under subsection (e), the Secretary, after consulting with the States, shall award a grant, contract, or cooperative agreement, on a competitive basis, to an institution of higher education, a public or private nonprofit organization or agency, or a consortium of such institutions, organizations, or agencies to establish a national research center—

(i) to carry out scientifically based research and evaluation for the purpose of developing, improving, and identifying the most successful methods for addressing the education, employment, and training needs of participants, including special populations, in career and technical education programs, including research and evaluation in such activities as—

(aa) career and technical instruction; and

(bb) academic, secondary and post-secondary instruction;

(ii) to carry out scientifically based research and evaluation that can be used to identify and State and local adjusted levels of performance that serve to improve career and technical education programs and student achievement;

(II) academic knowledge and career and technical skills required for employment or participation in postsecondary education; and

(V) preparation for occupations in high skill, high wage, or high demand business and industry, including examination of—

(aa) collaboration between career and technical education programs and business and industry; and

(bb) academic and technical skills required for a regional or sectoral workforce, including small business;

(iii) employer involvement in, and satisfaction with, career and technical education programs and student achievement;

(iv) academic knowledge and career and technical skills required for employment or participation in postsecondary education; and

(v) preparation for occupations in high skill, high wage, or high demand business and industry, including examination of—

(aa) collaboration between career and technical education programs and business and industry; and

(bb) academic and technical skills required for a regional or sectoral workforce, including small business;

(iv) academic knowledge and career and technical skills required for employment or participation in postsecondary education; and

(v) preparation for occupations in high skill, high wage, or high demand business and industry, including examination of—

(aa) collaboration between career and technical education programs and business and industry; and

(bb) academic and technical skills required for a regional or sectoral workforce, including small business;
as adopted by States under section 6311(b)(1) of this title; and
(bb) coordinating technical education with industry-recognized certification requirements;
(II) dissemination and training activities related to the applied research and demonstration activities described in this subsection, which may also include serving as a repository for information on career and technical skills, State academic standards, and related materials; and
(III) the recruitment and retention of career and technical education teachers, faculty, counselors, and administrators, including individuals in groups underrepresented in the teaching profession; and
(iv) to carry out such other research and evaluation, consistent with the purposes of this chapter, as the Secretary determines appropriate to assist State and local recipients of funds under this chapter.

(B) Report
The center conducting the activities described in subparagraph (A) shall annually prepare a report of the key research findings of such center and shall submit copies of the report to the Secretary, the relevant committees of Congress, the Library of Congress, and each eligible agency.

(C) Dissemination
The center shall conduct dissemination and training activities based upon the research described in subparagraph (A).

(5) Demonstrations and dissemination
The Secretary is authorized to carry out demonstration career and technical education programs, to replicate model career and technical education programs, to disseminate best practices information, and to provide technical assistance upon request of a State, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing career and technical education programs assisted under this chapter.

(e) Authorization of appropriations
There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2007 through 2012.

From funds reserved pursuant to section 2321(a)(1)(A) of this title, the Secretary shall—
(1) make a grant in the amount of $660,000 to Guam;
(2) make a grant in the amount of $350,000 to each of American Samoa and the Commonwealth of the Northern Mariana Islands; and
(3) make a grant of $160,000 to the Republic of Palau, subject to subsection (d).

(b) Remainder

(1) First year
Subject to subsection (a), for the first fiscal year following August 12, 2006, the Secretary shall make a grant of the remainder of funds reserved pursuant to section 2321(a)(1)(A) of this title to the Pacific Region Educational Laboratory in Honolulu, Hawaii, to make grants for career and technical education and training in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, for the purpose of providing direct career and technical educational services, including—
(A) teacher and counselor training and retraining;
(B) curriculum development; and
(C) the improvement of career and technical education and training programs in secondary schools and institutions of higher education, or improving cooperative education programs involving secondary schools and institutions of higher education.

(2) Subsequent years
Subject to subsection (a), for the second fiscal year following August 12, 2006, and each subsequent year, the Secretary shall make a grant of the remainder of funds reserved pursuant to section 2321(a)(1)(A) of this title and subject to subsection (a), in equal proportion, to each of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be used to provide direct career and technical educational services as described in subparagraphs (A) through (C) of paragraph (1).

(c) Limitation
The Pacific Region Educational Laboratory may use not more than 5 percent of the funds received under subsection (b)(1) for administrative costs.

(d) Restriction
The Republic of Palau shall cease to be eligible to receive funding under this section upon entering into an agreement for an extension of United States educational assistance under the Compact of Free Association, unless otherwise provided in such agreement.
§ 2326

TITLE 20—EDUCATION

§ 2326. Native American programs

(a) Definitions

In this section:

(1) Alaska Native

The term “Alaska Native” means a Native as such term is defined in section 1602 of title 43.

(2) Bureau-funded school

The term “Bureau-funded school” has the meaning given the term in section 2021 of title 25.

(3) Indian, Indian tribe, and tribal organization

The terms “Indian”, “Indian tribe”, and “tribal organization” have the meanings given the terms in section 450b of title 25.

(4) Native Hawaiian

The term “Native Hawaiian” means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(5) Native Hawaiian organization

The term “Native Hawaiian organization” has the meaning given the term in section 7517 of this title.

(b) Program authorized

(1) Authority

From funds reserved under section 2321(a)(1)(B)(i) of this title, the Secretary shall make grants to or enter into contracts with Indian tribes, tribal organizations, and Alaska Native entities to carry out the authorized programs described in subsection (c), except that such grants or contracts shall not be awarded to secondary school programs in Bureau-funded schools.

(2) Indian tribes and tribal organizations

The grants or contracts described in this section that are awarded to any Indian tribe or tribal organization shall be subject to the terms and conditions of section 450f of title 25 and shall be conducted in accordance with the provisions of sections 455, 456, and 457 of title 25, which are relevant to the programs administered under this subsection.

(3) Special authority relating to secondary schools operated or supported by the Bureau of Indian Affairs

An Indian tribe, a tribal organization, or an Alaska Native entity, that receives funds through a grant made or contract entered into under paragraph (1) may use the funds to provide assistance to a secondary school operated or supported by the Bureau of Indian Affairs to enable such school to carry out career and technical education programs.

(4) Matching

If sufficient funding is available, the Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subsection, relating to programs for Indians, to pay a part of the costs of programs funded under this subsection. During each fiscal year the Bureau of Indian Affairs shall expend not less than the amount expended during the prior fiscal year on career and technical education programs, services, and technical activities administered directly by, or under contract with, the Bureau of Indian Affairs, except that in no year shall funding for such programs, services, and activities be provided from the Bureau of Indian Affairs programs, services, and activities administered directly by, or under contract with, the Bureau of Indian Affairs, except that in no year shall funding for such programs, services, and activities be provided from accounts and programs that support other Indian education programs. The Secretary and the Assistant Secretary of the Interior for Indian Affairs shall prepare jointly a plan for the expenditure of funds made available and for the evaluation of programs assisted under this subsection. Upon the completion of a joint plan for the expenditure of the funds and the evaluation of the programs, the Secretary shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs.

(5) Regulations

If the Secretary promulgates any regulations applicable to paragraph (2), the Secretary shall—

(A) confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members; and

(B) promulgate the regulations under subchapter III of chapter 5 of title 5, commonly known as the “Negotiated Rulemaking Act of 1990”.

(6) Application

Any Indian tribe, tribal organization, or Bureau-funded school eligible to receive assistance under this subsection may apply individually or as part of a consortium with another such Indian tribe, tribal organization, or Bureau-funded school.

(c) Authorized activities

(1) Authorized programs

Funds made available under this section shall be used to carry out career and technical education programs consistent with the purpose of this chapter.

(2) Stipends

(A) In general

Funds received pursuant to grants or contracts awarded under subsection (b) may be used to provide stipends to students who are enrolled in career and technical education programs and who have acute economic needs which cannot be met through work-study programs.
(B) Amount

Stipends described in subparagraph (A) shall not exceed reasonable amounts as prescribed by the Secretary.

(d) Grant or contract application

In order to receive a grant or contract under this section, an organization, tribe, or entity described in subsection (b) shall submit an application to the Secretary that shall include an assurance that such organization, tribe, or entity shall comply with the requirements of this section.

(e) Restrictions and special considerations

The Secretary may not place upon grants awarded or contracts entered into under subsection (b) any restrictions relating to programs other than restrictions that apply to grants made to or contracts entered into with States pursuant to allotments under section 2321(a) of this title. The Secretary, in awarding grants and entering into contracts under this section, shall ensure that the grants and contracts will improve career and technical education programs, and shall give special consideration to—

(1) programs that involve, coordinate with, or encourage tribal economic development plans; and
(2) applications from tribally controlled colleges or universities that—

(A) are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary career and technical education; or
(B) operate career and technical education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization, and issue certificates for completion of career and technical education programs.

(f) Consolidation of funds

Each organization, tribe, or entity receiving assistance under this section may consolidate such assistance with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 1802 et seq.).

(g) Nonduplicative and nonexclusive services

Nothing in this section shall be construed—

(1) to limit the eligibility of any organization, tribe, or entity described in subsection (b) to participate in any activity offered by an eligible agency or eligible recipient under this subchapter; or
(2) to preclude or discourage any agreement, between any organization, tribe, or entity described in subsection (b) and any eligible agency or eligible recipient, to facilitate the provision of services by such eligible agency or eligible recipient to the population served by such eligible agency or eligible recipient.

(h) Native Hawaiian programs

From the funds reserved pursuant to section 2321(a)(1)(B)(ii) of this title, the Secretary shall award grants to or enter into contracts with community-based organizations primarily serving and representing Native Hawaiians to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this section for the benefit of Native Hawaiians.


References in Text


Prior Provisions


$2327. Tribally controlled postsecondary career and technical institutions

(a) Grant program

Subject to the availability of appropriations, the Secretary shall make grants under this section, to provide basic support for the education and training of Indian students, to tribally controlled postsecondary career and technical institutions that are not receiving Federal assistance as of the date on which the grant is provided under—

(1) title I of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1802 et seq.); or
(2) the Navajo Community College Act (25 U.S.C. 640a et seq.).

(b) Uses of grants

Amounts made available under this section shall be used for career and technical education programs for Indian students and for the institutional support costs of the grant, including the expenses described in subsection (e).

(c) Amount of grants

(1) In general

If the sums appropriated for any fiscal year for grants under this section are not sufficient to pay in full the total amount which approved applicants are eligible to receive under this section for such fiscal year, the Secretary shall first allocate to each such applicant who received funds under this part for the preceding fiscal year an amount equal to 100 percent of the product of the per capita payment for the preceding fiscal year and such applicant's Indian student count for the current program year, plus an amount equal to the actual cost of any increase to the per capita figure resulting from inflationary increases to necessary costs beyond the institution's control.

(2) Per capita determination

For the purposes of paragraph (1), the per capita payment for any fiscal year shall be de-
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(1) In general

The Secretary shall, subject to the availability of appropriations, provide for each program year to each tribally controlled postsecondary career and technical institution having an application approved by the Secretary, an amount necessary to pay expenses associated with—

(A) the maintenance and operation of the program, including development costs, costs of basic and special instruction (including special programs for individuals with disabilities and academic instruction), materials, student costs, administrative expenses, boarding costs, transportation, student services, daycare and family support programs for students and their families (including contributions to the costs of education for dependents), and student stipends;

(B) capital expenditures, including operations and maintenance, and minor improvements and repair, and physical plant maintenance costs, for the conduct of programs funded under this section;

(C) costs associated with repair, upkeep, replacement, and upgrading of the instructional equipment; and

(D) institutional support of career and technical education.

(2) Accounting

Each institution receiving a grant under this section shall provide annually to the Secretary an accurate and detailed accounting of the institution’s operating and maintenance expenses and such other information concerning costs as the Secretary may reasonably require.

(3) Indirect costs

Notwithstanding any other provision of law or regulation, the Secretary shall not require the use of a restricted indirect cost rate for grants issued under this section.

(d) Applications

To be eligible to receive a grant under this section, a tribally controlled postsecondary career and technical institution that is not receiving Federal assistance under title I of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1992 et seq.) or the Navajo Community College Act (25 U.S.C. 640a et seq.) shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) Expenses

(1) In general

The Secretary shall, subject to the availability of appropriations, provide for each program year to each tribally controlled postsecondary career and technical institution for which an Indian student count was not used for the purpose of making allocations under this section.

(3) Prohibition on alteration of grant amount

The amount of any grant for which tribally controlled postsecondary career and technical institutions are eligible under this section shall not be altered because of funds allocated to any such institution from funds appropriated under section 13 of title 25.

(3) Prohibition on contract denial

No tribally controlled postsecondary career and technical institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under section 13 of title 25, may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

(g) Complaint resolution procedure

The Secretary shall establish (after consultation with tribally controlled postsecondary career and technical institutions) a complaint resolution procedure for grant determinations and calculations under this section for tribally controlled postsecondary career and technical institutions.

(h) Definitions

In this section:

(1) Indian; Indian tribe

The terms “Indian” and “Indian tribe” have the meanings given the terms in section 2 of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801).

(2) Indian student count

(A) In general

The term “Indian student count” means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary career and technical institution, as determined in accordance with subparagraph (B).

(B) Determination

(i) Enrollment

For each academic year, the Indian student count shall be determined on the basis of the enrollments of Indian students as in effect at the conclusion of—

(I) in the case of the fall term, the third week of the fall term; and

(II) in the case of the spring term, the third week of the spring term.
(ii) Calculation
For each academic year, the Indian student count for a tribally controlled postsecondary career and technical institution shall be the quotient obtained by dividing—
(I) the sum of the credit hours of all Indian students enrolled in the tribally controlled postsecondary career and technical institution (as determined under clause (I)); by
(II) 12.

(iii) Summer term
Any credit earned in a class offered during a summer term shall be counted in the determination of the Indian student count for the succeeding fall term.

(iv) Students without secondary school degree
(I) In general
A credit earned at a tribally controlled postsecondary career and technical institution by any Indian student that has not obtained a secondary school degree (or the recognized equivalent of such a degree) shall be counted toward the determination of the Indian student count if the institution at which the student is enrolled has established criteria for the admission of the student on the basis of the ability of the student to benefit from the education or training of the institution.

(II) Presumption
The institution shall be presumed to have established the criteria described in clause (I) if the admission procedures for the institution include counseling or testing that measures the aptitude of a student to successfully complete a course in which the student is enrolled.

(III) Credits toward secondary school degree
No credit earned by an Indian student for the purpose of obtaining a secondary school degree (or the recognized equivalent of such a degree) shall be counted toward the determination of the Indian student count under this clause.

(v) Continuing education programs
Any credit earned by an Indian student in a continuing education program of a tribally controlled postsecondary career and technical institution shall be included in the determination of the sum of all credit hours of the student if the credit is converted to a credit hour basis in accordance with the system of the institution for providing credit for participation in the program.

(i) Authorization of appropriations
There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2007 through 2012.

Prior Provisions


Amendments
2008—Subsec. (a). Pub. L. 110–315, §941(j)(2)(A), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The Secretary, subject to the availability of appropriations, make grants pursuant to this section to tribally controlled postsecondary career and technical institutions that are not receiving Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community College Act (25 U.S.C. 640a et seq.) to provide basic support for the education and training of Indian students.”

Subsec. (d). Pub. L. 110–315, §941(j)(2)(B), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “Any tribally controlled postsecondary career and technical institution that is not receiving Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community College Act (25 U.S.C. 640a et seq.) that desires to receive a grant under this section shall submit an application to the Secretary in such manner and form as the Secretary may require.”


References in Text
The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in subsecs. (a)(1) and (d), is Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1325. Title I of the Act is classified generally to subchapter I (§1802 et seq.) of chapter 20 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 25 and Tables.

The Navajo Community College Act, referred to in subsec. (a)(2) and (d), is Pub. L. 92–189, Dec. 15, 1971, 85 Stat. 646, which is classified to section 640a et seq. of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 640a of Title 25 and Tables.


The Indian Self-Determination and Education Assistance Act, referred to in subsec. (f)(3), is Pub. L. 93–368, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.
§ 2328. Occupational and employment information

(a) National activities

From funds appropriated under subsection (g), the Secretary, in consultation with appropriate Federal agencies, is authorized—

(1) to provide assistance to an entity to enable the entity—
   (A) to provide technical assistance to State entities designated under subsection (c) to enable the State entities to carry out the activities described in such subsection;
   (B) to disseminate information that promotes the replication of high quality practices described in subsection (c); and
   (C) to develop and disseminate products and services related to the activities described in subsection (c); and

(2) to award grants to States that designate State entities in accordance with subsection (c) to enable the State entities to carry out the State level activities described in such subsection.

(b) State application

(1) In general

A jointly designated State entity described in subsection (c) that desires to receive a grant under this section shall submit an application to the Secretary at the same time the State submits its State plan under section 2342 of this title, in such manner, and accompanied by such additional information, as the Secretary may reasonably require.

(2) Contents

Each application submitted under paragraph (1) shall include a description of how the jointly designated State entity described in subsection (c) will provide information based on trends provided pursuant to section 15 of the Wagner-Peyser Act [29 U.S.C. 49l] to inform program development.

(c) State level activities

In order for a State to receive a grant under this section, the eligible agency and the Governor of the State shall jointly designate an entity in the State—

(1) to provide support for career guidance and academic counseling programs designed to promote improved career and education decision making by students (and parents, as appropriate), regarding education (including postsecondary education) and training options and preparations for high skill, high wage, or high demand occupations and non-traditional fields;

(2) to make available to students, parents, teachers, administrators, faculty, and career guidance and academic counselors, and to improve accessibility with respect to, information and planning resources that relate academic and career and technical educational preparation to career goals and expectations;

(3) to provide academic and career and technical education teachers, faculty, administrators, and career guidance and academic counselors with the knowledge, skills, and occupational information needed to assist parents and students, especially special populations, with career exploration, educational opportunities, education financing, and exposure to high skill, high wage, or high demand occupations and non-traditional fields, including occupations and fields requiring a baccalaureate degree;

(4) to assist appropriate State entities in tailoring career related educational resources and training for use by such entities, including information on high skill, high wage, or high demand occupations in current or emerging professions and on career ladder information;

(5) to improve coordination and communication among administrators and planners of programs authorized by this chapter and by section 15 of the Wagner-Peyser Act [29 U.S.C. 49l] to inform the Federal, State, and local levels to ensure nonduplication of efforts and the appropriate use of shared information and data;

(6) to provide ongoing means for customers, such as students and parents, to provide comments and feedback on products and services and to update resources, as appropriate, to better meet customer requirements; and

(7) to provide readily available occupational information such as—
   (A) information relative to employment sectors;
   (B) information on occupation supply and demand; and
   (C) other information provided pursuant to section 15 of the Wagner-Peyser Act [29 U.S.C. 49l] as the jointly designated State entity considers relevant.

(d) Nonduplication

(1) Wagner-Peyser Act

The jointly designated State entity described under subsection (c) may use funds provided under subsection (a) to supplement activities described in subsection (c); and

(2) Public Law 105–220

None of the functions and activities assisted under this section shall duplicate the functions and activities carried out under Public Law 105–220.

(e) Funding rule

Of the amounts appropriated to carry out this section, the Federal entity designated under subsection (a) shall use—

(1) not less than 85 percent to carry out subsection (c); and

(2) not more than 15 percent to carry out subsection (a).

(f) Report

The Secretary, in consultation with appropriate Federal agencies, shall prepare and submit to the appropriate committees of Congress, an annual report that includes—

(1) a description of activities assisted under this section during the prior program year;

(2) a description of the specific products and services assisted under this section that were delivered in the prior program year; and

(3) an assessment of the extent to which States have effectively coordinated activities
assisted under this section with activities authorized under section 15 of the Wagner-Peyser Act [29 U.S.C. 49–2].

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2007 through 2012.


References in Text


For complete classification of this Act to the Code, see Short Title note set out under section 2921 of this title and Tables.

Prior Provisions


Another prior section 2331 and prior sections 2332 to 2334 were omitted in the general amendment of this subchapter by Pub. L. 101–392.

Section 2331, Pub. L. 88–210, title II, §201, as added Pub. L. 98–524, §1, Oct. 19, 1984, 98 Stat. 2450; amended Pub. L. 100–297, title II, §2401(a), Apr. 28, 1988, 102 Stat. 324, related to use of a portion of a State's allotment to provide vocational education services and activities to meet special needs of handicapped individuals, disadvantaged individuals, single parents, homemakers, or single pregnant women, and other groups.


Prior sections 2335 to 2336 were omitted in the general amendment of this chapter by Pub. L. 105–332.


Part B—State Provisions

§ 2341. State administration

(a) Eligible agency responsibilities

The responsibilities of an eligible agency under this subchapter shall include—

(1) coordination of the development, submission, and implementation of the State plan, and the evaluation of the program, services, and activities assisted under this subchapter, including preparation for non-traditional fields;

(2) consultation with the Governor and appropriate agencies, groups, and individuals including parents, students, teachers, teacher and faculty preparation programs, representatives of businesses (including small businesses), labor organizations, eligible recipients, State and local officials, and local program administrators, involved in the planning, administration, evaluation, and coordination of programs funded under this subchapter;

(3) convening and meeting as an eligible agency (consistent with State law and procedure for the conduct of such meetings) at such time as the eligible agency determines necessary to carry out the eligible agency’s responsibilities under this subchapter, but not less than 4 times annually; and

(4) the adoption of such procedures as the eligible agency considers necessary to—

(A) implement State level coordination with the activities undertaken by the State boards under section 2821 of title 29; and

(B) make available to the service delivery system under section 2841 of title 29 within the State a listing of all school dropout, postsecondary education, and adult programs assisted under this subchapter.

(b) Exception

Except with respect to the responsibilities set forth in subsection (a), the eligible agency may delegate any of the other responsibilities of the eligible agency that involve the administration, operation, or supervision of activities assisted under this subchapter, in whole or in part, to 1 or more appropriate State agencies.


Prior Provisions


Another prior section 2341 and prior sections 2341a to 2341c were omitted in the general amendment of this chapter by Pub. L. 105–332.


§ 2342. State plan

(a) State plan

(1) In general

Each eligible agency desiring assistance under this subchapter for any fiscal year shall prepare and submit to the Secretary a State plan for a 6-year period, together with such annual revisions as the eligible agency determines to be necessary, except that, during the period described in section 2303 of this title, each eligible agency may submit a transition plan that shall fulfill the eligible agency's obligation to submit a State plan under this section for the first fiscal year following August 12, 2006.

(2) Revisions

Each eligible agency—

(A) may submit such annual revisions of the State plan to the Secretary as the eligible agency determines to be necessary; and

(B) shall, after the second year of the 6-year period, conduct a review of activities assisted under this subchapter and submit any revisions of the State plan that the eligible agency determines necessary to the Secretary.

(3) Hearing process

The eligible agency shall conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups (including charter school authorizers and organizers consistent with State law, employers, labor organizations, parents, students, and community organizations), an opportunity to present their views and make recommendations regarding the State plan. A summary of such recommendations and the eligible agency's response to such recommendations shall be included in the State plan.

(b) Plan development

(1) In general

The eligible agency shall—

(A) develop the State plan in consultation with—

(i) academic and career and technical education teachers, faculty, and administrators;

(ii) career guidance and academic counselors;

(iii) eligible recipients;

(iv) charter school authorizers and organizers consistent with State law;

(v) parents and students;

(vi) institutions of higher education;

(vii) the State tech prep coordinator and representatives of tech prep consortia (if applicable);

(viii) entities participating in activities described in section 2821 of title 29;

(ix) interested community members (including parent and community organizations);

(x) representatives of special populations;

(xi) representatives of business and industry (including representatives of small business); and

(xii) representatives of labor organizations in the State; and

(B) consult the Governor of the State with respect to such development.

(2) Activities and procedures

The eligible agency shall develop effective activities and procedures, including access to information needed to use such procedures, to allow the individuals and entities described in paragraph (1) to participate in State and local decisions that relate to development of the State plan.

(c) Plan contents

The State plan shall include information that—

(1) describes the career and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance, including a description of—

(A) the career and technical programs of study, which may be adopted by local educational agencies and postsecondary institutions to be offered as an option to students (and their parents as appropriate) when planning for and completing future coursework, for career and technical content areas that—

(i) incorporate secondary education and postsecondary education elements;

(ii) include coherent and rigorous content aligned with challenging academic standards and relevant career and technical content in a coordinated, nonduplicative progression of courses that align secondary education with postsecondary education to adequately prepare students to succeed in postsecondary education;

(iii) may include the opportunity for secondary education students to participate in dual or concurrent enrollment programs or other ways to acquire postsecondary education credits; and

(iv) lead to an industry-recognized credential or certificate at the postsecondary level, or an associate or baccalaureate degree;

(B) how the eligible agency, in consultation with eligible recipients, will develop
and implement the career and technical programs of study described in subparagraph 
(A);
(C) how the eligible agency will support eligible recipients in developing and implement-
ing articulation agreements between secondary education and postsecondary edu-
cation institutions;
(D) how the eligible agency will make available information about career and tech-
nical programs of study offered by eligible recipients;
(E) the secondary and postsecondary career and technical education programs to be 
carried out, including programs that will be carried out by the eligible agency to de-
velop, improve, and expand access to appropriate technology in career and technical 
education programs;
(F) the criteria that will be used by the eligible agency to approve eligible recipients 
for funds under this chapter, including criteria to assess the extent to which the local 
plan will—
(i) promote continuous improvement in academic achievement;
(ii) promote continuous improvement of technical skill attainment; and
(iii) identify and address current or emerging occupational opportunities;
(G) how programs at the secondary level will prepare career and technical education 
students, including special populations, to graduate from secondary school with a di-
ploma;
(H) how such programs will prepare career and technical education students, includ-
ing special populations, academically and technically for opportunities in postsecondary 
education or entry into high skill, high wage, or high demand occupations in current 
or emerging occupations, and how participating students will be made aware of such 
opportunities;
(I) how funds will be used to improve or develop new career and technical education 
courses—
(i) at the secondary level that are aligned with rigorous and challenging aca-
demic content standards and student academic achievement standards adopted by 
the State under section 1111(b)(1) of the Elementary and Secondary Education Act 
of 1965 [20 U.S.C. 6311(b)(1)];
(ii) at the postsecondary level that are relevant and challenging; and
(iii) that lead to employment in high skill, high wage, or high demand occupa-
tions;
(J) how the eligible agency will facilitate and coordinate communication on best prac-
tices among successful recipients of technology and activities that support recruit-
ment for career and technical education teachers, faculty, administrators, and career 
guidance and academic counselors will be provided, especially professional develop-
ment that—
(A) promotes the integration of coherent and rigorous academic content standards 
and career and technical education curricula, including through opportunities for the 
appropriate academic and career and technical education teachers to jointly develop 
and implement curricula and pedagogical strategies, as appropriate;
(B) increases the percentage of teachers that meet teacher certification or licensing 
requirements;
(C) is high quality, sustained, intensive, and focused on instruction, and increases 
the academic knowledge and understanding of industry standards, as appropriate, of career 
and technical education teachers;
(D) encourages applied learning that contributes to the academic and career and 
technical knowledge of the student;
(E) provides the knowledge and skills needed to work with and improve instruc-
tion for special populations;
(F) assists in accessing and utilizing data, including data provided under section 2328 
of this title, student achievement data, and data from assessments; and
(G) promotes integration with professional development activities that the State car-
(3) describes efforts to improve—
(A) the recruitment and retention of career and technical education teachers, fac-
ulty, and career guidance and academic counselors, including individuals in groups 
derrepresented in the teaching profession; and
(B) the transition to teaching from business and industry, including small business;
(4) describes efforts to facilitate the transition of subbaccalaureate career and technical 
education students into baccalaureate degree programs at institutions of higher education;
(5) describes how the eligible agency will actively involve parents, academic and career 
and technical education teachers, administrators, faculty, career guidance and academic 
counselors, local business (including small businesses), and labor organizations in the 
planning, development, implementation, and evaluation of such career and technical edu-
cation programs;
(6) describes how funds received by the eligible agency through the allotment made under 
section 2321 of this title will be allocated—
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(A) among career and technical education at the secondary level, or career and technical education at the postsecondary and adult level, or both, including the rationale for such allocation; and

(B) among any consortia that will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia, including the rationale for such allocation;

(7) describes how the eligible agency will—

(A) improve the academic and technical skills of students participating in career and technical education programs, including strengthening the academic and career and technical components of career and technical education programs through the integration of academics with career and technical education to ensure learning in—

(i) the core academic subjects (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]); and

(ii) career and technical education subjects;

(B) provide students with strong experience in, and understanding of, all aspects of an industry; and

(C) ensure that students who participate in such career and technical education programs are taught to the same challenging academic proficiencies as are taught to all other students;

(8) describes how the eligible agency will annually evaluate the effectiveness of such career and technical education programs, and describe, to the extent practicable, how the eligible agency is coordinating such programs to ensure nonduplication with other Federal programs;

(9) describes the eligible agency’s program strategies for special populations, including a description of how individuals who are members of the special populations—

(A) will be provided with equal access to activities assisted under this chapter;

(B) will not be discriminated against on the basis of their status as members of the special populations; and

(C) will be provided with programs designed to enable the special populations to meet or exceed State adjusted levels of performance, and prepare special populations for further learning and for high skill, high wage, or high demand occupations;

(10) describes—

(A) the eligible agency’s efforts to ensure that eligible recipients are given the opportunity to provide input in determining the State adjusted levels of performance described in section 2323 of this title; and

(B) how the eligible agency, in consultation with eligible recipients, will develop a process for the negotiation of local adjusted levels of performance under section 2323(b)(4) of this title if an eligible recipient does not accept the State adjusted levels of performance under section 2323(b)(3) of this title;

(11) provides assurances that the eligible agency will comply with the requirements of this chapter and the provisions of the State plan, including the provision of a financial audit of funds received under this chapter which may be included as part of an audit of other Federal or State programs;

(12) provides assurances that none of the funds expended under this chapter will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the acquiring entity or the employees of the acquiring entity, or any affiliate of such an organization;

(13) describes how the eligible agency will report data relating to students participating in career and technical education in order to adequately measure the progress of the students, including special populations, and how the eligible agency will ensure that the data reported to the eligible agency from local educational agencies and eligible institutions under this subchapter and the data the eligible agency reports to the Secretary are complete, accurate, and reliable;

(14) describes how the eligible agency will adequately address the needs of students in alternative education programs, if appropriate;

(15) describes how the eligible agency will provide local educational agencies, area career and technical education schools, and eligible institutions in the State with technical assistance;

(16) describes how career and technical education relates to State and regional occupational opportunities;

(17) describes the methods proposed for the joint planning and coordination of programs carried out under this subchapter with other Federal education programs;

(18) describes how funds will be used to promote preparation for high skill, high wage, or high demand occupations and non-traditional fields;

(19) describes how funds will be used to serve individuals in State correctional institutions; and

(20) contains the description and information specified in sections 2822(b)(8) and 2841(c) of title 29 concerning the provision of services only for postsecondary students and school dropouts.

(d) Plan options

(1) Single plan

An eligible agency not choosing to consolidate funds under section 2372 of this title shall fulfill the plan or application submission requirements of this section, and section 2371(c) of this title, by submitting a single State plan. In such plan, the eligible agency may allow recipients to fulfill the plan or application submission requirements of section 2354 of this title and subsections (a) and (b) of section 2374 of this title by submitting a single local plan.

(2) Plan submitted as part of 501 plan

The eligible agency may submit the plan required under this section as part of the plan submitted under section 501 of Public Law 105-220 [20 U.S.C. 9271], if the plan submitted
pursuant to the requirement of this section meets the requirements of this chapter.

e) Plan approval

(1) In general

The Secretary shall approve a State plan, or a revision to an approved State plan, unless the Secretary determines that—

(A) the State plan, or revision, respectively, does not meet the requirements of this chapter; or

(B) the State’s levels of performance on the core indicators of performance consistent with section 2323 of this title are not sufficiently rigorous to meet the purpose of this chapter.

(2) Disapproval

The Secretary shall not finally disapprove a State plan, except after giving the eligible agency notice and an opportunity for a hearing.

(3) Consultation

The eligible agency shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult career and technical education, postsecondary career and technical education, tech prep education, and secondary career and technical education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other 2-year postsecondary institutions primarily engaged in providing postsecondary career and technical education, and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, the State agency shall file such objections with the eligible agency. The eligible agency shall respond to any objections of the State agency in the State plan submitted to the Secretary.

(4) Timeframe

A State plan shall be deemed approved by the Secretary if the Secretary has not responded to the eligible agency regarding the State plan within 90 days of the date the Secretary receives the State plan.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 2343. Improvement plans

(a) State program improvement

(1) Plan

If a State fails to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance described in section 2323(b)(3) of this title, the eligible agency shall develop and implement a program improvement plan (with special consideration to performance gaps identified under section 2323(c)(2) of this title) in consultation with the appropriate agencies, individuals, and organizations during the first program year succeeding the program year for which the eligible agency failed to so meet the State adjusted level of performance for any of the core indicators of performance.

(2) Technical assistance

If the Secretary determines that an eligible agency is not properly implementing the eligible agency’s responsibilities under section 2342 of this title, or is not making substantial progress in meeting the purposes of this chapter, based on the State’s adjusted levels of performance, the Secretary shall work with the eligible agency to implement the improvement activities consistent with the requirements of this chapter.

(3) Subsequent action

(A) In general

The Secretary may, after notice and opportunity for a hearing, withhold from an eligible agency’s allotment under paragraphs (2) and (3) of section 2322(a) of this title if the eligible agency—

(i) fails to implement an improvement plan as described in paragraph (1);

(ii) fails to make any improvement in meeting any of the State adjusted levels of performance for the core indicators of performance identified under paragraph (1) within the first program year of implementation of its improvement plan described in paragraph (1); or

(iii) fails to meet at least 90 percent of an agreed upon State adjusted level of performance for the same core indicator of performance for 3 consecutive years.

(B) Waiver for exceptional circumstances

The Secretary may waive the sanction in subparagraph (A) due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

(4) Funds resulting from reduced allotments

The Secretary shall use funds withheld under paragraph (3) for a State served by an
eligible agency to provide technical assistance, to assist in the development of an improved State improvement plan, or for other improvement activities consistent with the requirements of this chapter for such State.

(b) Local program improvement

(1) Local evaluation

Each eligible agency shall evaluate annually, using the local adjusted levels of performance described in section 2323(b)(4) of this title, the career and technical education activities of each eligible recipient receiving funds under this subchapter.

(2) Plan

If, after reviewing the evaluation in paragraph (1), the eligible agency determines that an eligible recipient failed to meet at least 90 percent of an agreed upon local adjusted level of performance for any of the core indicators of performance described in section 2323(b)(4) of this title, the eligible recipient shall develop and implement a program improvement plan (with special consideration to performance gaps identified under section 2323(b)(4)(C)(ii)(II) of this title) in consultation with the eligible agency, appropriate agencies, individuals, and organizations during the first program year succeeding the program year for which the eligible recipient failed to so meet any of the local adjusted levels of performance for any of the core indicators of performance.

(3) Technical assistance

If the eligible agency determines that an eligible recipient is not properly implementing the eligible recipient’s responsibilities under section 2354 of this title, or is not making substantial progress in meeting the purposes of this chapter, based on the local adjusted levels of performance, the eligible agency shall work with the eligible recipient to implement improvement activities consistent with the requirements of this chapter.

(4) Subsequent action

(A) In general

The eligible agency may, after notice and opportunity for a hearing, withhold from the eligible recipient all, or a portion, of the eligible recipient’s allotment under this subchapter if the eligible recipient—

(i) fails to implement an improvement plan as described in paragraph (2); or

(ii) fails to make any improvement in meeting any of the local adjusted levels of performance for the core indicators of performance identified under paragraph (2) within the first program year of implementation of its improvement plan described in paragraph (2); or

(iii) fails to meet at least 90 percent of an agreed upon local adjusted level of performance for the same core indicator of performance for 3 consecutive years.

(B) Waiver for exceptional circumstances

In determining whether to impose sanctions under subparagraph (A), the eligible agency may waive imposing sanctions—

(i) due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the eligible recipient; or

(ii) based on the impact on the eligible recipient’s reported performance of the small size of the career and technical education program operated by the eligible recipient.

(5) Funds resulting from reduced allotments

The eligible agency shall use funds withheld under paragraph (4) from an eligible recipient to provide (through alternative arrangements) services and activities to students within the area served by such recipient to meet the purposes of this chapter.

§ 2344. State leadership activities

(a) General authority

From amounts reserved under section 2322(a)(2) of this title, each eligible agency shall conduct State leadership activities.

(b) Required uses of funds

The State leadership activities described in subsection (a) shall include—

(1) an assessment of the career and technical education programs carried out with funds under this subchapter, including an assessment of how the needs of special populations are being met and how the career and technical education programs are designed to enable special populations to meet State adjusted levels of performance and prepare the special populations for further education, further training, or for high skill, high wage, or high demand occupations;

(2) developing, improving, or expanding the use of technology in career and technical education that may include—

(A) training of career and technical education teachers, faculty, career guidance and academic counselors, and administrators to use technology, including distance learning;

(B) providing career and technical education students with the academic and career and technical skills (including the mathematics and science knowledge that provides a strong basis for such skills) that lead to entry into technology fields, including non-traditional fields; or

(C) encouraging schools to collaborate with technology industries to offer voluntary internships and mentoring programs;

(3) professional development programs, including providing comprehensive professional development (including initial teacher preparation) for career and technical education teachers, faculty, career guidance and academic counselors, and administrators to use technology, including distance learning;
teachers, faculty, administrators, and career guidance and academic counselors at the secondary and postsecondary levels, that support activities described in section 2342 of this title and—

(A) provide in-service and preservice training in career and technical education programs—

(i) on effective integration and use of challenging academic and career and technical education provided jointly with academic teachers to the extent practicable;

(ii) on effective teaching skills based on research that includes promising practices;

(iii) on effective practices to improve parental and community involvement; and

(iv) on effective use of scientifically based research and data to improve instruction;

(B) are high quality, sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction and the teacher’s performance in the classroom, and are not 1-day or short-term workshops or conferences;

(C) will help teachers and personnel to improve student achievement in order to meet the State adjusted levels of performance established under section 2323 of this title;

(D) will support education programs for teachers of career and technical education in public schools and other public school personnel who are involved in the direct delivery of educational services to career and technical education students to ensure that teachers and personnel—

(i) stay current with the needs, expectations, and methods of industry;

(ii) can effectively develop rigorous and challenging, integrated academic and career and technical education curricula jointly with academic teachers, to the extent practicable;

(iii) develop a higher level of academic and industry knowledge and skills in career and technical education; and

(iv) effectively use applied learning that contributes to the academic and career and technical knowledge of the student; and

(E) are coordinated with the teacher certification or licensing and professional development activities that the State carries out under title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6601 et seq.] and title II of the Higher Education Act of 1965 [20 U.S.C. 1021 et seq.];

(4) supporting career and technical education programs that improve the academic and career and technical skills of students participating in career and technical education programs by strengthening the academic and career and technical components of such career and technical education programs, through the integration of coherent and relevant content aligned with challenging academic standards and relevant career and technical education, to ensure achievement in—

(A) the core academic subjects (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]); and

(B) career and technical education subjects;

(5) providing preparation for non-traditional fields in current and emerging professions, and other activities that expose students, including special populations, to high skill, high wage occupations;

(6) supporting partnerships among local educational agencies, institutions of higher education, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, intermediaries, parents, and local partnerships, to enable students to achieve State academic standards, and career and technical skills, or complete career and technical programs of study, as described in section 2342(c)(1)(A) of this title;

(7) serving individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities;

(8) support for programs for special populations that lead to high skill, high wage, or high demand occupations; and

(9) technical assistance for eligible recipients.

(c) Permissible uses of funds

The leadership activities described in subsection (a) may include—

(1) improvement of career guidance and academic counseling programs that assist students in making informed academic and career and technical education decisions, including—

(A) encouraging secondary and postsecondary students to graduate with a diploma or degree; and

(B) exposing students to high skill, high wage occupations and non-traditional fields;

(2) establishment of agreements, including articulation agreements, between secondary school and postsecondary career and technical education programs in order to provide postsecondary education and training opportunities for students participating in such career and technical education programs, such as tech prep programs;

(3) support for initiatives to facilitate the transition of subbaccalaureate career and technical education students into baccalaureate degree programs, including—

(A) statewide articulation agreements between associate degree granting career and technical postsecondary educational institutions and baccalaureate degree granting postsecondary educational institutions;

(B) postsecondary dual and concurrent enrollment programs;

(C) academic and financial aid counseling; and

(D) other initiatives—

(i) to encourage the pursuit of a baccalaureate degree; and

(ii) to overcome barriers to participation in baccalaureate degree programs, including geographic and other barriers affecting rural students and special populations;

(4) support for career and technical student organizations, especially with respect to ef-
forts to increase the participation of students who are members of special populations;
(5) support for public charter schools operating career and technical education programs;
(6) support for career and technical education programs that offer experience in, and understanding of, all aspects of an industry for which students are preparing to enter;
(7) support for family and consumer sciences programs;
(8) support for partnerships between education and business or business intermediaries, including cooperative education and adjunct faculty arrangements at the secondary and postsecondary levels;
(9) support to improve or develop new career and technical education courses and initiatives, including career clusters, career academies, and distance education, that prepare individuals academically and technically for high skill, high wage, or high demand occupations;
(10) awarding incentive grants to eligible recipients—
(A) for exemplary performance in carrying out programs under this chapter, which awards shall be based on—
(i) eligible recipients exceeding the local adjusted levels of performance established under section 2323(b) of this title in a manner that reflects sustained or significant improvement;
(ii) eligible recipients effectively developing connections between secondary education and postsecondary education and training;
(iii) the adoption and integration of coherent and rigorous content aligned with challenging academic standards and technical coursework;
(iv) eligible recipients’ progress in having special populations who participate in career and technical education programs meet local adjusted levels of performance; or
(v) other factors relating to the performance of eligible recipients under this chapter as the eligible agency determines are appropriate; or
(B) if an eligible recipient elects to use funds as permitted under section 2355(c)(19) of this title;
(11) providing for activities to support entrepreneurship education and training;
(12) providing career and technical education programs for adults and school dropouts to complete their secondary school education, in coordination, to the extent practicable, with activities authorized under the Adult Education and Family Literacy Act (20 U.S.C. 2281 et seq.);
(13) providing assistance to individuals, who have participated in services and activities under this subchapter, in continuing the individuals’ education or training or finding appropriate jobs, such as through referral to the system established under section 2341 of title 29;
(14) developing valid and reliable assessments of technical skills;
(15) developing and enhancing data systems to collect and analyze data on secondary and postsecondary academic and employment outcomes;
(16) improving—
(A) the recruitment and retention of career and technical education teachers, faculty, administrators, and career guidance and academic counselors, including individuals in groups underrepresented in the teaching profession; and
(B) the transition to teaching from business and industry, including small business; and
(17) support for occupational and employment information resources, such as those described in section 2328 of this title.

(d) Restriction on uses of funds

An eligible agency that receives funds under section 2322(a)(2) of this title may not use any of such funds for administrative costs.


REFERENCES IN TEXT


PRIORITY PROVISIONS


PART C—LOCAL PROVISIONS

§ 2351. Distribution of funds to secondary education programs

(a) Distribution rules

Except as provided in section 2353 of this title and as otherwise provided in this section, each eligible agency shall distribute the portion of funds made available under section 2322(a)(1) of this title to carry out this section to local educational agencies within the State as follows:

(1) Thirty percent

Thirty percent shall be allocated to such local educational agencies in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such local educational agency for the preceding fiscal year compared to the total num-


PRIORITY PROVISIONS


PART C—LOCAL PROVISIONS

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Thirty percent shall be allocated to such local educational agencies in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such local educational agency for the preceding fiscal year compared to the total num-


PRIORITY PROVISIONS

ber of such individuals who reside in the school districts served by all local educational agencies in the State for such preceding fiscal year, as determined on the basis of the most recent satisfactory—
(A) data provided to the Secretary by the Bureau of the Census for the purpose of determining eligibility under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6801 et seq.]; or
(B) student membership data collected by the National Center for Education Statistics through the Common Core of Data survey system.

(2) Seventy percent
Seventy percent shall be allocated to such local educational agencies in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such local educational agency and are from families below the poverty level for the preceding fiscal year, as determined on the basis of the most recent satisfactory data used under section 1124(c)(1)(A) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6333(c)(1)(A)], compared to the total number of such individuals who reside in the school districts served by all the local educational agencies in the State for such preceding fiscal year.

(3) Adjustments
Each eligible agency, in making the allocations under paragraphs (1) and (2), shall adjust the data used to make the allocations to—
(A) reflect any change in school district boundaries that may have occurred since the data were collected; and
(B) include local educational agencies without geographical boundaries, such as charter schools and secondary schools funded by the Bureau of Indian Affairs.

(b) Waiver for more equitable distribution
The Secretary may waive the application of subsection (a) in the case of any eligible agency that submits to the Secretary an application for such a waiver that—
(1) demonstrates that a proposed alternative formula more effectively targets funds on the basis of poverty (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of title 42) to local educational agencies within the State than the formula described in subsection (a); and
(2) includes a proposal for such an alternative formula.

(c) Minimum allocation
(1) In general
Except as provided in paragraph (2), a local educational agency shall not receive an allocation under subsection (a) unless the amount allocated to such agency under subsection (a) is greater than $15,000. A local educational agency may enter into a consortium with other local educational agencies for purposes of meeting the minimum allocation requirement of this paragraph.

(2) Waiver
The eligible agency shall waive the application of paragraph (1) in any case in which the local educational agency—
(A)(i) is located in a rural, sparsely populated area; or
(ii) is a public charter school operating secondary school career and technical education programs; and
(B) demonstrates that the local educational agency is unable to enter into a consortium for purposes of providing activities under this part.

(3) Redistribution
Any amounts that are not allocated by reason of paragraph (1) or paragraph (2) shall be redistributed to local educational agencies that meet the requirements of paragraph (1) or (2) in accordance with the provisions of this section.

(d) Limited jurisdiction agencies
(1) In general
In applying the provisions of subsection (a), no eligible agency receiving assistance under this subchapter shall allocate funds to a local educational agency that serves only elementary schools, but shall distribute such funds to the local educational agency or regional educational agency that provides secondary school services to secondary school students in the same attendance area.

(2) Special rule
The amount to be allocated under paragraph (1) to a local educational agency that has jurisdiction only over secondary schools shall be determined based on the number of students that entered such secondary schools in the previous year from the elementary schools involved.

(e) Allocations to area career and technical education schools and educational service agencies
(1) In general
Each eligible agency shall distribute the portion of funds made available under section 2322(a)(1) of this title for any fiscal year by such eligible agency for career and technical education activities at the secondary level under this section to the appropriate area career and technical education school or educational service agency in any case in which the area career and technical education school or educational service agency, and the local educational agency concerned—
(A) have formed or will form a consortium for the purpose of receiving funds under this section; or
(B) have entered into or will enter into a cooperative arrangement for such purpose.

(2) Allocation basis
If an area career and technical education school or educational service agency meets the requirements of paragraph (1), then the amount that would otherwise be distributed to the local educational agency shall be allocated to the area career and technical education school, the educational service agency, and
the local educational agency based on each school, agency or entity's relative share of students who are attending career and technical education programs (based, if practicable, on the average enrollment for the preceding 3 years).

(3) Appeals procedure
The eligible agency shall establish an appeals procedure for resolution of any dispute arising between a local educational agency and an area career and technical education school or an educational service agency with respect to the allocation procedures described in this section, including the decision of a local educational agency to leave a consortium or terminate a cooperative arrangement.

(f) Consortium requirements

(1) Alliance
Any local educational agency receiving an allocation that is not sufficient to conduct a program which meets the requirements of section 2355 of this title is encouraged to—
(A) form a consortium or enter into a cooperative agreement with an area career and technical education school or educational service agency offering programs that meet the requirements of section 2355 of this title;
(B) transfer such allocation to the area career and technical education school or educational service agency; and
(C) operate programs that are of sufficient size, scope, and quality to be effective.

(2) Funds to consortium
Funds allocated to a consortium formed to meet the requirements of this subsection shall be used only for purposes and programs that are mutually beneficial to all members of the consortium and can be used only for programs authorized under this subchapter. Such funds may not be reallocated to individual members of the consortium for purposes or programs benefitting only 1 member of the consortium.

(g) Data
The Secretary shall collect information from eligible agencies regarding the specific dollar allocations made available by the eligible agency for career and technical education programs under subsections (a), (b), (c), (d), and (e) and how these allocations are distributed to local educational agencies, area career and technical education schools, and educational service agencies, within the State in accordance with this section.

(h) Special rule
Each eligible agency distributing funds under this section shall treat a secondary school fund received by the Bureau of Indian Affairs enrolled in such programs within the State, as if such school were a local educational agency within the State for the purpose of receiving a distribution under this section.


§ 2352. Distribution of funds for postsecondary education programs

(a) Allocation

(1) In general
Except as provided in subsections (b) and (c) and section 2353 of this title, each eligible agency shall distribute the portion of the funds made available under section 2322(a)(1) of this title to carry out this section for any fiscal year to eligible institutions or consortia of eligible institutions within the State.

(2) Formula
Each eligible institution or consortium of eligible institutions shall be allocated an amount that bears the same relationship to the portion of funds made available under section 2322(a)(1) of this title to carry out this section for any fiscal year as the sum of the number of individuals who are Federal Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of section 2355 of this title offered by such institution or consortium in the preceding fiscal year bears to the sum of the number of such recipients enrolled in such programs within the State for such year.

(3) Consortium requirements

(A) In general
In order for a consortium of eligible institutions described in paragraph (2) to receive assistance pursuant to such paragraph, such consortium shall operate joint projects that—
(i) provide services to all postsecondary institutions participating in the consortium; and
(ii) are of sufficient size, scope, and quality to be effective.

(B) Funds to consortium
Funds allocated to a consortium formed to meet the requirements of this subsection shall be used only for purposes and programs that are mutually beneficial to all members of the consortium and shall be used only for programs authorized under this subchapter. Such funds may not be reallocated to individual members of the consortium for purposes or programs benefitting only 1 member of the consortium.

(4) Waiver
The eligible agency may waive the application of paragraph (3)(A)(i) in any case in which
the eligible institution is located in a rural, sparsely populated area.

(b) Waiver for more equitable distribution

The Secretary may waive the application of subsection (a) if an eligible agency submits to the Secretary an application for such a waiver that—

(1) demonstrates that the formula described in subsection (a) does not result in a distribution of funds to the eligible institutions or consortia within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula will result in such a distribution; and

(2) includes a proposal for such an alternative formula.

(c) Minimum grant amount

(1) In general

No institution or consortium shall receive an allocation under this section in an amount that is less than $50,000.

(2) Redistribution

Any amounts that are not distributed by reason of paragraph (1) shall be redistributed to eligible institutions or consortia in accordance with this section.


PRIOR PROVISIONS


§2353. Special rules for career and technical education

(a) Special rule for minimal allocation

(1) General authority

Notwithstanding the provisions of sections 2351 and 2352 of this title and in order to make a more equitable distribution of funds for programs serving the areas of greatest economic need, for any program year for which a minimal amount is made available by an eligible agency for distribution under section 2351 or 2352 of this title, such eligible agency may distribute such minimal amount for such year—

(A) on a competitive basis; or

(B) through any alternative method determined by the eligible agency.

(2) Minimal amount

For purposes of this section, the term “minimal amount” means not more than 15 percent of the total amount made available for distribution under section 2322(a)(1) of this title.

(b) Redistribution

(1) In general

In any academic year that an eligible recipient does not expend all of the amounts the eligible recipient is allocated for such year under section 2351 or 2352 of this title, such eligible recipient shall return any unexpended amounts to the eligible agency to be reallocated under section 2351 or 2352 of this title, as appropriate.

(2) Redistribution of amounts returned late in an academic year

In any academic year in which amounts are returned to the eligible agency under section 2351 or 2352 of this title and the eligible agency is unable to reallocate such amounts according to such sections in time for such amounts to be expended in such academic year, the eligible agency shall retain such amounts for distribution in combination with amounts provided under section 2322(a)(1) of this title for the following academic year.

(c) Construction

Nothing in section 2351 or 2352 of this title shall be construed—

(1) to prohibit a local educational agency or a consortium thereof that receives assistance under section 2351 of this title, from working with an eligible institution or consortium thereof that receives assistance under section 2352 of this title, to carry out career and technical education programs at the secondary level in accordance with this subchapter;

(2) to prohibit an eligible institution or consortium thereof that receives assistance under section 2352 of this title, from working with a local educational agency or consortium thereof that receives assistance under section 2351 of this title, to carry out postsecondary and adult career and technical education programs in accordance with this subchapter; or

(3) to require a charter school, that provides career and technical education programs and is considered a local educational agency under State law, to jointly establish the charter school’s eligibility for assistance under this subchapter unless the charter school is explicitly permitted to do so under the State’s charter school statute.

(d) Consistent application

For purposes of this section, the eligible agency shall provide funds to charter schools offering career and technical education programs in the same manner as the eligible agency provides those funds to other schools. Such career and technical education programs within a charter school shall be of sufficient size, scope, and quality to be effective.


PRIOR PROVISIONS


§2354. Local plan for career and technical education programs

(a) Local plan required

Any eligible recipient desiring financial assistance under this part shall, in accordance
with requirements established by the eligible agency (in consultation with such other educational training entities as the eligible agency determines to be appropriate) submit a local plan to the eligible agency. Such local plan shall cover the same period of time as the period of time applicable to the State plan submitted under section 2342 of this title.

(b) Contents

The eligible agency shall determine the requirements for local plans, except that each local plan shall—

(1) describe how the career and technical education programs required under section 2355(b) of this title will be carried out with funds received under this subchapter;

(2) describe how the career and technical education activities will be carried out with respect to meeting State and local adjusted levels of performance established under section 2323 of this title;

(3) describe how the eligible recipient will—

(A) offer the appropriate courses of not less than 1 of the career and technical programs of study described in section 2342(c)(1)(A) of this title;

(B) improve the academic and technical skills of students participating in career and technical education programs by strengthening the academic and career and technical education components of such programs through the integration of coherent and rigorous content aligned with challenging academic standards and relevant career and technical education programs to ensure learning in—

(i) the core academic subjects (as defined in section 7801 of this title); and

(ii) career and technical education subjects;

(C) provide students with strong experience in, and understanding of, all aspects of an industry;

(D) ensure that students who participate in such career and technical education programs are taught to the same coherent and rigorous content aligned with challenging academic standards as are taught to all other students; and

(E) encourage career and technical education students at the secondary level to enroll in rigorous and challenging courses in core academic subjects (as defined in section 7801 of this title);

(4) describe how comprehensive professional development (including initial teacher preparation) for career and technical education, academic, guidance, and administrative personnel will be provided that promotes the integration of coherent and rigorous content aligned with challenging academic standards and relevant career and technical education (including curriculum development);

(5) describe how parents, students, academic and career and technical education teachers, faculty, administrators, career guidance and academic counselors, representatives of tech prep consortia (if applicable), representatives of the entities participating in activities described in section 2382 of title 29 (if applicable), representatives of business (including small business) and industry, labor organizations, representatives of special populations, and other interested individuals are involved in the development, implementation, and evaluation of career and technical education programs assisted under this subchapter, and how such individuals and entities are effectively informed about, and assisted in understanding, the requirements of this subchapter, including career and technical programs of study;

(6) provide assurances that the eligible recipient will provide a career and technical education program that is of such size, scope, and quality to bring about improvement in the quality of career and technical education programs;

(7) describe the process that will be used to evaluate and continuously improve the performance of the eligible recipient;

(8) describe how the eligible recipient will—

(A) review career and technical education programs, and identify and adopt strategies to overcome barriers that result in lowering rates of access to or lowering success in the programs, for special populations;

(B) provide programs that are designed to enable the special populations to meet the local adjusted levels of performance; and

(C) provide activities to prepare special populations, including single parents and displaced homemakers, for high skill, high wage, or high demand occupations that will lead to self-sufficiency;

(9) describe how individuals who are members of special populations will not be discriminated against on the basis of their status as members of the special populations;

(10) describe how funds will be used to promote preparation for non-traditional fields;

(11) describe how career guidance and academic counseling will be provided to career and technical education students, including linkages to future education and training opportunities; and

(12) describe efforts to improve—

(A) the recruitment and retention of career and technical education teachers, faculty, and career guidance and academic counselors, including individuals in groups underrepresented in the teaching profession; and

(B) the transition to teaching from business and industry.


PRIOR PROVISIONS


§ 2355. Local uses of funds

(a) General authority

Each eligible recipient that receives funds under this part shall use such funds to improve career and technical education programs.
(b) Requirements for uses of funds

Funds made available to eligible recipients under this part shall be used to support career and technical education programs that—

(1) strengthen the academic and career and technical skills of students participating in career and technical education programs, by strengthening the academic and career and technical education components of such programs through the integration of academics with career and technical education programs through a coherent sequence of courses, such as career and technical programs of study described in section 2342(c)(1)(A) of this title, to ensure learning in—

(A) the core academic subjects (as defined in section 7801 of this title); and

(B) career and technical education subjects;

(2) link career and technical education at the secondary level and career and technical education at the postsecondary level, including by offering the relevant elements of not less than 1 career and technical program of study described in section 2342(c)(1)(A) of this title;

(3) provide students with strong experience in and understanding of all aspects of an industry, which may include work-based learning experiences;

(4) develop, improve, or expand the use of technology in career and technical education, which may include—

(A) training of career and technical education teachers, faculty, and administrators to use technology, which may include distance learning;

(B) providing career and technical education students with the academic and career and technical skills (including the mathematics and science knowledge that provides a strong basis for such skills) that lead to entry into the technology fields; or

(C) encouraging schools to collaborate with technology industries to offer voluntary internships and mentoring programs, including programs that improve the mathematics and science knowledge of students;

(5) provide professional development programs that are consistent with section 2342 of this title to secondary and postsecondary teachers, faculty, administrators, and career guidance and academic counselors who are involved in integrated career and technical education programs, including—

(A) inservice and preservice training on—

(i) effective integration and use of challenging academic and career and technical education provided jointly with academic teachers to the extent practicable;

(ii) effective teaching skills based on research that includes promising practices;

(iii) effective practices to improve parental and community involvement; and

(iv) effective use of scientifically based research and data to improve instruction; strengthening the academic and technical education students, to ensure that such teachers and personnel stay current with all aspects of an industry;

(C) internship programs that provide relevant business experience; and

(D) programs designed to train teachers specifically in the effective use and application of technology to improve instruction;

(6) develop and implement evaluations of the career and technical education programs carried out with funds under this subchapter, including an assessment of how the needs of special populations are being met;

(7) initiate, improve, expand, and modernize quality career and technical education programs, including relevant technology;

(8) provide services and activities that are of sufficient size, scope, and quality to be effective; and

(9) provide activities to prepare special populations, including single parents and displaced homemakers who are enrolled in career and technical education programs, for high skill, high wage, or high demand occupations that will lead to self-sufficiency.

(c) Permissive

Funds made available to an eligible recipient under this subchapter may be used—

(1) to involve parents, businesses, and labor organizations as appropriate, in the design, implementation, and evaluation of career and technical education programs authorized under this subchapter, including establishing effective programs and procedures to enable informed and effective participation in such programs;

(2) to provide career guidance and academic counseling, which may include information described in section 2328 of this title, for students participating in career and technical education programs, that—

(A) improves graduation rates and provides information on postsecondary and career options, including baccalaureate degree programs, for secondary students, which activities may include the use of graduation and career plans; and

(B) provides assistance for postsecondary students, including for adult students who are changing careers or updating skills;

(3) for local education and business (including small business) partnerships, including for—

(A) work-related experiences for students, such as internships, cooperative education, school-based enterprises, entrepreneurship, and job shadowing that are related to career and technical education programs;

(B) adjunct faculty arrangements for qualified industry professionals; and

(C) industry experience for teachers and faculty;

(4) to provide programs for special populations;

(5) to assist career and technical student organizations;

(6) for mentoring and support services;
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(7) for leasing, purchasing, upgrading or adapting equipment, including instructional aids and publications (including support for library resources) designed to strengthen and support academic and technical skill achievement;

(8) for teacher preparation programs that address the integration of academic and career and technical education and that assist individuals who are interested in becoming career and technical education teachers and faculty, including individuals with experience in business and industry;

(9) to develop and expand postsecondary program offerings at times and in formats that are accessible for students, including working students, including through the use of distance education;

(10) to develop initiatives that facilitate the transition of sub-baccalaureate career and technical education students into baccalaureate degree programs, including—

(A) articulation agreements between sub-baccalaureate degree granting career and technical education postsecondary educational institutions and baccalaureate degree granting postsecondary educational institutions;

(B) postsecondary dual and concurrent enrollment programs;

(C) academic and financial aid counseling for sub-baccalaureate career and technical education students that informs the students of the opportunities for pursuing a baccalaureate degree and advises the students on how to meet any transfer requirements; and

(D) other initiatives—

(i) to encourage the pursuit of a baccalaureate degree; and

(ii) to provide activities to support entrepreneurship education and training;

(11) to provide activities to support entrepreneurship education and training;

(12) for improving or developing new career and technical education courses, including the development of new proposed career and technical programs of study for consideration by the eligible agency and courses that prepare individuals academically and technically for high skill, high wage, or high demand occupations and dual or concurrent enrollment opportunities by which career and technical education students at the secondary level could obtain postsecondary credit to count towards an associate or baccalaureate degree;

(13) to develop and support small, personalized career-themed learning communities;

(14) to provide support for family and consumer sciences programs;

(15) to provide career and technical education programs for adults and school dropouts to complete the secondary school education, or upgrade the technical skills, of the adults and school dropouts;

(16) to provide assistance to individuals who have participated in services and activities under this chapter in continuing their education or training or finding an appropriate job, such as through referral to the system established under section 2341 of title 29;

(17) to support training and activities (such as mentoring and outreach) in non-traditional fields;

(18) to provide support for training programs in automotive technologies;

(19) to pool a portion of such funds with a portion of funds available to not less than 1 other eligible recipient for innovative initiatives, which may include—

(A) improving the initial preparation and professional development of career and technical education teachers, faculty, administrators, and counselors;

(B) establishing, enhancing, or supporting systems for—

(i) accountability data collection under this chapter; or

(ii) reporting data under this chapter;

(C) implementing career and technical programs of study described in section 2342(c)(1)(A) of this title; or

(D) implementing technical assessments; and

(20) to support other career and technical education activities that are consistent with the purpose of this chapter.

(d) Administrative costs

Each eligible recipient receiving funds under this part shall not use more than 5 percent of the funds for administrative costs associated with the administration of activities assisted under this section.


PRIOR PROVISIONS


Prior sections 2361 to 2363 were omitted in the general amendment of this chapter by Pub. L. 101–392.


SUBCHAPTER II—TECH PREP EDUCATION

§ 2371. State allotment and application

(a) In general

For any fiscal year, the Secretary shall allot the amount made available under section 2376 of this title among the States in the same manner
as funds are allotted to States under paragraph (2) of section 2321(a) of this title.

(b) Payments to eligible agencies

The Secretary shall make a payment in the amount of a State's allotment under subsection (a) to the eligible agency that serves the State and has an application approved under subsection (c).

(c) State application

Each eligible agency desiring an allotment under this subchapter shall submit, as part of its State plan under section 2342 of this title, an application that—

(1) describes how activities under this subchapter will be coordinated, to the extent practicable, with activities described in the State plan submitted under section 2342 of this title; and

(2) contains such information as the Secretary may require.

§ 2373. Tech prep program

(a) Grant program authorized

(1) In general

From amounts made available to each eligible agency under section 2371 of this title, the eligible agency, in accordance with the provisions of this subchapter, shall award grants, on a competitive basis or on the basis of a formula determined by the eligible agency, for tech prep programs described in subsection (c). The grants shall be awarded to consortia between or among—

(A) a local educational agency, an intermediate educational agency, educational service agency, or area career and technical education school; and

(B)(i) a nonprofit institution of higher education that—

(I)(aa) offers a 2-year associate degree program or a 2-year certificate program; and

(ii) is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002], including—

(AA) an institution receiving assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.); and

(BB) a tribally controlled postsecondary education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002], if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.]; or

(ii) a proprietary institution of higher education that offers a 2-year associate degree program or a 2-year certificate program; and

(bb) is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002]; and

(bb) is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002]; and

(II) offers a 2-year apprenticeship program that follows secondary education instruction.

(b) Notification requirement

Each eligible agency that chooses to consolidate funds under this section shall notify the Secretary, in the State plan submitted under section 2342 of this title, of the eligible agency's decision to consolidate funds under this section.

(c) Treatment of consolidated funds

Funds consolidated under this section shall be considered as funds allotted under section 2321 of this title and shall be distributed in accordance with section 2322 of this title.

§ 2372. Consolidation of funds

(a) In general

An eligible agency receiving an allotment under sections 2321 and 2371 of this title may choose to consolidate all, or a portion of, funds received under section 2371 of this title with funds received under section 2321 of this title in order to carry out the activities described in the State plan submitted under section 2342 of this title.

(b) Notification requirement

Each eligible agency that chooses to consolidate funds under this section shall notify the Secretary, in the State plan submitted under section 2342 of this title, of the eligible agency's decision to consolidate funds under this section.

(c) Treatment of consolidated funds

Funds consolidated under this section shall be considered as funds allotted under section 2321 of this title and shall be distributed in accordance with section 2322 of this title.

§ 2373. Tech prep program

(a) Grant program authorized

(1) In general

From amounts made available to each eligible agency under section 2371 of this title, the eligible agency, in accordance with the provisions of this subchapter, shall award grants, on a competitive basis or on the basis of a formula determined by the eligible agency, for tech prep programs described in subsection (c). The grants shall be awarded to consortia between or among—

(A) a local educational agency, an intermediate educational agency, educational service agency, or area career and technical education school; and

(B)(i) a nonprofit institution of higher education that—

(I)(aa) offers a 2-year associate degree program or a 2-year certificate program; and

(ii) is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002], including—

(AA) an institution receiving assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.); and

(BB) a tribally controlled postsecondary education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002], if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.]; or

(ii) a proprietary institution of higher education that offers a 2-year associate degree program or a 2-year certificate program; and

(bb) is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002]; and

(bb) is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002]; and

(II) offers a 2-year apprenticeship program that follows secondary education instruction.

(b) Notification requirement

Each eligible agency that chooses to consolidate funds under this section shall notify the Secretary, in the State plan submitted under section 2342 of this title, of the eligible agency's decision to consolidate funds under this section.

(c) Treatment of consolidated funds

Funds consolidated under this section shall be considered as funds allotted under section 2321 of this title and shall be distributed in accordance with section 2322 of this title.

(2) Special rule

In addition, a consortium described in paragraph (1) may include 1 or more—
(A) institutions of higher education that award a baccalaureate degree; and
(B) employers (including small businesses), business intermediaries, or labor organizations.

(b) Duration
Each consortium receiving a grant under this subchapter shall use amounts provided under the grant to develop and operate a 4- or 6-year tech prep program described in subsection (c).

(c) Contents of tech prep program
Each tech prep program shall—
(1) be carried out under an articulation agreement between the participants in the consortium;
(2) consist of a program of study that—
(A) combines—
(i) a minimum of 2 years of secondary education (as determined under State law); with
(ii)(I) a minimum of 2 years of post-secondary education in a nonduplicative, sequential course of study; or
(II) an apprenticeship program of not less than 2 years following secondary education instruction; and
(B) integrates academic and career and technical education instruction, and utilizes work-based and worksite learning experiences where appropriate and available;
(C) provides technical preparation in a career field, including high skill, high wage, or high demand occupations;
(D) builds student competence in technical skills and in core academic subjects (as defined in section 7801 of this title), as appropriate, through applied, contextual, and integrated instruction, in a coherent sequence of courses;
(E) leads to technical skill proficiency, an industry-recognized credential, a certificate, or a degree, in a specific career field;
(F) leads to placement in high skill or high wage employment, or to further education; and
(G) utilizes career and technical education programs of study, to the extent practicable;
(3) include the development of tech prep programs for secondary education and post-secondary education that—
(A) meet academic standards developed by the State:
(B) link secondary schools and 2-year post-secondary institutions, and if possible and practicable, 4-year institutions of higher education, through—
(i) nonduplicative sequences of courses in career fields;
(ii) the use of articulation agreements; and
(iii) the investigation of opportunities for tech prep secondary education students to enroll concurrently in secondary education and postsecondary education coursework;
(C) use, if appropriate and available, work-based or worksite learning experiences in conjunction with business and all aspects of an industry; and
(D) use educational technology and distance learning, as appropriate, to involve all the participants in the consortium more fully in the development and operation of programs;
(4) include in-service professional development for teachers, faculty, and administrators that—
(A) supports effective implementation of tech prep programs;
(B) supports joint training in the tech prep consortium;
(C) supports the needs, expectations, and methods of business and all aspects of an industry;
(D) supports the use of contextual and applied curricula, instruction, and assessment;
(E) supports the use and application of technology; and
(F) assists in accessing and utilizing data, information available pursuant to section 2328 of this title, and information on student achievement, including assessments;
(5) include professional development programs for counselors designed to enable counselors to more effectively—
(A) provide information to students regarding tech prep programs;
(B) support student progress in completing tech prep programs, which may include the use of graduation and career plans;
(C) provide information on related employment opportunities;
(D) ensure that students are placed in appropriate employment or further post-secondary education;
(E) stay current with the needs, expectations, and methods of business and all aspects of an industry; and
(F) provide comprehensive career guidance and academic counseling to participating students, including special populations;
(6) provide equal access, to the full range of technical preparation programs (including preapprenticeship programs), to individuals who are members of special populations, including the development of tech prep program services appropriate to the needs of special populations;
(7) provide for preparatory services that assist participants in tech prep programs; and
(8) coordinate with activities conducted under subchapter I.

(d) Additional authorized activities
Each tech prep program may—
(1) provide for the acquisition of tech prep program equipment;
(2) acquire technical assistance from State or local entities that have designed, established, and operated tech prep programs that have effectively used educational technology and distance learning in the delivery of curricula and services;
(3) establish articulation agreements with institutions of higher education, labor organizations, or businesses located inside or outside the State and served by the consortium, especially with regard to using distance learning and educational technology to provide for the delivery of services and programs;
(4) improve career guidance and academic counseling for participating students through the development and implementation of graduation and career plans; and
(5) develop curriculum that supports effective transitions between secondary and post-secondary career and technical education programs.

(e) Indicators of performance and accountability

(1) In general

Each consortium shall establish and report to the eligible agency indicators of performance for each tech prep program for which the consortium receives a grant under this subchapter. The indicators of performance shall include the following:

(A) The number of secondary education tech prep students and postsecondary education tech prep students served.
(B) The number and percent of secondary education tech prep students enrolled in the tech prep program who—
(i) enroll in postsecondary education;
(ii) enroll in postsecondary education in the same field or major as the secondary education tech prep students were enrolled at the secondary level;
(iii) complete a State or industry-recognized certification or licensure;
(iv) successfully complete, as a secondary school student, courses that award postsecondary credit at the secondary level; and
(v) enroll in remedial mathematics, writing, or reading courses upon entering postsecondary education.
(C) The number and percent of postsecondary education tech prep students who—
(i) are placed in a related field of employment not later than 12 months after graduation from the tech prep program;
(ii) complete a State or industry-recognized certification or licensure;
(iii) complete a 2-year degree or certificate program within the normal time for completion of such program; and
(iv) complete a baccalaureate degree program within the normal time for completion of such program.

(2) Number and percent

For purposes of subparagraphs (B) and (C) of paragraph (1), the numbers and percentages shall be determined separately with respect to each clause of each such subparagraph.


References in Text


Prior Provisions


A prior section 203 of Pub. L. 88–210 was classified to section 2372 of this title, prior to the general amendment of this chapter by Pub. L. 109–270.

Another prior section 203 of Pub. L. 88–210 was classified to section 2333 of this title, prior to the general amendment of former subchapter II of this chapter by Pub. L. 101–382.

AMENDMENTS


§2374. Consortium applications

(a) In general

Each consortium that desires to receive a grant under this subchapter shall submit an application to the eligible agency at such time and in such manner as the eligible agency shall require.

(b) Plan

Each application submitted under this section shall contain a 5-year plan for the development and implementation of tech prep programs under this subchapter, which plan shall be reviewed after the second year of the plan.

(c) Approval

The eligible agency shall approve applications under this subchapter based on the potential of the activities described in the application to create an effective tech prep program.

(d) Special consideration

The eligible agency, as appropriate, shall give special consideration to applications that—
(1) provide for effective employment placement activities or the transfer of students to baccalaureate or advanced degree programs;
(2) are developed in consultation with business, industry, institutions of higher education, and labor organizations;
(3) address effectively the issues of school dropout prevention and reentry, and the needs of special populations;
(4) provide education and training in an area or skill, including an emerging technology, in which there is a significant workforce shortage based on the data provided by the eligible entity in the State under section 2323 of this title;
(5) demonstrate how tech prep programs will help students meet high academic and employability competencies; and
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(6) demonstrate success in, or provide assurances of, coordination and integration with eligible recipients described in part C of subchapter I.

(e) Performance levels

(1) In general

Each consortium receiving a grant under this subchapter shall enter into an agreement with the eligible agency to meet a minimum level of performance for each of the performance indicators described in sections 2323(b) and 2377(e) of this title.

(2) Resubmission of application; termination of funds

An eligible agency—

(A) shall require consortia that do not meet the performance levels described in paragraph (1) for 3 consecutive years to resubmit an application to the eligible agency for a tech prep program grant; and

(B) may choose to terminate the funding for the tech prep program for a consortium that does not meet the performance levels described in paragraph (1) for 3 consecutive years, including when the grants are made on the basis of a formula determined by the eligible agency.

(f) Equitable distribution of assistance

In awarding grants under this subchapter, the eligible agency shall ensure an equitable distribution of assistance between or among urban and rural participants in the consortium.


PRIOR PROVISIONS


Another prior section 2376, Pub. L. 88–210, title II, § 204, as added Pub. L. 100–418, title VI, §613(a)(3), Aug. 23, 1988, 102 Stat. 1509, provided findings and purpose of special program of financial assistance to States to enable them to expand and improve vocational education programs designed to meet current needs for training, retraining, and employment development of adults who had completed or left high school and were preparing to enter or had entered the labor market, including workers who were 55 years of age and older, in order to equip adults with competencies and skills required for productive employment, prior to repeal by Pub. L. 101–392, title III, §305, title VII, §702(a), Sept. 25, 1990, 104 Stat. 786, 843, effective July 1, 1991.

A prior section 206 of Pub. L. 88–210 was classified to section 2375 of this title, prior to the general amendment of this chapter by Pub. L. 109–270.


Prior sections 2381 to 2383 were omitted in the general amendment of this chapter by Pub. L. 105–332.


SUBCHAPTER III—GENERAL PROVISIONS

PART A—FEDERAL ADMINISTRATIVE PROVISIONS

§ 2391. Fiscal requirements

(a) Supplement not supplant

Funds made available under this chapter for career and technical education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out career and technical education activities and tech prep program activities.
(b) Maintenance of effort

(1) Determination

(A) In general

Except as provided in subparagraphs (B) and (C), no payments shall be made under this chapter for any fiscal year to a State for career and technical education programs or tech prep programs unless the Secretary determines that the fiscal effort per student or the aggregate expenditures of such State for career and technical education programs for the fiscal year preceding the fiscal year for which the determination is made, equaled or exceeded such effort or expenditures for career and technical education programs for the second fiscal year preceding the fiscal year for which the determination is made.

(B) Computation

In computing the fiscal effort or aggregate expenditures pursuant to subparagraph (A), the Secretary shall exclude capital expenditures, special 1-time project costs, and the cost of pilot programs.

(C) Decrease in Federal support

If the amount made available for career and technical education programs under this chapter for a fiscal year is less than the amount made available for career and technical education programs under this chapter for the preceding fiscal year, then the fiscal effort per student or the aggregate expenditures of a State required by subparagraph (A) for the preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available.

(2) Waiver

The Secretary may waive the requirements of this section, with respect to not more than 5 percent of expenditures by any eligible agency for 1 fiscal year only, on making a determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the eligible agency to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or aggregate expenditures required under this section for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.


PRIOR PROVISIONS


A prior section 311 of Pub. L. 88–210 was classified to section 2363 of this title, prior to the general amendment of this chapter by Pub. L. 105–332.

§2393. Construction

Nothing in this chapter shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school, regardless of whether a home school is treated as a private school or home school under State law. This section shall not be construed to bar students attending private, religious, or home schools from participation in programs or services under this chapter.


PRIOR PROVISIONS


A prior section 314 of Pub. L. 88–210 was classified to section 2363 of this title, prior to the general amendment of this chapter by Pub. L. 105–332.

§2394. Voluntary selection and participation

No funds made available under this chapter shall be used—

(1) to require any secondary school student to choose or pursue a specific career path or major; or

(2) to mandate that any individual participate in a career and technical education program, including a career and technical education program that requires the attainment of a federally funded skill level, standard, or certificate of mastery.

§ 2395. Limitation for certain students

No funds received under this chapter may be used to provide career and technical education programs to students prior to the seventh grade, except that equipment and facilities purchased with funds under this chapter may be used by such students.


Prior Provisions


Another prior section 2395 and prior sections 2395a to 2395e were omitted in the general amendment of this chapter by Pub. L. 105–332.


§ 2396. Federal laws guaranteeing civil rights

Nothing in this chapter shall be construed to be inconsistent with applicable Federal law prohibiting discrimination on the basis of race, color, sex, national origin, age, or disability in the provision of Federal programs or services.


Prior Provisions


Another prior section 2396 and prior sections 2396a to 2396m were omitted in the general amendment of this chapter by Pub. L. 105–332.


Short Title

§ 2397. Participation of private school personnel and children

(a) Personnel
An eligible agency or eligible recipient that uses funds under this chapter for in-service and preservice career and technical education professional development programs for career and technical education teachers, administrators, and other personnel shall, to the extent practicable, upon written request, permit the participation in such programs of career and technical education secondary school teachers, administrators, and other personnel in nonprofit private schools offering career and technical secondary education programs located in the geographical area served by such eligible agency or eligible recipient.

(b) Student participation
(1) Student participation
Except as prohibited by State or local law, an eligible recipient may, upon written request, use funds made available under this chapter to provide for the meaningful participation, in career and technical education programs and activities receiving funding under this chapter, of secondary school students attending nonprofit private schools who reside in the geographical area served by the eligible recipient.

(2) Consultation
An eligible recipient shall consult, upon written request, in a timely and meaningful manner with representatives of nonprofit private schools in the geographical area served by the eligible recipient described in paragraph (1) regarding the meaningful participation, in career and technical education programs and activities receiving funding under this chapter, of secondary school students attending nonprofit private schools.


Prior Provisions


Short Title

§ 2398. Limitation on Federal regulations
The Secretary may issue regulations under this chapter only to the extent necessary to administer and ensure compliance with the specific requirements of this chapter.


Prior Provisions

Prior sections 2401 to 2404 were omitted in the general amendment of this chapter by Pub. L. 105–332.


Part B—State Administrative Provisions
§ 2411. Joint funding

(a) General authority
Funds made available to eligible agencies under this chapter may be used to provide additional funds under an applicable program if—

(1) such program otherwise meets the requirements of this chapter and the requirements of the applicable program;

(2) such program serves the same individuals that are served under this chapter;

(3) such program provides services in a coordinated manner with services provided under this chapter; and
§ 2412. Prohibition on use of funds to induce out-of-State relocation of businesses

No funds provided under this chapter shall be used for the purpose of directly providing incentives or inducements to an employer to relocate a business enterprise from one State to another State if such relocation will result in a reduction in the number of jobs available in the State where the business enterprise is located before such incentives or inducements are offered.


§ 2413. State administrative costs

(a) General rule

Except as provided in subsection (b), for each fiscal year for which an eligible agency receives assistance under this chapter, the eligible agency shall provide, from non-Federal sources for the costs the eligible agency incurs for the administration of programs under this chapter, an amount that is not less than the amount provided by the eligible agency from non-Federal sources for such costs for the preceding fiscal year.

(b) Exception

If the amount made available from Federal sources for the administration of programs under this chapter for a fiscal year (referred to in this section as the “determination year”) is less than the amount made available from Federal sources for the administration of programs under this chapter for the preceding fiscal year, then the amount the eligible agency is required to provide from non-Federal sources for such costs for the preceding fiscal year as the same ratio to the amount the eligible agency provided from non-Federal sources for such costs for the preceding fiscal year.

Another prior section 323 of Pub. L. 88–210 was classified to section 2373 of this title, prior to repeal by Pub. L. 101–392.

§ 2414. Student assistance and other Federal programs

(a) Attendance costs not treated as income or resources

The portion of any student financial assistance received under this chapter that is made available for attendance costs described in subsection (b) shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) Attendance costs

The attendance costs described in this subsection are—

1. Tuition and fees normally assessed a student carrying an academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in that course of study; and

2. An allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

(c) Costs of career and technical education services

Funds made available under this chapter may be used to pay for the costs of career and technical education services required in an individualized education program developed pursuant to section 1414(d) of title 29 with respect to ensuring equal access to educational programs for Federal correctional institutions.

Prior Provisions


§ 2501 STATEMENT OF PURPOSE

It is the purpose of this subchapter to provide Federal assistance to States to enable them to plan for the development of career education and career development programs and activities for individuals of all ages, and to plan for the improvement of existing programs and activities, in the areas of awareness, exploration, planning, and decisionmaking of individuals served with regard to career opportunities and career development throughout the lifetimes of such individuals, through—

(1) planning for the development of information on the needs for career education and career development for all individuals;

(2) planning for the promotion of a national dialogue on career education and career development designed to encourage each State and local educational agency to determine and adopt the approach best suited to the needs of the individuals served by each such agency;

(3) planning for the assessment of the status of career education and career development programs and practices, including a reassessment of the stereotyping of career opportunities by race or by sex;

(4) planning for the demonstration of the best of the current career education and career development programs and practices by planning to develop and test exemplary programs and practices using various theories, concepts, and approaches with respect to career education and through planning for a nationwide system of regional career education centers;

(5) planning for the training and retraining of persons for conducting career education and career development programs; and

(6) planning for the use of funds for joint funding of programs and activities through the establishment of Federal and State agencies, etc.

SUBCHAPTER I—CAREER EDUCATION AND CAREER DEVELOPMENT

Chapter 45—Career Education and Career Development

SUBCHAPTER I—CAREER EDUCATION AND CAREER DEVELOPMENT PROGRAMS AND ACTIVITIES

§ 2501. Statement of purpose

It is the purpose of this subchapter to provide Federal assistance to States to enable them to plan for the development of career education and career development programs and activities for individuals of all ages, and to plan for the improvement of existing programs and activities, in the areas of awareness, exploration, planning, and decisionmaking of individuals served with regard to career opportunities and career development throughout the lifetimes of such individuals, through—

(1) planning for the development of information on the needs for career education and career development for all individuals;

(2) planning for the promotion of a national dialogue on career education and career development designed to encourage each State and local educational agency to determine and adopt the approach best suited to the needs of the individuals served by each such agency;

(3) planning for the assessment of the status of career education and career development programs and practices, including a reassessment of the stereotyping of career opportunities by race or by sex;

(4) planning for the demonstration of the best of the current career education and career development programs and practices by planning to develop and test exemplary programs and practices using various theories, concepts, and approaches with respect to career education and through planning for a nationwide system of regional career education centers;

(5) planning for the training and retraining of persons for conducting career education and career development programs; and
(6) developing State and local plans for implementing programs designed to ensure that every person has the opportunity to gain the knowledge and skills necessary for gainful or maximum employment and for full participation in our society according to his or her ability.


**Effective Date**

Chapter effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, where section provides for authorization of appropriations, see section 532 of Pub. L. 94–482, set out as an Effective Date of 1976 Amendment note under section 1001 of this title.

**Short Title of 1978 Amendment**

Pub. L. 95–270, Apr. 27, 1978, 92 Stat. 220, which enacted sections 2566 to 2569 of this title, is known as the Hubert H. Humphrey Institute of Public Affairs and the Everett McKinley Dirksen Congressional Leadership Research Center Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 2566 of this title and Tables.

§ 2502. Funding requirements

(a) Authorization of appropriations

There are authorized to be appropriated for the purpose of this subchapter $10,000,000 for fiscal year 1978. The provisions of section 1226a of this title shall not apply to the authorization made by this subsection.

(b) Availability of amounts appropriated; allotments to States, etc.

(1) From the sums appropriated under this subchapter, the Secretary of Education shall reserve an amount not to exceed $2,000,000, for the purpose of carrying out section 2505 of this title.

(2) From the remainder of the sums appropriated under this subchapter, the Secretary of Education shall reserve such amount, not to exceed 1 per centum thereof, as he may determine necessary and shall allot such amount among the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands, according to their relative need for assistance under this subchapter.

(3)(A) Of the remainder of the sums appropriated, the Secretary of Education shall allot to each State an amount which bears the same ratio to such sums for such year as the population of the State bears to the population of all States, for purposes of carrying out section 2501 of this title.

(B) For purposes of this paragraph, the term "State" means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Federal share

The Federal share of funds allotted to States under this subchapter shall not exceed 80 per centum of the total cost of the planning undertaken pursuant to this subchapter.

1 See References in Text note below.
Secretary of Education by December 31, 1978, a report on any planning undertaken pursuant to this subchapter. Such report shall be in such form as the State may desire, and may include planning proposals for—

(1) extending career education and career development programs and services to all individuals in the State;

(2) extending the concept of the education process beyond the school into the area of employment and community affairs, and relating the subject matter curriculums of schools to the needs of individuals to function in society;

(3) the implementation of new concepts in career education and career development and for the replication of concepts which have demonstrated success;

(4) the development of training programs, including inservice training programs, for teachers, counselors, other educators, and administrators;

(5) fostering cooperative arrangements with such community groups and agencies as the public employment services, vocational rehabilitation service, community mental health agencies, education opportunity centers, and other community resources concerned with vocational development guidance and counseling, in order to avoid unnecessary duplication in the provision of services in the community or area to be served; and

(6) inventories of State, local, and private resources available for the development of career education and career development programs and services.

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\text{TRANSFER OF FUNCTIONS}

“Secretary of Education” substituted in text for “Commissioner” pursuant to sections 301(a)(1) and 507 of this title and which transferred Education Division to Department of Education.

\section{Grants or contracts}

\subsection{Information gathering; analysis of career trends and options; publication of periodic reports and reference works; conduct of seminars, workshops, etc.}

The Secretary of Education shall provide, either directly or by grant or contract, for—

(1) the gathering, cataloging, storing, analyzing, and disseminating information related to the availability of, and preparation for, careers in the United States, including information concerning current career options, future career trends, and career education;

(2) the ongoing analysis of career trends and options in the United States, using information from both the public and private sectors, including such sources as the Bureau of Labor Statistics, the Department of Commerce, the United States International Trade Commission, economic analysts, labor unions, and private industry;

(3) the publication of periodic reports and reference works using analysis prepared pursuant to this section and containing exemplary materials from the career education field, including research findings, results, and techniques from successful projects and programs, and highlights of ongoing analyses of career trends in the United States; and

(4) the conduct of seminars, workshops, and career information sessions for the purpose of disseminating to teachers, guidance counselors, other career educators, administrators, other education personnel, and the general public information compiled and analyzed under this section.

\subsection{Implementation requirements}

In carrying out the provisions of this subchapter, and to the extent practicable, the Secretary of Education shall (1) make use of existing offices, centers, clearinghouses, and research capabilities, (2) coordinate among the offices, centers, clearinghouses, and research capabilities in carrying out his career information responsibilities, and (3) use the career information capabilities of the Department of Education.

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\text{CHANGE OF NAME}


\subsection{Transfer of functions}

“Secretary of Education” substituted for “Commissioner” in text, and “Department of Education” substituted for “Education Division” in subsec. (b)(3), pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96–88, which are classified to sections 3414(a)(1) and 3307 of this title and which transferred functions of Commissioner of Education to Secretary of Education and transferred Education Division to Department of Education.

\section{Functions of National Advisory Council for Career Education}

The National Advisory Council for Career Education established pursuant to section 2612a(g) of this title shall, in addition to its duties under that section, advise the Secretary of Education with respect to the implementation of this subchapter.

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\text{REFERENCES IN TEXT}

Section 2612a of this title, referred to in text, has been omitted from the Code.

\subsection{Transfer of functions}

“Secretary of Education” substituted in text for “Commissioner” pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3414(a)(1) and 3307 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

\subsection{Termination of advisory councils}

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year...
period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER II—GUIDANCE AND COUNSELING ACTIVITIES AND PROGRAMS

§ 2531. Congressional findings

The Congress finds that—

(1) guidance and counseling activities are an essential component to assure success in achieving the goals of many education programs;1

(2) lack of coordination among guidance and counseling activities supported jointly or separately by Federal programs and by State and local programs has resulted in an underutilization of resources available for such activities; and

(3) increased and improved preparation of education professionals is needed in guidance and counseling, including administration of guidance and counseling programs at the State and local levels, with special emphasis on inservice training which takes educational professionals into the workplaces of business and industry, the professions, and other occupational pursuits, and that increased and improved use of individuals employed in such pursuits are needed for effective guidance and counseling programs, including (A) bringing persons employed in such pursuits into schools, and (B) bringing students into such workplaces for observation of, and participation in, such pursuits, in order to acquaint the students with the nature of the work.


§ 2532. Authorization of appropriations

(a) Fiscal years 1978 through 1983

There are authorized to be appropriated $20,000,000 for each of the fiscal years 1978 through 1983, to carry out the provisions of this subchapter.

(b) Limitations; allotments to States, etc.; reallocations

(1) There are authorized to be appropriated $3,000,000 for fiscal year 1977, for purposes of grants to States made by the Secretary of Education for programs, projects, and leadership activities designed to expand and strengthen counseling and guidance services in elementary and secondary schools.

(2) No sums are authorized to be appropriated under section 401(a) of the Elementary and Secondary Education Act of 1965 for fiscal year 1977, for the purpose of making grants under part B (Libraries and Learning Resources) of title IV of such Act, for such fiscal year which represent the amount authorized to be appropriated under paragraph (1) of this subsection.

(3)(A) The Secretary of Education shall allot the amounts appropriated under this subsection among Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective needs for assistance under this subsection. In addition, he shall allot from such amounts to (i) the Secretary of the Interior the amounts necessary for the programs, projects, and activities authorized by this subsection for children and teachers in elementary and secondary schools operated for Indian children by the Department of the Interior; and (ii) the Secretary of Defense the amounts necessary for the programs, projects, and activities authorized by this subsection for children and teachers in the overseas dependents schools of the Department of Defense. The terms upon which payment for such purposes shall be made to the Secretary of the Interior and the Secretary of Defense shall be determined pursuant to such criteria as the Secretary of Education determines will best carry out the purposes of this subsection.

(B) From the amounts appropriated to carry out this subsection, the Secretary of Education shall allot to each State from such amounts an amount which bears the same ratio to such amounts as the number of children aged five to seventeen, inclusive, in the State bears to the number of such children in all the States. For the purposes of this subparagraph, the term “State” shall not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. The number of children aged five to seventeen, inclusive, in a State and in all the States shall be determined by the Secretary of Education on the basis of the most recent satisfactory data available to him.

(C) The amount of any State’s allotment under subparagraph (A) or subparagraph (B) to carry out this subsection which the Secretary of Education determines will not be required to carry out this subsection shall be available for reallocation from time to time, on such dates as the Secretary of Education may fix, to other States in proportion to the original allotments to such States under subparagraph (A) or subparagraph (B) but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary of Education estimates such State needs and will be able to use. The total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amounts reallocated to a State under this subparagraph from funds appropriated under this subsection shall be deemed a part of its allotment under subparagraph (A) or subparagraph (B).


References in Text

Title IV of the Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(2), which was formerly classified to subchapter I (§1801 et seq.) of chap-

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1 So in original. The colon probably should be a semicolon.
2 See References in Text note below.
§ 2533

TITLE 20—EDUCATION

Page 1014

The Secretary of Education may reserve an amount not to exceed 5 per centum of the sums appropriated under this subchapter to carry out the provisions of this section.


AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95–43 substituted “this subchapter” for “this section”.

TRANSFER OF FUNCTIONS

“Secretary of Education” and “Department of Education” substituted in text for “Commissioner” and “Education Division”, respectively, pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1), (b)(2) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education and transferred Education Division to Department of Education.

For authority of Secretary of Education to consolidate, alter, or discontinue the administrative unit for guidance and counseling programs, or to reallocate any functions vested by statute in the administrative unit, see section 413 of Pub. L. 96–88, which is classified to section 3473 of this title.

§ 2534. Contracts and grants to States, educational agencies, etc.

(a) Implementation of programs

The Secretary of Education is authorized, on a competitive basis, to enter into contracts and make grants to State and local educational agencies, to institutions of higher education, and to private nonprofit organizations to assist them in conducting institutes, work shops, and seminars designed to improve the professional guidance qualifications of teachers and counselors in State and local educational agencies and nonpublic elementary and secondary school systems, including opportunities for teachers and guidance counselors in such agencies and systems to obtain experience in business and industry, the professions, and other occupational pursuits, and including, for the purpose of such improvement, such programs, services, or activities which bring individuals with experience in such pursuits into schools as counselors or advisors for students, and which bring students into the workplaces of such pursuits to acquaint students with the nature of the work and to provide training for supervisory and technical personnel in such agencies and systems having responsibilities for guidance and counseling, and to improve supervisory services in the field of guidance and counseling.

(b) Coordination of programs of guidance and counseling

The Secretary of Education is authorized to make grants to States to assist them in carrying out programs to coordinate new and existing programs of guidance and counseling in the States.


TRANSFER OF FUNCTIONS

“Secretary of Education” substituted in text for “Commissioner” pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§§ 2561 to 2563. Omitted

CODIFICATION

Section 2561, Pub. L. 94–482, title V, § 521, Oct. 12, 1976, 90 Stat. 2226, required Secretary of Health, Education, and Welfare, not later than six months after October 12, 1976, to report on purposes, administration, and effectiveness of special programs for students from dis-
advantaged backgrounds under sections 1070d and 1070d-1 of this title and High School Equivalency Program and College Assistance Migrant Program authorized under section 873 of title 29 and provided funding requirements for fiscal year 1977 for the programs authorized under section 873 of title 29.


§2564. Departmental day care center facilities; establishment; fees and charges; equipment and operation by appropriated funds

Notwithstanding any other provision of law, the Secretary of Health and Human Services is authorized by contract or otherwise to establish, equip, and operate day care center facilities for the purpose of serving children who are members of households of employees of the Department of Health and Human Services. The Secretary is authorized to establish or provide for the establishment of appropriate fees and charges to be chargeable against the Department employees or others who are beneficiaries of services provided by such facilities to pay for the cost of their operation and to accept money, equipment, or other property donated for use in connection with the facilities. No appropriated funds may be used for the equipping or operation of any centers provided under this authority. The prohibition made by the preceding sentence shall not preclude the provision of appropriated space nor the purchase of the initial equipment for the centers, except that the cost of such equipment shall be reimbursed over the expected life of such equipment, not to exceed 10 years.


CHANGE OF NAME

“Secretary of Health and Human Services” and “Department of Health and Human Services” substituted in text for “Secretary of Health, Education, and Welfare” and “Department of Health, Education, and Welfare”, respectively, pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of this title.

§2565. Wayne Morse Chair of Law and Politics

(a) Establishment

The Secretary of Education (hereinafter in this section referred to as the “Secretary”) is authorized to provide financial assistance in accordance with the provisions of this section to assist in establishing the Wayne Morse Chair of Law and Politics at the University of Oregon, of Eugene, Oregon.

(b) Federal share; application for financial assistance

(1) For purposes of this section, the Federal share of the cost of establishing the Wayne Morse Chair of Law and Politics shall not exceed 50 per centum.

(2) No financial assistance under this section may be made except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) Authorization of appropriations

There are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.


TRANSFER OF FUNCTIONS

“Secretary” substituted for “Commissioner” in subsec. (a) and (b) pursuant to sections 301(a)(1) and 307 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

§2566. Hubert H. Humphrey Institute of Public Affairs; grants for development

In recognition of the public service of Senator Hubert H. Humphrey, the Secretary of Education (hereafter in sections 2566 to 2569 of this title referred to as the “Secretary”) is authorized to make grants in accordance with the provisions of sections 2566 to 2569 of this title to assist in the development of the Hubert H. Humphrey Institute of Public Affairs, located at the University of Minnesota, Minneapolis–Saint Paul.


EFFECTIVE DATE

Section 4(d) of Pub. L. 95–270 provided that: “This Act [enacting this section, sections 2567 to 2569 of this title, and provisions set out as a note above] shall take effect October 1, 1978.”

SHORT TITLE

Section 1 of Pub. L. 95–270 provided: “That this Act [enacting this section, sections 2567 to 2569 of this title, and provisions set out as a note above] may be cited as the ‘Hubert H. Humphrey Institute of Public Affairs and the Everett McKinley Dirksen Congressional Leadership Research Center Assistance Act’."

TRANSFER OF FUNCTIONS

“Secretary” substituted in text for “Commissioner” pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.
§ 2567. Everett McKinley Dirksen Congressional Leadership Research Center; grants for development

In recognition of the public service of Senator Everett McKinley Dirksen, the Secretary is authorized to make grants in accordance with the provisions of sections 2566 to 2569 of this title to assist in the development of the Everett McKinley Dirksen Congressional Leadership Research Center, located in Pekin, Illinois.


**Effective Date**

Section effective Oct. 1, 1978, see section 4(d) of Pub. L. 95–270, set out as a note under section 2566 of this title.

**TRANSFER OF FUNCTIONS**

"Secretary", meaning the Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

§ 2568. Payments to Humphrey Institute and Dirksen Center; procedures applicable

No payment may be made under sections 2566 to 2568 of this title except upon an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require.


**Effective Date**

Section effective Oct. 1, 1978, see section 4(d) of Pub. L. 95–270, set out as a note under section 2566 of this title.

**TRANSFER OF FUNCTIONS**

"Secretary", meaning Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

§ 2569. Authorization of appropriations for Humphrey Institute and Dirksen Center

(a) **Maximum amount for Institute**

There are authorized to be appropriated such sums, not to exceed $5,000,000, as may be necessary to carry out the provisions of section 2566 of this title.

(b) **Maximum amount for Center**

There are authorized to be appropriated such sums, not to exceed $2,500,000, as may be necessary to carry out the provisions of section 2567 of this title.

(c) **Availability of funds**

Funds appropriated pursuant to sections 2566 to 2569 of this title shall remain available until expended.


**Effective Date**

Section effective Oct. 1, 1978, see section 4(d) of Pub. L. 95–270, set out as a note under section 2566 of this title.

**CHAPTER 46—CAREER EDUCATION INCENTIVE**

Sec.

2601 to 2614. Repealed or Omitted.


**Short Title**


§ 2612a. Omitted

**Codification**

implementation of the section and other programs pertaining to development and implementation of career education. The Career Education Incentive Act was repealed by Pub. L. 97–35, and section 413 of Pub. L. 96–48 (20 U.S.C. 3473) authorized the Secretary of Education to consolidate, alter, or discontinue the Office of Career Education or to reallocate any functions vested by statute in the Office. The National Advisory Council for Career Education terminated in 1982.


SUBPART 2—BASIC PROGRAM REQUIREMENTS

§§ 2721 to 2731. Omitted


§§ 2791 to 2796

PART D—PROGRAMS OPERATED BY STATE AGENCIES

SUBPART 1—PROGRAMS FOR MIGRATORY CHILDREN

§ 2781 to 2783. Omitted

Condition


SUBPART 4—GENERAL PROVISIONS FOR STATE OPERATED PROGRAMS

§§ 2811, 2812. Omitted

CODIFICATION


Prior sections 2812 to 2817 were omitted in the general amendment of the Elementary and Secondary Education Act of 1965, Pub. L. 89-10, by Pub. L. 100-297.


PART E—PAYMENTS

§§ 2821 to 2826. Omitted

CODIFICATION


PART F—GENERAL PROVISIONS

SUBPART 1—FEDERAL ADMINISTRATION

§§ 2831 to 2839. Omitted

CODIFICATION


SUBPART 4—STUDIES


SUBPART 6—MISCELLANEOUS PROVISIONS


PART A—STATE AND LOCAL PROGRAMS

SUBPART 1—GENERAL PROVISIONS

§§ 2921, 2922. Omitted

CODIFICATION


SUBPART 2—STATE PROGRAMS

§§ 2931, 2932. Omitted

CODIFICATION


SUBPART 3—LOCAL TARGETED ASSISTANCE PROGRAMS

§§ 2941 to 2943. Omitted

CODIFICATION


SUBPART 4—EFFECTIVE SCHOOLS PROGRAMS

§§ 2951, 2952. Omitted

CODIFICATION


SUBPART 2—REGIONAL MATHEMATICS AND SCIENCE EDUCATION CONSORTIUMS

$§\text{2994 to 2994g. Omitted}$


**SUBPART 3—GENERAL PROVISIONS**

$§\text{2996. Omitted}$

**Section 2996.** Omitted.


**PART B—FOREIGN LANGUAGES ASSISTANCE**

$§\text{3001 to 3006. Omitted}$


SUBCHAPTER III—MAGNET SCHOOLS ASSISTANCE

§§ 3021 to 3032. Omitted

CODIFICATION


Prior sections 3032 to 3034 were repealed by Pub. L. 97-35, title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to projects for economically disadvantaged students.


PART B—GIFTED AND TALENTED CHILDREN

§§ 3061 to 3068, Omitted

Codification


Section 3061, Pub. L. 89-10, title IV, §4101, as added Pub. L. 100-297, title I, §1001, Apr. 28, 1988, 102 Stat. 237, provided that this part could be referred to as the "Jacob K. Javits Gifted and Talented Students Education Act of 1985".


PART C—ALLEN J. ELLENDER FELLOWSHIP PROGRAM

§ 3081. Omitted

CODIFICATION


SUBPART 3—GENERAL PROVISIONS

§§ 3111, 3112. Omitted

CODIFICATION


PART D—IMMIGRANT EDUCATION

§§ 3121 to 3130. Omitted

CODIFICATION


PART E—TERRITORIAL ASSISTANCE

§§ 3141, 3142. Omitted

Codification


PART F—SECRETARY’S FUND FOR INNOVATION IN EDUCATION

§§ 3151 to 3157. Omitted

Codification


A prior section 3151, Pub. L. 89-10, title IV, §4601, as added Pub. L. 100-297, title I, §1001, Apr. 28, 1988, 102 Stat. 247, authorized Secretary to carry out programs and projects to identify and disseminate innovative education approaches.


that programming reflect cultural diversity and needs and experiences of both boys and girls, was renumbered section 472 of the General Education Provisions Act by Pub. L. 103-252, title I, §121(a)(1), May 18, 1994, 108 Stat. 649, transferred to section 1235a of this title, and subsequently repealed.


SUBCHAPTER V—DRUG EDUCATION

§§ 3171 to 3173. Omitted
Page 1031

§§ 3201 to 3203

TITLE 20—EDUCATION

PART A—FINANCIAL ASSISTANCE FOR DRUG
ABUSE EDUCATION AND PREVENTION PROGRAMS
§§ 3181, 3182. Omitted
CODIFICATION
Sections were omitted in the general amendment of
the Elementary and Secondary Education Act of 1965,
Section 3181, Pub. L. 89–10, title V, § 5111, as added
amended Pub. L. 100–690, title III, §§ 3301, 3308(b), Nov.
18, 1988, 102 Stat. 4247, 4251; Pub. L. 101–226, § 2, Dec. 12,
1989, 103 Stat. 1928; Pub. L. 101–647, title XV, §§ 1506(b),
1509(a), Nov. 29, 1990, 104 Stat. 4841, 4842, authorized appropriations.
Section 3182, Pub. L. 89–10, title V, § 5112, as added
4842, related to reservations and State allotments of
funds.

PART B—STATE AND LOCAL PROGRAMS
§§ 3191 to 3197. Omitted
CODIFICATION
Sections were omitted in the general amendment of
the Elementary and Secondary Education Act of 1965,
Section 3191, Pub. L. 89–10, title V, § 5121, as added
amended Pub. L. 100–690, title III, § 3302, Nov. 18, 1988,
1929, related to use of allotments by States.
A prior section 3191, Pub. L. 89–10, title VI, § 601, as
added Pub. L. 95–561, title VI, § 601(a), Nov. 1, 1978, 92
Stat. 2252, set out short title for program of emergency
school aid, prior to repeal by Pub. L. 97–35, title V,
Section 3192, Pub. L. 89–10, title V, § 5122, as added
amended Pub. L. 100–690, title III, § 3303, Nov. 18, 1988,
1929; Pub. L. 101–647, title XV, §§ 1503(a), 1504, Nov. 29,
A prior section 3192, Pub. L. 89–10, title VI, § 602, as
added Pub. L. 95–561, title VI, § 601(a), Nov. 1, 1978, 92
Stat. 2252, provided Congressional findings and declaration of purpose for program of emergency school aid,
Section 3193, Pub. L. 89–10, title V, § 5123, as added
amended Pub. L. 100–690, title III, § 3304, Nov. 18, 1988,
1930, related to State applications.
A prior section 3193, Pub. L. 89–10, title VI, § 603, as
added Pub. L. 95–561, title VI, § 601(a), Nov. 1, 1978, 92
Stat. 2252, related to United States policy with respect
to the application of the provisions of the program of
emergency school aid and provisions of other Federal
law, prior to repeal by Pub. L. 97–35, title V, § 587(a)(1),
Section 3194, Pub. L. 89–10, title V, § 5124, as added
amended Pub. L. 100–690, title III, § 3305, Nov. 18, 1988,
1930; Pub. L. 101–647, title XV, § 1509(c), Nov. 29, 1990, 104
Stat. 4842, related to responsibilities of State educational agencies.
A prior section 3194, Pub. L. 89–10, title VI, § 604, as
added Pub. L. 95–561, title VI, § 601(a), Nov. 1, 1978, 92
title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to
authorization of programs and appropriations, prior to

Section 3195, Pub. L. 89–10, title V, § 5125, as added
amended Pub. L. 100–690, title III, § 3306, Nov. 18, 1988,
1931; Pub. L. 101–647, title XV, § 1505, Nov. 29, 1990, 104
Stat. 4839, related to local drug abuse education and
prevention programs.
A prior section 3195, Pub. L. 89–10, title VI, § 605, as
added Pub. L. 95–561, title VI, § 601(a), Nov. 1, 1978, 92
title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to apportionment and reapportionment among States, prior
to repeal by Pub. L. 97–35, title V, § 587(a)(1), Aug. 13,
Section 3196, Pub. L. 89–10, title V, § 5126, as added
Stat. 1932, 1941; Pub. L. 101–647, title XV, §§ 1507,
1509(f)(2), Nov. 29, 1990, 104 Stat. 4841, 4842, related to
local applications.
A prior section 3196, Pub. L. 89–10, title VI, § 606, as
added Pub. L. 95–561, title VI, § 601(a), Nov. 1, 1978, 92
Stat. 2254; amended Pub. L. 96–88, title III, § 301(a)(1),
title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to
eligibility of local educational agencies for assistance,
Section 3197, Pub. L. 89–10, title V, § 5127, as added
amended Pub. L. 100–690, title III, § 3307, Nov. 18, 1988,
1933, related to State and local reports.
Prior sections 3197 to 3200 were repealed by Pub. L.
Section 3197, Pub. L. 89–10, title VI, § 607, as added
2257; amended Pub. L. 96–88, title III, § 301(a)(1), title V,
§ 507, Oct. 17, 1979, 93 Stat. 677, 692, related to authorized
activities under the program of emergency school and
the preferential hiring of teacher aides.
Section 3198, Pub. L. 89–10, title VI, § 608, as added
2258; amended Pub. L. 96–88, title III, § 301(a)(1), title V,
§ 507, Oct. 17, 1979, 93 Stat. 677, 692, related to special
programs and projects.
Section 3199, Pub. L. 89–10, title VI, § 609, as added
2259; amended Pub. L. 96–88, title III, § 301(a)(1), title V,
§ 507, Oct. 17, 1979, 93 Stat. 677, 692, related to grants for
metropolitan area projects.
Section 3200, Pub. L. 89–10, title VI, § 610, as added
17, 1979, 93 Stat. 677, 692, related to the submission,
form, contents, approval, etc. of applications for assistance.

PART C—TRAINING OF TEACHERS, COUNSELORS,
AND SCHOOL PERSONNEL
§§ 3201 to 3203. Omitted
CODIFICATION
Sections were omitted in the general amendment of
the Elementary and Secondary Education Act of 1965,
Section 3201, Pub. L. 89–10, title V, § 5128, as added
Pub. L. 100–690, title III, § 3308(a)(2), Nov. 18, 1988, 102
103 Stat. 1934; Pub. L. 101–647, title XV, § 1506(a), Nov. 29,
A prior section 3201, Pub. L. 89–10, title VI, § 611, as
added Pub. L. 95–561, title VI, § 601(a), Nov. 1, 1978, 92




**PART E—GENERAL PROVISIONS**

**§§ 3221 to 3224b. Omitted**

Codification


**§ 3225. Transferred**

Codification

Section, Pub. L. 99–570, title IV, §4302, Oct. 27, 1986, 100 Stat. 2307–153, which established National Trust for Drug-Free Youth, was transferred to section 7105 of this title, and subsequently omitted from the Code.
PART F—DEVELOPMENT OF EARLY CHILDHOOD EDUCATION DRUG ABUSE PREVENTION MATERIALS

§ 3227. Omitted

CODIFICATION

PART G—MISCELLANEOUS PROVISIONS

§§ 3231 to 3233. Omitted

CODIFICATION

SUBCHAPTER VI—PROJECTS AND PROGRAMS DESIGNED TO ADDRESS SCHOOL DROPOUT PROBLEMS AND TO STRENGTHEN BASIC SKILLS INSTRUCTION

PART A—ASSISTANCE TO ADDRESS SCHOOL DROPOUT PROBLEMS

§§ 3241 to 3248. Omitted

CODIFICATION


PART A—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

§§ 3291 to 3292. Omitted

CODIFICATION

set out the short title and the declaration of findings and purpose for program for gifted and talented children.


PART C—TRAINING AND TECHNICAL ASSISTANCE §§ 3321 to 3325. Omitted

Codification


PART D—ADMINISTRATION §§ 3331, 3332. Omitted

Codification


PART E—TRANSITION

§ 3341. Omitted

CODIFICATION


SUBCHAPTER IX—GENERAL PROVISIONS

§§ 3381 to 3384. Omitted

CODIFICATION


§ 3386. Omitted

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SUBCHAPTER I—GENERAL PROVISIONS

§ 3401. Congressional findings

The Congress finds that—

1. education is fundamental to the development of individual citizens and the progress of the Nation;

2. there is a continuing need to ensure equal access for all Americans to educational opportunities of a high quality, and such educational opportunities should not be denied because of race, creed, color, national origin, or sex;

3. parents have the primary responsibility for the education of their children, and States, localities, and private institutions have the primary responsibility for supporting that parental role;

4. in our Federal system, the primary public responsibility for education is reserved respectively to the States and the local school systems and other instrumentalities of the States;

5. the American people benefit from a diversity of educational settings, including public and private schools, libraries, museums and other institutions, the workplace, the community, and the home;

6. the importance of education is increasing as new technologies and alternative approaches to traditional education are considered, as society becomes more complex, and as equal opportunities in education and employment are promoted;

7. there is a need for improvement in the management and coordination of Federal education programs to support more effectively State, local, and private institutions, students, and parents in carrying out their educational responsibilities;

8. the dispersion of education programs across a large number of Federal agencies has led to fragmented, duplicative, and often inconsistent Federal policies relating to education;

9. Presidential and public consideration of issues relating to Federal education programs is hindered by the present organizational position of education programs in the executive branch of the Government; and

10. there is no single, full-time, Federal education official directly accountable to the President, the Congress, and the people.


EFFECTIVE DATE

Section 601 of Pub. L. 96–88 provided that:

"(a) The provisions of this Act [see Short Title note below] shall take effect one hundred and eighty days after the first Secretary takes office, or on any earlier date on or after October 1, 1979, as the President may prescribe and publish in the Federal Register [prescribed as May 4, 1980, by Ex. Ord. No. 12212, formerly set out below], except that at any time on or after October 1, 1979—

"(1) any of the officers provided for in title II of this Act [subchapter II of this chapter] may be nominated and appointed, as provided in such title; and

"(2) the Secretary may promulgate regulations pursuant to section 505(b)(2) of this Act [section 3505(b)(2) of this title].

"(b) Funds available to any department or agency (or any official or component thereof), the functions or offices of which are transferred to the Secretary or the Department by this Act [see Short Title note below], may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this title [this section and section 602 of Pub. L. 96–88 set out below] and other transitional and planning expenses associated with the establishment of the Department or transfer of functions or offices thereto until such time as funds for such purposes are otherwise available."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–392, title VI, §601, Sept. 25, 1990, 104 Stat. 840, provided that: "This title [enacting section 3423 of this title, amending section 3422 of this title, repealing sections 1131 and 3423 of this title, and enacting provisions set out as a note under section 3493 of this title] may be cited as the 'Office of Correctional Education Act of 1990'.''

SHORT TITLE

Section 1 of Pub. L. 96–88 provided that: "This Act [enacting this chapter, amending sections 928, 929, 1102, 2390, 2711, and 3012 of this title, section 19 of Title 3, The President, sections 101, 5312, and 5314 to 5316 of Title 5, Government Organization and Employees, sections 515, and 11 of the Inspector General Act of 1978, set out in the Appendix to Title 5, section 1004 of Title 21, Food
and Drugs, and sections 761b, 794c, 821, 829, 873, 879, 882, 914, and 952 of Title 29, Labor, and enacting provisions set out as notes under this section and section 1102 of this title) may be cited as the ‘Department of Education Organization Act’.

**INTERIM APPOINTMENTS**

Section 602 of Pub. L. 96–88 provided that:

“(a) In the event that one or more officers required by this Act [see Short Title note above] to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act [May 4, 1980] and notwithstanding any other provisions of law, the President may designate an officer in the executive branch to act in such office for one hundred and twenty days or until the office is filled as provided in this Act, whichever occurs first.

“(b) Any officer acting in an office in the Department pursuant to the provisions of subsection (a) shall receive compensation at the rate prescribed for such office under this Act.”

**EXECUTIVE ORDER NO. 12212**


**§ 3402. Congressional declaration of purpose**

The Congress declares that the establishment of a Department of Education is in the public interest, will promote the general welfare of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal Government to coordinate its education activities more effectively. Therefore, the purposes of this chapter are—

(1) to strengthen the Federal commitment to ensuring access to equal educational opportunity for every individual;

(2) to supplement and complement the efforts of States, the local school systems and other instrumentalities of the States, the private sector, public and private educational institutions, public and private nonprofit educational research institutions, community-based organizations, parents, and students to improve the quality of education;

(3) to encourage the increased involvement of the public, parents, and students in Federal education programs;

(4) to promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information;

(5) to improve the coordination of Federal education programs;

(6) to improve the management and efficiency of Federal education activities, especially with respect to the process, procedures, and administrative structures for the dispersal of Federal funds, as well as the reduction of unnecessary and duplicative burdens and constraints, including unnecessary paperwork, on the recipients of Federal funds; and

(7) to increase the accountability of Federal education programs to the President, the Congress, and the public.


**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original ‘‘this Act’’, meaning Pub. L. 96–88, Oct. 17, 1979, 93 Stat. 668, known as the Department of Education Organization Act, which enacted this chapter, amended sections 928, 929, 1102, 2380, 2711, and 3012 of this title, section 19 of Title 3, The President, sections 101, 3011, and 5316 of Title 5, Government Organization and Employees, sections 2, 9, and 11 of the Inspector General Act of 1978, set out in the Appendix to Title 5, section 1004 of Title 21, Food and Drugs, and sections 761b, 794c, 821, 829, 873, 879, 882, 914, and 952 of Title 29, Labor, and enacting provisions set out as notes under sections 1102 and 3401 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

**§ 3403. Relationship with States**

(a) Rights of local governments and educational institutions

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve the control of such governments and institutions over their own educational programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

(b) Curriculum, administration, and personnel; library resources

No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

(c) Funding under pre-existing programs

The Secretary shall not, during the period within eight months after May 4, 1980, take any action to withhold, suspend, or terminate funds under any program transferred by this chapter by reason of the failure of any State to comply with any applicable law requiring the administration of such a program through a single organizational unit.


**CONSIDERATION**

In subsec. (c), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of this title.

**§ 3404. Definitions**

As used in this chapter, unless otherwise provided or indicated by the context—

(1) the term “Department” means the Department of Education or any component thereof;
§ 3411

TERMINEATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER II—ESTABLISHMENT OF THE DEPARTMENT

§ 3411. Establishment of Department; appointment of Secretary

There is established an executive department to be known as the Department of Education. The Department shall be administered, in accordance with the provisions of this chapter, under the supervision and direction of a Secretary of Education. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate.


EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Education, see Parts 1, 2, and 6 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out under section 518 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER No. 12729

Ex. Ord. No. 12729, Sept. 24, 1990, 55 F.R. 39388, which established the President's Advisory Commission on Educational Excellence for Hispanic Americans, directed Secretary of Education to establish the White House Initiative on Educational Excellence for Hispanic Americans, set forth reporting requirements, and required active involvement of executive departments and agencies, was revoked by Ex. Ord. No. 12800, § 10, Feb. 22, 1994, 59 F.R. 9061, formerly set out below.

EXECUTIVE ORDER No. 12900

Ex. Ord. No. 12900, Feb. 22, 1994, 59 F.R. 9061, which established in the Department of Education the President's Advisory Commission on Educational Excellence for Hispanic Americans and the White House Initiative on Educational Excellence for Hispanic Americans and directed the Secretary of Education to submit to the President an Annual Federal Plan to Promote Hispanic American Educational Excellence and the Director of the Office of Personnel Management to develop a program to promote recruitment of Hispanic students for positions in the Federal Government, was revoked by Ex. Ord. No. 13230, § 9, Oct. 12, 2001, 66 F.R. 52843, formerly set out below.

EXECUTIVE ORDER No. 13230

Ex. Ord. No. 13230, Oct. 12, 2001, 66 F.R. 52841, which established in the Department of Education the President's Advisory Commission on Educational Excellence for Hispanic Americans and the White House Initiative on Educational Excellence for Hispanic Americans, set forth reporting requirements, and required cooperation by executive departments and agencies, was revoked by Ex. Ord. No. 13555, § 4(a), Oct. 19, 2010, 75 F.R. 65420, set out below.

EX. ORD. No. 13555, WHITE HOUSE INITIATIVE ON EDUCATIONAL EXCELLENCE FOR HISPANICS

Ex. Ord. No. 13555, Oct. 19, 2010, 75 F.R. 65417, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, to restore the country to its role as the global leader in education, to strengthen the Nation by expanding educational opportunities and improving edu-
cational outcomes for Hispanics and Latinos (Hispanics) of all ages, and to help ensure that all Hispanics receive an education that properly prepares them for college, productive careers, and satisfying lives, it is hereby ordered as follows:

SECTION 1. Policy. At more than 52 million strong, including 4 million in Puerto Rico, Hispanics constitute the country’s largest and fastest growing minority group. They have had a profound and positive impact on our country through, among other things, their community’s strong commitment to family, faith, hard work, and service. Many Hispanics contribute to this Nation bilingually in the English and Spanish languages—a true asset for our country in an increasingly global, interdependent world.

Hispanic students are the largest minority group in our Nation’s schools, numbering more than 11 million in our public elementary and secondary school system, and constituting more than 25 percent of all pre-K-12 students. Hispanic students face educational challenges of crisis proportions. Fewer than half of all Hispanic children participate in early childhood education programs, and far too few Hispanic students graduate from high school; of those who do complete high school, many are not adequately prepared for college. Only 12 percent of adult Hispanics have a bachelor’s degree, and just 3 percent have completed graduate or professional degree programs. At the same time, large numbers of Hispanic adults lack the education or literacy skills they need to advance their careers; they also are less likely than members of other groups to have taken job- or career-related courses, with the exception of basic education classes, such as English as a second language. Our country was built on and continues to thrive on national diversity, and there is no doubt that the future of this country is inextricably linked to the future of the Hispanic community. To reach the ambitious educational outcomes for Hispanics and Latinos (Hispanics) of all ages, and to help ensure that all Hispanics receive an education that properly prepares them for college, a career, and productive and satisfying lives, it is hereby ordered as follows:

1. There is established the Federal Interagency Working Group on Educational Excellence for Hispanics (Working Group), which shall be convened and expanded as necessary to meet the needs of Hispanic students.
2. The Working Group shall consist of senior officials from the Department, the White House Domestic Policy Council, the Department of Labor, and the Department of Health and Human Services, as well as such additional departments, agencies, and offices as the President may designate. Senior officials shall be designated by the heads of their respective departments, agencies, and offices.
3. The Initiative’s Executive Director may establish subgroups of the Working Group to focus on different aspects of the educational system or educational challenges facing Hispanics, such as early childhood education, K-12 [sic] education, higher education, career and technical education, language acquisition, and adult education.
4. The Initiative shall, consistent with law, promote, encourage, and undertake efforts designed to meet the following objectives:
   (i) increasing general understanding of the causes of the educational challenges faced by Hispanic students;
   (ii) increasing the percentage of Hispanic children who enter kindergarten ready for success by improving access to Hispanics to high-quality programs and services that encourage early learning and development of children from birth through age 5;
   (iii) implementing successful and innovative education reform strategies and practices in America’s public schools to ensure that Hispanic students, like their peers, receive a rigorous and well-rounded education, and have access to student support services that will prepare them for college, a career, and civic participation;
   (iv) ensuring that all Hispanic students have access to excellent teachers and school leaders, in part by supporting efforts to improve the recruitment, preparation, development, and retention of successful Hispanic teachers and school leaders and other effective teachers and school leaders responsible for the education of Hispanic students;
   (v) reducing the dropout rate of Hispanic students and helping Hispanic students graduate from high school prepared for college and a career, in part by promoting a positive school climate and supporting successful and innovative dropout prevention and recovery strategies that better engage Hispanic youths in their learning, help them catch up academically, and provide those who have left the educational system with pathways to reentry;
   (vi) increasing college access and success for Hispanic students and providing support to help ensure that a greater percentage of Hispanics complete college and contribute to the goal of having America again lead the world in the proportion of college graduates by 2020, in part through strategies to strengthen the capacity of Hispanic-Serving Institutions, community colleges, and other institutions of higher education serving large numbers of Hispanic students; and
   (vii) enhancing the educational and life opportunities of Hispanics by fostering positive family and community engagement, improving the quality of, and expanding access to, adult education, literacy, career and technical education, as well as increasing opportunities for education and career advancement in the fields of science, technology, engineering, and mathematics.
5. The Initiative’s Executive Director may establish such working groups and subgroups of the Working Group as are necessary to carry out the objectives of this order.
6. The Initiative shall be supported by such additional Federal funds as are necessary to implement the provisions of this order.
7. The Initiative shall be reviewed by the Working Group at least annually and, at least once every five years, the President shall submit a report to Congress on the activities of the Initiative.
ment's programs and education-related programs at other executive departments and agencies;
(iv) advise Department officials and, through the Working Group, other agency officials on issues relat-
related to the Hispanic community and the educational attainment of Hispanic students;
(v) advise the Secretary on the development, imple-
mentation, and coordination of educational programs
and initiatives at the Department and other agencies
designed to improve educational opportunities and
outcomes for Hispanics of all ages;
(vi) encourage and develop partnerships with pub-
lic, private, philanthropic, and nonprofit stakehold-
ers to improve Hispanics' readiness for school, col-
lege, and career, as well as their college persistence
and completion; and
(vii) develop a national network of individuals, or-
ganizations, and communities to share and imple-
ment best practices related to the education of His-
panics.
(3) The Initiative shall periodically publish reports on
its activities. The Secretary and the Executive Direc-
tor of the Initiative, in consultation with the Inter-
agency Working Group and the Chair of the Commis-
sion established under section 3 of this order, may de-
velop and submit to the President recommendations
designed to advance and promote educational opportu-
nities and attainment for Hispanics, including recom-
mandations for short- and long-term initiatives.
(e) Collaboration Among White House Initiatives. The
White House Initiatives on Educational Excellence for
Hispanics, Historically Black Colleges and Universities,
Tribal Colleges and Universities, and Asian-American
and Pacific Islanders shall work together whenever ap-
propriate in light of their shared objectives.
SEC. 3. President's Advisory Commission on Educa-
tional Excellence for Hispanics. There is established the Presi-
dent's Advisory Commission on Educational Excellence for
Hispanics (Commission) in the Department.
(a) Commission Mission and Scope. The Commission
shall advise the President and the Secretary on mat-
ters pertaining to the educational attainment of the
Hispanic community, including:
(1) developing, implementing, and coordinating edu-
cational programs and initiatives at the Department
and other agencies to improve educational opportuni-
ties and outcomes for Hispanics of all ages;
(2) increasing the participation of the Hispanic com-

munity and Hispanic-Serving Institutions in the De-
partment's programs and in education programs at
other agencies;
(3) engaging the philanthropic, business, nonprofit,
and education communities in a national dialogue re-
garding the mission and objectives of this order; and
(4) establishing partnerships with public, private,
philanthropic, and nonprofit stakeholders to meet
the mission and policy objectives of this order.
The Commission shall meet periodically, but at least
twice a year, and may work through task forces com-
posed exclusively of Commission members, as appro-
priate.
(b) Commission Membership and Chair.
(1) The Commission shall consist of no more than 30
members appointed by the President. The Commission
may include individuals with relevant experience or sub-
ject matter expertise that the President deems ap-
propriate, as well as individuals who may serve as rep-
resentatives of a variety of sectors, including the edu-
cation sector (early childhood education, elementary
and secondary education, higher education, career and
technical education, and adult education), labor or-
ganizations, research institutions, corporate and finan-
cial institutions, public and private philanthropic orga-
nizations, and nonprofit and community-based organi-
zations at the national, State, regional, or local levels.
(2) The President shall designate one of the members
to serve as Chair of the Commission, who shall work
with the Initiative's Executive Director to convene regu-
lar meetings of the Commission, determine its agen-
da, and direct its work, consistent with this order.
(c) Commission Administration. The Executive Director
of the Initiative shall also serve as the Executive Di-
rector of the Commission and administer the work of
the Commission. The Initiative Department shall provide funding
and administrative support for the Commission, to the
extent permitted by law. Members of the Commission
shall serve without compensation but shall be allowed
travel expenses, including per diem in lieu of board-
ex pense, as authorized by law for persons serving inter-

Insofar as the Federal Advisory Committee Act, as
amended (5 U.S.C. App.) (Act), may apply to the admin-
istration of the Commission, any functions of the
President under the Act, except that of reporting to the
Congress, shall be performed by the Secretary, in ac-


ce with the guidelines issued by the Admin-
istrator of General Services.
(a) This order supersedes Executive Order 12330 of Oc-
(b) This order is not intended to, and does not, create
any right or benefit, substantive or procedural, enforce-
able at law or in equity by any party against the United States, its departments, agencies, or entities,
its officers, employees, or agents, or any other person.
BARACK OBAMA.
EXTENSION OF TERM OF PRESIDENT’S ADVISORY COMMISSION ON EDUCATIONAL EXCELLENCE FOR HISPANIC AMERICANS

Term of President's Advisory Commission on Educa-
tional Excellence for Hispanic Americans extended
until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1996,
60 F.R. 51755, formerly set out as a note under section
14 of the Federal Advisory Committee Act in the Ap-
pendix to Title 5, Government Organization and Em-
ployees.

Term of President’s Advisory Commission on Educa-
tional Excellence for Hispanic Americans extended
until Sept. 30, 1999, by Ex. Ord. No. 13062, § 1(d), Sept. 29,
1997, 62 F.R. 51755, formerly set out as a note under sec-
ction 14 of the Federal Advisory Committee Act in the
Appendix to Title 5.

Term of President’s Advisory Commission on Educa-
tional Excellence for Hispanic Americans extended
until Sept. 30, 1999, by Ex. Ord. No. 13062, § 1(d), Sept. 29,
1997, 62 F.R. 51755, formerly set out as a note under section
14 of the Federal Advisory Committee Act in the
Appendix to Title 5.

§3412. Principal officers

(a) Deputy Secretary of Education

(1) There shall be in the Department a Deputy
Secretary of Education who shall be appointed
by the President, by and with the advice and
consent of the Senate. During the absence or
disability of the Secretary, or in the event of a
vacancy in the office of the Secretary, the De-
puty Secretary shall act as Secretary. The Sec-
dary shall designate the order in which other
officials of the Department shall act for and per-
form the functions of the Secretary during the
absence or disability of both the Secretary and
Deputy Secretary or in the event of vacancies in
both of those offices.

(2)(A) The Deputy Secretary shall have respon-
sibility for the conduct of intergovernmental rela-
tions of the Department, including assuring (i)
that the Department carries out its functions in
a manner which supplements and complements
the education policies, programs, and procedures of the States and the local school systems and other instrumentalities of the States, and (ii) that appropriate officials of the Department consult with individuals responsible for making policy relating to education in the States and the local school systems and other instrumentalities of the States concerning differences over education policies, programs, and procedures and concerning the impact of the rules and regulations of the Department on the States and the local school systems and other instrumentalities of the States.

(b) Local education authorities may inform the Deputy Secretary of any rules or regulations of the Department which are in conflict with another rule or regulation issued by any other Federal department or agency or with any other office of the Department. If the Deputy Secretary determines, after consultation with the appropriate Federal department or agency, that such a conflict does exist, the Deputy Secretary shall report such conflict or conflicts to the appropriate Federal department or agency together with recommendations for the correction of the conflict.

(b) Assistant Secretaries and General Counsel

(1) There shall be in the Department—
   (A) an Assistant Secretary for Elementary and Secondary Education;
   (B) an Assistant Secretary for Postsecondary Education;
   (C) an Assistant Secretary for Vocational and Adult Education;
   (D) an Assistant Secretary for Special Education and Rehabilitative Services;
   (E) an Assistant Secretary for Civil Rights; and
   (F) a General Counsel.

(2) Each of the Assistant Secretaries and the General Counsel shall be appointed by the President, by and with the advice and consent of the Senate.

(3) There shall be in the Department, a Special Assistant for Gender Equity who shall be appointed by the Secretary. The Special Assistant shall advise the Secretary and Deputy Secretary on all matters relating to gender equity.

(4) There shall be in the Department a Director of the Institute of Education Sciences who shall be appointed in accordance with section 114(a) of the Education Sciences Reform Act of 2002 [20 U.S.C. 9511(a)] and perform the duties described in that Act [20 U.S.C. 9501 et seq.].

(c) Inspector General

There shall be in the Department an Inspector General appointed in accordance with the Inspector General Act of 1978.

(d) Under Secretary of Education

There may be in the Department an Under Secretary of Education who shall perform such functions as the Secretary may prescribe. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(e) Additional officers

There shall be in the Department four additional officers who shall be appointed by the President, by and with the advice and consent of the Senate. The officers appointed under this subsection shall perform such functions as the Secretary shall prescribe, including—

(1) congressional relations functions;
(2) public information functions, including the provision, through the use of the latest technologies, of useful information about education and related opportunities to students, parents, and communities;
(3) functions related to monitoring parental and public participation in programs where such participation is required by law, and encouraging the involvement of parents, students, and the public in the development and implementation of departmental programs;
(4) management and budget functions;
(5) planning, evaluation, and policy development functions, including development of policies to promote the efficient and coordinated administration of the Department and its programs and to encourage improvements in education; and
(6) functions related to encouraging and promoting the study of foreign languages and the study of cultures of other countries at the elementary, secondary, and postsecondary levels.

(f) Statements of functions of nominees

Whenever the President submits the name of an individual to the Senate for confirmation as an officer of the Department under this section, the President shall state the particular functions of the Department such individual will exercise upon taking office.

(g) Supervision by Secretary

Each officer of the Department established under this section shall report directly to the Secretary and shall, in addition to any functions vested in or required to be delegated to such officer, perform such additional functions as the Secretary may prescribe.

(h) Coordination of literacy related functions by Assistant Secretary for Vocational and Adult Education

The Assistant Secretary for Vocational and Adult Education, in addition to performing such functions as the Secretary may prescribe, shall have responsibility for coordination of all literacy related programs and policy initiatives in the Department. The Assistant Secretary for Vocational and Adult Education shall assist in coordinating the related activities and programs of other Federal departments and agencies.

(i) Liaison for Community and Junior Colleges

(1) There shall be in the Department a Liaison for Community and Junior Colleges, who shall be an officer of the Department appointed by the Secretary.

(2) The Secretary shall appoint, not later than 6 months after July 23, 1992, as the Liaison for Community and Junior Colleges a person who—
   (A) has attained an associate degree from a community or junior college; or
   (B) has been employed in a community or junior college setting for not less than 5 years.
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(3) The Liaison for Community and Junior Colleges shall—
(A) serve as principal advisor to the Secretary on matters affecting community and junior colleges;
(B) provide guidance to programs within the Department dealing with functions affecting community and junior colleges; and
(C) work with the Federal Interagency Committee on Education to improve coordination of—
(i) the outreach programs in the numerous Federal departments and agencies that administer education and job training programs;
(ii) collaborative business education partnerships; and
(iii) education programs located in, and regarding, rural areas.

(2002—Subsec. (b)(4). Pub. L. 102–325 added par. (4) and struck out former par. (4) which read as follows: “There shall be in the Department an Assistant Secretary for Educational Research and Improvement who shall be—
(A) appointed by the President, by and with the consent of the Senate; and
(B) selected (giving due consideration to recommendations from the National Educational Research Policy and Priorities Board) from among individuals who—
(i) are distinguished educational researchers or practitioners;
(ii) have proven management ability; and
(iii) have substantial knowledge of education within the United States.”


1994—Subsec. (b)(1)(E) to (G). Pub. L. 103–227, §913(1), redesignated subpars. (F) and (G) as (E) and (F), respectively, and struck out former subpar. (E) which read as follows: “an Assistant Secretary for Educational Research and Improvement;”.

Subsec. (b)(3). Pub. L. 103–382 added par. (3) relating to Special Assistant for Gender Equity.

1991—Subsecs. (d), (e), Pub. L. 102–103 added subsec. (d) and redesignated former subsec. (d) as (e).


1989—Subsec. (a). Pub. L. 101–509 substituted “a Deputy Secretary for “an Under Secretary” in first sentence of par. (1) and “Deputy Secretary” for “Under Secretary” wherever appearing elsewhere in pars. (1) and (2).


Effective Date of 2002 Amendment
Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6321 of this title.

Effective Date of 1992 Amendment

Effective Date of 1991 Amendment
Section 203 of title II of Pub. L. 102–103 provided that: “(a) in General.—This Act [probably should be “this title”]...”

Reference to in subsec. (c), is Pub. L. 95–485, Oct. 27, 1978, 92 Stat. 1091, which is classified generally to subchapter I (§601 et seq.) of chapter 76 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9501 of this title and Tables.


AMENDMENTS
2002—Subsec. (b)(4). Pub. L. 107–279 added par. (4) and struck out former par. (4) which read as follows: “There shall be in the Department an Assistant Secretary for Educational Research and Improvement who shall be—
A) appointed by the President, by and with the consent of the Senate; and
B) selected (giving due consideration to recommendations from the National Educational Research Policy and Priorities Board) from among individuals who—
1) are distinguished educational researchers or practitioners;
2) have proven management ability; and
3) have substantial knowledge of education within the United States.”


1994—Subsec. (b)(1)(E) to (G). Pub. L. 103–227, §913(1), redesignated subpars. (F) and (G) as (E) and (F), respectively, and struck out former subpar. (E) which read as follows: “an Assistant Secretary for Educational Research and Improvement;”.

Subsec. (b)(3). Pub. L. 103–382 added par. (3) relating to Special Assistant for Gender Equity.

1991—Subsecs. (d), (e), Pub. L. 102–103 added subsec. (d) and redesignated former subsec. (d) as (e).


1989—Subsec. (a). Pub. L. 101–509 substituted “a Deputy Secretary for “an Under Secretary” in first sentence of par. (1) and “Deputy Secretary” for “Under Secretary” wherever appearing elsewhere in pars. (1) and (2).


§ 3413. Office for Civil Rights

(a) Establishment; administration; delegation of functions

There shall be in the Department an Office for Civil Rights, to be administered by the Assistant Secretary for Civil Rights appointed under section 3412(b) of this title. Notwithstanding the provisions of section 3472 of this title, the Secretary shall delegate to the Assistant Secretary for Civil Rights all functions, other than administrative and support functions, transferred to the Secretary under section 3441(a)(3) of this title.

(b) Compliance and enforcement reports; copies submitted to Secretary

(1) The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action and as to which, in the
judgment of the Assistant Secretary, adequate progress is not being made.

(2) Notwithstanding any other provision of law, the report required by paragraph (1) shall be transmitted to the Secretary, the President, and the Congress by the Assistant Secretary for Civil Rights without further clearance or approval. The Assistant Secretary shall provide copies of the report required by paragraph (1) to the Secretary sufficiently in advance of its submission to the President and the Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the report.

(c) Authority of Assistant Secretary

In addition to the authority otherwise provided under this section, the Assistant Secretary for Civil Rights, in carrying out the provisions of this section, is authorized—

(1) to collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights;

(2) to select, appoint, and employ such officers and employees, including staff attorneys, as may be necessary to carry out the functions of such Office, subject to the provisions of title 5 governing appointments in the competitive service and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(3) to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private organizations and persons, and to make such payments as may be necessary to carry out the compliance and enforcement functions of such Office; and

(4) notwithstanding any other provision of this chapter, to obtain services as authorized by section 3109 of title 5 at a rate not to exceed the equivalent daily rate payable for grade GS–18 of the General Schedule under section 5332 of such title.


Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (b)(1) of this section relating to making an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 3115 of Title 31, Money and Finance, and page 82 of House Document No. 103–7.

References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3414. Office of Elementary and Secondary Education; inclusion of Office of Migrant Education

There shall be in the Department an Office of Elementary and Secondary Education, to be administered by the Assistant Secretary for Elementary and Secondary Education appointed under section 3412(b) of this title. The Assistant Secretary shall administer such functions affecting elementary and secondary education, both public and private, as the Secretary shall delegate. There shall be within the Office of Elementary and Secondary Education and directly under the supervision of the Assistant Secretary for Elementary and Secondary Education, an Office of Migrant Education, which shall be responsible for the administration of programs established by part C of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6391 et seq.] and by subpart 5 of part A of title IV of the Higher Education Act of 1965 [20 U.S.C. 1070d–2].


References in Text


AMENDMENTS

1994—Pub. L. 103–382 substituted “part C” for “subpart 1 of part B”.

Effective Date of 1994 Amendment


§ 3415. Office of Postsecondary Education

(a) There shall be in the Department an Office of Postsecondary Education, to be administered by the Assistant Secretary for Postsecondary Education appointed under section 3412(b) of this title. The Assistant Secretary shall administer such functions affecting postsecondary education, both public and private, as the Secretary shall delegate, and shall serve as the principal adviser to the Secretary on matters affecting postsecondary education.

(b) The Assistant Secretary for Postsecondary Education shall appoint a Deputy Assistant Secretary for International and Foreign Language Education to perform such functions affecting postsecondary, international, and foreign language education as the Secretary may prescribe. The Deputy Assistant Secretary for International and Foreign Language Education shall—

(1) be an individual with extensive background and experience in international and foreign language education;

(2) have responsibility for encouraging and promoting the study of foreign languages and
the study of the cultures of other countries at the elementary, secondary, and postsecondary levels in the United States; and
(3) coordinate with related international and foreign language education programs of other Federal agencies.


AMENDMENTS

2008—Pub. L. 110–315 amended section generally. Prior to amendment, text read as follows: “There shall be in the Department an Office of Postsecondary Education, to be administered by the Assistant Secretary for Postsecondary Education appointed under section 3412(b) of this title. The Assistant Secretary shall administer such functions affecting postsecondary education, both public and private, as the Secretary shall delegate, and shall serve as the principal adviser to the Secretary on matters affecting public and private postsecondary education.”

§ 3416. Office of Vocational and Adult Education

There shall be in the Department an Office of Vocational and Adult Education, to be administered by the Assistant Secretary for Vocational and Adult Education appointed under section 3412(b) of this title. The Assistant Secretary shall administer such functions affecting vocational and adult education as the Secretary shall delegate, and shall serve as principal adviser to the Secretary on matters affecting vocational and adult education. The Secretary, through the Assistant Secretary, shall also provide a unified approach to rural education and rural family education through the coordination of programs within the Department and shall work with the Federal Interagency Committee on Education to coordinate related activities and programs of other Federal departments and agencies.


§ 3417. Office of Special Education and Rehabilitative Services

There shall be in the Department an Office of Special Education and Rehabilitative Services, to be administered by the Assistant Secretary for Special Education and Rehabilitative Services appointed under section 3412(b) of this title. Notwithstanding the provisions of section 3472 of this title, the Secretary shall delegate to the Assistant Secretary all functions, other than administrative and support functions, transferred to the Secretary under sections 3441(a)(1) of this title (with respect to the bureau for the education and training of the handicapped), 3441(a)(2)(H) of this title, and 3441(a)(4) of this title.


§ 3419. Institute of Education Sciences

There shall be in the Department of Education the Institute of Education Sciences, which shall be administered in accordance with the Education Sciences Reform Act of 2002 [20 U.S.C. 9501 et seq.] by the Director appointed under section 114(a) of that Act [20 U.S.C. 9514(a)].


REFERENCES IN TEXT


PRIOR PROVISIONS


A prior section 208 of Pub. L. 96–88 was classified to section 3418 of this title prior to repeal by Pub. L. 99–145.

§ 3420. Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students

There shall be in the Department an Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, to be administered by a Director of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, who shall be appointed by the Secretary. The Director shall coordinate the administration of bilingual education programs by the Department and shall consult with the Secretary concerning policy decisions affecting bilingual education and minority languages affairs. The Director shall report directly to the Secretary, and shall perform such additional functions as the Secretary may prescribe.


PRIOR PROVISIONS

A prior section 209 of Pub. L. 96–88 was renumbered section 208 and was classified to section 3419 of this title, prior to repeal by Pub. L. 107–279.

AMENDMENTS

2002—Pub. L. 107–110, §1072(d), substituted “Director of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students” for “Director of Bilingual Education and Minority Languages Affairs”.

(Pub. L. 107–110, §1072(b), (c)(2)(A), substituted “Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students” for “Office of Bilingual Education
and Minority Languages Affairs'' in section catchline and in text.

**Effective Date of 2002 Amendment**
Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

§ 3421. Office of General Counsel

There shall be in the Department an Office of General Counsel, to be administered by the General Counsel appointed under section 3412(b) of this title. The General Counsel shall provide legal assistance to the Secretary concerning the programs and policies of the Department.


**Prior Provisions**

A prior section 210 of Pub. L. 96–88 was renumbered section 209 and is classified to section 3420 of this title.

§ 3422. Office of Inspector General

There shall be in the Department an Office of Inspector General, established in accordance with the Inspector General Act of 1978.


**References in Text**


**Prior Provisions**

A prior section 211 of Pub. L. 96–88 was renumbered section 210 and is classified to section 3421 of this title.


**Effective Date of Repeal**

Repeal effective July 1, 1991, see section 702(a) of Pub. L. 101–392, set out as an Effective Date note under section 3423a of this title.

§ 3423a. Office of Correctional Education

(a) Findings

The Congress finds and declares that—

(1) education is important to, and makes a significant contribution to, the readjustment of incarcerated individuals to society; and

(2) there is a growing need for immediate action by the Federal Government to assist State and local educational programs for criminal offenders in correctional institutions.

(b) Statement of purpose

It is the purpose of this subchapter to encourage and support educational programs for criminal offenders in correctional institutions.

(c) Establishment of Office

The Secretary of Education shall establish within the Department of Education an Office of Correctional Education.

(d) Functions of Office

The Secretary, through the Office of Correctional Education established under subsection (c) of this section, shall—

(1) coordinate all correctional education programs within the Department of Education;

(2) provide technical support to State and local educational agencies and schools funded by the Bureau of Indian Affairs on correctional education programs and curricula;

(3) provide an annual report to the Congress on the progress of the Office of Correctional Education and the status of correctional education in the United States;

(4) cooperate with other Federal agencies carrying out correctional education programs to ensure coordination of such programs;

(5) consult with, and provide outreach to, State directors of correctional education and correctional educators; and

(6) collect from States a sample of information on the number of individuals who complete a vocational education sequence, earn a high school degree or general equivalency diploma, or earn a postsecondary degree while incarcerated and the correlation with job placement, job retention, and recidivism.

(e) Definitions

As used in this section—

(1) the term “criminal offender” means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender;

(2) the term “correctional institution” means any—

(A) prison,

(B) jail,

(C) reformatory,

(D) work farm,

(E) detention center, or

(F) halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders; and

(3) the term “State educational agency” means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.


**Prior Provisions**

A prior section 212 of Pub. L. 96–88 was renumbered section 211 and is classified to section 3422 of this title.

**Amendments**

§ 3423b Title 20—Education

Effective Date
Section 702 of Pub. L. 101–392 provided that:

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act (enacting subchapter II of chapter 44 of this title, this section, sections 2311a, 2327, 2329, 2334 to 2336, 2335 to 2336e, 2339 to 2395, 2395 to 2396m, 2411 to 2430a, 2424, 2466b to 2466s, 2468, 2468b to 2468e, and 3423a of this title, and amending provisions set out as a note under section 1812 of Title 25, and sections 49f, 1533, 1604, and 2401 to 2404, 2421 to 2423, 2451, 2463, and 2471 of this title, section 1812 of Title 25, and is classified to section 3424 of this title; and amending provisions set out as a note under section 2301 of this title) shall take effect on July 1, 1991.

(b) SPECIAL RULE.—Sections 3, 115, 116, 504, and 512 and part H of title III of the Carl D. Perkins Vocational and Applied Technology Education Act (former sections 2302, 2325, 2326, 2466a, and 2468a of this title and former part H (§ 2397 et seq.) of subchapter III of chapter 44 of this title) (as amended by this Act) shall take effect on the enactment of this Act [Sept. 25, 1990].

§ 3423b. Office of Non-Public Education

There shall be in the Department an Office of Non-Public Education to ensure the maximum potential participation of non-public school students in all Federal educational programs for which such students are eligible.


Prior Provisions
A prior section 214 of Pub. L. 96–88 was renumbered section 212 and is classified to section 3422a of this title.

Another prior section 214 of Pub. L. 96–88 was renumbered section 217 and is classified to section 3424 of this title.

§ 3423c. Office of Indian Education

(a) Office of Indian Education

There shall be an Office of Indian Education (referred to in this section as “the Office”) in the Department of Education.

(b) Director

(1) Appointment and reporting

The Office shall be under the direction of the Director, who shall be appointed by the Secretary and who shall report directly to the Assistant Secretary for Elementary and Secondary Education.

(2) Duties

The Director shall—

(A) be responsible for administering this title;

(B) be involved in, and be primarily responsible for, the development of all policies affecting Indian children and adults under programs administered by the Office of Elementary and Secondary Education;

(C) coordinate the development of policy and practice for all programs in the Department relating to Indian persons; and

(D) assist the Assistant Secretary of the Office of Educational Research and Improvement in identifying research priorities related to the education of Indian persons.

(c) Indian preference in employment

(1) In general

The Secretary shall give a preference to Indian persons in all personnel actions in the Office.

(2) Implementation

Such preference shall be implemented in the same fashion as the preference given to any veteran under section 45 of title 25.


References in Text
This title, referred to in subsec. (b)(2)(A), is title II of Pub. L. 96–88, Oct. 17, 1979, 93 Stat. 671, which is classified to this subchapter, but probably should have been a reference to part A of title IX of the Elementary and Secondary Education Act of 1965. Part A of title IX of that Act was classified generally to part A (§ 7801 et seq.) of subchapter IX of chapter 70 of this title, prior to general amendment by Pub. L. 110–124, title XII, § 12101, Jan. 8, 2002, 116 Stat. 1518. Provisions similar to those formerly appearing in part A of title IX are contained in part A of title VII of that Act, which is classified generally to part A (§ 7401 et seq.) of subchapter VII of chapter 70 of this title. For complete classification of the Elementary and Secondary Education Act of 1965 to the Code, see Short Title note set out under section 6301 of this title and Tables.

Prior Provisions
A prior section 215 of Pub. L. 96–88 was renumbered section 217 and is classified to section 3424 of this title.

Offices of Educational Research and Improvement
The Office of Educational Research and Improvement was established by section 3419 of this title. Section 3419 was repealed and a new section 3419 establishing the Institute of Educational Sciences was enacted by Pub. L. 107–279, title IV, § 402(a), Nov. 5, 2002, 116 Stat. 1185.

§ 3423d. Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students

(a) Establishment

There shall be, in the Department, an Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students through which the Secretary shall carry out functions relating to bilingual education.

(b) Director

(1) In general

The Office shall be headed by a Director of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, appointed by the Secretary, to whom the Secretary shall delegate all delegable functions relating to bilingual education. The Director shall also be assigned responsibility for recommending improvements and providing tech-
nical assistance to other Federal programs serving language-minority and limited-
English-proficient students and their families and for assisting the Assistant Secretary of the
Office of Educational Research and Improvement in identifying research priorities which reflect the needs of language-minority and limited-English language proficient stu-
dents.

(2) Organization

The Office shall be organized as the Director
determines to be appropriate in order to carry out such functions and responsibilities effec-
tively.

(3) Inclusion

The Secretary shall ensure that limited-
English-proficient and language-minority stu-
dents are included in ways that are valid, reli-
able, and fair under all standards and assess-
ment development conducted or funded by the Department.

(Pub. L. 96–88, title II, § 216, as added Pub. L.
3978; amended Pub. L. 107–110, title X, § 1072(b),
(c)(2)(B), (d), Jan. 8, 2002, 115 Stat. 2089.)

Codification

Another section 216 of Pub. L. 96–88 was renumbered section 218 and is classified to section 3425 of this title.

AMENDMENTS

2002—Pub. L. 107–110, § 1072(c)(2)(B), substituted "Of-
Fice of English Language Acquisition, Language En-
hancement, and Academic Achievement for Limited
English Proficient Students" for "Office of Bilingual
Education and Minority Languages Affairs" in section
catchline.

Subsec. (a). Pub. L. 107–110, § 1072(b), substituted "Of-
Fice of English Language Acquisition, Language En-
hancement, and Academic Achievement for Limited
English Proficient Students" for "Office of Bilingual
Education and Minority Languages Affairs".

Subsec. (b)(1). Pub. L. 107–110, § 1072(d), substituted
"Director of English Language Acquisition, Language En-
hancement, and Academic Achievement for Limited
English Proficient Students" for "Director of Bilingual
Education and Minority Languages Affairs".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002,
except with respect to certain noncompetitive pro-
grams and competitive programs, see section 5 of Pub.
L. 107–110, set out as an Effective Date note under sec-
3631 of this title.

OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

The Office of Educational Research and Improvement
was established by section 3419 of this title. Section
3419 was repealed and a new section 3419 establishing the Institute of Educational Sciences was enacted by
1985.

§ 3424. Federal Interagency Committee on Edu-
cation

(a) Establishment and function

There is established a Federal Interagency
Committee on Education (hereafter referred to in
this section as the "Committee"). The Com-
mittee shall assist the Secretary in providing a
mechanism to assure that the procedures and
actions of the Department and other Federal de-
partments and agencies are fully coordinated.

(b) Coordination of Federal programs, policies
and practices

The Committee shall study and make recom-
mendations for assuring effective coordination of Federal programs, policies, and administra-
tive practices affecting education, including—

(1) consistent administration and develop-
ment of policies and practices among Federal
agencies in the conduct of related programs;

(2) full and effective communication among
Federal agencies to avoid unnecessary duplica-
tion of activities and repetitive collection of
data;

(3) full and effective cooperation with the
Secretary on such studies and analyses as are
necessary to carry out the purposes of this
chapter;

(4) coordination of related programs to as-
sure that recipients of Federal assistance are
efficiently and responsively served; and

(5) full and effective involvement and par-
ticipation of students and parents in Federal
education programs.

(c) Membership

The Committee shall be composed of the Sec-
retary, who shall chair the Committee, and sen-
or policy making officials from those Federal
agencies, commissions, and boards that the
President may find appropriate.

(d) Designation of additional persons to attend
meetings

The Director of the Office of Management and
Budget, the Chairman of the Council of Eco-

nomic Advisers, the Director of the Office of
Science and Technology Policy, and the Execu-
tive Director of the Domestic Policy Staff may
each designate a staff member to attend meet-
ings of the Committee.

(e) Federal vocational education and training
programs study; report

The Committee shall conduct a study concern-
ing the progress, effectiveness, and accomplish-
ments of Federal vocational education and train-
ing programs, and the need for improved
coordination between all federally funded voca-
tional education and training programs. The
Committee shall report the findings of such
study to the Secretary and the Congress within
the two years of October 17, 1979.

(f) Required meetings; establishment of sub-
committees

The Committee shall meet at least twice each
year. The Secretary may establish subcommit-
tees of the Committee to facilitate coordination in
important areas of Federal activity.

(g) Support assistance

The Secretary and the head of each agency
represented on the Committee under subsection
(c) of this section shall furnish necessary assist-
ance to the Committee.

17, 1979, 93 Stat. 676; renumbered § 215, Pub. L.
101–392, title VI, § 602(a)(2), Sept. 25, 1990, 104
Stat. 840; renumbered § 217, Pub. L. 103–382, title

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to
terminate not later than the expiration of the 2-year
§ 3425. Office of Educational Technology

(a) Establishment

There shall be in the Department of Education an Office of Educational Technology (hereafter in this section referred to as the “Office”), to be administered by the Director of Educational Technology. The Director of Educational Technology shall report directly to the Secretary and shall perform such additional functions as the Secretary may prescribe.

(b) Director

The Director of the Office of Educational Technology (hereafter in this section referred to as the “Director”), through the Office, shall—

(1) in support of the overall national technology policy and in consultation with other Federal departments or agencies which the Director determines appropriate, provide leadership to the Nation in the use of technology to promote achievement of the National Education Goals and to increase opportunities for all students to achieve State content and challenging State student performance standards;

(2) review all programs and training functions administered by the Department and recommend policies in order to promote increased use of technology and technology planning throughout all such programs and functions;

(3) review all relevant programs supported by the Department to ensure that such programs are coordinated with and support the national long-range technology plan developed pursuant to section 5862(b)(1) of this title; and

(4) perform such additional functions as the Secretary may require.

(c) Officers and employees

The Director is authorized to select, appoint, and employ such officers and employees as may be necessary to carry out the functions of the Office, subject to the provisions of title 5 (governing appointments in the competitive service), and the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

(d) Experts and consultants

The Secretary may obtain the services of experts and consultants in accordance with section 3109 of title 5.

§ 3426. Liaison for Proprietary Institutions of Higher Education

(a) Establishment

There shall be in the Department a Liaison for Proprietary Institutions of Higher Education, who shall be an officer of the Department appointed by the Secretary.

(b) Appointment

The Secretary shall appoint, not later than 6 months after October 7, 1998, a Liaison for Proprietary Institutions of Higher Education who shall be a person who—

(1) has attained a certificate or degree from a proprietary institution of higher education; or

(2) has been employed in a proprietary institution setting for not less than 5 years.

(c) Duties

The Liaison for Proprietary Institutions of Higher Education shall—

(1) serve as the principal advisor to the Secretary on matters affecting proprietary institutions of higher education;

(2) provide guidance to programs within the Department that involve functions affecting proprietary institutions of higher education; and

(3) work with the Federal Interagency Committee on Education to improve the coordination of—

(A) the outreach programs in the numerous Federal departments and agencies that administer education and job training programs;

(B) collaborative business and education partnerships; and

(C) education programs located in, and involving, rural areas.

(§ 3425)

References in Text


Transfer of Office of Training Technology Transfer

Section 236(a)(1) of Pub. L. 103–227 provided that: “The Office of Training Technology Transfer as established under section 6103 of the Training Technology Transfer Act of 1988 [(former] 20 U.S.C. 5093) is transferred to and established in the Office of Educational Technology.”

§ 3427. Coordinator for the outlying areas

(a) Establishment

The Secretary shall designate an office of the Department to coordinate the activities of the Department as they relate to the outlying areas.

(b) Appointment

Not later than 90 days after January 8, 2002, the head of the office designated under sub-
section (a) of this section shall appoint a coordinator for the outlying areas, who shall be a person with substantial experience in the operation of Federal programs in the outlying areas.

(c) Duties

The coordinator for the outlying areas shall—

(1) serve as the principal advisor to the Department on Federal matters affecting the outlying areas;

(2) evaluate, on a periodic basis, the needs of education programs in the outlying areas;

(3) assist with the coordination of programs that serve the outlying areas; and

(4) provide guidance to programs within the Department that serve the outlying areas.

(d) Outlying areas defined

As used in this section, the term “outlying areas” includes Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, but does not include the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.


Effective Date

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of this title.

SUBCHAPTER III—TRANSFERS OF AGENCIES AND FUNCTIONS

§ 3441. Transfers from Department of Health, Education, and Welfare

(a) Functions transferred to Secretary

There are transferred to the Secretary—

(1) all functions of the Assistant Secretary for Education and of the Commissioner of Education of the Department of Health, Education, and Welfare, and all functions of the Office of such Assistant Secretary and of the Education Division of the Department of Health, Education, and Welfare and of any officer or component of such Office or Division;

(2) all functions of the Secretary of Health, Education, and Welfare and of the Department of Health, Education, and Welfare under—

(A) the General Education Provisions Act [20 U.S.C. 1221 et seq.];

(B) the Elementary and Secondary Education Act of 1965;


(D) the Education Amendments of 1978;

(E) the Act of August 30, 1980 (7 U.S.C. 321–328);

(F) the National Defense Education Act of 1958;

(G) the International Education Act of 1966;

(H) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.];


(J) the Vocational Education Act of 1963;

(K) the Vocational Education Act of 1963;

(L) the Career Education Incentive Act;

(M) laws relating to the relationship between (i) Gallaudet College, Howard University, the American Printing House for the Blind, and the National Technical Institute for the Deaf, and (ii) the Department of Health, Education, and Welfare;

(N) the Model Secondary School for the Deaf Act;

(O) the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.];

(2) all functions of the Secretary of Health, Education, and Welfare and of the Department of Health, Education, and Welfare under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], except that the provisions of this subparagraph shall not be construed to transfer to the Secretary the functions of the Secretary of Health, Education, and Welfare under sections 222 and 1615 of the Social Security Act [42 U.S.C. 422 and 1382d];

(2) all functions with respect to or being administered by the Office for Civil Rights which relate to functions transferred by this section;


(3) all functions of the Office of the Assistant Secretary of the Department of Health, Education, and Welfare giving
advice or making recommendations that primarily concern education functions transferred by this section.

(c) Administrative functions transferred to Secretary
There are transferred to the Secretary all functions of the Secretary of Health, Education, and Welfare, the Assistant Secretary for Education for the Commission on Education of the Department of Health, Education, and Welfare, as the case may be, with respect to—

(1) the Education Division of the Department of Health, Education, and Welfare;
(2) the Office of the Assistant Secretary for Education, including the National Center for Education Statistics; and
(3) any advisory committee in the Department of Health, Education, and Welfare giving advice and making recommendations principally concerning education functions transferred by this section.

(d) Reservation of functions relating to Project Head Start
Nothing in the provisions of this section or in the provisions of this chapter shall authorize the transfer of functions under part A of title V of the Economic Opportunity Act of 1964 [42 U.S.C. 2928 et seq.], relating to Project Head Start, from the Secretary of Health, Education, and Welfare to the Secretary.


REFERENCES IN TEXT

17 (§401 et seq.) of this title prior to omission from the Code. For complete classification of this Act to the Code, see Tables.


The Rehabilitation Act of 1973, referred to in subsecs. (a)(4)(A), (C), and (b)(3), is Pub. L. 92-112, Sept. 26, 1973, 87 Stat. 356, which is classified generally to chapter 16 (§107 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 107 of Title 29 and Tables. Act of June 20, 1936, referred to in subsec. (a)(4)(B), is Pub. L. 89-97, Aug. 20, 1956, ch. 638, 40 Stat. 638, known as the Randolph-Sheppard Act and also popularly known as the Randolph-Shoppard Vending Stand Act, which is classified generally to chapter 16A (§107 et seq.) of this title. For complete classification of this Act to the Code, see Short Title notes set out under section 107 of this title and Tables.

CODIFICATION


AMENDMENTS

1996—Subsec. (a)(5) to (7). Pub. L. 104-208, § 101(e) [title VII, § 709(b)(2)(A)], redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) which transferred all functions of the Institute of Museum Services of the Department of Health, Education, and Welfare to the Secretary of Education. Subsec. (b)(4) to (7). Pub. L. 104-208, § 101(e) [title VII, § 709(b)(2)(B)], redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which transferred the offices, etc., of the Institute of Museum Services of the Department of Health, Education, and Welfare to the Secretary of Education.


CHANGE OF NAME


EFFECTIVE DATE OF 1990 AMENDMENT


REFERENCES IN TEXT

Section 601 of this Act, referred to in subsec. (a), is section 601 of Pub. L. 96-88, which is set out as an Effective Date note under section 401 of this title.

PRIOR PROVISIONS

A prior section 302 of Pub. L. 96-88 was classified to section 3442 of this title prior to repeal by Pub. L. 99-145.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277 substituted “relating to such education” for “under section 303(c)(2) of the Comprehensive Employment and Training Act”.

§ 3444. Transfer of programs from National Science Foundation

(a) Science education; exceptions

(1) There are transferred to the Secretary all programs relating to science education of the National Science Foundation or the Director of the National Science Foundation established prior to May 4, 1980, pursuant to the National Science Foundation Act of 1950 (42 U.S.C. 1861 et seq.), except the programs or parts of programs, as determined after review by the Director of the Office of Science and Technology Policy and the Director of the National Science Foundation, which relate to—

(A) scientific career development;

(b) the continuing education of scientific personnel;

(C) increasing the participation of women, minorities, and the handicapped in careers in science;

(D) the conduct of basic and applied research and development applied to science learning at all educational levels and the dissemination of results concerning such research and development; and

(E) informing the general public of the nature of science and technology and of attendant values and public policy issues.

(2) Except as provided in paragraph (1), no mission oriented research functions or programs of the National Science Foundation or any other Federal agency shall be transferred by this chapter.

(b) Authority of Secretary; consultation and advice

The Secretary is authorized to conduct the programs transferred by subsection (a) of this section. In conducting such programs the Secretary shall consult, as appropriate, with the Director of the National Science Foundation, and shall establish advisory mechanisms designed to assure that scientists and engineers are fully involved in the development, implementation, and review of science education programs.
(c) Report by Secretary

The annual report to be transmitted by the Secretary pursuant to section 3486 of this title shall include a description of arrangements, developed by the Secretary in consultation with the Director of the National Science Foundation, for coordinated planning and operation of science education programs, including measures to facilitate the implementation of successful innovations.

(d) Reservation of certain Foundation authority

Nothing in this section is intended to repeal or limit the authority of the National Science Foundation or the Director of the National Science Foundation to initiate and conduct programs under the National Science Foundation Act of 1950 (42 U.S.C. 1861 et seq.).

REFERENCES IN TEXT

The National Science Foundation Act of 1950, referred to in subsecs. (a)(1) and (d), is act May 10, 1950, ch. 171, 64 Stat. 149, as amended, which is classified generally to chapter 6 (§1661 et seq.) of Title 42, the Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1861 of Title 42 and Tables.

CODIFICATION

In subsec. (a)(1), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of this title.

PRIOR PROVISIONS

A prior section 300 of Pub. L. 96–88 was renumbered section 302 and is classified to section 3445 of this title.

§ 3445. Transfers from Department of Justice

There are transferred to the Secretary all functions of the Attorney General and of the Law Enforcement Assistance Administration with regard to the student loan and grant programs known as the law enforcement education program and the law enforcement intern program authorized by subsections (b), (c), and (f) of section 406 of the Omnibus Crime Control and Safe Streets Act of 1968.

REFERENCES IN TEXT

Section 406 of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in text, is section 406 of title I of Pub. L. 90–351, June 19, 1968, 82 Stat. 193, which was classified to section 3746 of Title 42, the Public Health and Welfare. Title I of the Act was amended generally by Pub. L. 96–157, §2, Dec. 27, 1979, 93 Stat. 1167, and provisions formerly contained in section 406 of the Act were contained in section 705 of part G of title I of the Act, which was classified to section 3775 of Title 42. Subsequently, part G of title I of the Act was amended generally by Pub. L. 98–473, title II, §609(a)(2), Oct. 12, 1984, 98 Stat. 2090, and, as so amended, did not contain a section 705 or similar provisions.

See References in Text note below.

§ 3446. Transfers from Department of Housing and Urban Development

There are transferred to the Secretary all functions relating to college housing loans of the Secretary of Housing and Urban Development and of the Department of Housing and Urban Development under title IV of the Housing Act of 1950 (12 U.S.C. 1749 et seq.).

REFERENCES IN TEXT

The Housing Act of 1950, referred to in text, is act Apr. 20, 1950, ch. 94, 64 Stat. 48, as amended. Title IV of the Housing Act of 1950 which was classified generally to subchapter IX (§1749 et seq.) of chapter 13 of Title 12, Banking and Banking, was repealed by Pub. L. 99–498, title VII, §702, Oct. 17, 1986, 100 Stat. 1545. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1701 of Title 12 and Tables.

PRIOR PROVISIONS

A prior section 305 of Pub. L. 96–88 was renumbered section 304 and is classified to section 3445 of this title.

§ 3447. Effect of transfers

The transfer of a function or office from an officer or agency to the Secretary or to the Department includes any aspects of such function or office vested in a subordinate of such officer or in a component of such agency.

REFERENCES IN TEXT

The Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Secretary and the Department. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Applicability of General Schedule; termination of authority; exemption from limitations on executive positions

(1) At the request of the Secretary, the Director of the Office of Personnel Management shall, under section 5108 of title 5, provide for the establishment in each of the grade levels GS–16,
GS-17, and GS-18 of a number of positions in the Department equal to the number of positions in that grade level which were used primarily for the performance of functions and offices transferred under this chapter and which were assigned and filled on the day before May 4, 1980.


(3) Appointments to positions provided for under this subsection may be made without regard to the provisions of section 3324 of title 5, if the individual appointed in such position is an individual who is transferred in connection with the transfer of functions and offices under this chapter and, on the day preceding May 4, 1980, holds a position and has duties comparable to those of the position to which appointed hereunder.

(4) The authority under this subsection with respect to any position shall terminate when the person first appointed to fill such position ceases to hold such position.

(5) For purposes of section 414(a)(3)(A) of the Civil Service Reform Act of 1978, an individual appointed under this subsection shall be deemed to occupy the same position as the individual occupied on the day preceding May 4, 1980.


(d) Senior Executive Service

Notwithstanding any other provision of law, the Director of the Office of Personnel Management shall establish positions within the Senior Executive Service for 15 limited-term appointees. The Secretary shall appoint individuals to such positions as provided by section 3394 of title 5. Such positions shall expire on the later of three years after May 4, 1980, or three years after the initial appointment to each position. Positions in effect under this subsection shall be taken into account in applying the limitations on positions prescribed under section 3134(e) and section 5106 of such title.

(e) Indian preference laws

Nothing in this chapter shall be construed to prevent the application of any Indian preference law in effect on the day before October 17, 1979, to any function or office transferred by this chapter and subject to any such law on the day before October 17, 1979. Any function or office transferred by this chapter and subject to any such law shall continue to be subject to any such law.


REFERENCES IN TEXT


CODIFICATION

In subsecs. (a) and (d), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of this title.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–279 struck out par. (2) which read as follows: “At the request of the Secretary, the Director of the Office of Personnel Management may, under section 3104 of this title, provide for the establishment in the Office created by section 3419 of this title of a number of scientific, professional, and technical positions outside of the General Schedule equal to the number of such positions which were used primarily for the performance of functions and offices transferred under this chapter and which were assigned and filled on the day before May 4, 1980.

1994—Subsec. (b)(2). Pub. L. 103–382 made technical amendment to reference to section 3419 of this title to reflect renumbering of corresponding section of original act.

1986—Subsec. (c). Pub. L. 99–498 struck out subsec. (c) which read as follows: “The Secretary may appoint, without regard to the provisions of title 5 governing appointment in the competitive service, up to 175 scientific, technical, or professional employees of the Office created by section 3419 of this title and may compensate employees so appointed without regard to the provisions of chapter 51 and subchapter III of chapter 55 of title 5 relating to classification and General Schedule pay rates. The rate of basic compensation for such employees shall not be equal to or in excess of the minimum rate of pay currently paid for GS-16 of the General Schedule under section 5332 of such title.”

1985—Subsec. (f). Pub. L. 99–145 struck out subsec. (f) which deemed any reference to “civilian component” as including a reference to overseas personnel of the overseas dependents’ education system for purposes of any status of forces agreement between the United States and any other country or any international organization.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employee, see section 329 (title I, § 101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3462. Experts and consultants

(a) In general

The Secretary may as provided in appropriation Acts obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5 and may compensate such experts and consultants at rates not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of such title.

(b) Special rule

(1) In general

Notwithstanding any other provision of law, the Secretary may use not more than 1 percent of the funds appropriated for any education program that awards such funds on a competitive basis to pay the expenses and fees of non-Federal experts necessary to review applications and proposals for such funds.

(2) Applicability

The provisions of paragraph (1) shall not apply to any education program under which funds are authorized to be appropriated to pay the fees and expenses of non-Federal experts to review applications and proposals for such funds.
§ 3463 Personnel reduction and annual limitations

(a) Work-years limitation; allocations; adjustments

(1) Notwithstanding any other provision of this chapter, there shall be included in each appropriation Act containing appropriations for the administration of the Department for any fiscal year beginning after September 30, 1981 (other than an appropriation Act containing only supplemental appropriations for the Department), an annual limitation on the total number of work-years for the personnel of the Department.

(2) The Secretary shall prescribe the allocation of the work-years available under paragraph (1) among the organizational units and components of the Department.

(3) If the President transmits any reorganization plan under chapter 9 of title 5 which would result in the transfer of functions or offices to the Secretary or the Department, the message transmitting the plan shall include any adjustments which may be necessary in a work-year limitation established under paragraph (1) to reflect changes in the work-years required as a result of such plan.

(b) Full-time equivalent personnel reductions

Not later than the end of the first fiscal year following May 4, 1980, the number of full-time equivalent personnel positions available for performing functions transferred to the Secretary or the Department by this chapter shall be reduced by 500.

(c) Person nel computations

(1) Computations required to be made for purposes of this section shall be made on the basis of all personnel employed by the Department, including experts and consultants employed under section 3109 of title 5 and all other part-time and full-time personnel employed to perform functions of the Secretary or the Department, except personnel employed under special programs for students and disadvantaged youth (including temporary summer employment).

(2) The Director of the Office of Personnel Management shall, by rule, establish a method for computing work-years for personnel of the Department as described in paragraph (1).

(d) Report on effects of reorganization on employees

The Director of the Office of Personnel Management shall, as soon as practicable, but not later than one year after May 4, 1980, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this chapter, which shall include—

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this chapter;

(2) a statement of the number of employees entitled to pay savings by reason of the organization under this chapter;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Director considers necessary.

(§ 3463)
§ 3472. Delegation of functions

Except as otherwise provided in this chapter, the Secretary may delegate any function to such officers and employees of the Department as the Secretary may designate, and may authorize such successive redelegations of such functions within the Department as may be necessary or appropriate. No delegation of functions by the Secretary under this section or under any other provision of this chapter shall relieve the Secretary of responsibility for the administration of such functions.

§ 3473. Reorganization of Department

(a) Authorization; limitations

The Secretary is authorized, subject to the requirements of section 3412(f) of this title, to allocate or reallocate functions among the officers of the Department, and to establish, consolidate, alter, or discontinue such organizational entities within the Department as may be necessary or appropriate, but the authority of the Secretary under this subsection does not extend to—

(1) any office, bureau, unit, or other entity transferred to the Department and established by statute or any function vested by statute in such an entity, except as provided in subsection (b) of this section;

(2) the abolition of organizational entities established by this chapter; or

(3) the alteration of the delegation of functions to any specific organizational entity required by this chapter.

(b) Alteration, consolidation, or discontinuance of statutory and organizational entities

(1) The Secretary may, in accordance with paragraph (2) of this subsection, consolidate, alter, or discontinue any of the following statutory entities, or reallocate any functions vested by statute in the following statutory entities:

(A) the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students;

(B) the Teacher Corps;

(C) the Community College Unit;

(D) the National Center for Education Statistics;

(E) the National Institute of Education;

(F) the Office of Environmental Education;

(G) the Office of Consumers’ Education;

(H) the Office of Indian Education;

(I) the Office of Career Education;

(J) the Office of Non-Public Education;

(K) the bureau for the education and training for the handicapped; and

(L) the administrative units for guidance and counseling programs, the veterans’ cost of instruction program, and the program for the gifted and talented children.

(2) The Secretary may alter, consolidate, or discontinue any organizational entity continued within the Department and described in paragraph (1) of this subsection or reallocate any function vested by statute in such an entity, upon the expiration of a period of ninety days after the receipt by the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives of notice given by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this subsection and the facts and circumstances relied upon in support of such proposed action.

AMENDMENTS


1996—Subsec. (b)(1)(H) to (M). Pub. L. 104–208 redesignated subpars. (I) to (M) as (H) to (L), respectively, and struck out former subpar. (H) which authorized the Secretary to consolidate, alter, discontinue, or reallocate any functions vested by statute in Office of Libraries and Learning Resources.

1980—Subsec. (b)(1). Pub. L. 96–496 redesignated subpar. (N) as (M) and struck out former subpar. (M), which authorized the Secretary to reallocate the functions of the Secretary to alter or discontinue the Institute of Museum Services.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 17, 1999.

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

NATIONAL INSTITUTE OF EDUCATION

The National Institute of Education was established by section 1221e of this title which as amended generally by Pub. L. 99–498, title XIV, § 1401(a), Oct. 17, 1986, 100 Stat. 1589, provided objectives and duties for the Office of Educational Research and Improvement and established the National Advisory Council on Educational Research and Improvement, and section 1401(b) of Pub. L. 99–498 transferred the property and
records of the National Institute of Education to the Office of Educational Research and Improvement.

OFFICE OF MIGRANT EDUCATION

Pub. L. 98–611, title VII, §701(b), Oct. 19, 1984, 98 Stat. 2405, provided that: “For the purposes of section 413(a) of the Department of Education Organization Act (20 U.S.C. 3475), the Office of Migrant Education shall be considered to be an organizational entity established by such Act [20 U.S.C. 3401 et seq.] and shall not be subject to the reorganizational authority of the Secretary of Education under that section or any other provision of law.”

§ 3474. Rules and regulations

The Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.


AMENDMENTS

1994—Pub. L. 103–382 struck out subsec. (a) designation and subsec. (b) which read as follows: ‘‘The Secretary, in promulgating rules and regulations as authorized by statute, shall prescribe such rules and regulations in accordance with chapter 5 of title 5. Section 1222 of this title also shall apply to such rules and regulations to the extent applicable immediately prior to May 4, 1980, and to rules and regulations promulgated with respect to programs transferred under sections 3441(a)(1), (2), and (4), 3443, 3444, 3445, and 3446 of this title.’’


§ 3475. Contracts

(a) Authorization of Secretary

Subject to the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, the Secretary is authorized to make, enter into, and perform such contracts, grants, leases, cooperative agreements, or other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and to make such payments, by way of advance or reimbursement, as the Secretary may determine necessary or appropriate to carry out functions of the Secretary or the Department.

(b) Limitations

Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance under appropriation Acts. This subsection shall not apply with respect to the authority granted under section 3481 of this title.


CODIFICATION


§ 3476. Regional and field offices

The Secretary is authorized to establish, alter, discontinue, or maintain such regional or other field offices as the Secretary may find necessary or appropriate to perform the functions of the Secretary or the Department.


§ 3477. Acquisition and maintenance of property

(a) Authorized properties; establishment of necessary facilities

The Secretary is authorized—

(1) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

(A) schools and related facilities (but only to the extent that operation of schools and related facilities by the Department is authorized by this chapter);

(B) laboratories;

(C) research and testing sites and facilities;

(D) quarters and related accommodations for employees and dependents of employees of the Department; and

(E) personal property (including patents), or any interest therein, as may be necessary; and

(2) to provide by contract or otherwise for the establishment or contracting for and maintaining facilities for the health and welfare of employees of the Department at its installations, and purchase and maintain equipment therefor.

(b) Day care center facilities

The authority available to the Secretary of Health, Education, and Welfare under section 2564 of this title, shall also be available to the Secretary.

(c) Special purpose facilities

The authority granted by subsection (a) of this section shall be available only with respect to facilities of a special purpose nature that cannot readily be reassigned from similar Federal activities and are not otherwise available for assignment to the Department by the Administrator of General Services.


§ 3478. Facilities at remote locations

(a) Authorized services, supplies and facilities

The Secretary is authorized to provide, construct, or maintain for employees and their dependents stationed at remote locations as necessary and when not otherwise available at such remote locations—

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;
(3) dining facilities;
(4) audiovisual equipment, accessories, and supplies for recreation and training;
(5) reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;
(6) living and working quarters and facilities; and
(7) transportation for dependents of employees of the Department to the nearest appropriate educational facilities.

(b) Reimbursements
The furnishing of medical treatment under paragraph (1) of subsection (a) of this section and the furnishing of services and supplies under paragraphs (2), (3), and (4) of subsection (a) of this section shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Appropriation credits and refunds
Proceeds from reimbursements under this section may be credited to the appropriation of funds that bear or will bear all or part of the cost of such work or services or used to refund excess sums when necessary.

§ 3479. Use of facilities

(a) Federal, State, local and foreign government facilities
With their consent, the Secretary may, with or without reimbursement, use the research, equipment, services, and facilities of any agency or instrumentality of the United States, of any State or political subdivision thereof, or of any foreign government, in carrying out any function of the Secretary or the Department.

(b) Public and private permittees
The Secretary is authorized to permit public and private agencies, corporations, associations, organizations, or individuals to use any real property, or any facilities, structures, or other improvements thereon, under the custody and control of the Secretary for Department purposes. The Secretary shall permit the use of such property, facilities, structures, or improvements under such terms and rates and for such period as may be in the public interest, except that the periods of such uses may not exceed five years. The Secretary may require permittees under this section to condition and maintain, at their own expense, the real property, facilities, structures, and improvements used by such permittees to a standard satisfactory to the Secretary. This subsection shall not apply to excess property as defined in section 102(3) of title 40.

(c) Appropriation credits and refunds
Proceeds from reimbursements under this section may be credited to the appropriation of funds that bear or will bear all or part of the cost of such equipment or facilities provided or to refund excess sums when necessary.

(d) Interests in real property
Any interest in real property acquired pursuant to this chapter shall be acquired in the name of the United States Government.


Codification
“Section 102(3) of title 40” substituted in subsec. (b) for “section 9(e) of the Federal Property and Administrative Services Act of 1949” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Amendments
1985—Subsec. (a). Pub. L. 99-145 struck out par. (1) designation and par. (2) which provided for treatment of personnel, upon transfer of functions and personnel from the Secretary of Defense to the Secretary of Education, as employees of the Department of Defense for the purpose of access to services and facilities provided by the Department of Defense.

§ 3480. Copyrights and patents

The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;
(2) licenses under copyrights, patents, and applications for patents; and
(3) releases, before suit is brought, for past infringement of patents or copyrights.


§ 3481. Gifts and bequests

The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, and to accept donations of services, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary.


Amendments
1994—Pub. L. 103-382 inserted “and to accept donations of services,” after “personal.”.

§ 3482. Technical advice

(a) Authorization

The Secretary is authorized, upon request, to provide advice, counsel, and technical assistance to applicants or potential applicants for grants and contracts and other interested persons with respect to any functions of the Secretary or the Department.

(b) Consolidation of applications for grants and contracts

The Secretary may permit the consolidation of applications for grants or contracts with respect to two or more functions of the Secretary or the Department, but such consolidation shall not alter the statutory criteria for approval of
§ 3483. Working capital fund

(a) Establishment; administrative services included

The Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to establish for the Department a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Secretary shall find to be desirable in the interests of economy and efficiency, including such services as—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its components;
(2) central messenger, mail, telephone, and other communications services;
(3) office space, central services for document reproduction, and for graphics and visual aids; and
(4) a central library service.

(b) Capital; reimbursement of funds; credit; miscellaneous receipts; transfers

The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates that will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain such fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which the Secretary determines, with the approval of the Director of the Office of Management and Budget, will be performed.


§ 3485. Seal of Department

The Secretary shall cause a seal of office to be made for the Department of such design as the Secretary shall approve. Judicial notice shall be taken of such seal.


§ 3486. Annual report

(a) Contents

The Secretary shall, as soon as practicable after the close of each fiscal year, make a single, comprehensive report to the President for transmission to the Congress on the activities of the Department during such fiscal year. The report shall include a statement of goals, priorities, and plans for the Department together with an assessment of the progress made toward—

(1) the attainment of such goals, priorities, and plans;
(2) the more effective and efficient management of the Department and the coordination of its functions; and
(3) the reduction of excessive or burdensome regulation and of unnecessary duplication and fragmentation in Federal education programs, accompanied where necessary by recommendations for proposed legislation for the achievement of such objectives.

(b) Estimate on non-Federal personnel employed

The report required by subsection (a) of this section shall also include an estimate of the extent of the non-Federal personnel employed pursuant to contracts entered into by the Department under section 3475 of this title or under any other authority (including any subcontract thereunder), the number of such contracts and subcontracts pursuant to which non-Federal personnel are employed, and the total cost of those contracts and subcontracts.


Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section relating to transmission of report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 80 of House Document No. 103–7.


§ 3488. Authorization of appropriations

Subject to any limitation on appropriations applicable with respect to any function or office transferred to the Secretary or the Department, there are authorized to be appropriated for fiscal
year 1980 and each succeeding fiscal year such sums as may be necessary to carry out the provisions of this chapter and to enable the Secretary to administer and manage the Department. Funds appropriated in accordance with this section shall remain available until expended.


**PRIOR PROVISIONS**

A prior section 427 of Pub. L. 96–68 was classified to section 3487 of this title prior to repeal by Pub. L. 103–382.

§ 3489. **General extension of authorizations**

Subject to the limitations contained in subtitle A of this title, there are authorized to be appropriated for fiscal years 1982, 1983, and 1984 such sums as may be necessary to carry out each of the following provisions of law:

1. (1) the Act of September 30, 1950 (Public Law 815, 81st Congress);

2. (the Act of September 23, 1950 (Public Law 815, 81st Congress);


4. (the Indian Education Act;


6. (the Adult Education Act; 1

7. (section 342 of the Education Amendments of 1976 [20 U.S.C. 2532];

8. (the Asbestos School Hazards Detection and Control Act [20 U.S.C. 3601 et seq.];

9. (the Joint Resolution of October 19, 1972 (86 Stat. 907); 1

10. (the Vocational Education Act of 1963; 1


13. (part C of title IX of the Elementary and Secondary Education Act of 1965, 1 relating to Women’s Educational Equity; and

14. (title VII of the Elementary and Secondary Education Act of 1965. 1


**REFERENCES IN TEXT**


Act of September 30, 1950 (Public Law 815, 81st Congress), referred to in par. (1), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, which was classified generally to chapter 13 (§ 236 et seq.) of this title, prior to repeal by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.


1 See References in Text note below.


The Navajo Community College Act, referred to in par. (12), is Pub. L. 92–189, Dec. 15, 1971, 85 Stat. 646, as amended, which is classified to section 649a et seq. of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 25 and Tables.

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in par. (12), is Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1325, which is classified principally to chapter 20 (§1801 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 25 and Tables.


Codification

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the Department of Education Organization Act which comprises this chapter.

Amendments


1998—Par. (12). Pub. L. 105–244 redesignated pars. (13) to (15) as (12) to (14), respectively, and struck out former par. (12) which listed the Library Services and Construction Act as one of the laws for which funds were authorized to be appropriated under this section. 1983—Par. (15). Pub. L. 98–211 added par. (15).

Effective Date of 1998 Amendment


Short Title

Section 501 of title V of Pub. L. 97–35 provided that:

“This section [see Tables for classification of sections 501 to 596 of Pub. L. 97–35] may be cited as the ‘Omnibus Education Reconciliation Act of 1981.’

Applicability to Other Laws; General Restrictions

Section 502 of subtitle A of title V of Pub. L. 97–35 provided that:

“(a) Any provision of law which is not consistent with the provisions of this subtitle [see Tables for classification of sections 502 to 528 of Pub. L. 97–35] is here-by superseded and shall have only such force and effect during each of the fiscal years 1982, 1983, and 1984 which is consistent with this subtitle.

“(b) Notwithstanding any authorization of appropriations for fiscal year 1982, 1983, or 1984 contained in any provision of law which is specified in this subtitle (including any authorization of appropriations contained in section 502 of this title (this section)), no funds are authorized to be appropriated in excess of the limitations imposed upon appropriations by the provisions of this subtitle.

“(c) No funds are authorized to be appropriated for the fiscal years 1982, 1983, or 1984 to pay for the expenses of any advisory council which provides advice to a program for which there are no authorizations of appropriations made under this subtitle or made by an amendment made by this subtitle.”

§3490. Potential financial interests or impaired objectivity of covered individuals or entities

(a) Maintenance of integrity and ethical values within Department of Education

Within 60 days after December 26, 2007, the Secretary of Education shall implement procedures—

(1) to assess whether a covered individual or entity has a potential financial interest in, or impaired objectivity towards, a product or service purchased with, or guaranteed or insured by, funds administered by the Department of Education or a contracted entity of the Department; and

(2) to disclose the existence of any such potential financial interest or impaired objectivity.

(b) Review by Inspector General

(1) Within 60 days after the implementation of the procedures described in subsection (a), the Inspector General of the Department of Education shall report to the Committees on Appropriations of the House of Representatives and the Senate on the adequacy of such procedures.

(2) Within 1 year, the Inspector General shall conduct at least 1 review to ensure that such procedures are properly implemented and are effective to uncover and disclose the existence of potential financial interests or impaired objectivity described in subsection (a).

(3) The Inspector General shall report to such Committees any recommendations for modifications to such procedures that the Inspector General determines are necessary to uncover and disclose the existence of such potential financial interests or impaired objectivity.

(c) Definition

For purposes of this section, the term “covered individual or entity” means—

(1) an officer or professional employee of the Department of Education,

(2) a contractor or subcontractor of the Department, or an individual hired by the contracted entity,

(3) a member of a peer review panel of the Department; or

(4) a consultant or advisor to the Department.


Codification

Section was enacted as part of the Department of Education Appropriations Act, 2008, and also as part of...
the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, and the Consolidated Appropriations Act, 2008, and not as part of the Department of Education Organization Act which comprises this chapter.

SUBCHAPTER V—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

§ 3501. Transfer and allocation of appropriations and personnel

(a) Personnel and appropriations in connection with functions and offices transferred by this chapter; use of unexpended funds

Except as otherwise provided in this chapter, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions and offices, or portions thereof, transferred by this chapter, subject to section 1531 of title 31, shall be transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) Positions specified to carry out functions or offices transferred by this chapter

Positions expressly specified by statute or reorganization plan to carry out functions or offices transferred by this chapter, personnel occupying those positions on the effective date of this chapter, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level IV or V of the Executive Schedule (5 U.S.C. 5315–5316) on May 4, 1980, shall be subject to the provisions of section 3503 of this title.


§ 3502. Effect on personnel

(a) Non-separation or non-reduction in grade or compensation of full-time personnel and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer pursuant to this subchapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(b) Positions compensated in accordance with Executive Schedule

Any person who, on the day preceding May 4, 1980, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.


§ 3503. Agency terminations

(a) Specific terminations

On May 4, 1980, the following entities shall terminate:

(A) the Education Division of the Department of Health, Education, and Welfare, including the Office of Education;

(B) the Office of the Assistant Secretary for Education of the Department of Health, Education, and Welfare;

(C) the Bureau of Occupational and Adult Education of the Department of Health, Education, and Welfare.

(b) Positions authorized to be compensated at rate prescribed for level IV or V of the Executive Schedule

Each position which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for level IV or V of the Executive Schedule (5 U.S.C. 5315–5316), in an office terminated pursuant to this chapter shall also terminate.


§ 3504. Incidental transfers

(a) Authorization of Director of Office of Management and Budget; termination of affairs

The Director of the Office of Management and Budget, at such time or times as the Director
shall provide, is authorized and directed to make such determinations as may be necessary with regard to the functions, offices, or portions thereof transferred by this chapter, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, offices, or portions thereof, as may be necessary to carry out the provisions of this chapter. The Director shall provide for the continuance or modification of any such proceeding under the same terms and conditions as if such proceeding could have been discontinued or modified if this chapter had not been enacted.

(2) The Secretary is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) to the Department.

(e) Actions

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to May 4, 1980, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this chapter had not been enacted.

(d) Liabilities incurred

No suit, action, or other proceeding commenced by or against any officer in the official capacity of such individual as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in the official capacity of such officer shall abate by reason of the enactment of this chapter.

(f) Review

Orders and actions of the Secretary in the exercise of functions transferred under this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the agency or office, or part thereof, exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this chapter shall apply to the exercise of such function by the Secretary.


§ 3506. Separability

If any provision of this chapter or the application thereof to any person or circumstance is


Codification

In subsecs. (a)(2), (b)(1), (c)(1), and (e), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3601 of this title.

§ 3506. Separability

If any provision of this chapter or the application thereof to any person or circumstance is
§ 3507. Existing references to transferor officials or bodies deemed references to transferee officials or bodies

With respect to any function transferred by this chapter and exercised on or after May 4, 1980, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which this chapter transfers such functions.


CODIFICATION

“May 4, 1980” substituted in text for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of this title.

§ 3508. Department of Health and Human Services

(a) Redesignation of Department of Health, Education, and Welfare

The Department of Health, Education, and Welfare is hereby redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare is hereby redesignated the Secretary or official, as appropriate, of Health and Human Services.

(b) Reference to Department, Secretary, etc., of Health, Education, and Welfare deemed reference to Department, Secretary, etc., of Health and Human Services

Any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education, and Welfare, or any other official of the Department of Health, Education, and Welfare in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on May 4, 1980, shall be deemed to refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary or the Department under this chapter.


CODIFICATION

“May 4, 1980” substituted in text for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of this title.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–217, § 6(b), which had repealed subsec. (b) of this section, was itself repealed by Pub. L. 108–178 insofar as it related to subsec. (b) of this section, and Pub. L. 108–178 further provided that subsec. (b) of this section was revived to read as if Pub. L. 107–217, § 6(b), had not been enacted.

EFFECTIVE DATE OF 2003 AMENDMENT


§ 3509. Coordination of programs for handicapped

The Secretary of Health and Human Services shall identify, assess, coordinate, and eliminate conflict, duplication, and inconsistencies among programs significantly affecting handicapped individuals carried out by or under the Department of Health and Human Services, shall promote efficiency among such programs, and shall seek to coordinate, to the maximum extent feasible, such programs with programs significantly affecting handicapped individuals carried out by or under the Department of Education.


§ 3510. Transitional provisions

With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions or offices have been transferred to the Secretary or the Department, and funds appropriated to such functions or offices for such period of time as may reasonably be needed to facilitate the orderly implementation of this chapter.


CHAPTER 49—ASBESTOS SCHOOL HAZARD DETECTION AND CONTROL

Sec. 3601. Congressional statement of findings and purposes.


3603. State plan.

3604. Asbestos hazards detection program.

3605. Asbestos Hazards Control Loan Program.

3606. Standards and safety procedures.

3607. Recovery of costs by United States.

3608. Employee protection.

3609. Retained rights.

3610. Definitions.

3611. Authorization of appropriations.

§ 3601. Congressional statement of findings and purposes

(a) The Congress finds that—

(1) exposure to asbestos fibers has been identified over a long period of time and by reputable medical and scientific evidence as significantly increasing the incidence of cancer and other severe or fatal diseases, such as asbestos;

(2) medical evidence has suggested that children may be particularly vulnerable to environmentally induced cancers;
(3) medical science has not established any minimum level of exposure to asbestos fibers which is considered to be safe to individuals exposed to the fibers; 
(4) substantial amounts of asbestos, particularly in sprayed form, have been used in school buildings, especially during the period 1946 through 1972; 
(5) partial surveys in some States have indicated that (A) in a number of school buildings materials containing asbestos fibers have become damaged or friable, causing asbestos fibers to be dislodged into the air, and (B) asbestos concentrations far exceeding normal ambient air levels have been found in school buildings containing such damaged materials; 
(6) the presence in school buildings of friable or easily damaged asbestos creates an unwarranted hazard to the health of the school children and school employees who are exposed to such materials; 
(7) the Department of Health and Human Services and the Environmental Protection Agency, as well as several States, have attempted to publicize the potential hazards to school children and employees from exposure to asbestos fibers, but there is no systematic program for identifying hazardous conditions in schools or for remedying those conditions; 
(8) because there is no Federal health standard regulating the concentration of asbestos fibers in noncommercial workplace environments such as schools, school employees and students may be exposed to hazardous concentrations of asbestos fibers in the school buildings which they use each day; 
(9) without an improved program of information distribution, technical and scientific assistance, and financial support, many local educational agencies and States will not be able to mitigate the potential asbestos hazards in their schools; and 
(10) the effective regulation of interstate commerce for the protection of the public health requires the establishment of programs under this chapter to identify and mitigate hazards from exposure to asbestos fibers and materials emitting such fibers.

(b) It is the purpose of this chapter to—
(1) direct the Secretary of Education to establish a task force to assist States and local educational agencies to ascertain the extent of the danger to the health of school children and employees from asbestos materials in schools; 
(2) require States receiving administrative funds for any applicable program (as defined under section 122(c)(1)(A) of this title) to prepare a plan describing the manner in which information relating to programs established under this chapter shall be distributed to local educational agencies; 
(3) provide scientific, technical, and financial assistance to State educational agencies and local educational agencies to enable them to conduct an asbestos detection program to identify asbestos hazards in schools; 
(4) provide loans to local educational agencies for the mitigation of asbestos hazards which constitute an imminent hazard to the health and safety of school children and employees; and 
(5) assure that no employee of any local educational agency suffers any disciplinary action as a result of calling attention to potential asbestos hazards which may exist in schools.


REFERENCES IN TEXT
Section 1221 of this title, referred to in subsec. (b)(2), was amended generally by Pub. L. 103–382, title II, § 211, Oct. 20, 1994, 108 Stat. 3912, and, as so amended, no longer contains a subsec. (c)(1)(A). However, the term "applicable program" is defined in subsec. (c)(1) of that section.

SHORT TITLE
Section 1 of Pub. L. 96–270 provided that: "This Act [enacting this chapter and amending section 1411 of this title] may be cited as the 'Asbestos School Hazard Detection and Control Act of 1980'."

§ 3602. Asbestos Hazards School Safety Task Force

(a) Establishment; composition; membership; chairman; appointment; vacancies

(1) There is established a task force to be known as the Asbestos Hazards School Safety Task Force (hereinafter in this chapter referred to as "Task Force"). The Task Force shall be composed of ten members, who shall be appointed by the Secretary within 30 days after June 14, 1980, as follows:

(A) One representative of the Department of Education, recommended by the Secretary of Education.

(B) One representative of the Department of Health and Human Services.

(C) One representative of the National Cancer Institute.

(D) One representative of the Environmental Protection Agency, recommended by the Administrator of such agency.

(E) One representative of the National Institute of Environmental Health Sciences.

(F) One representative of the Occupational Safety and Health Administration, recommended by the Secretary of Labor.

(G) Four representatives from among organizations concerned with education and health.

Members of the Task Force shall be individuals who have knowledge of the medical problems associated with exposure to asbestos, or individuals who are familiar with procedures for the following activities: the containment or removal of asbestos from buildings; the replacement of asbestos materials removed from school buildings with other appropriate building materials; and the restoration of such buildings to conditions comparable to those existing before such containment or removal was carried out.

(2) The Secretary shall designate a chairman of the Task Force from among its members.

(3) Members shall be appointed for the life of the Task Force. Any vacancy in the Task Force shall be filled in the same manner in which the original appointment was made.

(b) Meetings; quorum; hearings

(1) The Task Force shall meet, no later than 30 days after the appointment of its members, at the call of the chairman of the Task Force.
(2) Five members of the Task Force shall constitute a quorum for purposes of conducting the business of the Task Force, but a lesser number may hold hearings.

(c) Compensation; travel expenses

(1) Members of the Task Force who are not full-time officers or employees of the Federal Government shall receive compensation at a rate determined by the Secretary, but not to exceed the daily equivalent of the maximum annual rate of pay in effect for grade GS-16 of the General Schedule, for each day (including traveltime) during which they are engaged in the performance of the duties of the Task Force.

(2) While away from their homes or regular places of business in the performance of the duties of the Task Force, all members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(d) Availability of Department of Education personnel; use of mails

(1) Upon request of the Task Force, the Secretary shall make available to the Task Force personnel of the Department of Education to assist the Task Force in carrying out its duties.

(2) The Task Force may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(e) Duties

The duties of the Task Force shall include—

(1) the compilation of medical, scientific, and technical information explaining—

(A) the health and safety hazards associated with asbestos materials; and

(B) the means of identifying, sampling, and testing materials suspected of emitting asbestos fibers;

(2) the distribution of the information described in paragraph (1) (in any appropriate form such as pamphlets, reports, or instructions) to State educational agencies and to local educational agencies for the purpose of assisting such agencies in carrying out activities described in this chapter;

(3) the review of applications for grants and loans under sections 3604 and 3605 of this title, and the submission to the Secretary of recommendations respecting the approval or disapproval of such applications;

(4) the review of any guidelines established by the Environmental Protection Agency for identifying those schools in which exposure to asbestos fibers constitutes a health problem and for taking appropriate corrective actions at such schools, in order to determine whether any modifications of such guidelines should be recommended to the Secretary under paragraph (5); and

(5) providing the Secretary with assistance in formulating standards and procedures under section 3606 of this title by—

(A) submitting to the Secretary relevant information concerning the results of the review made under paragraph (4) of this subsection; and

(B) recommending such modifications to the guidelines referred to in such paragraph as the Task Force considers appropriate.

In carrying out its duties under this subsection, the Task Force shall avoid, to the maximum extent practicable, duplicating similar activities undertaken by the Environmental Protection Agency.

(f) Termination

The Task Force shall cease to exist at the end of the 180-day period beginning on the date that the authority of the Secretary to make loans under section 3605 of this title has expired.


References in Other Laws to GS–16, 17, or 18 Rate Schedules

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title 1, § 101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3603. State plan

(a) Submission by State educational agency receiving administrative funds for programs; contents

Not later than six months after June 14, 1980, the State educational agency of any State which receives administrative funds for any applicable program (as defined under section 1221(c)(1)(A) of this title) shall submit to the Secretary a plan which—

(1) describes the manner in which the State, not later than nine months after June 14, 1980, shall distribute to local educational agencies within that State’s jurisdiction information describing—

(A) the programs established under this chapter;

(B) the health hazards associated with exposure to asbestos fibers; and

(C) the procedures established by the Secretary under section 3606 of this title for carrying out activities under programs under this chapter; and such other relevant information regarding such activities as the State considers desirable;

(2) contains a general description of the content of the information to be distributed in accordance with paragraph (1) and provides assurances that the State shall continually revise such information and distribute such revised material to local educational agencies to ensure that such agencies have available to them the most recent material available with regard to the matters referred to in paragraph (1);

(3) describes the procedures to be used by the State for maintaining records on—

(A) the presence of asbestos materials in school buildings of local educational agencies;

(B) the asbestos detection, containment, or removal activities conducted by local...
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educational agencies (including activities relating to the replacement of the asbestos materials removed from school buildings with other appropriate building materials); and

(C) repairs made to school buildings to conditions comparable to those existing before the containment or removal activities referred to in subparagraph (B) were undertaken; and

(4) designates a State agency or other administrative unit with the responsibility for submitting to the Secretary the reports described in subsection (b) of this section and provides assurances that such agency or unit shall carry out the duties specified under subsection (b) of this section.

(b) Reporting requirements respecting plan implementation

Not later than six months after the submission of the plan described in subsection (a) of this section, and each six months thereafter during the two-year period beginning on June 14, 1980, the State agency or unit designated under paragraph (4) of subsection (a) of this section shall submit to the Secretary a report which describes the actions taken by the State in accordance with its plan under such subsection.


REFERENCES IN TEXT

Section 1221 of this title, referred to in subsec. (a), was amended generally by Pub. L. 103–382, title II, § 211, Oct. 20, 1994, 108 Stat. 3912, and, as so amended, no longer contains a subsec. (c)(1)(A). However, the term "applicable program" is defined in subsec. (c)(1) of that section.

§ 3604. Asbestos hazards detection program

(a) Grants to local and State educational agencies for Federal share; duration of granting authority; amount of Federal share

(1)(A) The Secretary may make grants to local educational agencies for the Federal share of the costs of carrying out an asbestos detection program meeting the standards established by the Secretary under section 3606(a)(1) of this title. Grants may be made under this section only during the two-year period beginning on June 14, 1980.

(B) The Secretary may make grants to State educational agencies for the Federal share of the costs of carrying out any asbestos detection program if—

(i) the State, through the State educational agency or some other appropriate State agency, is making grants to local educational agencies for asbestos hazard detection programs, and

(ii) such programs meet the standards established by the Secretary under section 3606(a)(1) of this title.

(C) Grants may be made under this section only during the two-year period beginning after June 14, 1980.

(2) Subject to the second sentence of this paragraph, the Federal share of the costs referred to in paragraph (1) shall be 50 percent. Upon a determination by the Secretary that an applicant has limited fiscal resources and would be unable to participate in the program under this section without receiving from the Federal Government, as its Federal share of such costs, an amount greater than the amount permitted under the first sentence of this paragraph, the Secretary may increase the Federal share which may be paid to such applicant by such amount as the Secretary considers appropriate to permit the applicant to participate in the program.

(b) Application for grants; procedures applicable for approval; programs completed before January 1, 1976; determinations respecting amount of grant

(1) No grant may be made under this section unless an application has been submitted to and approved by the Secretary, after consultation with the Task Force. The Secretary may not approve an application unless the application—

(A) contains a description of the methods to be used by the local educational agency, or, in the case of an application by the State educational agency the methods to be used by the local educational agencies receiving grants from the State, to determine whether hazardous concentrations of asbestos fibers or materials emitting such fibers exist in school buildings under the jurisdiction of such agency;

(B) contains an estimate of the total cost of the detection program, including such detailed descriptions of the costs of each component of the program as the Secretary may require;

(C) designates the party which shall conduct the testing for the detection program and describes such party's qualifications for conducting such testing;

(D) contains assurances that the program shall be carried out in accordance with standards established by the Secretary under section 3606(a)(1) of this title and that any party employed to conduct such testing shall satisfy the competency standards established under such section; and

(E) contains such other information or assurances as the Secretary may require.

(2) The Secretary shall provide the Task Force with a copy of any application submitted to the Secretary under paragraph (1).

(3) No grant may be awarded by the Secretary under this section for asbestos hazards detection programs conducted before June 14, 1980, unless the applicant has submitted an application to the Secretary—

(A) containing the information required under paragraph (1); and

(B) providing assurances that any program for which a grant is sought was carried out in a manner which substantially conforms to the requirements established by the Secretary under section 3606(a)(1) of this title.

No grant may be awarded under this section for any asbestos hazards detection program completed before January 1, 1976.

(4) After reviewing the application submitted under this section, together with any recommendations made by the Task Force, the Secretary shall determine the amount of any grant to be awarded under this section. Funds may be awarded by the Secretary for the administrative
costs incurred in the preparation and supervision of the asbestos detection program and for the following activities:

(A) Visual inspections of school buildings.
(B) The sampling of building and insulation materials.
(C) Appropriate tests to determine the level of asbestos content in suspected materials, and tests determined to be essential to detect the likelihood of imminent danger to persons within school buildings.

(c) Reporting requirements for recipients

Local and State educational agencies receiving grants under this section shall file a report with the Secretary, not later than 120 days after the award of such grant, describing the detection activities which were undertaken, the results of the asbestos detection program, and plans for mitigating any imminent hazards which were detected by the testing. The report shall include a detailed accounting of the funds used to carry out the detection program.

(d) Availability of appropriated funds for education and technical assistance programs

During the period in which grants may be made under this section, not more than 20 percent of the funds appropriated to carry out this section may be made available by the Secretary to the Task Force to conduct education and technical assistance programs related to the detection of asbestos hazards in school buildings and the implementation of appropriate actions to mitigate such hazards.

§ 3605. Asbestos Hazards Control Loan Program

(a) Establishment; administration; loans to local educational agencies for share of project costs; project criteria; increase in amount of loans

(1) There is established within the Department of Education an Asbestos Hazards Control Loan Program (hereinafter in this chapter referred to as the “Loan Program”), which shall be administered by the Secretary in accordance with this section.

(2) The Secretary may make loans under this section to local educational agencies in an amount equal to 50 percent of the costs of carrying out projects for:

(A) the containment or removal of any materials containing asbestos in school buildings in which such materials pose an imminent hazard to the health and safety of children or employees;
(B) the replacement of the asbestos materials removed from school buildings with other appropriate building materials; and
(C) making repairs which the Secretary determines to be necessary to restore school buildings to conditions comparable to those existing before containment or removal activities were undertaken under subparagraph (A).

Loans may be made under this section only for projects affecting more than 2,500 square feet of surface and in which the asbestos material to be contained or removed consists of a minimum asbestos level, as determined by the Secretary under section 3606(a)(2) of this title.

(3) If the Secretary determines that an applicant has limited fiscal resources and would be unable to carry out the projects described in paragraph (2) without receiving a loan under this section for an amount greater than the amount permitted under such paragraph, the Secretary may increase the amount of the loan payable to such applicant to an amount the Secretary considers appropriate to enable the applicant to carry out such projects.

(b) Loan agreements; required terms; additional terms and conditions

Loans under this section shall be made pursuant to loan agreements which shall provide for the following terms:

(1) The loan shall not bear any interest except as otherwise provided under paragraph (5).

(2) The loan shall have a maturity period of not more than 20 years (as determined by the Secretary) and shall be repayable during such period at such times and in such amounts as the Secretary may specify in the loan agreement.

(3) Repayment of the loan shall be made to the Secretary of the Treasury for deposit in the general fund of the Treasury.

Such loans shall be subject to such other terms and conditions as the Secretary may establish for the protection of the financial interest of the United States and in furtherance of the purposes of this chapter.

(c) Application for loans; procedures applicable for approval; projects completed before January 1, 1976

(1) No loan may be made under this section unless an application has been submitted to and approved by the Secretary, after consultation with the Task Force, within the two-year period beginning on June 14, 1980. The Secretary may not approve an application unless—

(A) the application contains such information as the Secretary may require, including information describing—

(i) the nature of the asbestos problem for which the loan is sought;

(ii) the asbestos content of the material to be contained or removed by the local educational agency, as determined under preliminary testing which was conducted in accordance with the standards established by the Secretary under section 3606(a)(1) of this title, or, in the case of testing conducted before June 14, 1980, was conducted in a manner which substantially conforms to such standards; and

(iii) the methods which will be used to contain or remove the asbestos materials, in accordance with section 3606(b) of this title, and any other pertinent details relating to the project or projects to be conducted by the applicant (as described in subsection (a)(2) of this section); and

(B) the application contains assurances that—

(i) any employee engaged in any activity to carry out programs under this section shall be notified in writing by the local educational agency conducting the program of
the hazards of working with asbestos, and shall be required to utilize all appropriate safety procedures to minimize health risks;

(ii) no child or school employee shall be permitted in the vicinity of any asbestos containment or removal activity; and

(iii) the local educational agency shall pay employees engaged in containment, removal, or replacement activities to carry out programs under this section at reasonable rates of pay, as established by the Secretary on the basis of prevailing wage rates in the location of such work.

(2) The Secretary shall provide the Task Force with a copy of any application submitted to the Secretary under paragraph (1).

(3) No loans may be made by the Secretary under this section for projects described in subsection (a)(2) of this section which commenced before the availability of loans under the Loan Program unless the local educational agency submits to the Secretary an application which—

(A) meets the requirements of paragraph (1); and

(B) contains assurances that any work already completed by the applicant has been carried out in substantial conformity with section 3606(b) of this title.

No loan may be awarded under this section for any project described in subsection (a)(2) of this section which was completed before January 1, 1976.

(d) Reporting requirements for Secretary

During each of the three calendar years after 1980, the Secretary shall submit before February 1 of such year a report to the appropriate committees of the House of Representatives and the Senate, which shall—

(1) describe the number of loans made in the preceding calendar year and specify each applicant for and recipient of a loan;

(2) describe the nature of the asbestos problem of each applicant;

(3) describe the types of programs for which loans were made;

(4) specify the estimated total costs of such programs to the recipients of loans and specify the amount of loans made under the Loan Program; and

(5) specify the number of loan applications which were disapproved during the preceding calendar year and describe the reasons for such disapprovals.

(e) Avoidance of duplication of similar activities of Environmental Protection Agency

In carrying out his duties under this section, the Secretary shall avoid, to the maximum extent practicable, duplicating similar activities undertaken by the Environmental Protection Agency.


§ 3607. Recovery of costs by United States

(a) Suit by United States on behalf of grant or loan recipient for recovery of costs of activities of recipient; proceeds of judgment

(1) As a condition of the award of any grant under section 3604 of this title or loan under section 3605 of this title, the recipient of any such grant or loan shall permit the United States to sue on behalf of such recipient any person determined by the Attorney General to be liable to the recipient for the costs of any activities undertaken by the recipient under such sections.

(2) The proceeds from any judgment recovered in any suit brought by the United States under paragraph (1) or, if the recipient files a similar suit on its own behalf, the proceeds from any judgment recovered by the recipient in such suit shall be used to repay to the United States, to the extent that the proceeds are sufficient to provide for such repayment, an amount equal to the sum of—

(A) the amount of any grant made to the recipient under section 3604 of this title;

(B) the amount outstanding on any loan made to the recipient under section 3605 of this title; and

(C) standards for determining which contractors are qualified to carry out the testing and evaluation described in this paragraph.

(2) After consulting with the Task Force, the Secretary shall establish criteria to be used for determining eligibility for loans under section 3605 of this title. The criteria shall be based on the assessment of the extent of the health hazards posed by the presence of asbestos fibers in schools, as determined in accordance with standards under paragraph (1)(B) of this subsection.

(b) Establishment of regulations

After reviewing recommendations submitted to the Secretary by the Task Force under section 3602(e)(5) of this title, the Secretary, with the concurrence of the Task Force, shall by regulation establish—

(1) procedures to be used by local educational agencies, in programs for which loans are made under section 3605 of this title, for—

(A) containing and removing asbestos materials in school buildings;

(B) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(C) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken; and

(2) standards for determining which contractors are qualified to carry out the activities referred to in paragraph (1).

§ 3606. Standards and safety procedures

(a) Establishment and distribution to designated State agency or unit; establishment of criteria for loan program eligibility

(1) Within 120 days after the first meeting of the Task Force, and after consultation with the Task Force, the Secretary shall establish and distribute to the State agency or unit designated under section 3603(a)(4) of this title—

(A) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(B) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(C) standards for determining which contractors are qualified to carry out the testing and evaluation described in this paragraph.


§ 3605. Standards and safety procedures

(a) Establishment and distribution to designated State agency or unit; establishment of criteria for loan program eligibility

(1) Within 120 days after the first meeting of the Task Force, and after consultation with the Task Force, the Secretary shall establish and distribute to the State agency or unit designated under section 3603(a)(4) of this title—

(A) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(B) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(C) standards for determining which contractors are qualified to carry out the testing and evaluation described in this paragraph.

(C) an amount equal to the interest which would have been charged on such loan were the loan made by a commercial lender at prevailing interest rates (as determined by the Secretary).

(b) Investigation and report by Attorney General respecting feasibility of recovery of costs from any person determined by Attorney General to be liable

The Attorney General shall conduct an investigation to determine whether, by using all available means, the United States should or could recover, from any person determined by the Attorney General to be liable for such costs, the amounts expended by the United States to carry out this chapter. Within one year after June 14, 1980, the Attorney General shall submit to the Congress a report containing the results of the study, together with any appropriate recommendations.

(c) Expeditious proceedings by Attorney General

If the Attorney General determines in the report under subsection (b) of this section that the United States should seek to recover the amounts expended by the United States to carry out this chapter, the Attorney General shall proceed in an expeditious manner to recover such amounts from the persons referred to in subsection (b) of this section.


§ 3608. Employee protection

No State or local educational agency receiving assistance under this chapter may discharge any employee or otherwise discriminate against any employee with respect to the employee’s compensation, terms, conditions, or privileges of employment because the employee has brought to the attention of the public information concerning any asbestos problem in the school buildings within the jurisdiction of such agency.

(Pub. L. 96–270, § 9, June 14, 1980, 94 Stat. 496.)

§ 3609. Retained rights

Except as otherwise provided in section 3607 of this title, nothing in this chapter shall—

(1) affect the right of any party to seek legal redress in connection with the purchase or installation of asbestos materials in schools or any claim of disability or death related to exposure to asbestos in a school setting; or

(2) affect the rights of any party under any other law.

(Pub. L. 96–270, § 10, June 14, 1980, 94 Stat. 496.)

§ 3610. Definitions

For purposes of this chapter—

(1) the term “asbestos” means—

(A) chrysotile, amosite, or crocidolite; or asbestos in fibrous form, tremolite, anthophyllite, or actinolite;

(B) the term “Attorney General” means the Attorney General of the United States;

(C) the term “imminent hazard to the health and safety” means, for purposes of section 3605 of this title, that an asbestos material is, according to standards established by the Secretary, friable or easily damaged, or within easy reach of students or otherwise susceptible to damage (including damage from water or air circulation) which could result in the dispersal of asbestos fibers into the school environment;

(D) the term “local educational agency” means—

(A) any local educational agency as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965;

(B) the governing authority of any non-profit elementary or secondary school;

(2) the term “nonprofit elementary or secondary school” means—

(A) any elementary or secondary school (as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, and

(B) any school of any agency of the United States;

(3) the term “Secretary” means the Secretary of Education, or his designee;

(4) the term “Secretary” has the same meaning given such term by section 198(a)(17) of the Elementary and Secondary Education Act of 1965.


REFERENCES IN TEXT


1 See References in Text note below.
§ 3611. National Afro-American History and Culture Commission

(a) Establishment and membership

There is established a commission to be known as the National Afro-American History and Culture Commission (hereinafter in this chapter referred to as the "Commission") which shall be composed of fifteen members, as specified in section 3702 of this title.

(b) Duties

The Commission shall have the following duties:

(1) The Commission shall be responsible for the development of a definitive plan for the construction and operation of the National Center for the Study of Afro-American History and Culture and shall submit the plan, together with any recommendations for additional legislation, to the President of the United States and the Congress not later than twenty-four months after October 10, 1980. The plan shall include, but not be limited to, identification of—

(A) the main objectives to be achieved by the establishment, development, and operation of the National Center for the Study of Afro-American History and Culture;

(B) the types of uses, both public and private, to be accommodated by such a center;

(C) the criteria and recommendations for the design and appearance of such a center;

(D) the proposed ownership and operation of the center;

(E) the criteria and recommendations for interpretive, cultural, and educational programs and uses of the center;

(F) the areas where cooperative agreements might be developed between the center and Afro-American institutions, organizations, and universities to enhance their programs and projects relating to the knowledge, preservation, and presentation of the history and culture of Afro-Americans;

(G) the estimates of costs, both public and private, for implementing the plan; and

(H) the procedures to be used in implementing the plan.

(2) The Commission shall solicit subscriptions of funds from private and public sources to help meet the costs of carrying out its duties under this section; the costs of the construction, furnishing, and operation of the center; the costs of research programs and research staff positions, and reasonable administrative costs which may include, subject to the availability of funds, payment to members of the Commission of travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5. Any funds so received by the Commission shall be placed in a special deposit account with the Treasurer of the United States, and may be expended by the Commission only to meet the costs specified in this subparagraph.
§ 3702. Organization of Commission

(a) Membership

The Commission shall be composed of fifteen members as follows:

(1) The Secretary of the Interior (or his designee).
(2) The Secretary of Education (or his designee).
(3) The Librarian of Congress (or his designee).
(4) The President of the Association for the Study of Afro-American History.
(5) The presidents of Wilberforce University and Central State University in Ohio.
(6) Nine members appointed by the President, who are especially qualified to serve on the Commission by reason of their background and experience. No more than two members appointed under this paragraph shall be from any one State.

(b) Terms of office

Subject to subsection (c) of this section, the members of the Commission specified in paragraphs (1) through (5) of subsection (a) of this section shall serve for the life of the Commission. The members of the Commission appointed under paragraph (6) of such subsection shall serve for terms of four years, except that of the members first appointed—

(1) three shall be appointed for terms of one year;
(2) three shall be appointed for terms of two years; and
(3) three shall be appointed for terms of four years;

as designated by the President at the time of appointment.

(c) Membership continuation

If any member of the Commission who was appointed to the Commission under paragraphs (1) through (5) as an officer designated under such paragraphs leaves such office, such member may continue as a member of the Commission for not longer than the thirty-day period beginning on the date he leaves that office.

(d) Vacancies

(1) Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.
(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Members may be reappointed.

(e) Quorum

Six members of the Commission shall constitute a quorum.

(f) Voting

The Commission shall act by affirmative majority vote.

(g) Officers

The Commission shall elect a chairman and other officers from among its members to serve for terms established by the Commission.

(h) Meetings

The Commission shall meet at the call of the chairman or a majority of its members, but not less than two times each year. The headquarters of the Commission shall be at Wilberforce, Ohio, and the Commission shall conduct its meetings in such city unless circumstances otherwise require.

(i) Seal; bylaws; rules and regulations

The Commission may adopt an official seal which shall be judicially noticed and may make such bylaws, rules, and regulations as it considers necessary to carry out its functions under this chapter.

(j) Compensation

Members of the Commission shall serve without pay.

(k) Temporary services

The Commission may procure, subject to the availability of funds, temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5.

(l) Personnel details

Upon request of the Commission, and subject to the availability of funds, the head of any Federal agency may detail to the Commission on a reimbursable basis any of the personnel of such agency to assist the Commission in carrying out its duties under this chapter.

(m) Administrative support services

The Administrator of the General Services Administration shall provide to the Commission on

\[1\text{So in original. Probably should be followed by "of subsection (a) of this section".}\]
a reimbursable basis such administrative support services as the Commission may request to carry out its duties under this chapter.


§ 3703. Omitted

CODIFICATION


CHAPTER 51—ELEMENTARY AND SECONDARY EDUCATION BLOCK GRANT

SUBCHAPTER I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN


Section 3805, Pub. L. 97–35, title V, § 556, Aug. 13, 1981, 95 Stat. 467, related to support services as the Commission may request to carry out its duties under this chapter.


SHORT TITLE


EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

SUBCHAPTER II—CONSOLIDATION OF FEDERAL PROGRAMS FOR ELEMENTARY AND SECONDARY EDUCATION


EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

PART A—BASIC SKILLS DEVELOPMENT


EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

PART B—EDUCATIONAL IMPROVEMENT AND SUPPORT SERVICES


EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

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4051 to 4062. Repealed.

subchapter viii.—equal access

4071. Denial of equal access prohibited.
It is the purpose of this chapter to improve the quality of mathematics and science teaching and instruction in the United States. (Pub. L. 98–377, § 2, Aug. 11, 1984, 98 Stat. 1267.)

**SHORT TITLE OF 1985 AMENDMENT**

Pub. L. 99–159, § 1, Nov. 22, 1985, 99 Stat. 887, provided: “That this Act [enacting sections 366, 1221e–1, and 3911 to 3922 of this title, and section 1806 of Title 42, The Public Health and Welfare, amending sections 351a, 351c, 351d, 353, 1134h, 1221e–1b, 1411, 2007, 2311, 2312, 2322, 2323, 2333, 2361 to 2363, 2383, 2392, 2417, 2462, 2464, 2471, 2763, 3962, 3963 to 3973, 3982, 3983, 3985 to 3988, 4063, 4063, 4063, 4063, 4065, and 4069 of this title, sections 1903 and 1753 of Title 29, Labor, and sections 1862 to 1864, 1868 to 1872, 1873, 1874, 1881a, 1882, and 1885 to 1885 of Title 42, omitting sections 3915, 3921 to 3923, 3921 to 3923, 3931, 3931, and 3931 to 3934 of this title, repealing sections 1873a and 1884 of Title 42, enacting provisions set out as notes under sections 351l, 1221eb, 1411, and 2311 of this title and section 1861 of Title 42, and amending provisions set out as notes under sections 1067b and 2301 of this title and sections 1861 and 1882 of Title 42] may be cited as the ‘National Science, Engineering, and Mathematics Authorization Act of 1986’."

**SHORT TITLE**

Section 1 of Pub. L. 98–377 provided: “That this Act [enacting this chapter] may be cited as the ‘Education in American Schools’.”


Title V of Pub. L. 98–377, which enacted subchapter V of this chapter, is known as “Asbestos School Hazard Abatement Act of 1984”, see note set out under section 4011 of this title.

Title VIII of Pub. L. 98–377, which enacted subchapter VIII of this chapter, is known as “The Equal Access Act”, see note set out under section 4011 of this title.

**§ 3902. Definitions**

For the purpose of this chapter—

(1) The term “area career and technical education school” has the same meaning given that term under section 2302(3) of this title.

(2) The term “Director” means the Director of the National Science Foundation.

(3) The term “elementary school” has the same meaning given that term under section 7801 of this title.

(4) The term “Governor” means the chief executive of a State.

(5) The term “Foundation” means the National Science Foundation.

(6) The term “institution of higher education” has the same meaning given that term by section 1001 of this title.

(7) The term “local educational agency” has the same meaning given that term under section 7801 of this title.

(8) The term “secondary school” has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

(9) The term “Secretary” means the Secretary of Education.

(10) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(11) The term “State agency for higher education” means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purpose of this chapter by the Governor or by State law.

(12) The term “State educational agency” has the same meaning given that term under section 7801 of this title.

**REFERENCES IN TEXT**


This chapter, referred to in par. (11), was in the original “this title” and has been translated as if the reference was to “this Act” to reflect the probable intent of Congress inasmuch as this section is not part of a title of Pub. L. 98–377.

**AMENDMENTS**

2006—Par. (1). Pub. L. 109–270 substituted “area career and technical education school” for “area vocational education school” and “area career and technical education program” for “area vocational education program” and “section 2302(3) of this title.” for “section 2471(3) of this title.”


**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see sec-

1 See References in Text note below.
tion 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

**Termination of Trust Territory of the Pacific Islands**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

**Subchapter I—National Science Foundation Science and Engineering Education**

§ 3911. Congressional declaration of policy

(a) The Congress declares that the science and engineering education responsibilities of the National Science Foundation are—

(1) to improve the quality of instruction in the fields of mathematics, science, and engineering;

(2) to support research, fellowships, teacher-faculty-business exchange programs in mathematics, science, and engineering;

(3) to improve the quality and availability of instrumentation for mathematics, science, and engineering instruction;

(4) to encourage partnerships in education between local and State education agencies, business and industry, colleges and universities, and cultural and professional institutions and societies; and

(5) to improve the quality of education at all levels in the fields of mathematics, science, and engineering.

(b) In exercising its responsibilities to strengthen scientific and engineering research potential and science and engineering education programs at all levels, the Foundation shall avoid undue concentration of support for research and education activities.


**Prior Provisions**


**Undergraduate Science Improvement**

Pub. L. 100–570, title I, §112, Oct. 31, 1988, 102 Stat. 2870, provided that:

“(a) The Congress finds that the support of undergraduate science and engineering education is a critical component in a comprehensive national policy intended to ensure the Nation’s future supply of scientists and engineers.

“(b) In accordance with the provisions of this Act [see Tables for classification], the Foundation shall support undergraduate science and engineering activities in instrumentation and laboratory improvement, undergraduate faculty enhancement, undergraduate research opportunities, undergraduate curriculum development, and efforts to encourage the participation of women, minorities, and the disabled in such fields.

“(c) In carrying out the provisions of this section, the Foundation shall take into account the special needs of two-year and four-year colleges and universities.”

§ 3912. Functional objectives; uses of funds

(a) In carrying out its science and engineering education responsibilities, the Foundation shall have the following functional objectives: public understanding of science and technology, faculty enhancement, student education and training, instructional development and instrumentation, and materials development and dissemination.

(b) Funds under this subchapter shall, consistent with such functional objectives, be used for—

(1) enhancement of public understanding of science and engineering through informal education activities using a variety of mediums such as broadcasting, museums, clubs, and amateur science societies;

(2) development of new science and engineering faculty resources and talents;

(3) enhancement of the quality of science and engineering instruction in colleges of teacher education;

(4) development of four-year college faculty and instructors in high technology fields;

(5) development of two-year community college faculty and instructors especially in high technology fields;

(6) development of precollege mathematics, science and engineering education and training;

(7) encouragement of potential students, including underrepresented and underserved populations, to pursue careers in mathematics, science, engineering, and critical foreign languages;

(8) development of instructional instrumentation and systems for postsecondary technical, engineering, and scientific education; and

(9) development of science, engineering, and education networks to aid in the development and dissemination of successful curricula, methods, and materials.


**Prior Provisions**


§ 3913. Teacher institutes

(a) Authorization to make competitive grants; covered institutions, businesses, etc.; purpose

The Foundation shall, in accordance with the provisions of this subchapter, make competitive grants to institutions of higher education, businesses, nonprofit private organizations (including schools), local education agencies, professional engineering and scientific associations, museums, libraries, public broadcasting entities (as defined in section 397(11) of title 47), and appropriate State agencies to support institutes and workshops for supervisors and teachers in public and private elementary and secondary schools for the purpose of improving the subject knowledge and teaching skills of such teachers in the areas of mathematics and science.

(b) Equitable distribution of grants; awards in each State

In making grants under this section, the Foundation shall assure that there is an equi-
table distribution among States of institutes established and operated with funds made available under this section. The Foundation shall award not less than one institute in each State, except that the Foundation may waive this requirement if there is no proposal from a State which meets the requirements of this subchapter. Proposals which exceed $300,000 in any fiscal year incorporating the services or resources of more than two entities in the design and operation of the institute, may be funded at the discretion of the Director of the Foundation.

(c) Cooperation of advanced technology businesses and other businesses

Institutes assisted under this subchapter may, to the extent possible, involve the cooperation of advanced technology businesses and other businesses which are able to supply assistance in the teaching of mathematics and science.

(d) Requirement of involvement in planning and development

In making grants under this subchapter, the Foundation shall require assurances that local education agencies will be involved in the planning and development of the institute in the case of applications submitted by other eligible applicants described in subsection (a) of this section, or that one or more such applicants will be involved in the planning and development of the institute in the case of applications submitted by State or local education agencies.


PRIOR PROVISIONS


§ 3914. Materials development and methods research for search for mathematics, science, and engineering

(a) Authorization to award competitive grants; covered institutions, businesses, etc.; purposes

The Foundation is authorized, in accordance with the provisions of this subchapter, to award competitive grants to institutions of higher education, businesses, nonprofit private organizations, local education agencies, professional engineering and scientific associations, museums, libraries, public broadcasting entities (as defined in section 397(11) of title 47), and appropriate State agencies—

(1) for instructional curriculum improvement and faculty development in mathematics, science, and engineering;

(2) for programs designed to enhance public understanding of mathematics, science, and engineering, including the use of public broadcasting entities; and

(3) for research on methods of instruction and educational programs in mathematics, science, engineering, and critical foreign languages.

(b) Scope of studies

Studies conducted under subsection (a)(3) of this section may include—

(1) teaching and learning research and its application to local and private sector instructional materials development and to improved teacher training programs;

(2) research on the use of local and informal science education activities;

(3) research on recruitment, retention, and improvement of mathematics, science, engineering, and critical languages faculties; and

(4) analysis of materials and methods for mathematics, science, and engineering education used in other countries and their potential application in the United States.

(c) Matching grant requirements

Funds awarded for such competitive grants shall be expended through a system requiring matching of the grant. The minimum amount required as a match shall be equal to a percentage of the grant that is determined by the Foundation.

(d) Materials or methods research application requirements

In making grant applications for materials or methods research for the purposes described in subsections (a)(1) and (a)(3) of this section, the Foundation shall assure the involvement of appropriate State or local education agencies in the case of applications submitted by other entities described in subsection (a) of this section, or that one or more of such other entities will be consulted in the case of applications submitted by State or local education agencies.


PRIOR PROVISIONS


§ 3915. Graduate fellowships

The Foundation is authorized, in accordance with the provisions of this subchapter, to establish and carry out a program of graduate fellowships for the purpose of encouraging and assisting promising students to continue their education and research in mathematics, science, and engineering.


PRIOR PROVISIONS


§ 3916. Other functional activities

(a) The Foundation is authorized to expend up to 15 per centum of the funds available for science and engineering education for applications which the Foundation determines will meet one or more of the functional objectives described in section 3912(b) of this title.
(b) Such programs may include a program for the exchange of mathematics, science, or engineering faculty between institutions of higher education (particularly institutions having nationally recognized research facilities) and eligible institutions. For the purposes of this section, the term “eligible institution” means an institution of higher education which—

(1) has an enrollment which includes a substantial percentage of students who are members of a minority group, or who are economically or educationally disadvantaged; or

(2) is located in a community that is not within commuting distance of a major institution of higher education; and

(3) demonstrates a commitment to meet the special educational needs of students who are members of a minority group or are economically or educationally disadvantaged.


§ 3918. Approval of proposals

The Foundation shall adopt approval procedures designed to assure that awards are made on the basis of the scientific and educational merit as determined by the peer review process. To the maximum extent possible, the Foundation shall assure that there is an equitable distribution of resources with respect to institutions and geographical areas.


§ 3919. Special consideration of underrepresented and underserved population

In providing financial assistance under this subchapter, the Foundation shall make every effort to ensure that consideration is given to proposals which contain provisions designed to meet the needs of underrepresented and underserved populations.


§ 3920. Availability of funds

Funds to carry out this subchapter for any fiscal year shall be made available from amounts appropriated pursuant to annual authorizations of appropriations for the National Science Foundation for Science and Engineering Education. For fiscal year 1986, funds to carry out this subchapter shall be available from amounts authorized by section 102(a)(8) of the National Science Foundation Authorization Act for fiscal year 1986.

§ 3961 to 3973


SUBCHAPTER II—EDUCATION FOR ECONOMIC SECURITY


AMENDMENTS


SHORT TITLE


§ 3982. Definitions

As used in this part—

(1) the term “applicant” means with respect to activities described in section 3984(a) of this title an institution of higher education and the other participants described in paragraph (3) of section 3984(a) of this title, and with respect to activities described in section 3984(b) of this title a local educational agency and the other participants described in paragraph (3) of section 3984(b) of this title;

(2) the term “equipment” includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials; and

(3) the term “State agency for higher education” means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.


AMENDMENTS


1985—Pub. L. 99–159 struck out pars. (3), (4), and (5) which defined “Foundation”, “institution of higher education”, and “States”, respectively, and redesignated par. (6) as (3).

§ 3983. Program authorized

(a) Authority of Secretary

The Secretary is authorized, in accordance with the provisions of this part, to make grants to applicants to pay the Federal share of the costs of the activities described in section 3984 of this title.
(b) Authorization of appropriations

There are authorized to be appropriated $50,000,000 for each of the fiscal years 1986 and 1987. There are authorized to be appropriated to carry out the provisions of this part $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.


AMENDMENTS


Subsec. (b). Pub. L. 99–159, § 233, amended subsec. (b) generally, substituting authorizations of $50,000,000 for each of the fiscal years 1986, 1987, and 1988, for authorizations of $30,000,000 for fiscal year 1984 and $60,000,000 for fiscal year 1985.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of this title.

§ 3984. Authorized activities

(a) Higher education partnership in education programs and activities; eligible applicants

(1) An applicant may use payments received under this part in any fiscal year for higher education programs and activities described in this subsection.

(2) Grants under this subsection may be used for partnership in education programs—

(A) for the improvement of instruction in mathematics, science, computer science, and engineering education at the postsecondary level;

(B) for awarding scholarships to students at institutions of higher education in the fields of mathematics, science, computer science, and engineering;

(C) for the operation of faculty exchange programs by the institutions of higher education and business concerns within the State;

(D) for research in the fields of mathematics, science, computer science, and engineering;

(E) for the acquisition, rehabilitation, and renovation of equipment and instrumentation for use in instruction in the fields of mathematics, science, computer science, and engineering; and

(F) to promote public understanding of science, mathematics, and computer science.

(3) Education partnerships under this subsection may include institutions of higher education, business concerns, nonprofit private organizations, local educational agencies, professional mathematic and scientific associations, museums, libraries, educational television stations, and if the State so desires, appropriate State agencies.

(b) Elementary and secondary partnership in education programs and activities; eligible applicants

(1) An applicant may use payments received under this part in any fiscal year for programs and activities described in this subsection. An applicant may use payments received under this part in any fiscal year for programs and activities described in this subsection.

(2) A local educational agency may carry out an elementary and secondary school partnership in education program under which—

(A) elementary and secondary school teachers in the schools of local educational agencies who teach mathematics, science, or computer science are made available to local business concerns and business concerns with establishments located in the community to serve in such concerns or establishments;

(B) personnel of local business concerns and business concerns with establishments located in the community serve as consultants, lecturers, teaching assistants, or teachers of mathematics, science, or computer science in the elementary and secondary schools within the State;

(C) training and retraining is furnished to elementary and secondary school teachers of mathematics, science, and computer science under a cooperative arrangement between the State or local educational agency and appropriate business concerns;

(D) secondary school students observe, participate, and work in local business concerns and business concerns with establishments located in the community; and

(E) computer clubs and extracurricular activities involving modern technologies are established in elementary and secondary schools.

(3) Partnerships under this subsection may include local educational agencies, business concerns, nonprofit private organizations, institutions of higher education, professional mathematical and scientific associations, museums, libraries, educational television stations, and, if the State so desires, appropriate State agencies.


AMENDMENTS


§ 3985. Application

(a) Requirements; terms, assurances, and conditions

Any applicant which desires to receive a grant under this part shall submit an application approved under section 3986 of this title to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Each such application shall—

(1) describe the activities for which assistance under this part is sought;

(2) provide assurances that not more than 5 per centum of the amount received by the ap-
applicant in any fiscal year may be expended on administrative expenses;
(3) with respect to each program for which assistance is sought, provide assurances that—
(A) 30 per centum of the funds for each such project will be furnished by business concerns within the community;
(B) 20 per centum of the funds will be supplied by—
(i) the State,
(ii) the institution of higher education or the local educational agency, as the case may be, participating in the program; and
(iii) the other parties participating in the program;
(C) no stipend will be paid directly to employees of a profitmaking business concern; and
(D) teachers participating in the exchange program may not be employed by the participating business concern with which the teacher served within three years after the end of the exchange program unless the teacher repays the full cost of the exchange program to the State and local educational agency, as the case may be; and
(4) provide assurances that whenever the program for which assistance is sought includes scholarships, the scholarships be awarded to undergraduate students at institutions of higher education within the State who wish to pursue a course of study in mathematics or science, engineering or computer science, and that each student awarded a scholarship under this part will receive a stipend which shall not exceed the cost of tuition at the institution of higher education plus a stipend of not to exceed $750 for each academic year of study for which the scholarship is awarded;
(5) set forth policies and procedures to assure that whenever the application includes a local educational agency, the scholarships be awarded to undergraduate students at institutions of higher education within the State who wish to pursue a course of study in mathematics or science, engineering or computer science, and that each student awarded a scholarship under this part will receive a stipend which shall not exceed the cost of tuition at the institution of higher education plus a stipend of not to exceed $750 for each academic year of study for which the scholarship is awarded;
(6) provide assurances that consideration is given to programs and activities designed to assure that there is equitable distribution of grants among the States.
(7) provide assurances that in the consideration of applications submitted under section 3986(a) of this title that equitable consideration is given to applications submitted by private and public institutions of higher education; and
(8) provide such additional assurances as the Secretary determines essential to ensure compliance with the requirements of this part.

(b) Regional joint application
A regional consortium of applicants in two or more States may file a joint application under the provisions of subsection (a) of this section.


AMENDMENTS
1985—Subsec. (a). Pub. L. 99–159 substituted “Secretary” for “Foundation” in two places in provisions preceding par. (1) and in par. (8).

§ 3986. Submission of applications
Each applicant within a State which desires to receive a grant under this part shall submit the application prepared in accordance with section 3985 of this title to the State agency on higher education or the State educational agency, as the case may be, for approval and shall submit the approved application to the Secretary under section 3985 of this title. Each such application shall be submitted jointly by the local educational agency in the case of activities described in section 3984(a) of this title, or an institution of higher education in the case of activities described in section 3984(b) of this title, and each business concern or other party that is to participate in the program for which assistance is sought.

AMENDMENTS
1988—Pub. L. 100–418 substituted “part” for “subchapter”.
1985—Pub. L. 99–159 substituted “Secretary” for “Foundation”.

§ 3987. Approval of applications
(a) Criteria; consistency of applications with State plans
(1) The Secretary shall establish criteria for approval of applications under this part.
(2) No application may be approved by the Secretary unless the State educational agency or the State agency for higher education, as the case may be, determines that the application is consistent with State plans for elementary and secondary education or State plans for higher education, as the case may be, in the State.

(b) Procedures for equitable distribution of grants among States
The Secretary shall adopt approval procedures designed to assure that there is equitable distribution of grants among the States.

AMENDMENTS
1985—Pub. L. 99–159 substituted “Secretary” for “Foundation” in pars. (1) and (2) of subsec. (a) and in subsec. (b).

§ 3988. Payments; Federal share; limitation
(a) Federal and non-Federal shares
(1) The Secretary shall pay, to each applicant having an application approved under section
§ 3994. Eligible programs

(a) In general

A State may use funds from grants received in any fiscal year under this part for elementary programs.

1 See References in Text note below.

2 See References in Text note below.
and secondary programs described in this section. The State educational agency shall administer such funds, which shall be awarded to such programs on a competitive basis.

(b) Use of funds

Funds from grants received under this part may be used for the following:

1. Improvement of elementary and secondary resources

Such funds may be used for acquisition of equipment, instructional and reference materials, and partnership in education programs designed to—

(A) improve instruction in mathematics and science education at the elementary and secondary level;

(B) improve laboratory facilities, classroom and library resources in elementary and secondary mathematics and science education; and

(C) attract matching dollars and in kind contributions of equipment, learning resources or shared time from business concerns, libraries, museums, nonprofit private organizations, professional mathematics and scientific associations, and appropriate State agencies.

2. Advanced placement programs

(A) Such funds may be used for advanced placement programs operated by local educational agencies that are designed to allow qualified secondary students to attend college preparatory schools, colleges, or universities on a part-time or full-time basis with respect to science and mathematics instruction.

(B) A local educational agency that receives funds from a grant under this part for an advanced placement program described in subparagraph (A) shall allocate to such program a percentage of funds received from the State on a per student basis according to—

(i) the number of students participating in the program; and

(ii) the instruction time such students receive under the program.


§ 3995. Local applications

(a) Eligibility

An applicant that desires to receive a grant under this part shall submit an application to the State educational agency, at such time, and in such manner, as the State may require. Such application may take the form of an amendment to an assessment submitted by the local educational agency under section 210,1 if appropriate.

(b) Requirements for application

The State shall require each application to include—

1. a description of the activities for which assistance under this part is sought;

2. assurances that not more than 5 percent of the amount received by the applicant in any fiscal year shall be expended on administrative expenses;

3. if the funds are to be used for improvement of elementary and secondary resources as described in subsection (b)(1) of this section—

(A) an estimate of the amount to be spent on equipment, facilities improvement, library resources, and classroom instructional material;

(B) an estimate of the number of elementary and secondary students who will be aided by activities and expenditures under the grant;

(C) assurances that—

(i) except as provided in subsection (c) of this section, a minimum of 25 percent of the funds for each project will be supplied by business concerns within the community;

(ii) no stipend shall be paid directly to employees of a profitmaking business concern;

(iii) provision shall be made for the equitable participation in the project of children who are enrolled in private elementary and secondary schools; and

(iv) consideration will be given to programs and activities designed to meet the needs of educationally disadvantaged and other traditionally underserved populations; and

4. if the funds are to be used for advanced placement programs as described in subsection (b)(2) of this section, a commitment as to the percentage of funds received from the State on a per student basis that shall be used by the local educational agency to defray costs of the advanced placement program.

(c) Waiver

The State may waive or reduce the amount of matching funds required under subsection (b)(3)(C)(i) of this section if the State determines that—

1. substantial need exists in the area served by the applicant for a grant under this part; and

2. the required amount of matching funds cannot be made available.

(d) Joint applications

A regional consortium of applicants in 2 or more local school districts may file a joint application under subsection (a) of this section.


REFERENCES IN TEXT


§ 3996. Submission of applications

An applicant within a State that desires to receive a grant under this part1 shall submit an

1 See References in Text note below.
application prepared in accordance with section 3995 of this title to the State educational agency for approval. Each application with respect to funds for improvement of elementary and secondary resources under section 3994(b)(1) of this title shall be submitted jointly by the local educational agency and each business concern or other party that is to participate in the activities for which assistance is sought.


REFERENCES IN TEXT

This part, referred to in text, was in the original "this chapter" and was translated as reading "this part" to reflect the probable intent of Congress because title III of Pub. L. 98–377, which comprises this subchapter, does not contain chapters.

§ 3997. Approval of applications

(a) Criteria

The State shall establish criteria for approval of applications under this section. Such criteria shall include—

(1) consideration of the local district’s need for, and inability to locally provide for, the activities, equipment, library and instructional materials requested;

(2) the number and nature of elementary and secondary students who will benefit from the planned program; and

(3) the expressed level of financial and in-kind commitment from other parties to the program.

(b) Approval procedures

The State shall adopt approval procedures designed to ensure that grants are equitably distributed among—

(1) rural, urban, and suburban areas; and

(2) small, medium, and large local educational agencies.


§ 3998. Computation of grant amounts

(a) Payments to grantees

(1) Payment by State

The State shall pay to the extent of amounts received by it from the Secretary under this part, to each applicant having an application approved under section 3997 of this title, the Federal share of the cost of the program described in the application.

(2) Amount

(A) Except as provided in subparagraph (B), the Federal share for each fiscal year shall be 75 percent.

(B) In the case of an applicant that receives a waiver under section 3995(c) of this title, the Federal share for each fiscal year may be as much as 100 percent.

(3) Non-Federal share

The non-Federal share of payments under this part may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) Payments to States

Except as provided in subsection (c) of this section, each State shall receive under this part the greater of—

(1) an amount equal to its share of funds appropriated under chapter 1 of the Education Consolidation and Improvement Act; or

(2) $225,000.

(c) Reduction for insufficient funding

If sums appropriated to carry out this part are not sufficient to permit the Secretary to pay in full the grants which States may receive under subsection (b) of this section, the amount of such grants shall be ratably reduced.


REFERENCES IN TEXT


SUBCHAPTER IV—PRESIDENTIAL AWARDS FOR TEACHING EXCELLENCE IN MATHEMATICS AND SCIENCE


EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

SUBCHAPTER V—ASBESTOS SCHOOL HAZARD ABATEMENT

§ 4011. Findings and purpose

(a) Findings

The Congress finds that—

(1) exposure to asbestos fibers has been identified over a long period of time and by reputable medical and scientific evidence as significantly increasing the incidence of cancer and other severe or fatal diseases, such as asbestosis;

(2) medical evidence has suggested that children may be particularly vulnerable to environmentally induced cancers;

(3) medical science has not established any minimum level of exposure to asbestos fibers which is considered to be safe to individuals exposed to the fibers;

(4) substantial amounts of asbestos, particularly in sprayed form, have been used in school
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buildings, especially during the period 1946 through 1972;

(5) partial surveys in some States have indicated that (A) in a number of school buildings materials containing asbestos fibers have become damaged or friable, causing asbestos fibers to be dislodged into the air; and (B) asbestos concentration far exceeding normal ambient air levels have been found in school buildings containing such damaged materials;

(6) the presence in school buildings of friable or easily damaged asbestos creates an unwarrented hazard to the health of the school children and school employees who are exposed to such materials;

(7) the Department of Health and Human Services and the Environmental Protection Agency, as well as several States, have attempted to publicize the potential hazards to school children and employees from exposure to asbestos fibers, but there is no systematic program for remedying hazardous conditions in schools;

(8) because there is no Federal health standard regulating the concentration of asbestos fibers in noncommercial workplace environments such as schools, school employees and students may be exposed to hazardous concentrations of asbestos fibers in the school buildings which they use each day;

(9) without a program of information distribution, technical and scientific assistance, and financial support, many local educational agencies and States will not be able to mitigate the potential asbestos hazards in their schools; and

(10) the effective regulation of interstate commerce for the protection of the public health requires the establishment of programs under this subchapter to mitigate hazards from exposure to asbestos fibers and materials emitting such fibers.

(b) Purpose

It is the purpose of this subchapter to—

(1) direct the Administrator of the Environmental Protection Agency to establish a program to assist States and local educational agencies to ascertain the extent of the danger to the health of school children and employees from asbestos materials in schools;

(2) provide continuing scientific and technical assistance to State and local agencies to enable them to identify and abate asbestos hazards in schools;

(3) provide financial assistance for the abatement of asbestos threats to the health and safety of school children or employees; and

(4) assure that no employee of any local educational agency suffers any disciplinary action as a result of calling attention to potential asbestos hazards which may exist in schools.


AMENDMENTS


SHORT TITLE OF 1990 AMENDMENT

Section 1 of Pub. L. 101–637 provided that: “This Act [enacting section 2656 of Title 15, Commerce and Trade, amending this section, sections 4012 to 4022 of this title, and sections 2643, 2646, and 2647 of Title 15, enacting provisions set out as notes under this section and sections 2646 and 2656 of Title 15, and amending provisions set out as a note under this section] may be cited as the ‘Asbestos School Hazard Abatement Reauthorization Act of 1990’.”

SHORT TITLE


FINDINGS AND PURPOSES

Section 2 of Pub. L. 101–637 provided that:

“(a) FINDINGS.—Congress finds the following:

“(1) The Environmental Protection Agency has estimated that more than forty-four thousand school buildings contain friable asbestos, exposing more than fifteen million school children and one million five hundred thousand school employees to unwarrented health hazards.

“(2) All elementary and secondary schools are required by the Asbestos Hazard Emergency Response Act [of 1986, see Short Title of 1986 Amendment note above] to inspect for asbestos, develop an asbestos management plan, and implement such plan.

“(3) The Environmental Protection Agency has estimated it will cost local education agencies more than $3,000,000,000 to comply with the Asbestos Hazard Emergency Response Act.

“(4) Without a continuing program of information assistance, technical and scientific assistance, training, and financial support, many local educational agencies will be unable to carry out sufficient response actions to prevent the release of asbestos fibers into the air.

“(5) Without the provisions of sufficient financial support, the cost to local educational agencies of implementing asbestos response actions may have an adverse impact in their educational mission.

“(6) The effective regulation of interstate commerce for the protection of human health and the environment requires the continuation of programs to mitigate hazards of asbestos fibers and materials emitting such fibers.

“(b) PURPOSES.—The purposes of this Act [see Short Title of 1990 Amendment note above] are the following:

“(1) To direct the Environmental Protection Agency to maintain a program to assist local schools in carrying out their responsibilities under the Asbestos Hazard Emergency Response Act.

“(2) To provide continuing scientific and technical assistance to State and local agencies to enable them to identify and abate asbestos health hazards.

“(3) To provide financial assistance to State and local agencies for training of persons involved with inspections and abatement of asbestos, for conducting necessary reinspections of school buildings, and for the actual abatement of asbestos threats to the health and safety of school children or employees.

“(4) To assure that no employee of a local educational agency suffers any disciplinary action as a result of calling attention to potential asbestos hazards which may exist in schools.”

§ 4012. Asbestos hazard abatement program

(a) Abatement program

There is hereby established a program within the Environmental Protection Agency to be known as the Asbestos Hazards Abatement Pro-
gram (hereinafter in this subchapter referred to as "Program").

(b) Duties

The duties of the Administrator in implementing and effectuating the Program shall include—

(1) the compilation of medical, scientific, and technical information including, but not limited to—
   (A) the health and safety hazards associated with asbestos materials;
   (B) the means of identifying, sampling, and testing materials suspected of emitting asbestos fibers; and
   (C) the means of abating the threat posed by asbestos and asbestos containing materials;

(2) the distribution of the information described in paragraph (1) (in any appropriate form such as pamphlets, reports, or instructions) to State and local educational agencies and to other institutions, including parent and employee organizations, for the purpose of carrying out activities described in this subchapter;

(3) not later than November 15 of each year for which this subchapter is authorized, the development and distribution of applications, or notifications to all local educational agencies of the availability of application forms including information for obtaining such forms; and

(4) the review of applications for financial assistance, and the approval or disapproval of such applications, in accordance with the provisions of section 4014 of this title.


AMENDMENTS


Subsec. (a). Pub. L. 101–637, §14(b)(3), inserted heading and struck out par. (1) designation before "There is hereby established".


Subsec. (b)(2). Pub. L. 101–637, §4(1), (2), substituted "educational agencies" for "agencies" and "institutions, including parent and employee organizations," for "institutions".

Subsec. (b)(3). Pub. L. 101–637, §4(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "the development within forty-five days of August 11, 1984, of an interim or final application form, which shall be distributed promptly to local educational agencies; and".

§ 4013. State records and priority lists

(a) Records

The Governor of each State shall maintain records on—

(1) the presence of asbestos materials in school buildings of local educational agencies;

(2) the asbestos detection and abatement activities and other response actions conducted by local educational agencies (including activities relating to the replacement of the asbestos materials removed from school buildings with other appropriate building materials); and

(3) repairs made to restore school buildings to conditions comparable to those which existed before the abatement activities referred to in paragraph (2) were undertaken.

(b) Priority list

(1) Each year, in accordance with procedures established by the Administrator, the Governor of each State shall:

(A) submit to the Administrator a priority list of all schools under the authority of a local educational agency within the State, without regard to the public or private nature of the school involved, that are candidates for abatement activities and other response actions; and

(B) forward to the Administrator for each candidate for abatement activities and other response actions all applications for financial assistance prepared by the local educational agencies in accordance with the provisions of section 4014 of this title; and

(2) The priority list shall rank the potential candidates for abatement action based on the nature and magnitude of the existing and potential exposure presented by the asbestos materials.

(3) For each school listed, the Governor shall certify that the statement of need contained in the application for assistance accurately reflects the financial resources available to the local educational agency for the asbestos abatement program.

(4) For the purpose of determining the adequacy of the financial resources available to a local educational agency for the abatement of asbestos threats the Governor shall, to the extent practicable, consider the following:

(A) A measure of financial need used by the State in which the local educational agency is located.

(B) The estimated per capita income of the locality of such agency or of those directly or indirectly providing financial support for such agency.

(C) The extent to which the local school millage rate falls above or below (i) the millage rate average of the State and (ii) the millage rate of other local educational agencies with comparable enrollment, per capita income, and resource base.

(D) The ratio, expressed as a percentage, of the estimated cost of the project to the total budget of the local educational agency.

(E) The borrowing capacity of the local educational agency.

(F) Any additional costs to the local educational agency of meeting the special needs of disadvantaged students.

(G) Any other factor that demonstrates that the local educational agency has limited financial resources.


AMENDMENTS


1So in original. Probably should end with a period instead of "; and".
Subsec. (a), Pub. L. 101–637, §§5(a)(1), 14(b)(5), inserted heading and substituted “The Governor of each State shall maintain records on” for “Not later than three months after August 11, 1984, the Governor of each State shall submit to the Administrator a plan which describes the procedures to be used by the State for maintaining records on” in introductory provisions.

Subsec. (a)(2), Pub. L. 101–637, §5(a)(2), (3), inserted “and other response actions” after “abatement activities” and inserted “and” after semicolon at end.

Subsec. (a)(3), Pub. L. 101–637, §6(a)(4), substituted “paragraph (2)” for “subparagraph (B)”.


Subsec. (b)(1), Pub. L. 101–637, §5(b)(1), substituted “Each year, in accordance with procedures established by the Administrator,” for “Not later than six months after August 11, 1984, and annually thereafter,” in introductory provisions.

Subsec. (b)(1)(A), Pub. L. 101–637, §§5(b)(2), (3), 14(b)(6)(B), substituted “abatement activities and other response actions” for “abatement”, struck out “and” “submit to the Administrator” and inserted “and” after semicolon at end.

Subsec. (b)(1)(B), Pub. L. 101–637, §§5(b)(2), 14(b)(6)(B), (C), substituted “abatement activities and other response actions” for “abatement”, struck out “section 4012(b)(3) of this title” and “section 4014”, and struck out “and the Secretary of the Department of Education” after “forward to the Administrator”.

Subsec. (b)(1)(C), Pub. L. 101–637, §5(b)(4), struck out subpar. (C) which reads as follows: “forward to the Secretary of the Department of Education a copy of all information submitted to the Administrator in accordance with subsection (b)(3) of this section.”

Subsec. (b)(4)(C), Pub. L. 101–637, §14(b)(6)(D), inserted a comma after “per capita income.”

Subsec. (b)(4)(F), (G), Pub. L. 101–637, §5(c), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (c), Pub. L. 101–637, §5(d), struck out subsec. (c) which read as follows: “Not later than nine months after the submission of the plan described in subsection (a) of this section, and each twelve months thereafter, the Governor shall submit to the Administrator a report which describes the actions taken by the State in accordance with its plan under such subsection.”

§ 4014. Financial assistance

(a) Assistance Program

There is hereby established within the Environmental Protection Agency an Asbestos Hazard Abatement Assistance Program (hereafter in this chapter referred to as the “Assistance Program”), which shall be administered in accordance with this section.

(b) Application submission

(1) Applications for financial assistance shall be submitted by a local educational agency to the Governor, or the Governor’s designee, who shall establish a priority list based on the criteria of section 4013(b)(2) of this title.

(2) Pursuant to section 4013 of this title, the Governor shall submit applications, together with the Governor’s report and priority list, to the Administrator who shall review and rank such applications pursuant to subsection (c)(2) of this section and propose financing pursuant to the criteria of section 4013(b)(4) of this title.

The Administrator shall approve or disapprove applications for financial assistance no later than April 30 of each year.

(c) Review of application

(1) The Administrator shall provide financial assistance on a school-by-school basis to local educational agencies in accordance with other provisions of this section to carry out projects for—

(A) abating the threat posed by materials containing asbestos to the health and safety of children or employees;

(B) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(C) restoring school buildings to conditions comparable to those existing before abatement activities were undertaken pursuant to this section.

(2) The Administrator shall review and list in priority order applications for financial assistance. In ranking applications, the Administrator shall consider—

(A) the priority assigned to the abatement program by the Governor pursuant to section 4013(b)(2) of this title; and

(B) the likelihood of release of asbestos fibers into a school environment;

(ii) any other evidence of the risk caused by the presence of asbestos including, but not limited to, situations in which there is a substantial quantity of dry loose asbestos-containing material on horizontal surfaces or asbestos-containing material is substantially deteriorated or damaged, and there is asbestos-containing material in an air plenum or in a high traffic area, confined space, or within easy reach of a passerby;

(iii) the extent to which the corrective action proposed by the applicant will reduce the exposure of school children and school employees; and

(iv) the extent to which the corrective action proposed by the applicant uses the least burdensome methods which protect human health and the environment.

(3) In determining whether an applicant is eligible for assistance, and the nature and amount of financial assistance, the Administrator shall consider the financial resources available to the applicant as certified by the Governor pursuant to section 4013(b)(4) of this title.

(d) Limitation

In no event shall financial assistance be provided under this subchapter to an applicant if—

(1) the Administrator determines that such applicant has resources adequate to support an appropriate asbestos materials abatement program; or

(2) the applicant is not in compliance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).

(e) Amount of loan or grant

(1) An applicant for financial assistance may be granted a loan of up to 100 percent of the costs of an abatement program or, if the Administrator determines that such applicant is unable to undertake and complete an asbestos materials abatement program with a loan, such applicant may also receive a grant (alone or in combination with a loan) not to exceed 50 percent of the total costs of abatement, in the amount which the Administrator deems necessary.

(2) In approving any grant, the Administrator shall state with particularity the reasons why
the applicant is unable to undertake and complete the abatement program with loan funds.

(f) Loan agreement

Loans under this section shall be made pursuant to agreements which shall provide for the following:

(1) the loan shall not bear interest;
(2) the loan shall have a maturity period of not more than twenty years (as determined by the Administrator) and shall be repayable during such period at such times and in such amounts as the Administrator may specify in the loan agreement;
(3) repayment shall be made to the Secretary of the Treasury for deposit in the Asbestos Trust Fund established by section 4022 of this title; and
(4) such other terms and conditions that the Administrator determines necessary to protect the financial interest of the United States.

(g) Application requirements

(1) No financial assistance may be provided under this section unless an application has been submitted to the Administrator in accordance with such procedures as may be developed by the Administrator.
(2) The Administrator shall not approve an application unless—

(A) the application contains such information as the Administrator may require, including but not limited to information describing—

(i) the nature and extent of the asbestos problem for which the assistance is sought;
(ii) the asbestos content of the material to be abated;
(iii) the methods which will be used to abate the asbestos materials;
(iv) the amount and type of financial assistance requested;
(v) a description of the financial resources of the local educational agency; and
(vi) a justification for the type and amount of the financial assistance requested.

(B) the application contains a certification that—

(i) the local educational agency has prepared and is implementing an asbestos management plan, as required under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.); and
(ii) all activities to be conducted with the financial assistance will be performed by individuals trained and accredited in conformance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) and regulations promulgated under that title;

(C) the application contains assurances that the local educational agency will furnish such information as is necessary for the Administrator to make the report required by section 4016 of this title.

(3) No financial assistance may be provided by the Administrator under this section for projects described in subsection (a)(2) of this section on which abatement action was completed prior to January 1, 1984.

(4) Except as provided in section 4021(b)(1) of this title, in approving applications the Administrator shall provide assistance to the local educational agencies having the highest priority among applications being considered in order of ranking until the appropriated funds are expended.


REFERENCES IN TEXT


AMENDMENTS


Subsec. (b)(2). Pub. L. 101–637, § 6(a)(1), (2), substituted “the Governor shall submit applications,” for “applications shall be submitted,” and inserted “The Administrator shall approve or disapprove applications for financial assistance no later than April 30 of each year.”

Subsec. (b)(3). Pub. L. 101–637, § 6(a)(3), struck out par. (3) which read as follows: “Within sixty days of receipt of the information described in section 4013(b)(1) of this title, the Secretary of the Department of Education shall review such information and, in the Secretary’s discretion, provide to the Administrator comments and recommendations based upon the needs of local educational agencies for financial assistance. Within sixty days of receipt of the Secretary’s report, or expiration of the time allowed for such report, the Administrator shall approve or disapprove applications for financial assistance.”


Pub. L. 101–637, § 6(b), substituted “uses the least burdensome methods which protect human health and the environment” for “is cost-effective compared to other techniques including management of material containing asbestos”.

Subsec. (c)(3). Pub. L. 101–637, § 6(c), substituted “shall consider the financial resources available to the applicant as certified by the Governor pursuant to section 4013(b)(4) of this title” for “shall consider—

“(A) the financial resources available to the applicant as certified by the Governor pursuant to section 4013(b)(4) of this title; and

“(B) the report, if any, of the Secretary of Education pursuant to section 4013(b)(5) of this title.”.

Subsec. (d). Pub. L. 101–637, § 6(d), inserted heading and amended text generally. Prior to amendment, text read as follows: “In no event shall financial assistance be provided under this subchapter to an applicant if the
Administrative determines that such applicant has resources adequate to support an appropriate asbestos materials abatement program. In making such a determination, the Administrator may consult with the Secretary of Education.


Subsec. (g)(4)(B)(i), (ii). Pub. L. 101–637, §14(c)(7)(F), substituted cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

“(i) any employee engaged in an asbestos material abatement program who is trained and equipped pursuant to post—


Subsec. (i). Pub. L. 101–637, §14(b)(1), inserted subsec. “in accordance with such procedures as may be developed by the Administrator” for “within the five-year period beginning on August 11, 1984”.

(a) Regulations

The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this subchapter.

(b) Procedures

The Administrator also shall establish procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 4014 of this title, for—

(1) abating asbestos materials in school buildings;

(2) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(3) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

(c) Relationship to other laws

Nothing contained in this subchapter shall be construed, interpreted, or applied to diminish in any way the level of protection required under any other State or Federal worker protection or other applicable laws.

(d) Other authority

In order to effectuate the purposes of this subchapter, the Administrator may also adopt such other procedures, standards, and regulations as the Administrator deems necessary, including—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.

FINANCIAL ASSISTANCE TO CARRY OUT INSPECTIONS FOR ASBESTOS-CONTAINING MATERIAL

Section 4(b) of Pub. L. 99–511 provided that:

“(3) In determining which local educational agencies to approve grants for, the Administrator shall take into account the financial need of the agency. Of the amount available under the Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. 4011 et seq.] for fiscal years 1988 and 1989, not more than 10 percent may be obligated for the purposes described in this subsection.”

§ 4015. Administrative provisions

(a) Regulations

The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this subchapter.

(b) Procedures

The Administrator also shall establish procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 4014 of this title, for—

(1) abating asbestos materials in school buildings;

(2) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(3) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

Amendments


Subsec. (b). Pub. L. 101–637, §7(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

“The Administrator shall also establish—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.”

(1) abating asbestos materials in school buildings;

(b) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(c) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

Amendments


Subsec. (b). Pub. L. 101–637, §7(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

“The Administrator shall also establish—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.

1984—Pub. L. 99–519 provided that:

(a) Title II of the Toxic Substances Control Act in the form of grants to States or local educational agencies to carry out inspections for asbestos-containing material in school buildings and preparation of management plans for school buildings under this title [probably means title II of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.] 

(b) Not more than 2 percent of any grant awarded to a State pursuant to paragraph (1) may be used by the State for administrative purposes. For purposes of the preceding sentence, administrative purposes do not include salaries of persons who inspect for asbestos-containing material or assist in the preparation of management plans.

McKinney’s US Statutes at Large

Title 20. Education

Subtitle C. School Health Programs

Part B. Asbestos School Hazard Abatement

Subpart 3. Asbestos School Hazard Abatement Program

§ 4015. Administrative provisions

(a) Regulations

The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this subchapter.

(b) Procedures

The Administrator also shall establish procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 4014 of this title, for—

(1) abating asbestos materials in school buildings;

(2) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(3) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

Amendments


Subsec. (b). Pub. L. 101–637, §7(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

“The Administrator shall also establish—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.

Subsec. (b). Pub. L. 101–637, §7(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

“The Administrator shall also establish—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.”

1984—Pub. L. 99–519 provided that:

(a) Title II of the Toxic Substances Control Act in the form of grants to States or local educational agencies to carry out inspections for asbestos-containing material in school buildings and preparation of management plans for school buildings under this title [probably means title II of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.] 

(b) Not more than 2 percent of any grant awarded to a State pursuant to paragraph (1) may be used by the State for administrative purposes. For purposes of the preceding sentence, administrative purposes do not include salaries of persons who inspect for asbestos-containing material or assist in the preparation of management plans.

McKinney’s US Statutes at Large

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§ 4015. Administrative provisions

(a) Regulations

The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this subchapter.

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The Administrator also shall establish procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 4014 of this title, for—

(1) abating asbestos materials in school buildings;

(2) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(3) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

Amendments


Subsec. (b). Pub. L. 101–637, §7(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

“The Administrator shall also establish—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.”

1984—Pub. L. 99–519 provided that:

(a) Title II of the Toxic Substances Control Act in the form of grants to States or local educational agencies to carry out inspections for asbestos-containing material in school buildings and preparation of management plans for school buildings under this title [probably means title II of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.] 

(b) Not more than 2 percent of any grant awarded to a State pursuant to paragraph (1) may be used by the State for administrative purposes. For purposes of the preceding sentence, administrative purposes do not include salaries of persons who inspect for asbestos-containing material or assist in the preparation of management plans.
§ 4016. Annual report

During each calendar year until 1999, the Administrator shall prepare and submit, not later than June 1 of each year, to the Committee on Environment and Public Works of the Senate and to the Committee on Energy and Commerce of the House of Representatives a report on the loan and grant program authorized by section 4014 of this title.

(1) describe the number of applications received;

(2) describe the number of loans and grants made in the preceding calendar year and specify each applicant for and recipient of a loan or grant;

(3) specify the number of loan or grant applications which were disapproved during the preceding calendar year and describe the reasons for such disapprovals;

(4) describe the types of programs for which loans or grants were made;

(5) specify the estimated total costs of such programs to the recipients of loans or grants and specify the amount of loans or grants made under the program authorized by this section; and

(6) estimate the number of schools still in need of assistance and the amount of resources needed by such schools, categorized by State, to abate all remaining asbestos hazards.


AMENDMENTS


Pub. L. 101–637, §8(a), amended first sentence generally. Prior to amendment, first sentence read as follows: "During each of the ten calendar years after 1984, the Administrator shall prepare and submit not later than February 1 of each year a report to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives on the loan and grant program authorized by section 4014 of this title.

Par. (6), Pub. L. 101–637, §8(b), inserted before period at end "and the amount of resources needed by such schools, categorized by State, to abate all remaining asbestos hazards."
cerning any asbestos problem in the school buildings within the jurisdiction of such agency.


AMENDMENTS

§ 4019. Affect on rights under other laws

Except as otherwise provided in section 4017 of this title, nothing in this subchapter shall—

(1) affect the right of any party to seek legal redress in connection with the purchase or installation of asbestos materials in schools or any claim of disability or death related to exposure to asbestos in a school setting; or

(2) affect the rights of any party under any other law.


AMENDMENTS

§ 4020. Definitions

For purposes of this subchapter:

(1) The term "asbestos" means—

(A) chrysotile, amosite, or crocidolite; or

(B) in fibrous form, tremolite, anthophyllite, or actinolite.

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "threat" or "hazard" means that an asbestos material is friable or easily damaged, or within reach of students or employees or otherwise susceptible to damage (including damage from water, vibration, or air circulation) which could result in the dispersal of asbestos fibers into the school environment.

(4) The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of this title; and

(B) the governing authority of any nonprofit elementary or secondary school.

(5) The term "nonprofit elementary or secondary school" means—

(A) any elementary or secondary school as defined in section 7801 of this title owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and

(B) any school of any agency of the United States.

(6) The term "school buildings" means—

(A) structures suitable for use as classrooms, laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(C) other facilities used for the instruction of students, for research, or for the administration of educational or research programs; and

(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A) through (C) of this paragraph.

(7) The term "Administrator" means the Administrator of the Environmental Protection Agency, or the Administrator's designee.

(8) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Bureau of Indian Affairs.

(9) The term "response action" has the meaning given such term by section 2642(11) of title 15.


AMENDMENTS
2002—Par. (4)(A). Pub. L. 107–110, §1076(1)(2)(A), which directed amendment of subpar. (A) by substituting in the original "9101" for "198(a)(10)"; was executed by substituting "section 7801 of this title" for "section 8801 of this title", to reflect the probable intent of Congress and prior amendment by Pub. L. 103–382, §394(c)(1), which had substituted "1101" for "198(a)(10)" in the original. See 1994 Amendment note below.

Par. (5)(A). Pub. L. 107–110, §1076(1)(2)(B), which directed amendment of subpar. (A) by substituting in the original "9101" for "198(a)(7)"; was executed by substituting "section 7801 of this title" for "section 8801 of this title", to reflect the probable intent of Congress and prior amendment by Pub. L. 103–382, §394(c)(2), which had substituted "1101" for "198(a)(7)" in the original. See 1994 Amendment note below.


1990—Pub. L. 101–637, §§14(a)(11), (c)(6)(A), inserted section catchline and substituted "this subchapter:" for "this subchapter—".

Pars. (1), (2). Pub. L. 101–637, §§14(c)(6)(B), (C), substituted "the" for "the" at beginning and a period for semicolon at end.

Par. (3). Pub. L. 101–637, §§101(1), 14(c)(6)(B)(D), substituted "the" for "the" at beginning and a period for semicolon at end, struck out "each" before "reach of student", and inserted "vibration," after "damage from water":

Par. (4). Pub. L. 101–637, §14(c)(6)(B), (C), substituted "The" for "the" at beginning and a period for semicolon at end.

Par. (5). Pub. L. 101–637, §14(c)(6)(E), which directed the insertion of "secondary" before "school", was executed by making the insertion in the introductory provision to reflect the probable intent of Congress.

Pub. L. 101–637, §14(c)(6)(B), (C), substituted "The" for "the" at beginning and a period for semicolon at end.

Pars. (6), (7). Pub. L. 101–637, §14(c)(6)(B), (C), substituted "The" for "the" at beginning and a period for semicolon at end.
§ 4021. Authorization

(a) Amount; availability until expended

(1) There are hereby authorized to be appropriated for the asbestos abatement program not more than $200,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995. In addition, for such purposes and for each of such fiscal years there are authorized to be appropriated out of the Asbestos Trust Fund established by section 4022 of this title such sums as are contained in such trust fund in each of such fiscal years.

(2) The sums appropriated under this subchapter shall remain available until expended.

(b) Minimum State amount; fiscal year obligation requirement; reserved funds for administration and asbestos abatement oriented program expenditures; appropriations out of Asbestos Trust Fund

(1) A State with qualified applicants shall receive no less than one-half of 1 per cent of the sums appropriated under this subchapter or the total of the amounts requested by such applicants, whichever is less. Those amounts available in each fiscal year under this paragraph shall be obligated before the end of that fiscal year. For the purposes of this paragraph the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Bureau of Indian Affairs and, together with Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Of those sums appropriated for the implementation of this subchapter, not more than 5 percent may be reserved during each fiscal year for the administration of this subchapter and for programs including (but not limited to) the following:

(A) The establishment of training centers for contractors, engineers, school employees, and other personnel to provide instruction, in accordance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.), on asbestos assessment and abatement.

(B) The development and dissemination of abatement guidance documents to assist in evaluation of potential hazards and the determination of proper abatement programs.

(C) The development of rules and regulations regarding inspection, reporting, and record-keeping.

(D) The development of a comprehensive testing and technical assistance program.

(3) Of those sums appropriated for any fiscal year for the implementation of this subchapter, the Administrator may use not more than 5 percent to provide grants to States for the following purposes:

(A) Assisting local educational agencies in performing the periodic reinspections and training activities required under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).

(B) Establishing and maintaining programs to accredit personnel performing asbestos inspections and response actions.

References in Text


Amendments


Subsec. (a)(1). Pub. L. 101–637, §11(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “There are hereby authorized to be appropriated for the asbestos abatement program not more than $50,000,000 for the fiscal year ending on September 30, 1984, $50,000,000 for the fiscal year ending on September 30, 1985, and $100,000,000 for each of the five succeeding fiscal years. In addition, for such purposes there are authorized to be appropriated out of the Asbestos Trust Fund established by section 4022 of this title $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.”

Subsec. (b)(2). Pub. L. 101–637, §11(b), added par. (2) and struck out former par. (2) which read as follows: “Of those sums appropriated for the implementation of this subchapter, up to 10 per centum shall be reserved during the fiscal year ending September 30, 1984, and up to 5 per centum for the fiscal year ending September 30, 1985, for the administration of this subchapter and for programs including, but not limited to, the following: “(A) the establishment of a training center for contractors, engineers, school employees, parents and other personnel to provide instruction on asbestos assessment and abatement; “(B) the development and dissemination of abatement guidance documents to assist in evaluation of potential hazards, and the determination of proper abatement programs; “(C) the development of rules and regulations regarding inspection, reporting and record-keeping; and “(D) the development of a comprehensive testing and technical assistance program.”


1985—Pub. L. 99–319 inserted “and struck out former par. (2) which read as follows: “Of those sums appropriated for the implementation of this subchapter, up to 10 per centum shall be reserved during the fiscal year ending September 30, 1984, and up to 5 per centum for the fiscal year ending September 30, 1985, for the administration of this subchapter and for programs including, but not limited to, the following: “(A) the establishment of a training center for contractors, engineers, school employees, parents and other personnel to provide instruction on asbestos assessment and abatement; “(B) the development and dissemination of abatement guidance documents to assist in evaluation of potential hazards, and the determination of proper abatement programs; “(C) the development of rules and regulations regarding inspection, reporting and record-keeping; and “(D) the development of a comprehensive testing and technical assistance program.”

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.
Changes to the Asbestos Trust Fund, consisting of such amounts as may be transferred or credited to such Trust Fund as provided in this section.

(b) Transfers to Trust Fund

(1) Transfer

There are hereby transferred to the Asbestos Trust Fund amounts equivalent to—
(A) amounts received in the Treasury on or after January 1, 1987, as repayments of loans made under section 404 of this title.
(B) amounts received as deposits from local educational agencies under section 2647(a) of title 15, and
(C) amounts received as proceeds from any judgment recovered in any suit brought pursuant to section 4017(a)(1) of this title.

(2) Monthly transfers

The amounts transferred by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Asbestos Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were more or less than the amounts required to be transferred.

(c) Management of Trust Fund

(1) Investment

(A) In general

The Secretary of the Treasury shall invest such portion of the Asbestos Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States and may be acquired—
(i) on original issue at the issue price, or
(ii) by purchase of outstanding obligations at the market price.

(B) Sale of obligations

Any obligation acquired by the Asbestos Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) Interest on certain proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Asbestos Trust Fund shall be credited to and form a part of the Trust Fund.


(d) Expenditures from Asbestos Trust Fund

Amounts in the Asbestos Trust Fund shall be available, as provided by appropriation Acts, only for purposes of carrying out the Asbestos Hazard Abatement Assistance Program under section 4014 of this title.

(e) Authority to borrow

(1) In general

There are authorized to be appropriated to the Asbestos Trust Fund, as repayable advances, $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(2) Repayment of advances

(A) In general

Advances made under this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Asbestos Trust Fund.

(B) Rate of interest

Interest on advances made under this subsection shall be at a rate determined by the Secretary (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(f) Effective date

The amendments made by this section shall take effect on January 1, 1986.


Codification

Section was enacted as part of the Asbestos Hazard Emergency Response Act of 1986, and not as part of the Asbestos School Hazard Abatement Act of 1984 which comprises this subchapter nor as part of the Education for Economic Security Act which comprises this chapter.

Amendments

1995—Subsec. (c)(2). Pub. L. 104–66 struck out heading and text of par. (2). Text read as follows: “It shall be the duty of the Secretary of the Treasury to hold the Asbestos Trust Fund and to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next 5 fiscal years.”

1990—Subsec. (b)(1). Pub. L. 101–637, § 12(a), substituted a comma for “as in effect on October 22, 1986,” and “” in subpar. (A) and “, and” for period at end of subpar. (B), and added subpar. (C).

Subsec. (d). Pub. L. 101–637, § 12(b), struck out before period at end “as in effect on October 22, 1986”.

SUBCHAPTER VI—EXCELLENCE IN EDUCATION PROGRAM


**(c) Fair opportunity criteria**

Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that—

1. The meeting is voluntary and student-initiated;
2. There is no sponsorship of the meeting by the school, the government, or its agents or employees;
3. Employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
4. The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school;
5. Nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

**(d) Construction of subchapter with respect to certain rights**

Nothing in this subchapter shall be construed to authorize the United States or any State or political subdivision thereof—

1. To influence the form or content of any prayer or other religious activity;
2. To require any person to participate in prayer or other religious activity;
3. To expend public funds beyond the incidental cost of providing the space for student-initiated meetings;
4. To compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;
5. To sanction meetings that are otherwise unlawful;
6. To limit the rights of groups of students which are not of a specified numerical size; or
7. To abridge the constitutional rights of any person.

**(e) Federal financial assistance to schools unaffected**

Notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this subchapter shall be construed to authorize the United States to deny or withhold Federal financial assistance to any school.

**(f) Authority of schools with respect to order, discipline, well-being, and attendance concerns**

Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.


**Short Title**

Section 801 of title VIII of Pub. L. 98–377 provided that: “This title [enacting this subchapter] may be cited as ‘The Equal Access Act.’”

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**Effective Date of Repeal**

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

**SUBCHAPTER VIII—MAGNET SCHOOLS ASSISTANCE**


For similar provisions, see section 7201 et seq. of this title.

**Effective Date of Repeal**

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

**SUBCHAPTER VIII—EQUAL ACCESS**

§ 4071. Denial of equal access prohibited

(a) Restriction of limited open forum on basis of religious, political, philosophical, or other speech content prohibited

It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

(b) "Limited open forum" defined

A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.
§ 4072. Definitions

As used in this subchapter—

(1) The term “secondary school” means a public school which provides secondary education as determined by State law.

(2) The term “sponsorship” includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.

(3) The term “meeting” includes those activities of student groups which are permitted under a school’s limited open forum and are not directly related to the school curriculum.

(4) The term “noninstructional time” means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.


§ 4073. Severability

If any provision of this subchapter or the application thereof to any person or circumstances is judicially determined to be invalid, the provisions of the remainder of the subchapter and the application to other persons or circumstances shall not be affected thereby.


§ 4074. Construction

The provisions of this subchapter shall supersede all other provisions of Federal law that are inconsistent with the provisions of this subchapter.


CHAPTER IX—STAR SCHOOLS PROGRAM


For similar provisions, see section 6891 et seq. of this title.

SHORT TITLE


CHAPTER 53—EMERGENCY IMMIGRANT EDUCATION ASSISTANCE


Effective Date of Repeal

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.


CHAPTER 55—EDUCATION OF THE DEAF

SUBCHAPTER I—GALLAUDET UNIVERSITY; NATIONAL TECHNICAL INSTITUTE FOR THE DEAF; OTHER PROGRAMS

PART A—GALLAUDET UNIVERSITY

Sec. 4301. Continuation of Gallaudet College as Gallaudet University.

4302. Property rights.

4303. Board of Trustees.

PART B—NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

4304. Laurent Clerc National Deaf Education Center.

4305. Agreement with Gallaudet University.

PART C—OTHER PROGRAMS

4306. National study on the education of the deaf.


4308. Repealed.

4309. Oversight and effect of agreements.

4309a. Internationally trained students.

4309b. Research priorities.

4310. National study on the education of the deaf.

4310a. Authorization of appropriations.


4312. Purchases through General Services Administration.

4313. Financial and program audit by Secretary.

SUBCHAPTER II—GENERAL PROVISIONS

4314. Gifts.

4315. Audit.

4316. Reports.

4317. Monitoring, evaluation, and reporting.

4318. Liaison for educational programs.


4320. Repealed.

4321. Cultural experiences grants.

REFERENCES IN TEXT

An Act to amend the charter of the Columbia Institution for the Deaf, change its name, define its corporate powers, and provide for its organization and administration, and for other purposes; approved June 18, 1954, is continued as a body corporate under the name of Gallaudet University. On and after August 4, 1986, Gallaudet College shall be known as Gallaudet University and have perpetual succession and shall have the powers and be subject to the limitations contained in this chapter.

(b) Purpose

The purpose of Gallaudet University shall be to provide education and training to individuals who are deaf and otherwise to further the education of individuals who are deaf.


PRIOR PROVISIONS

Provisions similar to this section were contained in sections 691 and 691a of this title prior to repeal by Pub. L. 99–371.

AMENDMENTS

1993—Subsec. (a). Pub. L. 100–373 inserted comma after “Hereafter” in original, which for purposes of codification had been translated as “On or after August 4, 1986,” requiring no change in text.

1992—Subsec. (b). Pub. L. 102–421 substituted “individuals who are deaf” for “deaf individuals” after “training to” and for “the deaf” after “education of”.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 161 of title I of Pub. L. 102–421 provided that: “The amendments described in this title [enacting sections 4304, 4305, 4357, 4358, and 4359a of this title, amending this section and sections 4331, 4352, 4353 to 4356, and 4360 of this title, and repealing sections 4311, 4321, 4341 to 4344, 4347, and 4358 of this title] are made upon October 1, 1992, and take effect upon such date.”

SHORT TITLE OF 1998 AMENDMENT


SHORT TITLE OF 1993 AMENDMENT

Section 201(a) of title II of Pub. L. 103–73 provided that: “This title [amending this section and sections 4302 to 4305, 4331, 4352, 4353 to 4357, 4358, 4359a, and 4360 of this title] may be cited as the ‘Education of the Deaf Act Amendments of 1993.’”
§ 4302. SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–421 provided that: “This Act [enacting sections 4304, 4305, 4357, 4358, and 4359a of this title, amending this section and sections 1424a, 1431, 1441, 4303, 4331, 4332, 4351 to 4356, and 4960 of this title, repealing sections 4311, 4321, 4322, 4341 to 4494, 4537, and 4538 of this title, and enacting provisions set out as notes under this section and section 1424a of this title] may be cited as the ‘Education of the Deaf Act Amendments of 1992’.”

§ 4302. Property rights

(a) Property rights described

Gallaudet University is vested with all the property and the rights of property, and shall have and be entitled to use all authority, privileges, and possessions and all legal rights which it has, or which it had or exercised under any former name, including the right to sue and be sued and to own, acquire, sell, mortgage, or otherwise dispose of property it may own now or hereafter acquire. Gallaudet University shall also be subject to all liabilities and obligations now outstanding against the corporation under any former name.

(b) Disposal of real property

(1) With the approval of the Secretary, the Board of Trustees of Gallaudet University may convey fee simple title by deed, convey by quit-claim deed, mortgage, or otherwise dispose of any or all real property title to which is vested in Gallaudet University, Gallaudet College, the Columbia Institution for the Deaf, or any predecessor corporation.

(2) The proceeds of any such disposition shall be considered a part of the capital structure of the corporation, and may be used solely for the acquisition of real estate for the use of the corporation, for the construction, equipment, or improvement of buildings for such use, or for investment purposes, but, if invested, only the income from the investment may be used for current expenses of the corporation.


PRIOR PROVISIONS

Provisions similar to this section were contained in section 691b of this title, prior to repeal by Pub. L. 99–371.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–73, § 203(b)(1), substituted “Secretary” for “Secretary of Education”.

Subsec. (b)(2). Pub. L. 103–73, § 203(b)(2), substituted “but, if invested,” for “but if invested.”

REAL PROPERTY PROVISIONS

The following acts contained provisions relating to acquisition, exchange, and adjustment of boundaries of properties of Gallaudet University and its predecessors, Gallaudet College and Columbia Institution for the Deaf:


§ 4303. Board of Trustees

(a) Composition of Board

(1) Gallaudet University shall be under the direction and control of a Board of Trustees, composed of twenty-one members who shall include—

(A) three public members of whom (i) one shall be a United States Senator appointed by the President of the Senate, and (ii) two shall be Representatives appointed by the Speaker of the House of Representatives; and

(B) eighteen other members, all of whom shall be elected by the Board of Trustees and of whom one shall be elected pursuant to regulations of the Board of Trustees, by the Gallaudet University Alumni Association, for a term of three years.

(2) The members appointed from the Senate and House of Representatives shall be appointed for a term of two years at the beginning of each Congress, shall be eligible for reappointment, and shall serve until their successors are appointed.

(3) The Board of Trustees shall have the power to fill any vacancy in the membership of the Board except for public members. Nine trustees shall constitute a quorum to transact business. The Board of Trustees, by vote of a majority of its membership, is authorized to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a trustee, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation.

(b) Powers of Board

The Board of Trustees is authorized to—

(1) make such rules, policies, regulations, and bylaws, not inconsistent with the Constitution and laws of the United States, as may be necessary for the good government of Gallaudet University, for the management of the property and funds of such corporation (including the construction of buildings and other facilities), and for the admission, instruction, care, and discharge of students;

(2) provide for the adoption of a corporate seal and for its use;

(3) fix the date of holding their annual and other meetings;

(4) appoint a president and establish policies, guidelines, and procedures related to the appointments, the salaries, and the dismissals of professors, instructors, and other employees of Gallaudet University, including the adoption of a policy of outreach and recruitment to employ and advance in employment qualified individuals with disabilities, particularly individuals who are deaf or hard of hearing;

(5) elect a chairperson and other officers and prescribe their duties and terms of office, and appoint an executive committee to consist of five members, and vest the committee with such of its powers during periods between meetings of the Board as the Board deems necessary;
§ 4304. Laurent Clerc National Deaf Education Center

(a) General authority

(1)(A) The Board of Trustees of Gallaudet University is authorized, in accordance with the agreement under section 4305 of this title, to maintain and operate the Laurent Clerc National Deaf Education Center (referred to in this section as the “Clerc Center”) to carry out exemplary elementary and secondary education programs, projects, and activities for the primary purpose of developing, evaluating, and disseminating innovative curricula, instructional techniques and strategies, and materials that can be used in various educational environments serving individuals who are deaf or hard of hearing throughout the Nation.

(B) The elementary and secondary education programs described in subparagraph (A) shall serve students with a broad spectrum of needs, including students who are lower achieving academically, who come from non-English-speaking homes, who have secondary disabilities, who are members of minority groups, or who are from rural areas.

(C) The elementary and secondary education programs described in subparagraph (A) shall include—

(i) the Kendall Demonstration Elementary School, to provide day facilities for elementary education for students who are deaf from the age of onset of deafness to age fifteen, inclusive, but not beyond the eighth grade or its equivalent, to provide such students with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such students for high school and other secondary study; and

(ii) the Model Secondary School for the Deaf, to provide day and residential facilities for secondary education for students who are deaf from grades nine through twelve, inclusive, to provide such students with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such students for college, other postsecondary opportunities, or the workplace.

(2) The Model Secondary School for the Deaf may provide residential facilities for students enrolled in the school—

(A) who live beyond a reasonable commuting distance from the school; or

(B) for whom such residency is necessary for them to receive a free appropriate public education within the meaning of part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.].

(b) Administrative requirements

(1) The Clerc Center shall—

(A) provide technical assistance and outreach throughout the Nation to meet the training and information needs of parents of infants, children, and youth who are deaf or hard of hearing; and

(B) provide technical assistance and training to personnel for use in teaching (i) students who are deaf or hard of hearing, in various educational environments, and (ii) students...
who are deaf or hard of hearing with a broad spectrum of needs as described in subsection (a) of this section.

(2) To the extent possible, the Clerc Center shall provide the services required under paragraph (1)(B) in an equitable manner, based on the national distribution of students who are deaf or hard of hearing in educational environments as determined by the Secretary for purposes of section 618(a)(1) of the Individuals with Disabilities Education Act [20 U.S.C. 1418(a)(1)]. Such educational environments shall include—

(A) regular classes;

(B) resource rooms;

(C) separate classes;

(D) separate, public or private, nonresidential schools; and

(E) separate, public or private, residential schools and homebound or hospital environments.

(3) If a local educational agency, educational service agency, or State educational agency refers a child to, or places a child in, one of the elementary or secondary education programs to meet its obligation to make available a free appropriate public education under part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.], the agency or unit shall be responsible for ensuring that the special education and related services provided to the child by the education program are in accordance with part B of that Act and that the child is provided the rights and procedural safeguards under section 615 of such Act [20 U.S.C. 1415].

(4) If the parents or guardian places a child in one of the elementary or secondary education programs, the University shall—

(A) notify the appropriate local educational agency, educational service agency, or State educational agency of that child's attendance in the program;

(B) work with local educational agencies, educational service agencies, and State educational agencies, where appropriate, to ensure a smooth transfer of the child to and from that program; and

(C) provide the child a free appropriate public education in accordance with part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.] and procedural safeguards in accordance with the following provisions of section 615 of such Act [20 U.S.C. 1415]:

(i) Paragraphs (1), and (3) through (8) of subsection (b).

(ii) Subsections (c) through (g).

(iii) Subsection (h), except for the matter in paragraph (4) pertaining to transmission of findings and decisions to a State advisory panel.

(iv) Paragraphs (1) and (2) of subsection (i).

(v) Subsection (j)—

(I) except that such subsection shall not be applicable to a decision by the University to refuse to admit a child; or

(II) to dismiss a child, except that, before dismissing any child, the University shall give at least 60 days written notice to the child's parents and to the local educational agency in which the child resides, unless the dismissal involves a suspension, expulsion, or other change in placement covered under section 615(k) [20 U.S.C. 1415(k)].

(vi) Subsections (k) through (o).

(5) The University, for purposes of the elementary and secondary education programs carried out at the Clerc Center, shall—

(A)(i) select challenging academic content standards, challenging student academic achievement standards, and academic assessments of a State, adopted and implemented, as appropriate, pursuant to paragraphs (1) and (3) of section 6311(b) of this title and approved by the Secretary; and

(ii) implement such standards and assessments for such programs by not later than the beginning of the 2009–2010 academic year;

(B) annually determine whether such programs at the Clerc Center are making adequate yearly progress, as determined according to the definition of adequate yearly progress defined (pursuant to section 6311(b)(2)(C) of this title) by the State that has adopted and implemented the standards and assessments selected under subparagraph (A)(i); and

(C) publicly report the results of the academic assessments implemented under subparagraph (A), except where such reporting would not yield statistically reliable information or would reveal personally identifiable information about an individual student, and whether the programs at the Clerc Center are making adequate yearly progress, as determined under subparagraph (B).

section 6311 of such Act [20 U.S.C. 1411 et seq.].

Section 615 of the Individuals with Disabilities Education Act, referred to in subsec. (a)(2)(B) and (b)(3), (4)(C), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of this title. For complete classification of this Act to the Code, see section 6400 et seq., and Tables.

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (a)(2)(B) and (b)(3), (4)(C), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of this title. For complete classification of this Act to the Code, see section 6400 of this title and Tables.

AMENDMENTS


Subsec. (a)(1)(A). Pub. L. 110–315, § 901(2), inserted “the Laurent Clerc National Deaf Education Center (referred to in this section as the ‘Clerc Center’)” after “maintain and operate”.


2004—Subsec. (b)(2). Pub. L. 108–446, which directed amendment of ‘‘section 104(h)(2) of the Education of the Deaf Act’’ by substituting ‘‘618(a)(1)’’ for ‘‘618(a)(1)(A)’’ in introductory provisions, was not executed to this section, which is section 194 of the Education of the Deaf Act of 1986. See 2008 Amendment note above.

1998—Subsec. (b)(1). Pub. L. 105–244, §912(1), inserted "and" after semicolon in subpar. (A), substituted a period for ";" and at end of subpar. (B), and struck out subpar. (C) which read as follows: ‘‘establish and publish priorities for research, development, and demonstration through a process that allows for public input.’’

Subsec. (b)(2). Pub. L. 105–244, §912(2), in introductory provisions, substituted ‘‘paragraph (1)(B)’’ for ‘‘paragraph (1)’’ and ‘‘section 618(a)(1)(A)’’ for ‘‘section 618(b)’’.

Subsec. (b)(3). Pub. L. 105–244, §912(3), substituted ‘‘educational service agency’’ for ‘‘intermediate educational unit’’.

Subsec. (b)(4)(A). Pub. L. 105–244, §912(4)(A), substituted ‘‘educational service agency’’ for ‘‘intermediate educational unit’’.

Subsec. (b)(4)(B). Pub. L. 105–244, §912(4)(B), substituted ‘‘educational service agencies’’ for ‘‘intermediate educational units’’.

Subsec. (b)(4)(C). Pub. L. 105–244, §912(5), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ‘‘provide the child a free appropriate public education in accordance with part B of the Individuals with Disabilities Education Act and procedural safeguards in accordance with the following provisions of section 615 of such Act:

(i) Subparagraphs (A), (C), (D), and (E) of paragraph (1) of subsection (b), and paragraph (2) of such subsection.

(ii) Subsection (d), except the portion of paragraph (4) requiring that findings and decisions be transmitted to a State advisory panel.

(iii) Paragraphs (1) through (3) of subsection (e). Paragraph (3) of such subsection is not applicable to a decision by the University to refuse to admit or to dismiss a child, except that, before dismissing any child, the University shall give at least 60 days notice to the child’s parents and to the local educational agency in which the child resides.

(iv) Subsection (f).’’


Subsec. (a)(1). Pub. L. 104–208, §203(d)(2), in subpar. (A) substituted ‘‘(a)’’ for ‘‘(a) hard’’ for ‘‘deaf and individuals who are hard’’, in subpar. (B) inserted ‘‘education’’ after ‘‘elementary and secondary’’ and substituted ‘‘non-English-speaking’’ for ‘‘non-English speaking’’, and in subpar. (C), in introductory provisions, inserted ‘‘education’’ after ‘‘elementary and secondary’’, in cl. (i) substituted ‘‘students’’ for ‘‘individuals’’ wherever appearing and ‘‘deaf from the age of onset of deafness to age fifteen, inclusive, but not beyond the eighth grade or its equivalent, ‘‘for ‘‘deaf’, and, in cl. (ii) substituted ‘‘students’’ for ‘‘individuals’’ wherever appearing and ‘‘deaf from grades nine through twelve, inclusive, for ‘‘deaf’’, and in cl. (iii) substituted ‘‘students’’ for ‘‘individuals’’ wherever appearing and ‘‘deaf from grades eleven through twelve, inclusive, for ‘‘deaf’’, and in cl. (iv) substituted ‘‘students’’ for ‘‘individuals’’ wherever appearing and ‘‘deaf from grades twelve through age twenty, inclusive, for ‘‘deaf’’. Subsec. (b)(1). Pub. L. 104–208, §203(d)(3), substituted ‘‘infants, children, and youth’’ for ‘‘infants and children’’ in subpar. (A) and a period for the semicolon at end of subpar. (C).

Subsec. (b)(4). Pub. L. 104–208, §203(d)(4), substituted ‘‘program’’ for ‘‘programs’’ in subpar. (A), ‘‘the child to and from that program’’ for ‘‘students to and from those programs’’ in subpar. (B), and ‘‘a decision’’ for ‘‘decisions’’ in subpar. (C)(iii).

Effective Date of 1998 Amendment


§4305. Agreement with Gallaudet University

(a) General authority

The Secretary and Gallaudet University shall establish, and periodically update, an agreement governing the operation and national mission activities, including construction and provision of equipment, of the elementary and secondary education programs at the University. The Secretary or the University shall determine the necessity for the periodic update described in the preceding sentence.

(b) Provisions of agreement

The agreement shall—

(1) provide that Federal funds appropriated for the benefit of the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this chapter and such agreement.

(2) provide that the University will make an annual report, to be part of the report required under section 4354 of this title, to the Secretary on the operations and national mission activities of the elementary and secondary education programs, including such other information as the Secretary may consider necessary;

(3) provide that in the design and construction of any facilities, maximum attention will be given to innovative auditory and visual devices and installations appropriate for the educational functions of such facilities;

(4) provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by Federal funds appropriated for the benefit of the Kendall Demonstration Elementary School or the Model Secondary School for the Deaf will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, commonly referred to as the Davis-Bacon Act; except that the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40; and

(5) include such other conditions as the Secretary or the University considers necessary to carry out the purposes of this part.

Effective Date of 1998 Amendment

References in Text

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (b)(4), is set out in the Appendix to Title 5, Government Organization and Employees.


§ 4331. Authority

For the purpose of providing a residential facility for postsecondary technical training and education for individuals who are deaf in order to prepare them for successful employment, the institution of higher education with which the Secretary has an agreement under this part is authorized to operate and maintain a National Technical Institute for the Deaf.


1993—Pub. L. 103–73 substituted “‘part’ for “‘sub-

Prior Provisions


§ 4332. Agreement for National Technical Institute for the Deaf

(a) General authority

(1) The Secretary is authorized to establish or continue an agreement with an institution of higher education for the establishment and operation, including construction and equipment, of a National Technical Institute for the Deaf. (2) The Secretary and the institution of higher education with which the Secretary has an agreement under this section—

(A) shall periodically assess the need for modification of the agreement; and

(b) Provisions of agreement

The agreement shall—

(1) provide that Federal funds appropriated for the benefit of NTID will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this chapter and the agreement made pursuant thereto;

(2) provide that the Board of Trustees or other governing body of the institution, subject to the approval of the Secretary, will appoint an advisory group to advise the Director of NTID in formulating and carrying out the basic policies governing its establishment and operation, which group shall include individuals who are professionally concerned with education and technical training at the post-secondary school level, persons who are professionally concerned with activities relating to education and training of individuals who are deaf, and members of the public familiar with the need for services provided by NTID;

(3) provide that the Board of Trustees or other governing body of the institution will prepare and submit to the Secretary, not later than June 1 following the fiscal year for which the report is submitted, an annual report containing an accounting of all indirect costs paid to the institution of higher education under the agreement with the Secretary, which accounting the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and to the Committee on Health, Education, Labor, and Pensions of the Senate, with such comments and recommendations as the Secretary may deem appropriate;

(4) include such other conditions as the Secretary deems necessary to carry out the purposes of this part;
(5) provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by Federal funds appropriated for the benefit of NTID will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, commonly referred to as the Davis-Bacon Act; except that the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40; and

(6) establish a policy of outreach and recruitment to employ and advance in employment qualified individuals with disabilities, particularly individuals who are deaf or hard of hearing.

(c) Limitation

If, within twenty years after the completion of any construction (except minor remodeling or alteration) for which such funds have been paid—

(1) the facility ceases to be used for the purposes for which it was constructed or the agreement is terminated, unless the Secretary determines that there is good cause for releasing the institution from its obligation, or

(2) the institution ceases to be the owner of the facility,

the United States shall be entitled to recover from the applicant or other owner of the facility an amount which has the same ratio with respect to the current market value of the facility as the amount of Federal funds expended for construction of such facility bears to the total cost of construction of the facility. The current market value of the facility shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.


REFERENCES IN TEXT

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

PRIOR PROVISIONS

Provisions similar to this section were contained in section 684 of this title prior to repeal by Pub. L. 99–371.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–315, §903(a)(1), struck out at end "the Secretary, in considering proposals from institutions of higher education to enter into an agreement under this part, shall give preference to institutions which are located in metropolitan industrial areas.


1998—Subsec. (a)(2). Pub. L. 105–244 added par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary and the institution of higher education with which the Secretary has an agreement under this section shall, within 1 year after October 16, 1992, assess the need for modification of the agreement. The Secretary and the institution of higher education with which the Secretary has an agreement under this section shall also periodically update the agreement as determined to be necessary by the Secretary or the institution."


Subsec. (a)(1). Pub. L. 103–73, §203(g)(2)(A), substituted "part" for "chapter".

Subsec. (a)(2). Pub. L. 103–73, §203(g)(2)(B), in first sentence struck out comma after "The Secretary" and after "this section".

Subsec. (b)(1), (2). Pub. L. 103–73, §202, substituted "NTID" for "the Institute" wherever appearing.

Subsec. (b)(3). Pub. L. 103–73, §203(g)(3)(A), substituted "Secretary, not later than June 1 following the fiscal year for which the report is submitted, an annual report containing" for "Secretary an annual report, including", "which accounting" for "which report", and "Representatives" for "Representatives,"


Subsec. (b)(5). Pub. L. 103–73, §203(g)(3)(C), substituted "or hard of hearing" for "or individuals who are deaf"

Subsec. (c). Pub. L. 103–73, §203(g)(3)(D), substituted "or hard of hearing" for "or individuals who are hard of hearing"

Subsec. (c). Pub. L. 103–73, §203(g)(4), inserted a comma after "IF"


Subsec. (b)(2). Pub. L. 102–421, §121(1)(a), substituted "individuals who are deaf" for "the deaf"

Subsec. (b)(3). Pub. L. 102–421, §121(2), substituted "will prepare and submit to the Secretary an annual report, including an accounting of all indirect costs paid to the institution of higher education under the agreement with the Secretary, which report the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate," for "will make an annual report together with an accounting of all indirect costs paid to the institution of higher education under the agreement to the Secretary, which the Secretary shall transmit to the Congress"


CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1998 AMENDMENT

PART C—OTHER PROGRAMS

§ 4341. Cultural experiences grants

(a) In general

The Secretary is authorized to, on a competitive basis, make grants to, and enter into contracts and cooperative agreements with, eligible entities to support the activities described in subsection (b).

(b) Activities

In carrying out this section, the Secretary shall support activities providing cultural experiences, through appropriate nonprofit organizations with a demonstrated proficiency in providing such activities, that—

(1) enrich the lives of deaf and hard-of-hearing children and adults;

(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard-of-hearing persons;

(3) promote the integration of hearing, deaf, and hard-of-hearing persons through shared cultural, educational, and social experiences.

(c) Applications

An eligible entity that desires to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

Pursuant to an agreement entered into between the Secretary and the Rochester Institute of Technology on Dec. 20, 1986, the National Technical Institute for the Deaf (N.T.I.D.) was established and located at Rochester, New York.


SUBCHAPTER II—GENERAL PROVISIONS

Prior Provisions

A prior subchapter II of this chapter, consisting of sections 4331 and 4332 of this title, was redesignated part B of subchapter I of this chapter by Pub. L. 102–421, title I, §101(b)(3), Oct. 16, 1992, 106 Stat. 2151.

§ 4351. Definitions

As used in this chapter—

(1) The term “international student” means an individual who—

(A) is not a citizen or national of, or lawfully admitted for permanent residence in, the United States;

(B) does not provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen of, or lawfully admitted for permanent residence in, the United States; and

(C) is not lawfully admitted for permanent residence in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, or the Virgin Islands.

(2) The term “construction” includes construction and initial equipment of new buildings, and expansion, remodeling, and alteration of existing buildings and equipment therein, including architect’s services, but excluding off-site improvements.

(3) The term “institution of higher education” means an educational institution in any State which (A) admits as regular students only individuals having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (B) is legally authorized within such State to provide a program of education beyond secondary education; (C) provides an educational program for which it awards a bachelor’s degree; (D) includes one or more professional or graduate schools; (E) is a public or nonprofit private institution; and (F) is accredited by a nationally recognized accrediting agency or association. For the purpose of subparagraph (F), the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered.

(4) The term “Secretary” means the Secretary of Education.

(5) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(6) The term “NTID” means the National Technical Institute for the Deaf.

(7) The term “University” means Gallaudet University.

The term “participation” means the Secretary of Education.

Pursuant to an agreement entered into between the Secretary and the Rochester Institute of Technology on Dec. 20, 1986, the National Technical Institute for the Deaf (N.T.I.D.) was established and located at Rochester, New York.


SUBCHAPTER II—GENERAL PROVISIONS

Prior Provisions

A prior subchapter II of this chapter, consisting of sections 4331 and 4332 of this title, was redesignated part B of subchapter I of this chapter by Pub. L. 102–421, title I, §101(b)(3), Oct. 16, 1992, 106 Stat. 2151.
The University and NTID are authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of the University or NTID, or for the use, as appropriate, for any programs, departments, or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for the purpose stated in the conveyance or will.


**Prior Provisions**

A prior section 202 of Pub. L. 99–371 was renumbered section 112 and is classified to section 4332 of this title. Provisions similar to subsec. (a) of this section were contained in section 439c of this title prior to repeal by Pub. L. 99–371.

**Amendments**

1992—Pub. L. 102–421, §132, amended section generally. Prior to amendment, section read as follows:

“(a) GALLAUDET UNIVERSITY.—Gallaudet University is authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of Gallaudet University, or for the use of any of its departments or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for the purpose stated in the conveyance or will.

“(b) NATIONAL TECHNICAL INSTITUTE FOR THE DEAF.—The National Technical Institute for the Deaf is authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of the Institute, or for the use of any of its programs as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for the purpose stated in the conveyance or will.”

**Effective Date of 1992 Amendment**


§ 4353. Audit

(a) **Government Accountability Office authority**

All financial transactions and accounts of the corporation or institution of higher education, as the case may be, in connection with the expenditure of any moneys appropriated by any law of the United States—

(1) for the benefit of Gallaudet University or for the construction of facilities for its use; or

(2) for the benefit of the National Technical Institute for the Deaf or for the construction of facilities for its use,

shall be settled and adjusted in the Government Accountability Office.

(b) **Independent financial and compliance audit**

(1) **In general**

Gallaudet University shall have an annual independent financial and compliance audit made of the programs and activities of the University, including the national mission and school operations of the elementary and secondary education programs at Gallaudet. The institution of higher education with which the Secretary has an agreement under section 4332 of this title shall have an annual independent financial and compliance audit made of the
programs and activities of such institution of higher education, including NTID, and containing specific schedules and analyses for all NTID funds, as determined by the Secretary.

(2) Compliance

As used in paragraph (1), compliance means compliance with sections 4302(b), 4305(b)(4), 4332(b)(5), 4353(c), 4357(b)(2) of this title, subsections (c) through (f) of section 4357 of this title, and subsections (a), (b), and (c) of section 4359a of this title.

(3) Submission of audits

A copy of each audit described in paragraph (1) shall be provided to the Secretary and the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 15 days of acceptance of the audit by the University or the institution authorized to establish and operate the NTID under section 4332(a) of this title, as the case may be, but not later than January 10 of each year.

(c) Limitations regarding expenditure of funds

(1) In general

No funds appropriated under this chapter for Gallaudet University, including the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf, or for the National Technical Institute for the Deaf may be expended on the following:

(A) Alcoholic beverages.

(B) Goods or services for personal use.

(C) Housing and personal living expenses (but only to the extent such expenses are not required by written employment agreement).

(D) Lobbying, except that nothing in this subparagraph shall be construed to prohibit the University and NTID from educating the Congress, the Secretary, and others regarding programs, projects, and activities conducted at those institutions.

(E) Membership in country clubs and social or dining clubs and organizations.

(2) Policies

(A) Not later than 180 days after October 16, 1992, the University and NTID shall develop policies, to be applied uniformly, for the allowability of expenditures for each institution. These policies should reflect the unique nature of these institutions. The principles established by the Office of Management and Budget may be considered.

(B) Policies under subparagraph (A) shall include the following:

(i) Noninstitutional professional activities.

(ii) Fringe benefits.

(iii) Interest on loans.

(iv) Rental cost of buildings and equipment.

(v) Sabbatical leave.

(vi) Severance pay.

(vii) Travel.

(viii) Royalties and other costs for uses of patents.

(C) The Secretary is not authorized to add items to those specified in subparagraph (B).


Prior Provisions

Provisions similar to this section were contained in section 691f of this title prior to repeal by Pub. L. 99–371.

Amendments

2009—Subsec. (b)(2). Pub. L. 111–39 substituted “and subsections (a), (b), and (c) of section 4359a of this title” for “and subsections (b) and (c) of section 4359a of this title.”

2008—Subsec. (b)(2). Pub. L. 110–315, §905(1)(A), substituted “sections 4302(b), 4305(b)(4), 4332(b)(5), 4353(c), 4357(b)(2) of this title, subsections (c) through (f) of section 4357 of this title, and subsections (b) and (c) of section 4359a of this title” for “sections 4302(b), 4305(b)(4), 4332(b)(5) of this title, and subsections (c) of this section, paragraphs (2) and (3) of section 4357 of this title, subsections (b)(2), (b)(3), and (c) through (f), of section 4357 of this title, and subsections (b) and (c) of section 4359a of this title”.


1998—Subsec. (b). Pub. L. 105–244 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Gallaudet University shall have an annual independent financial audit made of the programs and activities of the University. The institution of higher education with which the Secretary has an agreement under section 4332 of this title shall have an annual independent financial audit made of the programs and activities of such institution of higher education, including NTID, and containing specific schedules and analyses for all NTID funds, as determined by the Secretary.”

1993—Subsec. (b). Pub. L. 103–73, §204(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Gallaudet University and the institution of higher education operating the National Technical Institute for the Deaf shall have an annual independent audit made of the programs and activities of the University and of NTID, respectively.”
The Board of Trustees of Gallaudet University and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under section 4332 of this title shall prepare and submit an annual report to the Secretary, and to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, not later than 100 days after the end of each fiscal year, which shall include the following:

(1) The number of students during the preceding academic year who enrolled and whether these were first-time enrollments, who graduated, who found employment, or who left without completing a program of study, reported under each of the programs of the University (elementary, secondary, undergraduate, and graduate) and of NTID.

(2) For the preceding academic year, and to the extent possible, the following data on individuals who are deaf and from minority backgrounds and who are students (at all educational levels) or employees:

(A) The number of students enrolled full- and part-time.

(B) The number of these students who completed or graduated from each of the educational programs.

(C) The disposition of these students on the date that is one year after the date of graduation or completion of programs at NTID and at the University and its elementary and secondary schools in comparison to students from non-minority backgrounds.

(D) The number of students needing and receiving support services (such as tutoring and counseling) at all educational levels.

(E) The number of recruitment activities by type and location for all educational levels.

(F) Employment openings/vacancies and grade level/type of job and number of these individuals that applied and that were hired.

(G) Strategies (such as parent groups and training classes in the development of individualized education programs) used by the elementary and secondary programs and the extension centers to reach and actively involve minority parents in the educational programs of their children who are deaf or hard of hearing and the number of parents who have been served as a result of these activities.

(3)(A) A summary of the annual audited financial statements and auditor's report of the University, as required under section 4353 of this title, and (B) a summary of the annual audited financial statements and auditor's report of NTID programs and activities, and such supplementary schedules presenting financial information for NTID for the end of the Federal fiscal year as determined by the Secretary.

(4) For the preceding fiscal year, a statement showing the receipts of the University and NTID and from what Federal sources, and a statement showing the expenditures of each institution by function, activity, and administrative and academic unit.

(5) A statement showing the use of funds (both corpus and income) provided by the Federal Endowment Program under section 4357 of this title.

(6) A statement showing how such Endowment Program funds are invested, what the gains or losses (both realized and unrealized) on such investments were for the most recent fiscal year, and what changes were made in investments during that year.

(7) Such additional information as the Secretary may consider necessary.


PRIOR PROVISIONS

Provisions similar to this section were contained in section 691f of this title prior to repeal by Pub. L. 99–371.

AMENDMENTS


Par. (2). Pub. L. 110–315, § 906(3), substituted “on the date that is one year after the date of graduation or completion” for “upon graduation/completion”.

Par. (3). Pub. L. 110–315, § 906(4), substituted “of NTID programs and activities” for “of the institution of higher education with which the Secretary has an agreement under section 4332 of this title, and (B) an annual report to the Secretary, and the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, not later than 100 days after the end of each fiscal year, which shall include the following:

1. The number of students during the preceding academic year who enrolled and whether these were first-time enrollments, who graduated, who found employment, or who left without completing a program of study, reported under each of the programs of the University (elementary, secondary, undergraduate, and graduate) and of NTID.

2. For the preceding academic year, and to the extent possible, the following data on individuals who are deaf and from minority backgrounds and who are students (at all educational levels) or employees:

A. The number of students enrolled full- and part-time.

B. The number of these students who completed or graduated from each of the educational programs.

C. The disposition of these students on the date that is one year after the date of graduation or completion of programs at NTID and at the University and its elementary and secondary schools in comparison to students from non-minority backgrounds.

D. The number of students needing and receiving support services (such as tutoring and counseling) at all educational levels.

E. The number of recruitment activities by type and location for all educational levels.

F. Employment openings/vacancies and grade level/type of job and number of these individuals that applied and that were hired.

G. Strategies (such as parent groups and training classes in the development of individualized education programs) used by the elementary and secondary programs and the extension centers to reach and actively involve minority parents in the educational programs of their children who are deaf or hard of hearing and the number of parents who have been served as a result of these activities.

3. A summary of the annual audited financial statements and auditor’s report of the University, as required under section 4353 of this title, and a summary of the annual audited financial statements and auditor’s report of NTID programs and activities, and such supplementary schedules presenting financial information for NTID for the end of the Federal fiscal year as determined by the Secretary.

4. For the preceding fiscal year, a statement showing the receipts of the University and NTID and from what Federal sources, and a statement showing the expenditures of each institution by function, activity, and administrative and academic unit.

5. A statement showing the use of funds (both corpus and income) provided by the Federal Endowment Program under section 4357 of this title.

6. A statement showing how such Endowment Program funds are invested, what the gains or losses (both realized and unrealized) on such investments were for the most recent fiscal year, and what changes were made in investments during that year.

7. Such additional information as the Secretary may consider necessary.

§ 4355. Monitoring, evaluation, and reporting

(a) Activities

The Secretary shall conduct monitoring and evaluation activities of the education programs and activities and the administrative operations of the University (including the elementary, secondary, undergraduate, and graduate programs) and of NTID. The Secretary may also conduct studies related to the provision of preschoo, elementary, secondary, and postsecondary education and other related services to individuals who are deaf or hard of hearing. In carrying out the responsibilities described in this section, the Secretary is authorized to employ such consultants as may be necessary pursuant to section 3109 of title 5.

(b) Report

The Secretary shall annually transmit information to Congress on the monitoring and evaluation activities pursuant to subsection (a) of this section, together with such recommendations, including recommendations for legislation, as the Secretary may consider necessary.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2014 to carry out the monitoring and evaluation activities authorized under this section.

Amendments


Subsec. (b). Pub. L. 110–315, § 907(2), substituted “The Secretary shall annually transmit information to Congress on” for “The Secretary, as part of the annual report required under section 3486 of this title, shall include a description of”.


1993—Subsec. (a). Pub. L. 102–73 substituted “individuals who are deaf or hard of hearing” for “individuals who are deaf” and struck out “the provisions of” after “pursuant to”.

1992—Pub. L. 102–921, § 135(a), amended section generally. Prior to amendment, section read as follows: “The Secretary shall conduct monitoring and evaluation activities of the education programs and activities and the administrative operations of Gallaudet University and of the National Technical Institute for the Deaf. In carrying out the responsibilities described in this section, the Secretary is authorized to employ such consultants as may be necessary pursuant to the provisions of section 3109 of title 5.”

Effective Date of 1998 Amendment


Effective Date of 1992 Amendment


§ 4356. Liaison for educational programs

(a) Designation of liaison

The Secretary shall designate an individual in the Office of Special Education and Rehabilitation Services of the Department of Eduation from among individuals who have experience in the education of individuals who are deaf to serve as liaison between the Department and Gallaudet University, the National Technical Institute for the Deaf, and other postsecondary educational programs for individuals who are deaf under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], and other Federal or non-Federal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing.

(b) Duties of liaison

The individual serving as liaison for educational programs for individuals who are deaf or hard of hearing shall:

(1) provide information to institutions regarding the Department’s efforts directly affecting the operation of such programs by such institutions;

(2) review research and other activities carried out by the University, NTID, and other Federal or non-Federal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing for the purpose of determining overlap and opportunities for coordination among such entities; and

Change of Name

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.
provide such support and assistance as such institutions may request and the Secretary considers appropriate.

(c) Authority of Secretary

Nothing in this section may be construed to affect the authority of the Secretary under this chapter or any other Act with respect to Gallaudet University or the National Technical Institute for the Deaf.


References in Text

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


2008—Subsec. (a). Pub. L. 110–315 substituted “The” for “Not later than 30 days after August 4, 1986, the”.

1992—Subsec. (b). Pub. L. 105–73, which directed amendment of subsec. (b) by inserting “or hard of hearing” after “individuals who are deaf”, was executed by inserting “individuals who are deaf” for “the deaf” in two places.


Subsec. (b)(1) to (3). Pub. L. 102–421, §136(2), struck out “and” at end of par. (1), added par. (2), and redesignated former par. (2) as (3).


$4357. Federal endowment programs for Gallaudet University and the National Technical Institute for the Deaf

(a) Establishment of programs

(1) The Secretary and the Board of Trustees of Gallaudet University are authorized to establish the Gallaudet University Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of the University. The Secretary and the Board of Trustees may enter into such agreements as may be necessary to carry out the purposes of this section with respect to the University.

(2) The Secretary and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under section 4332 of this title are authorized to establish the National Technical Institute for the Deaf Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of NTID. The Secretary and the Board or other governing body may enter into such agreements as may be necessary to carry out the purposes of this section with respect to NTID.

(b) Federal payments

(1) The Secretary shall, consistent with this section, make payments to the Federal endowment funds established under subsection (a) of this section from amounts appropriated under subsection (b) of this section for the fund involved.

(2) Subject to the availability of appropriations, the Secretary shall make payments to each Federal endowment fund in amounts equal to sums contributed to the fund from non-Federal sources during the fiscal year in which the appropriations are made available (excluding transfers from other endowment funds of the institution involved).

(c) Investments

(1) Except as provided in subsection (e) of this section, the University and NTID, respectively, shall invest the Federal contribution of its Federal endowment fund corpus and income in instruments and securities offered through one or more cooperative service organizations of operating educational organizations under section 501(f) of title 26, or in low-risk instruments and securities in which a regulated insurance company may invest under the laws of the State in which the institution involved is located.

(2) In managing the investment of its Federal endowment fund, the University or NTID shall exercise the judgment and care, under the prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of that person’s own business affairs.

(3) Neither the University nor NTID may invest its Federal endowment fund corpus or income in real estate, or in instruments or securities issued by an organization in which an executive officer, a member of the Board of Trustees of the University or of the host institution, or a member of the advisory group established under section 4332 of this title is a controlling share-
holder, director, or owner within the meaning of Federal securities laws and other applicable laws. Neither the University nor NTID may assign, hypothecate,1 encumber, or create a lien on the Federal endowment fund corpus without specific written authorization of the Secretary.

(d) Withdrawals and expenditures

(1) Except as provided in paragraph (3)(B), neither the University nor NTID may withdraw or expend any of the corpus of its Federal endowment fund.

(2)(A) The University and NTID, respectively, may withdraw or expend the income of its Federal endowment fund only for expenses necessary to the operation of that institution, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research.

(B) Neither the University nor NTID may withdraw or expend the income of its Federal endowment fund for any commercial purpose.

(C) The University and NTID shall maintain records of the income generated from its respective Federal endowment fund for the prior fiscal year.

(3)(A) Except as provided in subparagraph (B), the University and NTID, respectively, may, on an annual basis, withdraw or expend not more than 50 percent of the income generated from its Federal endowment fund from the current fiscal year.

(B) The Secretary may permit the University or NTID to withdraw or expend a portion of its Federal endowment fund corpus or more than 50 percent of the income generated from its Federal endowment fund from the prior fiscal year if the institution involved demonstrates, to the Secretary’s satisfaction, that such withdrawal or expenditure is necessary because of—

(i) a financial emergency, such as a pending insolvency or temporary liquidity problem; or

(ii) a life-threatening situation occasioned by natural disaster or arson; or

(iii) another unusual occurrence or exigent circumstance.

(e) Investment and expenditure flexibility

The corpus associated with a Federal payment (and its non-Federal match) made to the Federal endowment fund of the University or NTID shall not be subject to the investment limitations of subsection (c)(1) of this section after 10 fiscal years following the fiscal year in which the funds are matched, and the income generated from such corpus after the tenth fiscal year described in this subsection shall not be subject to such investment limitations or to the withdrawal and expenditure limitations of subsection (d)(3) of this section.

(f) Recovery of payments

After notice and an opportunity for a hearing, the Secretary is authorized to recover any Federal payments under this section if the University or NTID—

(1) makes a withdrawal or expenditure of the corpus or income of its Federal endowment fund that is not consistent with this section;

(2) fails to comply with the investment standards and limitations under this section; or

(3) fails to account properly to the Secretary concerning the investment of or expenditures from the Federal endowment fund corpus or income.

(g) Definitions

As used in this section:

(1) The term “corpus”, with respect to a Federal endowment fund under this section, means an amount equal to the Federal payments to such fund, amounts contributed to the fund from non-Federal sources, and appreciation from capital gains and reinvestment of income.

(2) The term “Federal endowment fund” means a fund, or a tax-exempt foundation, established and maintained pursuant to this section by the University or NTID, as the case may be, for the purpose of generating income for the support of the institution involved.

(3) The term “income”, with respect to a Federal endowment fund under this section, means an amount equal to the dividends and interest accruing from investments of the corpus of such fund.

(4) The term “institution involved” means the University or NTID, as the case may be.

(b) Authorization of appropriations

(1) In the case of the University, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 2009 through 2014.

(2) In the case of NTID, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 2009 through 2014.

(3) Amounts appropriated under paragraph (1) or (2) shall remain available until expended.

(i) Effective date

The provisions of this section shall take effect as if included in this chapter as enacted on August 4, 1986.


Amendments


1998—Subsec. (b)(2). Pub. L. 105–244, § 919(1)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Subject to the availability of appropriations and the non-Federal matching requirements of paragraph (3), the Secretary shall make payments to

1 So in original. Probably should be “hypothecate.”
each Federal endowment fund in amounts equal to sums contributed to the fund from non-Federal sources (excluding transfers from other endowment funds of the institution involved).

Amendment by Pub. L. 105–244 effective Oct. 1, 1998,

unless otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

prior to repeal by Pub. L. 105–244.

Another prior section 208 of Pub. L. 99–371 was classified to section 4358 of this title, prior to repeal by Pub. L. 102–421.

amendments


1993—Subsec. (a). Pub. L. 103–73, § 204(g)(1), substituted “an agreement under part B of subchapter I of this chapter” for “an agreement under title II”.

Subsec. (b). Pub. L. 103–73, § 204(g)(2), struck out “the provisions of” after “inconsistent with”.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

amendment of 1998


§ 4359a. International students

(a) Enrollment

(1) In general

Except as provided in paragraph (2), effective with new admissions for academic year 1993–1994 and each succeeding academic year, the University (including undergraduate and graduate students) and NTID shall limit the enrollment of international students to approximately 15 percent of the total post-secondary student population enrolled respectively at the University or NTID, except that in any school year no United States citizen who is qualified to be admitted to the University or NTID and applies for admission to the University or NTID shall be denied admission because of the admission of an international student.

(2) Distance learning

International students who participate in distance learning courses that are at the University or the NTID, who are residing outside
of the United States, and are not enrolled in a degree program at the University or the NTID shall—
(A) not be counted as international students for purposes of the cap on international students under paragraph (1), except that in any school year no United States citizen who applies to participate in distance learning courses that are at the University or NTID shall be denied participation in such courses because of the participation of an international student in such courses; and
(B) not be charged a tuition surcharge, as described in subsection (b).

(b) Tuition surcharge
Except as provided in subsections (a)(2)(B) and (c), the tuition for postsecondary international students enrolled in the University (including undergraduate and graduate students) or NTID shall include, for academic year 2009–2010 and any succeeding academic year, a surcharge of—
(1) 100 percent for a postsecondary international student from a non-developing country; and
(2) 50 percent for a postsecondary international student from a developing country, or a country that was a developing country for any academic year during the student’s period of uninterrupted enrollment in a degree program at the University or NTID, except that such a surcharge shall not be adjusted retroactively.

(c) Reduction of surcharge
(1) In general
Beginning with the academic year 2009–2010, the University or NTID may reduce the surcharge—
(i) a student described under subsection (b)(1) from 100 percent to not less than 50 percent if—
(A) the student demonstrates need; and
(B) such student has made a good-faith effort to secure aid through such student’s government or other sources; and
(ii) a student described under subsection (b)(2) from 50 percent to not less than 25 percent if—
(A) the student demonstrates need; and
(B) such student has made a good-faith effort to secure aid through such student’s government or other sources.

(2) Development of sliding scale
The University and NTID shall develop a sliding scale model that—
(A) will be used to determine the amount of a tuition surcharge reduction pursuant to paragraph (1); and
(B) shall be approved by the Secretary.

(d) Definition
In this section, the term “developing country” means a country with a per-capita income of not more than $5,345, measured in 2005 United States dollars, as adjusted by the Secretary to reflect inflation since 2005.


Prior Provisions
A prior section 209 of Pub. L. 99–371 was renumbered section 208 and is classified to section 4359 of this title.

Amendments
2008—Subsec. (a). Pub. L. 110–315, §911(1), designated existing provisions as pars. (1), (inserted heading, substituted “Except as provided in paragraph (2), effective with” for “Effective with” and “undergraduate,” and added par. (2).
Subsecs. (b) to (d). Pub. L. 110–315, §911(2), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d), which related to tuition surcharge, reduction of surcharge, and definition of “developing country”, respectively.
1998—Subsec. (a). Pub. L. 105–244, §922(a)(1), substituted “15 percent” for “10 percent’ and inserted before period “, except that in any school year no United States citizen who is qualified to be admitted to the University or NTID and applies for admission to the University or NTID shall be denied admission because of the admission of an international student”.
Subsec. (c). Pub. L. 103–73, §204(b)(2), substituted “Beginning with the academic year 1993–1994” for “Beginning the academic year 1993–1994 and thereafter” in introductory provisions and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively.

Effective Date of 1998 Amendment

Effective Date

§ 4359b. Research priorities
(a) Research priorities
Gallaudet University and the National Technical Institute for the Deaf shall each establish and disseminate priorities for their national mission with respect to deafness related research, development, and demonstration activities, that reflect public input, through a process that includes consumers, constituent groups, and the heads of other federally funded programs. The priorities for the University shall include activities conducted as part of the University’s elementary and secondary education programs under section 4301 of this title.

(b) Research reports
The University and NTID shall each prepare and submit an annual research report, to the Secretary, the Committee on Education and Labor of the House of Representatives, and the
Committee on Health, Education, Labor, and Pensions of the Senate, not later than January 10 of each year, that shall include—

(1) a summary of the public input received as part of the establishment and dissemination of priorities required by subsection (a) of this section, and the University’s and NTID’s response to the input; and

(2) a summary description of the research undertaken by the University and NTID, the start and projected end dates for each research project, the projected cost and sources of funding for each project, and any products resulting from research completed in the prior fiscal year.


PRIOR PROVISIONS
A prior section 210 of Pub. L. 99–371 was renumbered section 209 and is classified to section 4359a of this title.


CHANGE OF NAME
Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate.

AMENDMENTS
2008—Subsec. (b), Pub. L. 110–315 substituted “Committee on Education and Labor of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate” for “Committee on Education and the Workforce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate”.

EFFECTIVE DATE

§ 4360. National study on the education of the deaf
(a) Conduct of study
(1) In general

The Secretary shall establish a commission on the education of the deaf (in this section referred to as the “commission”) to conduct a national study on the education of the deaf, to identify education-related barriers to successful postsecondary education experiences and employment for individuals who are deaf, and those education-related factors that contribute to successful postsecondary education experiences and employment for individuals who are deaf.

(2) Definition

In this section the term “deaf”, when used with respect to an individual, means an individual with a hearing impairment, including an individual who is hard of hearing, an individual deafened later in life, and an individual who is profoundly deaf.

(b) Public input and consultation

(1) In general

In conducting such study, the commission shall obtain input from the public. To obtain such input, the commission shall—

(A) publish a notice with an opportunity for comment in the Federal Register;

(B) consult with individuals and organizations representing a wide range of perspectives on deafness-related issues, including organizations representing individuals who are deaf, parents of children who are deaf, educators, and researchers; and

(C) take such other action as the commission deems appropriate, which may include holding public meetings.

(2) Structured opportunities

The commission shall provide structured opportunities to receive and respond to the viewpoints of the individuals and organizations described in paragraph (1)(B).

(c) Report

The commission shall report to the Secretary and Congress not later than 18 months after August 14, 2008, regarding the results of the study. The report shall contain—

(1) recommendations relating to educated-related factors that contribute to successful postsecondary education experiences and employment for individuals who are deaf, including recommendations for legislation, that the commission deems appropriate; and

(2) a detailed summary of the input received under subsection (b) of this section and the ways in which the report addresses such input.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 and 2010 to carry out the provisions of this section.


PRIOR PROVISIONS

AMENDMENTS
2008—Subsec. (a)(1). Pub. L. 110–315, § 913(a), inserted “establish a commission on the education of the deaf (in this section referred to as the ‘commission’) to” after “The Secretary shall”.

Subsec. (b), Pub. L. 110–315, § 913(b), substituted “commission” for “Secretary” wherever appearing.

Subsec. (c), Pub. L. 110–315, § 913(c)(1), in introductory provisions, substituted “commission shall report to the
Secretary and Congress not later than 18 months after August 14, 2008" for “Secretary shall report to Congress not later than 18 months after October 7, 1998”.

Subsec. (c)(1). Pub. L. 110–315, §4360a(2), substituted “recommendations relating to educated-related factors that contribute to successful postsecondary education experiences and employment for individuals who are deaf, including” for “recommendations, including” and “commission” for “Secretary”.

Subsec. (d). Pub. L. 110–315, §913(d), substituted “such sums as may be necessary for each of the fiscal years 2009 and 2010” for “$1,000,000 for each of the fiscal years 1999 and 2000”.

**Effective Date**


### § 4360a. Authorization of appropriations

#### (a) Gallaudet University

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2014 to carry out the provisions of subchapter I of this chapter and this subchapter, relating to—

1. Gallaudet University;
2. Kendall Demonstration Elementary School; and
3. the Model Secondary School for the Deaf.

#### (b) National Technical Institute for the Deaf

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2014 to carry out the provisions of subchapter I of this chapter and this subchapter relating to the National Technical Institute for the Deaf.


**Prior Provisions**

Provisions similar to this section were contained in section 4360 of this title, prior to repeal by Pub. L. 105–244.

**Amendments**


**Effective Date**


### § 4361. Supervision of public business of Gallaudet University

The Secretary of Education is charged with the supervision of public business relating to Gallaudet University.


**Codification**

Section was not enacted as part of the Education of the Deaf Act of 1986, which comprises this chapter.

Section was formerly classified to section 691 of this title.

### § 4362. Purchases through General Services Administration

On and after September 8, 1978, Gallaudet University and the National Technical Institute for the Deaf are authorized to make purchases through the General Services Administration.


**Codification**

Section is from the Second Supplemental Appropriations Act, 1978, and not enacted as part of the Education of the Deaf Act of 1986, which comprises this chapter, and contained additional provisions relating to purchases by the American Printing House for the Blind and Howard University which are set out as sections 196 and 130 of this title, respectively.

Section, as it relates to Gallaudet University, was formerly classified to section 691 of this title, and as it relates to the National Technical Institute for the Deaf, was formerly classified to section 686 of this title.

### Change of Name

“Gallaudet University” substituted in text for “Gallaudet College” pursuant to section 101(a) of Pub. L. 99–371, which is classified to section 4301(a) of this title.
§ 4363. Financial and program audit by Secretary

Funds appropriated in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts to the National Technical Institute for the Deaf, and Gallaudet University shall be subject to financial and program audit by the Secretary of Education and the Secretary may withhold all or any portion of these appropriations if he determines that an institution has not cooperated fully in the conduct of such audits.


CODIFICATION

Section is from the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1993, and was not enacted as part of the Education of the Deaf Act of 1986 which comprises this chapter, and contained additional provisions relating to the American Printing House for the Blind and Howard University, which are set out as sections 106a and 130a of this title, respectively.

CHAPTER 56—AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN CULTURE AND ART DEVELOPMENT

§ 4401. Findings

The Congress finds that—

(1) Indian art and culture and Native Hawaiian art and culture have contributed greatly to the artistic and cultural richness of the Nation;

(2) Indian art and culture and Native Hawaiian art and culture occupy a unique position in American history as being our only native art form and cultural heritage;

(3) the enhancement and preservation of this Nation’s native art and culture has a fundamental positive influence on the American people;

(4) although the encouragement and support of Indian and Native Hawaiian arts and crafts are primarily a matter for private, local, and Indian and Native Hawaiian initiative, it is also an appropriate matter of concern to the Federal Government;

(5) it is appropriate and necessary for the Federal Government to support research and scholarship in Indian art and culture and Native Hawaiian art and culture and to complement programs for the advancement of such art and culture by tribal, private, and public agencies and organizations;

(6) current Federal initiatives in the area of Indian art and culture and Native Hawaiian art and culture are fragmented and inadequate; and

(7) in order to coordinate the Federal Government’s effort to preserve, support, revitalize, and disseminate Indian art and culture and Native Hawaiian art and culture, it is desirable to establish—

(A) a national Institute of American Indian and Alaska Native Culture and Arts Development, and

(B) a program for Native Hawaiian culture and arts development.


SHORT TITLE OF 1994 AMENDMENT


§ 4402. Definitions

For the purpose of this chapter—

(1) The term “Indian art and culture” includes (but is not limited to) the traditional and contemporary expressions of Indian language, history, visual and performing arts, and crafts;

(2) The term “Native Hawaiian art and culture” includes the traditional and contemporary expressions of Native Hawaiian language, history, visual and performing arts, and crafts;

(3) The term “Institute” means the Institute of American Indian and Alaska Native Culture and Arts Development established by this chapter.

(4) The term “Indian” means any person who is a member of an Indian tribe.

(5) The term “Indian tribe” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for special programs and
services provided by the United States to Indians because of their status as Indians.

(6) The term "Native Hawaiian" means any descendent of a person who, prior to 1778, was a native of the Hawaiian Islands.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Board" means the Board of Trustees of the Institute established under this chapter.


REFERENCES IN TEXT

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

SUBCHAPTER I—AMERICAN INDIANS AND ALASKA NATIVES

§ 4411. Establishment of Institute

(a) In general

There is hereby established a corporation to be known as the "Institute of American Indian and Alaska Native Culture and Arts Development", which shall be under the direction and control of a Board of Trustees established under section 4412 of this title.

(b) Succession and amendment of charter

The corporation established under subsection (a) of this section shall have succession until dissolved by Act of Congress. Only the Congress shall have the authority to revise or amend the charter of such corporation.


AVAILABILITY OF FISCAL YEAR 1988 APPROPRIATIONS

Pub. L. 100–202, §101(g)(title I, §100), Dec. 22, 1987, 101 Stat. 1229–213, 1239–228, provided: "That notwithstanding any provision of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act [this chapter], the amounts appropriated for fiscal year 1988 for the Bureau of Indian Affairs for the Institute of American Indian and Alaska Native Culture and Arts Development under section 1508 of that Act [20 U.S.C. 4415], the Secretary of the Interior shall have the authority conferred upon such members under that Act, and "(3) until the earlier of— "(A) October 1, 1987, or "(B) the appointment of a President of such Institute under section 1508 of that Act [20 U.S.C. 4415], the Secretary of the Interior shall have the authority conferred upon such members under that Act, and "(3) until the earlier of— "(A) October 1, 1987, or "(B) the appointment of a President of such Institute under section 1508 of that Act, the Secretary of the Interior shall have the authority conferred upon the President of such Institute under this [that] Act".

§ 4412. Board of Trustees

(a) Composition

(1) The Board of Trustees of the Institute shall be composed of 13 voting members and 6 nonvoting members as follows:

(A) Subject to the provisions of subsection (i) of this section, the voting members shall be appointed by the President of the United States by and with the advice and consent of the Senate, not later than 180 days after October 17, 1986, from among individuals from private life who are Indians, or other individuals, widely recognized in the field of Indian art and culture and who represent diverse political views, and diverse fields of expertise, including, finance, law, fine arts, and higher education administration.

(B) The nonvoting members shall consist of—

(i) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives;

(ii) 2 Members of the Senate appointed by the President pro tempore of the Senate, upon the recommendation of the Majority Leader and the Minority Leader of the Senate;

(iii) the President of the Institute, ex officio; and

(iv) the president of the student body of the Institute, ex officio.

(2) In making appointments pursuant to paragraph (1)(A), the President of the United States shall—

(A) consult with the Indian tribes and the various organizations of Indians;

(B) publish in the Federal Register an announcement of the expiration of terms no less than 4 months before such expiration;

(C) solicit nominations from Indian tribes and various Indian organizations to fill the vacancies;

(D) give due consideration to the appointment of individuals who will provide appropriate regional and tribal representation on the Board; and

(E) ensure that a majority of the Board appointed under paragraph (1)(A) are Indians.

(3) The President shall carry out the activities described in subparagraphs (B) and (C) of para-
(2) through the Board. The Board may make recommendations based upon the nominations received, may make recommendations of its own, and may review and make comments to the President or the President's appointed staff on individuals being considered by the President for whom no nominations have been received.

(4) Members of Congress appointed under this section, or their designees, shall be entitled to attend all meetings of the Board and to provide advice to the Board on any matter relating to the Institute.

(b) Terms of office

(1) Except as otherwise provided in this section, members shall be appointed for terms of office of 6 years.

(2) The terms of office on the Board for the Members of the House of Representatives and of the Senate shall expire at the end of the congressional term of office during which such Member or Senator was appointed to the Board. The terms of the members of the Board first appointed under subsection (a)(1)(A) of this section—

(A) 4 shall be appointed for terms of office of 2 years;

(B) 4 shall be appointed for terms of office of 4 years; and

(C) 5 shall be appointed for terms of office of 6 years,

as determined by the drawing of lots during the first meeting of the Board.

(4) No member of the Board appointed under subsection (a)(1)(A) of this section shall be eligible to serve in excess of 2 consecutive terms, but may continue to serve until such member's successor is appointed.

(c) Vacancies

Any member of the Board appointed under subsection (a) of this section to fill a vacancy occurring before the expiration of the term to which such member's predecessor was appointed shall be appointed for the remainder of such term. If the vacancy occurs prior to the expiration of the term of a member of the Board appointed under subsection (a)(1)(B) of this section, a replacement shall be appointed in the same manner in which the original appointment was made.

(d) Removal

No member of the Board may be removed during the term of office of such member except for just and sufficient cause.

(e) Chairman and Vice Chairman

The President of the United States shall designate the initial Chairman and Vice Chairman of the Board from among the members of the Board appointed pursuant to subsection (a)(1)(A) of this section. Such Chairman and Vice Chairman so designated shall serve for 12 calendar months. Thereafter, the Chairman and Vice Chairman shall be elected from among the members of the Board appointed pursuant to subsection (a)(1)(A) of this section and shall serve for terms of 2 years. In the case of a vacancy in the office of Chairman or Vice Chairman, such vacancy shall be filled by the members of the Board appointed pursuant to subsection (a)(1)(A) of this section, and the member filling such vacancy shall serve for the remainder of the unexpired term.

(f) Quorum

Unless otherwise provided by the bylaws of the Institute, a majority of the members appointed under subsection (a)(1)(A) of this section shall constitute a quorum.

(g) Powers

The Board is authorized—

(1) to formulate the policy of the Institute;

(2) to direct the management of the Institute; and

(3) to make such bylaws and rules as it deems necessary for the administration of its functions under this chapter, including the organization and procedures of the Board.

(h) Compensation

Members of the Board appointed pursuant to subsection (a)(1)(A) of this section shall, for each day they are engaged in the performance of the duties under this chapter, receive compensation at the rate of $125 per day, including travel-time. All members of the Board, while so serving away from their homes or regular places of business, shall be allowed travel expenses (including per diem in lieu of subsistence), as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(i) Appointment exception for continuity

(1) In order to maintain the stability and continuity of the Board, the Board shall have the power to recommend the continuation of members on the Board pursuant to the provisions of this subsection. When the Board makes such a recommendation, the Chairman of the Board shall transmit the recommendation to the President no later than 75 days prior to the expiration of the term of the member.

(2) If the President has not transmitted to the Senate a nomination to fill the position of a member covered by such a recommendation within 60 days from the date that the member's term expires, the member shall be deemed to have been reappointed for another full term to the Board, with all the appropriate rights and responsibilities.

(3) This subsection shall not be construed to permit less than 7 members of the Board to be Indians. If an extension of a term under paragraph (2) would result in less than 7 members being Indians, the term of the member covered by paragraph (2) shall be deemed to expire 60 days after the date upon which it would have been deemed to expire without the operation of this subsection, except that the provisions of subsection (b)(4) of this section, relating to continuation of service pending replacement, shall continue to apply.


AMENDMENTS

1992—Subsec. (a)(1)(A). Pub. L. 102–325, § 1331(a)(1), substituted “Subject to the provisions of subsection (i) of this section, the voting” for “The voting” and inserted before period at end “, and diverse fields of ex-
pertise, including finance, law, fine arts, and higher education administration:"

Subsec. (a)(3), (4). Pub. L. 102–325, §1331(a)(2), (3), added par. (3) and redesignated former par. (3) as (4). Subsec. (1), Pub. L. 102–325, §1331(a)(4), added subsec. (1) and struck out former subsec. (1) which read as follows: "(1) Review by SECRETARY OF THE INTERIOR.—For so long as any employee of the Institute is covered under title 5, the Board (acting by majority vote) shall submit final decisions relating to personnel to the Secretary of the Interior. Each such decision shall become final 30 days after the date of its receipt by the Secretary unless the Secretary disapproves of such decision. The Secretary may only disapprove a decision of the Board for just cause."

**Effective Date of 1992 Amendment**


**DELEGATION OF AUTHORITY**

Memorandum of President of the United States, Feb. 22, 1991, 56 F.R. 8099, provided:

Memorandum for the Chairman of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development

By the authority vested in me as President of the United States by section 301 of Title 3 of the United States Code, I hereby delegate to the Chairman of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development the responsibility under section 1565(a)(2)(B) of P.L. 99–498 (20 U.S.C. 4412(a)(2)(B)) to publish in the Federal Register an announcement of the expiration of the terms of the presidentially appointed members of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development no less than 4 months prior to their expiration. The authority delegated by this memorandum may be further redelegated within the Institute. The delegation of authority to the Secretary of the Interior by memorandum of June 22, 1988, is hereby rescinded. This memorandum shall be published in the Federal Register.

GEORGE BUSH.

§ 4413. Executive Board

(a) Composition

The Board shall have an Executive Board composed of—

(1) the chairman of the Board;
(2) the vice chairman of the Board;
(3) the secretary of the Board;
(4) the treasurer of the Board; and
(5) an at-large member of the Board elected by the Board at its initial meeting.

(b) Vacancies

In the case of any vacancy which occurs in the position of at-large member before the expiration of such member’s term, the Board shall elect a replacement to complete that term.

(c) Meetings

The Executive Board shall hold not more than 4 regular meetings per calendar year. Special meetings may be held upon the call of the chairman or 3 members of the Executive Board.

(d) Quorum

A majority of the Executive Board shall constitute a quorum.

(e) Powers

The Executive Board may hold and use all the powers of the Board, subject to the approval of the Board.

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1 So in original. Probably should be “contracts”.
(13) to use any funds or property received by the Institute to carry out the purpose of this chapter, including the authority to designate on an annual basis a portion, not to exceed 10 percent, of the funds appropriated pursuant to section 4451 of this title for investment, without regard to any other provision of law regarding investment or disposition of federally appropriated funds, on a short-term basis for the purpose of maximizing yield and liquidity of such funds; and

(14) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Institute in order to carry out the provisions of this chapter and the exercise of the powers, purposes, functions, duties, and authorized activities of the Institute.

(b) Accounting for non-Federal funds

Any funds received by, or under the control of, the Institute that are not Federal funds shall be accounted for separately from Federal funds.

(c) Interest and investments

Interest and earnings on amounts received by the Institute pursuant to section 4451 of this title invested under subsection (a)(12) of this section shall be the property of the Institute and shall be expended to carry out this chapter. The Board shall be held to a reasonable and prudent standard of care, given such information and circumstances as existed when the decision is made, in decisions involving investment of funds under subsection (a)(12) of this section.


REFERENCES IN TEXT

Subsection (a)(12) of this section, referred to in subsection (c), was redesignated subsection (a)(13) of this section, repealed, and a new subsection (a)(12) added by Pub. L. 102–325, title XIII, § 1331(b)(1)(A), (C), July 23, 1992, 106 Stat. 806, and former subsection (a)(11) of this section was redesignated subsection (a)(12).

AMENDMENTS


1992—Subsec. (a)(2). Pub. L. 102–325, § 1331(b)(1)(B), added par. (2) and struck out former par. (2) which read as follows: ‘‘(2) to make agreements and contracts with persons, Indian tribes, and private or governmental entities and to make payments or advance payments under such agreements or contracts without regard to section 3323 of title 31;’’.

Subsec. (a)(3) to (12). Pub. L. 102–325, § 1331(b)(1)(A), (B), added par. (3) and redesignated former pars. (3) to (11) as (4) to (12), respectively. Former par. (12) redesignated (13).

Subsec. (a)(13). Pub. L. 102–325, § 1331(b)(1)(C), added par. (13) and struck out former par. (13) which read as follows: ‘‘(13) to use any funds or property received by the Institute to carry out the purpose of this chapter; and’’. Pub. L. 102–325, § 1331(b)(1)(A), redesignated par. (12) as (13). Former par. (13) redesignated (14).


Subsec. (c). Pub. L. 102–325, § 1331(b)(2), substituted ‘‘shall be expended’’ for ‘‘may be expended’’.

§ 4415. President of Institute

(a) Appointment

The President of the Institute shall have a President who shall be appointed by the Board. The President of the Institute shall serve as the chief executive officer of the Institute. Subject to the direction of the Board and the general supervision of the Chairman of the Board, the President of the Institute shall have the responsibility for carrying out the policies and functions of the Institute and shall have authority over all personnel and activities of the Institute.

(b) Compensation

The President of the Institute shall be paid at a rate not to exceed the maximum rate of basic pay payable for grade GS–18 of the General Schedule.


REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, § 101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 4416. Staff of Institute

(a) Exemption from civil service

Except as otherwise provided in this section, title 5 shall not apply to the Institute.

(b) Appointment and compensation

(1) The President of the Institute, with the approval of the Board, shall have the authority to appoint, fix the compensation of (including health and retirement benefits), and prescribe the duties of, such officers and employees as the President of the Institute deems necessary for the efficient administration of the Institute.

(2) The President of the Institute shall fix the basic compensation for officers and employees of the Institute at rates comparable to the rates in effect under the General Schedule for individ-
uals with comparable qualifications and positions, to whom chapter 51 of title 5 applies. If the Board determines that such action is necessary for purposes of recruitment or retention of officers or employees necessary to the function of the Institute, the Board is authorized, by formal action, to establish a rate of, or a range for, basic compensation that is comparable to the rate of compensation paid to officers or employees having similar duties and responsibilities in other institutions of higher education.

(3)(A) Not later than 180 days after the President of the Institute is appointed, the President of the Institute shall make policies and procedures governing—
   (i) the establishment of positions at the Institute,
   (ii) basic compensation for such positions (including health and retirement benefits),
   (iii) entitlement to compensation,
   (iv) conditions of employment,
   (v) discharge from employment,
   (vi) the leave system, and
   (vii) such other matters as may be appropriate.

(B) Rules and regulations promulgated with respect to discharge and conditions of employment shall require—
   (i) that procedures be established for the rapid and equitable resolution of grievances of such individuals; and
   (ii) that no individual may be discharged without notice of the reasons therefor and an opportunity for a hearing under procedures that comport with the requirements of due process.

(c) Appeal to Board
Any officer or employee of the Institute may appeal to the Board any determination by the President of the Institute to not re-employ or to discharge such officer or employee. Upon appeal, the Board may, in writing, overturn the determination of the President of the Institute with respect to the employment of such officer or employee.

(d) No reduction in classification or compensation
Individuals who elect to remain civil service employees shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions and personnel, except that any such transfer shall not result in a reduction in classification or compensation with respect to any such individual for at least one year after the date on which such transfer occurs.

(e) Leave
(1) Any individual who—
   (A) elects under subsection (g) of this section to be covered under the provisions of this section, or
   (B) is an employee of the Federal Government and is transferred or reappointed, without a break in service, from a position under a different leave system to the Institute,
shall be credited for purposes of the leave system provided under rules and regulations promulgated pursuant to subsection (b) of this section, with the annual and sick leave to the credit of such individual immediately before the effective date of such election, transfer, or reappointment.

(2) Upon termination of employment with the Institute, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, except that leave earned or accrued under rules and regulations promulgated pursuant to subsection (b) of this section shall not be so liquidated.

(3) In the case of any individual who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the rules and regulations promulgated pursuant to subsection (b) of this section shall be transferred to the credit of such individual in the employing agency on an adjusted basis in accordance with the rules and regulations which shall be promulgated by the Office of Personnel Management.

(f) Applicability
(1) This section shall apply to any individual appointed after October 17, 1986, for employment in the Institute. Except as provided in subsections (d) and (g) of this section, the enactment of this chapter shall not affect—
   (A) the continued employment of any individual employed before October 17, 1986; or
   (B) such individual’s right to receive the compensation attached to such position.

(2) This section shall not apply to an individual whose services are procured by the Institute pursuant to a written procurement contract.

(3) This section shall not apply to employees of an entity performing services pursuant to a written contract with the Institute.

(g) Termination of civil service positions
(1) On June 30, 1989, any position at the Institute which is occupied by an individual in the civil service shall terminate. During such period, such individual may make an irrevocable election to be covered under the provisions of this section, except that any such individual who is subject to subchapter III of chapter 83 of title 5 may elect to continue to be subject to such subchapter, and any such individual who is subject to chapter 84 of such title may elect to continue to be subject to such chapter.

(2) Any individual who makes an election under paragraph (1) to continue to be subject to subchapter III of chapter 83 of title 5 or chapter 84 of such title shall, so long as continually employed by the Institute without a break in service subject to such subchapter or such chapter 84, as the case may be, Employment by the Institute without a break of continuity in service shall be considered to be employment by the United States Government for the purpose of such subchapter or such chapter 84, as the case may be. The Institute shall be responsible for making the contributions required to be made by an employing agency under such subchapter or such chapter 84, as the case may be.
(h) Collective bargaining

The Institute shall be considered an agency for the purpose of chapter 71 of title 5.

(i) Workmen's compensation

Employees of the Institute shall receive compensation for work injuries and illnesses in accordance with chapter 81 of title 5.


REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(2), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–382 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “This section shall apply to any individual appointed after October 17, 1986, for employment in the Institute. Except as provided in subsections (d) and (g) of this section, the enactment of this chapter shall not affect—

(1) the continued employment of any individual employed immediately before October 17, 1986, or

(2) such individual’s right to receive the compensation attached to such position.”

1992—Subsec. (b)(2). Pub. L. 102–325 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The President of the Institute shall fix the basic compensation for officers and employees of the Institute at rates comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5 applies.”

1989—Subsec. (g)(1). Pub. L. 100–297 substituted “On June 30, 1989” for “At the end of the 2-year period beginning on the date referred to in section 4211(f) of this title”.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6503 of Pub. L. 100–297, set out as a note under section 1011 of this title.

§ 4417. Functions of Institute

(a) Primary functions

The primary functions of the Institute shall be—

(1) to provide scholarly study of, and instruction in, Indian art and culture, and

(2) to establish programs which culminate in the awarding of degrees in the various fields of Indian art and culture.

(b) Administrative entities

(1) The Board shall be responsible for establishing the policies and internal organization that relate to the control and monitoring of all subdivisions, administrative entities, and departments of the Institute.

(2) The specific responsibilities of each subdivision, entity, and department of the Institute are solely within the discretion of the Board, or its designee.

(3) The Board shall establish, within the Institute, departments for the study of culture and arts and for research and exchange, and a museum. The Board shall establish the areas of competency for the departments created under this paragraph, which may include (but are not limited to) Departments of Arts and Sciences, Visual Arts, Performing Arts, Language, Literature and Museology and a learning resources center, programs of institutional support and development, research programs, fellowship programs, seminars, publications, scholar-in-residence programs and inter-institutional programs of cooperation at national and international levels.

(c) Other programs

In addition to the centers and programs described in subsection (b) of this section, the Institute shall develop such programs and centers as the Board determines are necessary to—

(1) foster research and scholarship in Indian art and culture through—

(A) resident programs;

(B) cooperative programs; and

(C) grant programs;

(2) complement existing tribal programs for the advancement of Indian art and culture; and

(3) coordinate efforts to preserve, support, revitalize, and develop evolving forms of Indian art and culture.


AMENDMENTS

1992—Subsec. (b). Pub. L. 102–325 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “There shall be established within the Institute—

“(1) a Center for Culture and Art Studies to be administered by a director (appointed by the President of the Institute, with the approval of the Board), which shall include (but not be limited to) Departments of Arts and Sciences, Visual Arts, Performing Arts, Language, Literature, and Museology;

“(2) a Center for Research and Cultural Exchange, administered by a director (appointed by the President of the Institute, with the approval of the Board), which shall include—

“(A) a learning resources center;

“(B) programs of institutional support and development;

“(C) research programs;

“(D) fellowship programs;

“(E) seminars;

“(F) publications;

“(G) scholar-in-residence and artist-in-residence programs; and

“(H) inter-institutional programs of cooperation at national and international levels; and

“(3) a Museum of American Indian and Alaska Native Arts, which shall be under the direction of the President of the Institute.”

1990—Subsec. (b)(3). Pub. L. 101–644, §502(2)(A), redesignated subpars. (B) to (I) as (A) to (H), respectively, and struck out former subpar. (A) which related to a museum of Indian arts.

§ 4418. Indian preference

(a) In general

Notwithstanding any other provision of Federal or State law, the Institute is authorized to develop a policy or policies for the Institute to extend preference to Indians in—

(1) admissions to, and enrollment in, programs conducted by the Institute,

(2) employment by the Institute, and

(3) contracts, fellowships, and grants awarded by the Institute.

(b) Hiring preference

In carrying out section 4416(b)(1) of this title, the President of the Institute shall, to the maximum extent practicable, give preference in hiring to Indians.


AMENDMENTS

1986—Pub. L. 100–446 inserted “; tort liability” in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 4421. Transfer of functions

(a) Institute of American Indian Arts

There are hereby transferred to the Institute of American Indian and Alaska Native Culture and Art Development, and such Institute shall perform, the functions of the Institute of American Indian Arts established by the Secretary in 1962.

(b) Certain matters relating to transferred functions

(1) Subject to subsection (d) of this section, all personnel, liabilities, contracts, real property (including the collections of the museum located on the site known as the “Santa Fe Indian School” but not the museum building), personal property, assets, and records as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function transferred under the provisions of this chapter (regardless of the administrative entity providing the services on the date before the transfer) shall be transferred to the Institute.

(2) Personnel engaged in functions transferred by this chapter shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions, except that such transfer shall be without reduction in classification or compensation for one year after such transfer.

(c) References in other laws

All laws and regulations relating to the Institute of American Indian Arts established by the Secretary in 1962 shall, insofar as such laws and regulations are appropriate, and not inconsistent with the provisions of this chapter, remain in full force and effect and apply with respect to the Institute. All references in any other Federal law to the Institute of American Indian Arts, or any officer transferred to the Institute of American Indian and Alaska Native Culture and Arts Development under subsection (b) of this section, shall be deemed to refer to the Institute of American Indian and Alaska Native Culture and Arts Development.

(d) Forgiveness of amounts owed; hold harmless

(1) Subject to paragraph (2)—

(A) the Institute shall be responsible for all obligations of the Institute incurred after June 2, 1988, and

(B) the Secretary shall be responsible for all obligations of the Institute incurred on or before June 2, 1988, including those which accrued by reason of any statutory, contractual,
or other reason prior to June 2, 1988, which became payable within two years of June 2, 1988.

(2) With respect to all programs of the Federal Government, in whatever form or from whatever source derived, the Institute shall only be held responsible for actions and requirements, either administrative, regulatory, or statutory in nature, for events which occurred after July 1, 1988, including the submission of reports, audits, and other required information. The United States may not seek any monetary damages or repayment for the commission of events, or omission to comply with either administrative or regulatory requirements, for any action which occurred prior to June 2, 1988.


AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–325, §1331(f)(1), substituted “Subject to subsection (d) of this section, all personnel” for “All personnel”.

1990—Subsec. (d). Pub. L. 101–644, §503, added subsec. (d) and struck out former subsec. (d) which read as follows: “Unless the Board provides otherwise, the Secretary of the Interior shall, until October 1, 1989, provide such technical and support assistance to the Institute as the Secretary determines reasonable or necessary to assist the Institute. Such assistance shall include audit, accounting, computer services, and building and maintenance services.”

Subsecs. (e), (f). Pub. L. 101–644, §503(1), struck out subsec. (e) which related to completion of transfers, final date of control of Institute by Secretary, payment of unexpended or unobligated funds, and responsibility for subsequently incurred obligations, and subsec. (f) which related to contract with University of New Mexico, terms of contract, and composition of advisory council.


1987—Subsec. (d). Pub. L. 100–153, §8(1), (2), substituted “Unless the Board provides otherwise” for “During the 2-year period beginning on the date referred to in subsection (f) of this section” and inserted “, until October 1, 1989,” after “Secretary of the Interior shall”.

Subsec. (e). Pub. L. 100–153, §8(3), added subsec. (e) and struck out former subsec. (e) which read as follows: “During the period beginning on October 17, 1986, and ending on the date referred to in subsection (f) of this section, the Advisory Board for Institute of American Indian Arts shall continue to act in an advisory role for the Board and the Institute of American Indian and Alaska Native Culture and Arts Development.”

Subsec. (f). Pub. L. 100–153, §8(3), added subsec. (f) and struck out former subsec. (f) which read as follows: “The provisions of this section (other than subsection (e) of this section) shall take effect on October 1, 1986.”

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of this title.

§ 4422. Reports
(a) Annual report

The President of the Institute shall submit an annual report to the Congress and to the Board concerning the status of the Institute during the 12 calendar months preceding the date of the report. Such report shall include, among other matters, a detailed statement of all private and public funds, gifts, and other items of a monetary value received by the Institute during such 12-month period and the disposition thereof as well as any recommendations for improving the Institute.

(b) Budget proposal

(1) After September 30, 1988 and for each fiscal year thereafter, the Board shall submit a budget proposal to the Congress.

(2) A budget proposal under this subsection shall be submitted not later than April 1 of each calendar year and shall propose a budget for the Institute for the 2 fiscal years succeeding the fiscal year during which such proposal is submitted.

(3) In determining the amount of funds to be appropriated to the Institute on the basis of such proposals, the Congress shall not consider the amount of private fundraising or bequests made on behalf of the Institute during any preceding fiscal year.


AMENDMENTS

1992—Subsec. (b). Pub. L. 102–325 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: “Prior to October 1, 1988, the Board shall submit a budget proposal to the Secretary of the Interior. The Secretary shall submit that proposal to the Congress.”

1989—Subsec. (b)(1). Pub. L. 100–297, §5406(f)(1), substituted “Prior to October 1, 1988” for “During the 2-year period beginning on the date referred to in section 4421(f) of this title”.

(b)(2). Pub. L. 100–297, §5406(f)(2), substituted “September 30, 1988” for “the period described in paragraph (1)”.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section relating to submitting an annual report to Congress, and provisions in subsec. (b) of this section relating to submitting annual budget proposal to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 201 of House Document No. 103–7.

§ 4423. Headquarters

Santa Fe, New Mexico, shall be maintained as the location for the Institute of Indian and Alas-
ka Native Culture and Arts Development. To facilitate this action and the continuity of programs being provided at the Institute of American Indian Arts, the Board may enter into negotiations with State and local governments for such exchanges or transfers of lands and such other assistance as may be required.


AMENDMENTS

1992—Pub. L. 102–325 struck out "The site of the Institute of American Indian Arts, at" before "Santa Fe, New Mexico" and substituted "the Board may enter" for "the Secretary may enter".

EFFECTIVE DATE OF 1992 AMENDMENT


§ 4424. Compliance with other Acts

(a) In general

The Institute shall comply with the provisions of—

(1) Public Law 95–341 (42 U.S.C. 1992 [1996a]), popularly known as the American Indian Religious Freedom Act,

(2) the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), and

(3) the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(b) Criminal laws

All Federal criminal laws relating to larceny, embezzlement, or conversion of the funds or the property of the United States shall apply to the property of the Institute.

(c) Other Federal assistance

(1) Funds received by the Institute pursuant to this chapter shall not be regarded as Federal money for purposes of meeting any matching requirements for any Federal grant, contract or cooperative agreement.

(2) The Institute shall not be subject to any provision of law requiring that non-Federal funds or other moneys be used in part to fund any grant, contract, cooperative agreement, or project as a condition to the application for, or receipt of, Federal assistance. This subsection shall not be construed to affect in a negative fashion the review, prioritization, or acceptance of any application or proposal for such a program, solicited or unsolicited.


REFERENCES IN TEXT


The Archaeological Resources Protection Act of 1979, referred to in subsection (a)(2), is Pub. L. 96–35, Oct. 31, 1979, 93 Stat. 721, which is classified generally to chapter 1B (§470aa et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Title note set out under section 470aa of Title 16 and Tables.

The National Historic Preservation Act, referred to in subsection (a)(3), is Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§470 et seq.) of chapter 1A of Title 16. For complete classification of this Act to the Code, see section 470a of Title 16 and Tables.

This chapter, referred to in subsection (c)(1), was in the original "this Act" and was translated as reading "this title", meaning title XV of Pub. L. 99–498 to reflect the probable intent of Congress.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–325 designated existing provisions as pars. (1) and added par. (2).


EFFECTIVE DATE OF 1992 AMENDMENT


§ 4425. Endowment programs

(a) Program enhancement endowment

(1)(A) From the total amount appropriated for this subsection pursuant to section 4451(a) of this title, funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution.

(I) The President of the Institute shall provide—

(i) for the deposit into the trust fund referred to in subparagraph (A)—

(I) of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution; and

(ii) any earnings on the funds deposited under this paragraph; or

(ii) for the reservation for the sole use of the Institute of any noncash, in-kind contributions of real or personal property, which property may at any time be converted to cash, which shall be deposited as a capital contribution into the trust fund referred to in subparagraph (A).

(C) If at any time the Institute withdraws any capital contribution (as described in subparagraph (B)(i)) made by the Institute to the trust fund referred to in subparagraph (A) or puts any property (as described in subparagraph (B)(ii)) to a use which is not for the sole benefit of the Institute, an amount equal to the value of the Federal contribution shall be withdrawn from such trust fund and returned to the Treasury as miscellaneous receipts.

(2) Interest deposited into the trust fund pursuant to paragraph (1)(B)(i) may be periodically withdrawn and used, at the direction of the Board or its designee, to defray any expense associated with the operation of the Institute, including the expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.
(3) For the purpose of complying with the contribution requirement of paragraph (1)(B), the Institute may use funds or in-kind contributions of real or personal property fairly valued which are made available from any private or tribal source, including interest earned by the funds invested under this subsection. In-kind contributions shall be other than fully depreciable property or property which is designated for addition to the permanent collection of the Museum and shall be valued according to the procedures established for such purpose by the Secretary of the Treasury. For purposes of this paragraph, all contributions, including in-kind and real estate, which are on-hand as of November 29, 1990 and which have been received after June 2, 1988, but which have not been included in computations under this provision shall be eligible for matching with Federal funds appropriated in any fiscal year. All funds transferred to the Institute by the Secretary of the Treasury after June 2, 1988, shall be deemed to have been properly transferred as of July 23, 1992.

(4) Amounts appropriated under section 4451(a) of this title for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount to the Institute by the Secretary of the Treasury pursuant to section 4451(a) of this title for the purpose of establishing a separate special endowment for capital improvement (hereafter in this subsection referred to as the “capital endowment fund”) to pay expenses associated with site selection and preparation, site planning and architectural design and planning, new construction, materials and equipment procurement, renovation, alteration, repair, and other building and expansion costs of the Institute.

(b) Capital improvement endowment

(1) In addition to the trust fund established under subsection (a) of this section, funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution from the amount reserved for this subsection pursuant to section 4451(a) of this title for the purpose of establishing a separate special endowment for capital improvement (hereafter in this subsection referred to as the “capital endowment fund”) to pay expenses associated with site selection and preparation, site planning and architectural design and planning, new construction, materials and equipment procurement, renovation, alteration, repair, and other building and expansion costs of the Institute.

(2) The President of the Institute shall provide for the deposit into the capital endowment fund of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution and any earnings on amounts in the capital endowment fund.

(3) Funds deposited by the Institute as a match for Federal contributions under paragraph (5) shall remain in the capital endowment fund for a period of not less than two years. If at any time the Institute withdraws any capital contribution to the capital endowment fund before the funds have been deposited for this two-year period, an equal amount of the Federal contribution shall be withdrawn from the capital endowment fund and returned to the Treasury as miscellaneous receipts. At the end of the two-year period, the entire principal and interest of the funds deposited for this period, including the Federal matching portion, shall accrue, without reservation, to the Institute and may be withdrawn, in whole or in part, to defray expenses associated with capital acquisition and improvement of the Institute referred to in paragraph (1).

(4) For the purpose of complying with the contribution requirement of paragraph (2), the Institute may use funds which are available from any private, non-Federal governmental, or tribal source.

(5) Subject to paragraph (3), amounts appropriated under section 4451(a) of this title for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount which the Institute demonstrates has been placed within the control of, or irrevocably committed to the use of, the Institute and is available for deposit as a capital contribution of the Institute in accordance with this subsection.

(6) For the purpose of complying with the contribution requirement in this subsection, the Institute may use funds or in-kind contributions of real or personal property. For the purposes of this paragraph, all contributions, including in-kind and real estate, which are held by the Institute beginning on November 29, 1990, and which were received after June 2, 1988, but which have not been included in their entirety in computations under this section shall be eligible for matching Federal funds appropriated in any year.

(c) General administrative provisions

(1) Funds in the trust funds described in subsections (a) and (b) of this section shall be invested under the same conditions and limitations as funds are invested under section 1065(c)(2) of this title and the regulations implementing such section (as such regulations were in effect at the time the funds are invested).

(2) No part of the net earnings of the trust funds established under this section shall inure to the benefit of any private person.

(3) Any amounts deposited in a trust fund authorized under subsection (a) of this section may be used to secure loans procured for the purposes of constructing or improving Institute facilities.

(4) The President of the Institute shall provide for such other provisions governing the trust funds established under this section as may be necessary to protect the financial interest of the United States and to promote the purpose of this chapter as agreed to by the Secretary of the Treasury and the Board or its designee, including recordkeeping procedures for the investment of funds received under the trust fund established under subsection (b) of this section and such other recordkeeping procedures for the expenditure of accumulated interest for the trust fund under subsection (a) of this section as will allow the Secretary of the Treasury to audit and monitor activities under this section.

§ 4426. Provision of facilities

(a) Plan

The Board shall prepare a master plan on the short- and long-term facilities needs of the Institute. The master plan shall include evaluation of all facets of existing Institute programs, including support activities and programs and facilities. The master plan shall include impact projections for the Institute’s move to a new campus site. This master plan shall evaluate development and construction requirements based on a growth plan approved by the Board, including (but not limited to) items such as infrastructure and site analysis, development of a phased plan with architectural and engineering studies, cost projections, landscaping, and related studies which cover all facets of the Institute’s programs and planned functions.

(b) Deadline for transmittal

The plan required by this subsection shall be transmitted to Congress no later than 18 months after July 23, 1992. Such plan shall include a prioritization of needs, as determined by the Board.
(B) represent the Eskimo, Indian and Aleut cultures of Alaska, and
(C) serve for a fixed term.

AMENDMENTS

EFFECTIVE DATE OF 1994 AMENDMENT

§4442. Administrative provisions

(a) Payments
The Secretary may award grants under this subchapter in installments, in advance, or by way of reimbursement and may make necessary adjustments in payments of grants on account of overpayments or underpayments.

(b) Recovery of overpayments
(1) If the Secretary or a court of competent jurisdiction finds that—
(A) any person—
(i) has—
(I) made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be false, or
(II) knowingly failed, or caused another to fail, to disclose a material fact; and
(ii) as a result of such action, has received any funds under this subchapter which such person would not have otherwise received, or
(B) any person misappropriates any funds paid by the Secretary under this subchapter, such person shall be liable to repay the amount of such funds to the United States. Any such finding by the Secretary may be made only after an opportunity for a fair hearing.

(2) Any amount repaid under this subsection shall be returned to the general fund of the Treasury of the United States.

(c) Penalties
Whoever—
(1) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for such person or for any other person any payment of funds provided under this subchapter, or
(2) misappropriates any funds provided under this subchapter,
shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§4451. Authorization of appropriations

(a) Subchapter I
(1) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of subchapter I of this chapter.
(2) Funds appropriated under the authority of paragraph (1) shall remain available without fiscal year limitation.
(3) Except as provided for amounts subject to section 4425(d) of this title, amounts appropriated under the authority of this subsection for fiscal year 1989, and for each succeeding fiscal year, shall be paid to the Institute at the later of—
(A) the beginning of the fiscal year, or
(B) upon enactment of such appropriation.
(4) Funds appropriated under this subsection for the fiscal year 1992 and for each succeeding fiscal year shall be transferred by the Secretary of the Treasury through the most expeditious method available with the Institute being designated as its own certifying agency.
(5) Funds are authorized to be appropriated for programs for more than one fiscal year. For the purpose of affording adequate notice of funding available under this chapter, amounts appropriated in an appropriations Act for any fiscal year to carry out this chapter may, subject to the appropriation, become available for obligations on July 1 of that fiscal year.

SUBCHAPTER III—AUTHORIZATION OF APPROPRIATIONS

§4451. Authorization of appropriations

(a) Subchapter I
(1) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of subchapter I of this chapter.
(2) Funds appropriated under the authority of paragraph (1) shall remain available without fiscal year limitation.
(3) Except as provided for amounts subject to section 4425(d) of this title, amounts appropriated under the authority of this subsection for fiscal year 1989, and for each succeeding fiscal year, shall be paid to the Institute at the later of—
(A) the beginning of the fiscal year, or
(B) upon enactment of such appropriation.
(4) Funds appropriated under this subsection for the fiscal year 1992 and for each succeeding fiscal year shall be transferred by the Secretary of the Treasury through the most expeditious method available with the Institute being designated as its own certifying agency.
(5) Funds are authorized to be appropriated for programs for more than one fiscal year. For the purpose of affording adequate notice of funding available under this chapter, amounts appropriated in an appropriations Act for any fiscal year to carry out this chapter may, subject to the appropriation, become available for obligations on July 1 of that fiscal year.

(b) Subchapter II
There are authorized to be appropriated for the purpose of carrying out the provisions of subchapter II of this chapter—
(1) for fiscal year 1987, $1,000,000, and
(2) for each succeeding fiscal year, such sums as may be necessary to carry out such provisions.

References in Text

Amendments
1988—Subsec. (a). Pub. L. 100–297 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There are authorized to be appropriated for the purpose of carrying out the provisions of subchapter I of this chapter—
"(1) for fiscal year 1987, $1,000,000, and
"(2) for each succeeding fiscal year, such sums as may be necessary to carry out such provisions."

1 See References in Text note below.
§ 4501

TITLE 20—EDUCATION

Page 1128

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of this title.

CHAPTER 57—JAMES MADISON MEMORIAL FELLOWSHIP PROGRAM

Sec. 4501. Purpose.
4502. Foundation.
4503. Fellowship recipients.
4504. Period for award.
4505. Recipient’s choice of institution.
4506. Recipient’s eligibility.
4507. Selection of fellowship recipients.
4508. Amount of fellowships.
4509. Fellowship conditions.
4510. James Madison Memorial Fellowship Trust Fund.
4511. Expenditures and audit.
4512. President and Executive Secretary of Foundation.
4513. Administrative provisions.
4514. Definitions.
4515. Appropriations.
4517. Appropriations for universities.

§ 4501. Purpose

It is the purpose of this chapter to establish the James Madison Fellowship Program which is designed to encourage graduate study of the American Constitution, its roots, its formation, its principles, and its development.


CODIFICATION


SHORT TITLE

Section 101(b) [title VIII, § 801] of Pub. L. 99–500 and Pub. L. 99–591 provided that: "This title [enacting this chapter] may be cited as the 'James Madison Memorial Fellowship Act'."

§ 4502. Foundation

(a) Establishment

In order to commemorate the bicentennial of the Constitution, there is established, as an independent establishment of the executive branch, the James Madison Memorial Fellowship Foundation.

(b) Board of Trustees; membership; term of office

(1) The Foundation shall be subject to the supervision and direction of a Board of Trustees. The Board shall be composed of thirteen members, as follows:

(A) Two Members of the Senate, of different political parties, shall be appointed by the President upon the recommendation of the President pro tempore of the Senate, in consultation with the Majority Leader and Minority Leader of the Senate.

(B) Two Members of the House of Representatives, of different political parties, shall be appointed by the President upon the recommendation of the Speaker of the House, in consultation with the Minority Leader of the House of Representatives.

(C) Two members of the Federal judiciary shall be appointed by the President upon the recommendation of the Chief Justice of the United States.

(D) Six members, not more than three of whom shall be of the same political party, shall be appointed by the President with the advice and consent of the Senate, of whom one shall be a chief executive officer of a State, two shall be members of the general public, and three shall be members of the academic community, appointed upon the recommendation of the Librarian of Congress.

(E) The Secretary of Education or his designate shall serve ex officio as a member of the Board, but shall not be eligible to serve as Chairman.

(2) The term of office of each member of the Board shall be six years; except that (A) the members first taking office shall serve as designated by the President, four for terms of two years, five for terms of four years, and four for terms of six years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and shall be appointed in the same manner as the original appointment for that vacancy was made. This provision shall not apply to members ex officio.

(3) A member of the Board whose term has expired may continue to serve until the earlier of—

(A) the date on which a successor has taken office; or

(B) the date on which the Congress adjourns sine die to end the session of Congress that commences after the date on which the member’s term expired.

(c) Officers

Members of the Board shall elect from the members of the Board a Chairman and such other officers as may be necessary to carry out the duties of the Foundation.

(d) Reimbursement for expenses

(1) Subject to paragraph (2), members of the Board shall serve without pay.

(2) Members of the Board and the President, Executive Secretary, and other personnel of the Foundation shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties at rates applicable to judges of the United States under section 456(a) of title 28.


CODIFICATION


AMENDMENTS

1989—Subsec. (d). Pub. L. 101–208 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, sub-
sistence, and other necessary expenses incurred in the performance of their duties."

§ 4503. Fellowship recipients

(a) The Foundation is authorized to award fellowships to outstanding students and teachers who will pursue graduate study leading to the degree of Master of Arts in teaching or other appropriate masters degree for teachers, with a major in social studies or American history. Each recipient must take at least twelve semester hours, or its equivalent in topics directly related to the Constitution of the United States, as determined by the Board.

(b)(1) James Madison fellowships shall be awarded to individuals who are, or who desire to become, social studies and American history teachers in accordance with paragraphs (2) and (3).

(2) Junior fellowships shall be awarded to graduate students who are about to complete or have recently completed their undergraduate course of study, and plan to begin graduate work on a relatively full-time basis.

(3) Senior fellowships shall be awarded to experienced teachers who wish to undertake work for a graduate degree on a part-time basis during summers or in evening programs.


CODIFICATION

§ 4504. Period for award

Junior fellowships shall be granted for such periods as the Foundation may prescribe but not to exceed two academic years. Senior fellowship shall be granted for such periods as the Foundation may prescribe, but not to exceed five calendar years.


CODIFICATION

§ 4505. Recipient's choice of institution

Fellowship recipients may attend any institution of higher education in the United States with an accredited graduate program which offers courses of study or training which emphasize the origins of the Constitution of the United States, its principles, its development, and its comparison with other forms of government, as determined according to criteria established by the Foundation.


CODIFICATION

§ 4506. Recipient's eligibility

Each student awarded a fellowship under this chapter shall demonstrate the potential, and a serious intention, to follow a career of educating students in secondary schools. Each institution of higher education at which such a student is in attendance shall make reasonable efforts to encourage such a student to meet the objectives of this section.

Each student receiving a Fellowship under this chapter shall enter into an agreement under which the recipient shall:

(a) within a 5-year period after completing the education for which the fellowship was awarded, teach on a full-time basis students in secondary school for a period of not less than one year for each year for which assistance was received;

(b) repay all of the Fellowship assistance received plus interest at the rate of 6% per annum and, if applicable, reasonable collection fees for each school year for which assistance was received for which such recipient failed to teach as provided in paragraph (a); and

(c) not be considered to be in violation of the agreement entered into during any period during which the recipient:

(1) is pursuing a full-time course of study related to the field of teaching at an eligible institution;

(2) is serving, not in excess of 3 years, as a member of the armed services of the United States;

(3) is temporarily totally disabled for a period of time not to exceed 3 years as established by sworn affidavit of a qualified physician;

(4) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

(5) is seeking and unable to find full-time employment for a single period not to exceed 12 months; or

(6) is seeking and unable to find full-time employment as a teacher.


REFERENCES IN TEXT
This chapter, referred to in provisions preceding par. (a), was in the original "this Act" and was translated as reading "this title" meaning title VIII of section 101(b) of Pub. L. 99–500 and Pub. L. 99–591 which enacted this chapter, to reflect the probable intent of Congress.

CODIFICATION

§ 4507. Selection of fellowship recipients

(a) Criteria for selection

Madison Fellows shall be selected for their academic achievements and their potential to become secondary school teachers of social studies and American history.

1 See References in Text note below.

2 So in original. Probably should be "assistance."
§ 4508. Competition for selection; application

(1) The Foundation is authorized, either directly or by contract, to provide for the conduct of a nationwide competition for the selection of fellowship recipients. Each applicant must have a demonstrated interest in pursuing a course of study which emphasizes the Constitution, its principles, and its history, and have a demonstrated record of willingness to devote themselves to civil responsibility.

(2) Each application shall be accompanied by an essay explaining the importance of the study of the Constitution both to the applicant’s career aspirations and contributions to public service, and to citizenship generally in a constitutional regime.

(3)(A) Each application shall include a description of a program of study for the graduate program, designating the courses to be taken, and the proposed Master’s thesis, where appropriate.

(B) For the purpose of this paragraph, the Board of Trustees of the Foundation shall establish general criteria for programs in constitutional studies.

(c) Regional selection of recipients

The Foundation shall adopt selection procedures which shall assure that at least one Madison Fellow shall be selected each year from each State, the District of Columbia, and the Commonwealth of Puerto Rico, and considered as a single entity, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Marianas in which there are at least two resident applicants who meet the minimum criteria established by the Foundation; and, if sufficient funding is available, to invite applications from scholars overseas for study in the United States.

§ 4509. Fellowship conditions

(a) A student awarded a Madison Fellowship shall continue to receive payments only during such periods as the Foundation finds that the student is maintaining satisfactory progress in an approved program of study or research. Recipients of junior fellowships shall devote essentially full time to their program of study.

(b) The Foundation is authorized to require reports from any fellowship recipient containing such information, in such form, and to be filed at such times as the Foundation determines to be necessary. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such student is making satisfactory progress in a program of study or research, with such exceptions as the Foundation may establish.

§ 4510. James Madison Memorial Fellowship Trust Fund

(a) Establishment

There shall be established in the Treasury of the United States a trust fund consisting of appropriations and amounts contributed by the Foundation for the Commemoration of the Constitution and other private sources to be available, in accordance with the provisions of this chapter, to carry out the provisions of this chapter.

(b) Investment of amounts appropriated

(1) At the request of the Trust Fund, it shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated and contributed to the fund. Such investments may be made only in interest-bearing obligations of the United States issued directly to the fund.

(2) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the investments, and the investment of the special obligations issued directly to the fund. Such obligations may be the multiple of one-eighth of 1 percent interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States issued directly to the fund.

(c) Sale of obligations acquired by fund

At the request of the Trust Fund, the Secretary of the Treasury shall redeem any obligation issued directly to the fund. Obligations issued to the fund under subsection (b)(2) of this section shall be redeemed at par plus accrued interest. Any other obligations issued directly to the fund shall be redeemed at the market price.
Interest and proceeds from sale or redemption of obligations credited to fund

The interest on, and the proceeds from, the sale or redemption of any obligations held in the fund shall be credited to and form a part of the fund.


CODIFICATION


AMENDMENTS


§ 4512. President and Executive Secretary of Foundation

(a)(1) The Board may appoint a President of the Foundation to serve full-time or part-time and for such a term as the Board shall determine.

(2) The President shall carry out such of the functions and duties of the Foundation as the Board may determine, subject to the supervision and direction of the Board.

(3) The President shall be compensated at a rate to be determined by the Board without regard to subchapter III of chapter 53 of title 5, not to exceed the rate for level III of the Executive Schedule under section 5314 of that title.

(4) Sections 5532, 8344, and 4606 of title 5 shall not apply to a person while such person is serving as President of the Foundation.

(b)(1) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board.

(2) The Executive Secretary shall be the chief operating officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board or the President, as determined by the Board.

(3) The Executive Secretary shall be compensated at the rate specified for employees placed in grade GS–18 of the General Schedule set forth in section 5302 of title 5.


REPRESENTATIVES IN TEXT


CODIFICATION


AMENDMENTS

4513. Administrative provisions

(a) General powers

The Foundation is authorized—

(1) to appoint and fix the compensation of such personnel as may be necessary to carry out this chapter, without regard to the provisions of Title 5 governing appointments in the competitive service, but at General Schedule pay rates not in excess of the maximum rate for grade GS–15 of the General Schedule under section 5332 of that title;

(2) to procure temporary and intermittent services of such experts and consultants as are necessary to the extent authorized by section 3109 of Title 5, but at rates not to exceed the rate specified at the time of such service for grade GS–18 in section 5332 of that title;

(3) to prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(4) to receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) to accept and utilize the services of voluntary and noncompensated personnel and consultants as are necessary to the extent authorized by section 3109 of Title 5, but at rates not to exceed the rate specified at the time of such service for grade GS–18 in section 5332 of that title;

(6) to enter into contracts, grants, or other arrangements, or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds, and without regard to section 6101 of Title 41:

(7) to make advances, progress, and other payments which the Board deems necessary under this chapter without regard to the provisions of section 3324(a) and (b) of Title 31;

(8) to rent office space in the District of Columbia or its environs;

(9) to conduct programs in addition to or in conjunction with the Fellowship program which shall further the Foundation’s purpose of encouraging research and study of constitutionalism in America;

(10) to expend not more than 5 percent of its annual operating budget to pay the costs of fundraising activities, including public and private gatherings; and

(11) to make other necessary expenditures.

(b) Annual report

The foundation shall submit to the President and to the Congress an annual report of its operations under this chapter.

(c) Detailing of agency personnel to Foundation

On request of the Chairman of the Foundation, the head of a Federal agency may detail personnel of the agency to the Foundation to assist the Foundation in carrying out this chapter. Details under this subsection shall be without reimbursement by the Foundation to the agency from which personnel are detailed.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (c), was in the original “this Act” and was translated as reading “this title” meaning title VIII of section 101(b) of Pub. L. 99–500 and Pub. L. 99–591 which enacted this chapter, to reflect the probable intent of Congress.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–208, § 8(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “to appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees other than the Executive Secretary be compensated at a rate to exceed the rate provided for employees in grade GS–18 of the General Schedule set forth in section 5332 of title 5.”

Subsec. (a)(6). Pub. L. 101–208, § 8(1)(B), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “to rent office space;”.


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to submitting an annual report to Congress, see section 3003 of Pub. L. 101–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 176 of House Document No. 102–7.

§ 4514. Definitions

As used in this chapter—

2So in original. Probably should be capitalized.
(1) the term "Board" means the Board of Trustees of the James Madison Memorial Fellowship Foundation;
(2) the term "Foundation" means the James Madison Memorial Fellowship Foundation;
(3) the term "institution of higher education" has the same meaning given that term by section 1001 of this title; and
(4) the term "secondary school" has the same meaning given that term by section 7801 of this title.


Codification

Amendments

1998—Par. (3). Pub. L. 105–244, §102(a)(6)(G)(i), substituted "section 1001" for "section 1141(a)".

Par. (4). Pub. L. 105–244, §102(a)(6)(G)(ii), substituted "section 8801" for "section 1141(d)".

Effective Date of 2002 Amendment
Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

Effective Date of 1998 Amendment

§ 4516. Appropriations
There are appropriated to the James Madison Memorial Trust Fund $30,000,000 to carry out the provisions of this chapter, $10,000,000 of which shall be available on November 1, 1987, and to remain available until expended; and $10,000,000 of which shall be available on November 1, 1988, and to remain available until expended.


Codification

§ 4516. Constitutional Law Resource Centers
(a) Establishment
It is the purpose of this section to establish four centers where nationally recognized distinguished experts in Constitutional law will produce, on a periodic basis, articles of current interest relating to the Constitution of the United States which are suitable for use by James Madison scholars, educational institutions, law school reviews, bar associations, and the news media.

(b) Endowments
In order to encourage recipient universities to provide such a continuing service, four endowments shall be established with funds from appropriations provided herein and such other amounts as may be contributed from other sources.

(c) Chair for Professor of Constitutional Law
The income from each endowment shall be used to help support a chair for a Professor of Constitutional law. Each endowment shall be held in trust with the income from the portion provided herein used exclusively to contribute toward the salary and related costs of the professor filling the chair and for services directly related to the support of such professor such as secretarial and research services. The recipient university shall from sources other than the portion of the endowment funded herein furnish the office, classroom and related services suitable to such a member of the faculty.

The professor holding each chair shall file a copy of such articles with the Library of Congress, which shall make them available to libraries in the usual manner and the recipient of the endowment shall also make a copy available upon request by accredited educational institutions, bar associations, and general news media without royalty or charge other than the costs associated with printing or reprinting, handling and distribution.

(d) Investment of endowment
That portion of each endowment provided by this chapter and any accumulations attributable to such grant shall be invested by the recipient university in interest bearing obligations of the United States or in obligations guaranteed both as to principal and interest by the United States and shall be subject to audit by the Government Accountability Office for the sole purpose of determining that such funds are accounted for or have been used as provided herein. If a grantee university elects to discontinue such chair and support services, the corpus of the endowment attributable to the Federal grant shall revert to the Treasury of the United States.

(e) Application for grant of endowment
The application for the grant for an endowment shall require only such information and supporting material as is reasonably necessary to assure that the funds will be used for the purposes described herein. Acceptance of the grant by each university shall constitute an agreement and obligation of that university to fulfill the obligations set forth in this section.

(f) Amount of grant of endowment; recipients of offer
The grants for each endowment shall be for $800,000 and shall be offered to Howard University School of Law in Washington, D.C., Drake University School of Law in Des Moines, Iowa, the University of Akron School of Law in Akron, Ohio, and the University of South Carolina School of Law at Columbia, South Carolina.


1 So in original. Probably should be capitalized.
2 See References in Text note below.
§ 4517. Appropriations for universities

There is hereby appropriated to each recipient University named above or to the trustee of the fund designated by the President of the University the sum of $300,000 to carry out the provisions of section 4516 of this title, to be available on November 1, 1987, and to remain available until expended.


Codification


CHAPTER 58—DRUG-FREE SCHOOLS AND COMMUNITIES


Effective Date of Repeal

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

SUBCHAPTER II—STATE AND LOCAL PROGRAMS


Effective Date of Repeal

Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

SUBCHAPTER III—NATIONAL PROGRAMS


effective REPEAL. Provisions repealed effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

**SUBCHAPTER IV—GENERAL PROVISIONS**


Repeal effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of this title.

§ 4665. Transferred

**Codification**


Chapter 59—Barry Goldwater Scholarship and Excellence in Education Program

Sec.

4701. Findings.

4702. Definitions.

4703. Establishment of Barry Goldwater Scholarship and Excellence in Education Foundation.

4704. Barry Goldwater scholarship and excellence in education awards.

4705. Stipends.

4706. Scholarship conditions.

4707. Barry Goldwater Scholarship and Excellence in Education Fund.

4708. Expenditures from fund.

4709. Executive Secretary.

4710. Administrative provisions.

4711. Authorization of appropriations.

§ 4701. Findings

The Congress makes the following findings:

1. Senator Barry Goldwater of the State of Arizona has served his country for 56 years as a soldier and statesman, including service in the United States Senate for a period of 30 years.

2. Senator Goldwater has a distinguished record as a Senator, including service as Chairman of the Select Committee on Intelligence of the Senate and as Chairman of the Committee on Armed Services of the Senate.

3. Senator Goldwater has long maintained a special interest in the education of America’s youth, particularly in the fields of science and mathematics.

4. It would, therefore, be a fitting tribute to the leadership, courage, and vision of Senator Goldwater to establish in his name a scholarship program to foster and encourage excellence in science and mathematics.


**Short Title**

Section 1401 of title XIV of div. A of Pub. L. 99–661 provided that: “This title [enacting this chapter] may be cited as the ‘Barry Goldwater Scholarship and Excellence in Education Act’.”

§ 4702. Definitions

In this chapter:

1. The term “Foundation” means the Barry Goldwater Scholarship and Excellence in Education Foundation established under section 4703(a) of this title.

2. The term “Board” means the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation established under section 4703(b) of this title.

3. The term “fund” means the Barry Goldwater Scholarship and Excellence in Education Fund provided for under section 4707 of this title.

4. The term “institution of higher education” means any such institution as defined in section 1001 of this title.

5. The term “State” means each of the several States, the District of Columbia, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of Puerto Rico, and, considered as a single entity, the Northern Mariana Islands, and the Commonwealth of the Northern Marianas.

6. The term “eligible person” means a citizen or national of the United States or a permanent resident alien of the United States.


**Amendments**


**Termination of Trust Territory of the Pacific Islands**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4703. Establishment of Barry Goldwater Scholarship and Excellence in Education Foundation

(a) Establishment

There is established, as an independent Establishment of the executive branch of the United States Government, the Barry Goldwater Scholarship and Excellence in Education Foundation.

(b) Board of Trustees

The Foundation shall be subject to the supervision and direction of the Board of Trustees.
The Board shall be composed of 13 members, as follows:

(1) Two members from the Senate, one appointed by the majority leader and one appointed by the minority leader of the Senate.

(2) Two members from the House of Representatives, one appointed by the majority leader and one appointed by the minority leader of the House of Representatives.

(3) Eight members, not more than four of whom shall be of the same political party, to be appointed by the President, by and with the advice and consent of the Senate.

(4) The Secretary of Education, or his designee, who shall serve ex officio as a member of the Board but shall not be eligible to serve as Chairman.

(c) Term of office

(1) The term of office of each member of the Board shall be six years, except that—

(A) the members first taking office shall serve as designated by the President, four for terms of two years, five for terms of four years, and four for terms of six years;

(B) a member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed and shall be appointed in the same manner as the original appointment for that vacancy was made; and

(C) notwithstanding the term limitation provided for under this paragraph, a member appointed under subsection (b) of this section may continue to serve under such appointment until the successor to the member is appointed.

(2) A Member of Congress appointed to the Board under clause (1) or (2) of subsection (b) of this section may not serve as a member of the Board for more than a total of six years.

(d) Travel and subsistence pay

Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.


AMENDMENTS


1991—Subsec. (b)(3). Pub. L. 102–190 struck out before period at end “; at least one of whom shall be a representative of the aerospace industry and at least one of whom shall be a representative of a private foundation concerned with aerospace education.”

1987—Subsec. (c)(2). Pub. L. 100–26 substituted “clause (1) or (2)” for “clause (2) or (3)”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of Title 10, Armed Forces.

§ 4704. Barry Goldwater scholarship and excellence in education awards

(a) Award of scholarships and fellowships

(1) The Foundation may award scholarships and fellowships to eligible persons for study in the fields of science and mathematics. Such scholarships and fellowships shall be awarded to persons as provided in this chapter who meet the minimum criteria established by the Foundation.

(2) Scholarships shall be awarded to outstanding undergraduate students who intend to pursue careers in mathematics and the natural sciences.

(3) Fellowships shall be awarded to outstanding graduate students who intend to pursue advanced degrees in mathematics and the natural sciences.

(4) The Foundation may provide, directly or by contract, for the conduct of nationwide competition for the purpose of selecting recipients of scholarships and fellowships awarded under this chapter.

(b) Barry Goldwater Scholars

Recipients of scholarships and fellowships under this chapter shall be known as “Barry Goldwater Scholars”.

(c) Award of honoraria to volunteers

(1) The Foundation may award honoraria to outstanding educators, teachers, and persons who have volunteered to assist in secondary schools who have made significant contributions to improve the quality of instruction in mathematics and sciences in the secondary school. To the extent the Board determines such action practicable, honoraria awarded under this subsection shall be awarded annually to persons described in the preceding sentence as follows:

(A) To two persons selected at large from each State.

(B) To one person selected from each county in each State.

(C) To persons affiliated with secondary schools on military reservations.

(D) To persons affiliated with the dependent overseas school system.

(2) The Board shall establish a schedule of honoraria to be awarded under paragraph (1).


§ 4705. Stipends

Each person awarded a scholarship or fellowship under this chapter shall receive a stipend which shall not exceed the cost to such person for tuition, fees, books, room and board, or such lesser amount as may be prescribed by the Board.


§ 4706. Scholarship conditions

(a) In general

A person awarded a scholarship under this chapter may receive payments authorized under this chapter only during such periods as the
Foundation finds that the person is maintaining satisfactory proficiency and devoting full time to study or research and is not engaging in gainful employment other than employment approved by the Foundation pursuant to regulations of the Board.

(b) Reports

The Foundation may require reports containing such information in such form and to be filed at such times as the Foundation determines to be necessary from any person awarded a scholarship under this chapter. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such person is making satisfactory progress in, and is devoting essentially full time to study or research, except as otherwise provided in subsection (a) of this section.


§ 4707. Barry Goldwater Scholarship and Excellence in Education Fund

(a) Establishment of fund

There is established in the Treasury of the United States a trust fund to be known as the Barry Goldwater Scholarship and Excellence in Education Fund. The fund shall consist of amounts appropriated to it pursuant to section 4711 of this title and amounts credited to it under subsection (d) of this section.

(b) Investment of fund assets

It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated to the fund. Such investments may be made only in public debt securities of the United States with maturities suitable to the fund. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of ¼ percent lower than such average rate, Such special obligations shall be issued only if the Secretary determines that the purchases of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue or at the market price, is not in the public interest.

(c) Authority to sell obligations

Any obligation acquired by the fund may be sold by the Secretary at the market price.

(d) Proceeds from certain transactions credited to fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.


CODIFICATION


AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484 struck out “(except special obligations issued exclusively to the fund)” after “by the fund”.

1991—Subsec. (b). Pub. L. 102–190, §1089(2)(A), substituted “public debt securities of the United States with maturities suitable to the fund.” for “interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.”

Subsec. (c). Pub. L. 102–190, §1089(2)(B)(ii), struck out “, and such special obligations may be redeemed at par plus accrued interest after market price”,

Pub. L. 102–190, §1089(2)(B)(ii), which directed striking out of “(exceptional special obligations issued exclusively to the fund)”, could not be executed because those words did not appear. See 1992 Amendment note above.

§ 4708. Expenditures from fund

(a) In general

The Secretary of the Treasury may pay to the Foundation from the interest and earnings of the fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the purposes of this chapter.

(b) Audits by GAO

The activities of the Foundation under this chapter may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Foundation pertaining to such activities and necessary to facilitate the audit.


AMENDMENTS


§ 4709. Executive Secretary

(a) Appointment by Board

There shall be an Executive Secretary of the Foundation who shall be appointed by the Board. The Executive Secretary shall be the
chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board. The Executive Secretary shall carry out such other functions consistent with the provisions of this chapter as the Board shall prescribe.

(b) Compensation

The Executive Secretary of the Foundation shall serve as a noncareer appointee of the Senior Executive Service and shall be compensated at a rate determined by the Board in accordance with section 5383 of title 5.


AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190 substituted “serve as a noncareer appointee of the Senior Executive Service and shall be compensated at a rate determined by the Board in accordance with section 5383” for “be compensated at the rate specified for employees in grade GS–18 of the General Schedule under section 5332”.

§ 4710. Administrative provisions

(a) In general

In order to carry out this chapter, the Foundation may—

(1) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case may an employee other than the Executive Secretary be compensated at a rate to exceed the maximum rate provided for employees in grade GS–15 of the General Schedule under section 5332 of title 5; 

(2) procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for grade GS–18 under section 5332 of such title;

(3) prescribe such regulations as it considers necessary governing the manner in which its functions shall be carried out;

(4) receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation, and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) accept and use the services of voluntary and noncompensated personnel and for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) enter into contracts or other arrangements, or make grants, to carry out the provisions of this chapter, and enter into such contracts or other arrangements, or make such grants, with the concurrence of two-thirds of the members of the Board, without performance or other bonds and without regard to section 6101 of title 41;

(7) rent office space in the Washington, District of Columbia, metropolitan area; and

(8) make other necessary expenditures.

(b) Annual report

The Foundation shall submit to the President and to Congress an annual report of its operations under this chapter.


CODIFICATION


AMENDMENTS


REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title 1, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 4711. Authorization of appropriations

There is hereby authorized to be appropriated to the fund $40,000,000 to carry out this chapter.


CHAPTER 60—FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING


SHORT TITLE

Section 3201 of part B (§§ 3201–3243) of title III of Pub. L. 100–297 provided that part B of title III of Pub. L. 100–297 (enacting this chapter) could be cited as the “Fund for the Improvement and Reform of Schools and Teaching Act”.

SUBCHAPTER I—GRANTS FOR SCHOOLS AND TEACHERS


SUBCHAPTER II—FAMILY-SCHOOL PARTNERSHIP


SUBCHAPTER III—ADMINISTRATIVE PROVISIONS


SUBCHAPTER IV—GENERAL PROVISIONS


Section 4843, Pub. L. 100–297, title III, §§ 3243, Apr. 28, 1988, 102 Stat. 344, defined terms used in this chapter.

CHAPTER 61—EDUCATION FOR NATIVE HAWAIIANS


Section 4902, Pub. L. 100–297, title IV, §§ 4002, Apr. 28, 1988, 102 Stat. 358, stated purpose of this chapter.


Section 4904, Pub. L. 100–297, title IV, §§ 4004, Apr. 28, 1988, 102 Stat. 359, authorized grants to develop and operate Family-Based Education Centers in Hawaiian Islands.


For similar provisions, see section 7901 et seq. of this title.

CHAPTER 62—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS


Section 5001, Pub. L. 100–418, title VI, §§ 6001, Aug. 23, 1988, 102 Stat. 1469, provided that this chapter could be cited as the “Education and Training for a Competitive America Act of 1988”.
Part C—Projects and Programs Designed To Address School Dropout Problems and To Strengthen Basic Skills Instruction

Subpart 1—Assistance to Address School Dropout Problems


Section 5051, Pub. L. 100–418, title VI, §6061, Aug. 23, 1988, 102 Stat. 1491, provided that this subpart could be cited as the “School Dropout Demonstration Assistance Act of 1988”.

Section 5052, Pub. L. 100–418, title VI, §6062, Aug. 23, 1988, 102 Stat. 1491, stated purpose of this subpart.


Section 5054, Pub. L. 100–418, title VI, §6064, Aug. 23, 1988, 102 Stat. 1491, related to allotment of grants to local educational agencies.


Section 5056, Pub. L. 100–418, title VI, §6066, Aug. 23, 1988, 102 Stat. 1494, related to activities for which grants could be used.

Section 5057, Pub. L. 100–418, title VI, §6067, Aug. 23, 1988, 102 Stat. 1495, related to distribution of assistance and limitation on costs.

For similar provisions, see section 7261 et seq. of this title.

Subpart 2—Assistance to Provide Basic Skills Improvement


Section 5061, Pub. L. 100–418, title VI, §6071, Aug. 23, 1988, 102 Stat. 1496, provided that this subpart could be cited as the “Secondary Schools Basic Skills Demonstration Assistance Act of 1988”.


Section 5065, Pub. L. 100–418, title VI, §6075, Aug. 23, 1988, 102 Stat. 1496, related to activities for which grants could be used.


Subpart 3—General Provisions


Section 5072, Pub. L. 100–418, title VI, §6082, Aug. 23, 1988, 102 Stat. 1499, defined terms used in this chapter.

Subchapter II—Technology and Training

Part A—Transfer of Education and Training Software


Section 5091, Pub. L. 100–418, title VI, §6101, Aug. 23, 1988, 102 Stat. 1500, provided that this part could be cited as the “Training Technology Transfer Act of 1988”.

Part B—Instructional Programs in Technology Education


Section 5101, Pub. L. 100–418, title VI, §6111, Aug. 23, 1988, 102 Stat. 1505, stated purpose of part to assist educational agencies and institutions in developing technically literate population through instructional programs in technology education.


Section 5103, Pub. L. 100–418, title VI, §6113, Aug. 23, 1988, 102 Stat. 1507, related to applications for grants.


Section 5106, Pub. L. 100–418, title VI, §6116, Aug. 23, 1988, 102 Stat. 1507, defined “technology education”.

Part C—Replication of Technical Education Programs


Section 5111, Pub. L. 100–418, title VI, §6121, Aug. 23, 1988, 102 Stat. 1508, related to replication models for technical education programs designed to improve the quality of education for America’s technically trained workforce.

Part D—Access Demonstration Programs


Section 5121, Pub. L. 100–418, title VI, §6141, Aug. 23, 1988, 102 Stat. 1513, stated purpose of this part.


Section 5123, Pub. L. 100–418, title VI, §6143, Aug. 23, 1988, 102 Stat. 1513, related to applications for grants.


Chapter 63—Eisenhower Exchange Fellowship Program

Sec. 5201. Purpose.

5202. Eisenhower Exchange Fellowship Program Trust Fund.
§ 5201. Purposes

The purposes of this chapter are—

(1) to provide a permanent endowment for the Eisenhower Exchange Fellowship Program;

(2) to honor Dwight D. Eisenhower for his character, courage, and patriotism, and for his leadership based on moral integrity and trust;

(3) to pay tribute to President Eisenhower’s leadership in war and peace, through his diverse understanding of history, practical affairs, and the hearts of humankind;

(4) to address America’s need for the best possible higher education of its young talent for a competitive world which shares a common and endangered environment;

(5) to advance the network of friendship and trust already established in President Eisenhower’s name, so that it may continue to grow to the imminent challenges of the 21st century;

(6) to complete Dwight David Eisenhower’s crusade to liberate the people’s of Europe from oppression;

(7) to deepen and expand relationships with European nations developing democracy and self-determination; and

(8) to honor President Dwight D. Eisenhower on the occasion of the centennial of his birth through permanent endowment of an established fellowship program, the Eisenhower Exchange Fellowships, to increase educational opportunities for young leaders in preparation for and advancement of peace through international understanding.


References in Text

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101–454, Oct. 24, 1990, 104 Stat. 1063, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

Short Title

Section 1 of Pub. L. 101–454 provided that: “This Act enacting this chapter, amending sections 4901, 4902, and 4904 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under sections 4901 and 4902 of Title 22 may be cited as the ‘Eisenhower Exchange Fellowship Act of 1990’.”

§ 5202. Eisenhower Exchange Fellowship Program Trust Fund

(a) Establishment

There is established in the Treasury of the United States a trust fund to be known as the Eisenhower Exchange Fellowship Program Trust Fund (hereinafter in this chapter referred to as the “fund”). The fund shall consist of amounts authorized to be appropriated under section 5204 of this title.

(b) Investment in interest-bearing obligations

It shall be the duty of the Secretary of the Treasury to invest in full amounts appropriated to the fund. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue or at the market price, is not in the public interest.

(c) Sale and redemption of obligations

Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) Credit to fund of interest and proceeds of sale or redemption

The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

§ 5203. Expenditure and audit of trust fund

(a) Authorization of funding

For each fiscal year, there is authorized to be appropriated from the fund to Eisenhower Exchange Fellowships, Incorporated, the interest and earnings of the fund.

(b) Access to books, records, etc., by Government Accountability Office

The activities of Eisenhower Exchange Fellowships, Incorporated, may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by Eisenhower Exchange Fellowships, Incorporated, pertaining to such activities and necessary to facilitate the audit.


1 So in original. Probably should be “interest”.

References in Text

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101–454, Oct. 24, 1990, 104 Stat. 1063, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

Short Title

Section 1 of Pub. L. 101–454 provided that: “This Act [enacting this chapter, amending sections 4901, 4902, and 4904 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under sections 4901 and 4902 of Title 22] may be cited as the ‘Eisenhower Exchange Fellowship Act of 1990’.”
§ 5204. Authorization of appropriations

To provide a permanent endowment for the Eisenhower Exchange Fellowship Program, there are authorized to be appropriated to the Eisenhower Exchange Fellowships Program Trust Fund—

(1) $5,000,000; and
(2) the lesser of—
(A) $2,500,000; or
(B) an amount equal to contributions to Eisenhower Exchange Fellowships, Incorporated, from private sector sources during the 4-year period beginning on October 24, 1990.

§ 5205. Use of income on endowment


§ 5206. Report to Congress

For any fiscal year for which Eisenhower Exchange Fellowships, Incorporated, receive funds pursuant to section 5203(a) of this title, Eisenhower Exchange Fellowships, Incorporated, shall prepare and transmit to the President and the Congress a report of its activities for such fiscal year.

§ 5207. Status as executive agency

Notwithstanding any other provision of law, on and after August 2, 2002, for purposes of section 501 of title 40 (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), the Eisenhower Exchange Fellowship Program shall be deemed an executive agency for the purposes of carrying out the provisions of section 5201 of this title, and the employees of and participants in the Eisenhower Exchange Fellowship Program shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access.

APPENDIX


Subchapter I—Findings and Objectives


SHORT TITLE

Section 1 of Pub. L. 101–589 provided that Pub. L. 101–589 (enacting this chapter and sections 2994 to 2994g of this title, redesignating section 2993 of this title as section 2996 of this title, amending sections 237, 240,

SUBCHAPTER II—MATHEMATICS, SCIENCE AND TECHNOLOGY IMPROVEMENTS

PART A—INNOVATIVE TECHNOLOGIES


PART B—SCIENCE-TECHNOLOGY CENTERS


PART C—GRANTS TO EDUCATIONAL AGENCIES FOR SYSTEMIC REFORM OF MATHEMATICS AND SCIENCE EDUCATION


SUBCHAPTER III—HIGHER EDUCATION

PART A—GRADUATE FELLOWSHIPS AND TRAINEESHIPS


PART B—CENTERS OF EXCELLENCE


SUBCHAPTER IV—WOMEN AND MINORITIES IN MATHEMATICS, SCIENCE AND ENGINEERING


SUBCHAPTER V—EDUCATION COORDINATION AND DEPARTMENT OF ENERGY PROGRAMS


SUBCHAPTER VI—SCIENCE SCHOLARSHIPS

PART A—NATIONAL SCIENCE SCHOLARS PROGRAM


PART B—ROBERT NOYCE SCHOLARSHIPS


PART C—NATIONAL ACADEMY OF SCIENCE, SPACE, AND TECHNOLOGY


PART D—ADDITIONAL PROVISIONS


§ 5501. Findings and policy

(a) Findings

The Congress finds that—

(1) Threats to human health and environmental quality are increasingly complex, involving a wide range of conventional and toxic contaminants in the air and water and on the land.

(2) There is growing evidence of international environmental problems, such as global warming, ocean pollution, and declines in species diversity, and that these problems pose serious threats to human health and the environment on a global scale.

(3) Environmental problems represent a significant threat to the quality of life and the economic vitality of urban areas as they do the natural balance of rural areas.

(4) Effective response to complex environmental problems requires understanding of the natural and built environment, awareness of environmental problems and their origins (including those in urban areas), and the skills to solve these problems.

(5) Development of effective solutions to environmental problems and effective implementation of environmental programs requires a well educated and trained professional workforce.

(6) Current Federal efforts to inform and educate the public concerning the natural and built environment and environmental problems are not adequate.

(7) Existing Federal support for development and training of professionals in environmental fields is not sufficient.

(8) The Federal Government, acting through the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to develop programs to provide increased emphasis and financial resources for the purpose of attracting students into environmental engineering and assisting them in pursuing the programs to complete the advanced technical education required to provide effective problem solving capabilities for complex environmental issues.

(9) The Federal Government, acting through the coordinated efforts of its agencies and with the leadership of the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to develop programs to provide increased emphasis and financial resources for the purpose of attracting students into environmental engineering and assisting them in pursuing the programs to complete the advanced technical education required to provide effective problem solving capabilities for complex environmental issues.

(10) Federal natural resource agencies such as the United States Forest Service have a wide range of environmental expertise and a long history of cooperation with educational institutions and technology transfer that can assist in furthering the purposes of this chapter.

(b) Policy

It is the policy of the United States to establish and support a program of education on the environment, for students and personnel working with students, through activities in schools, institutions of higher education, and related educational activities, and to encourage post-secondary students to pursue careers related to the environment.


SHORT TITLE

Section 1(a) of Pub. L. 101–619 provided that: “This Act [enacting this chapter] may be cited as the ‘National Environmental Education Act.’”

§ 5502. Definitions

For the purposes of this chapter, the term—

(1) “Administrator” means the Administrator of the Environmental Protection Agency;

(2) “Agency” means the United States Environmental Protection Agency;

(3) “Federal agency” or “agency of the United States” means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation;

(4) “Secretary” means the Secretary of the Department of Education;

1 So in original. Probably should be “this”. 
(5) "local educational agency" means any education agency as defined in section 7801 of this title and shall include any tribal education agency;
(6) "not-for-profit" organization means an organization, association, or institution described in section 501(c)(3) of title 26, which is exempt from taxation pursuant to the provisions of section 501(a) of title 26;
(7) "noncommercial educational broadcasting entities" means any noncommercial educational broadcasting station (and/or its legal nonprofit affiliates) as defined and licensed by the Federal Communications Commission;
(8) "tribal education agency" means a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs;
(9) "Federal natural resource management agencies" means the United States Forest Service, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service;
(10) "environmental engineering" means the discipline within engineering and science concerned with the development and application of scientific and technical solutions to protecting the aquatic and atmospheric environment, including, but not limited to, all phases of water resource planning, water supply, water treatment, air pollution characterization and control, remediation of hazardous substances, environmental transport of contaminants in surface and ground water and atmosphere, and methods for assessment and control of pollution;
(11) "environmental education" and "environmental education and training" mean educational activities and training activities involving elementary, secondary, and post-secondary students, as such terms are defined in the State in which they reside, and environmental education personnel, but does not include technical training activities directed toward environmental management professionals or activities primarily directed toward the support of noneducational research and development;
(12) "Foundation" means the National Environmental Education and Training Foundation established pursuant to section 5509 of this title; and
(13) "Board of Directors" means the Board of Directors of the National Environmental Education and Training Foundation.


AMENDMENTS

EFFECTIVE DATE OF 2002 AMENDMENT
Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

§ 5503. Office of Environmental Education
(a) Establishment
The Administrator shall establish an Office of Environmental Education within the Environmental Protection Agency.
(b) Duties and functions
The Office of Environmental Education shall—
(1) develop and support programs and related efforts, in consultation and coordination with other Federal agencies, to improve understanding of the natural and built environment, and the relationships between humans and their environment, including the global aspects of environmental problems;
(2) support development and the widest possible dissemination of model curricula, educational materials, and training programs for elementary and secondary students and other interested groups, including senior Americans;
(3) develop and disseminate, in cooperation with other Federal agencies, not-for-profit educational and environmental organizations, State agencies, and noncommercial educational broadcasting entities, environmental education publications and audio/visual and other media materials;
(4) develop and support environmental education seminars, training programs, teleconferences, and workshops for environmental education professionals, as provided for in section 5504 of this title;
(5) manage Federal grant assistance provided to local education agencies, institutions of higher education, other not-for-profit organizations, and noncommercial educational broadcasting entities, under section 5505 of this title;
(6) administer the environmental internship and fellowship programs provided for in section 5506 of this title;
(7) administer the environmental awards program provided for in section 5507 of this title;
(8) provide staff support to the Advisory Council and Task Force provided for in section 5508 of this title;
(9) assess, in coordination with other Federal agencies, the demand for professional skills and training needed to respond to current and anticipated environmental problems and cooperate with appropriate institutions, organizations, and agencies to develop training programs, curricula, and continuing education programs for teachers, school administrators, and related professionals;
(10) assure the coordination of Federal statutes and programs administered by the Agency relating to environmental education, consistent with the provisions and purposes of those programs, and work to reduce duplication or inconsistencies within those programs;

1 So in original. Probably should be "not-for-profit organization".
(11) work with the Department of Education, the Federal Interagency Committee on Education, and with other Federal agencies, including Federal natural resource management agencies, to assure the effective coordination of programs related to environmental education, including environmental education programs relating to national parks, national forests, and wildlife refuges;

(12) provide information on environmental education and training programs to local education agencies, State education and natural resource agencies, and others; and

(13) otherwise provide for the implementation of this chapter.

(c) Director and staff

The Office of Environmental Education shall—

(1) be directed by a Director who shall be a member of the Senior Executive Service;

(2) include a headquarters staff of not less than six and not more than ten full-time equivalent employees; and

(3) be supported by one full-time equivalent employee in each Agency regional office.


§ 5504. Environmental Education and Training Program

(a) Establishment

There is hereby established an Environmental Education and Training Program. The purpose of the program shall be to train educational professionals in the development and delivery of environmental education and training programs and studies.

(b) Functions and activities

The functions and activities of the program shall include, at a minimum—

(1) classroom training in environmental education and studies including environmental sciences and theory, educational methods and practices, environmental career or occupational education, and topical environmental issues and problems;

(2) demonstration of the design and conduct of environmental field studies and assessments;

(3) development of environmental education programs and curriculum, including programs and curriculum to meet the needs of diverse ethnic and cultural groups;

(4) sponsorship and management of international exchanges of teachers and other educational professionals between the United States, Canada, and Mexico involved in environmental programs and issues;

(5) maintenance or support of a library of environmental education materials, information, literature, and technologies, with electronic as well as hard copy accessibility;

(6) evaluation and dissemination of environmental education materials, training methods, and related programs;

(7) sponsorship of conferences, seminars, and related forums for the advancement and development of environmental education and training curricula and materials, including international conferences, seminars, and forums;

(8) supporting effective partnerships and networks and the use of distant learning technologies; and

(9) such other activities as the Administrator determines to be consistent with the policies of this chapter.

Special emphasis should be placed on developing environmental education programs, workshops, and training tools that are portable and can be broadly disseminated.

(c) Grants

(1) The Administrator shall make a grant on an annual basis to an institution of higher education or other institution which is a not-for-profit organization (or consortia of such institutions) to operate the environmental education and training program required by this section.

(2) Any institution of higher education or other institution (or consortia of such institutions) which is a not-for-profit organization and is interested in receiving a grant under this section may submit to the Administrator an application in such form and containing such information as the Administrator may require.

(3) The Administrator shall award grants under this section on the basis of—

(A) the capability to develop environmental education and training programs;

(B) the capability to deliver training to a range of participants and in a range of settings;

(C) the expertise of the staff in a range of appropriate disciplines;

(D) the relative economic effectiveness of the program in terms of the ratio of overhead costs to direct services;

(E) the capability to make effective use of existing national environmental education resources and programs;

(F) the results of any evaluation under paragraph (5) of this subsection; and

(G) such other factors as the Administrator deems appropriate.

(4) No funds made available to carry out this section shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building.

(5) The Administrator shall establish procedures for a careful and detailed review and evaluation of the environmental education and training program to determine whether the quality of the program being operated by the grantee warrants continued support under this section.

(d) Eligibility

(1) Individuals eligible for participation in the program are teachers, faculty, administrators and related support staff associated with local education agencies, colleges, and universities, employees of State education, environmental protection, and natural resource departments, and employees of not-for-profit organizations involved in environmental education activities and issues.

(2) Individuals shall be selected for participation in the program based on applications which shall be in such form as the Administrator determines to be appropriate.

(3) In selecting individuals to participate in the program, the Administrator shall provide for a wide geographic representation and a mix of individuals, including minorities, working at
primary, secondary, postsecondary levels, and with appropriate other agencies and departments.

(4) Individuals selected for participation in the program may be provided with a stipend to cover travel and accommodations from grant funds awarded pursuant to this section in such amounts as the Administrator determines to be appropriate.


§ 5505. Environmental education grants

(a) Cooperative agreements and grants

The Administrator may enter into a cooperative agreement or contract, or provide financial assistance in the form of a grant, to support projects to design, demonstrate, or disseminate practices, methods, or techniques related to environmental education and training.

(b) Eligible activities

Activities eligible for grant support pursuant to this section shall include, but not be limited to, environmental education and training programs for—

(1) design, demonstration, or dissemination of environmental curricula, including development of educational tools and materials;
(2) design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;
(3) projects to understand and assess a specific environmental issue or a specific environmental problem;
(4) provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and
(5) design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.

(c) Priority projects

In making grants pursuant to this section, the Administrator shall give priority to those proposed projects which will develop—

(1) a new or significantly improved environmental education practice, method, or technique;
(2) an environmental education practice, method, or technique which may have wide application;
(3) an environmental education practice, method, or technique which addresses a skill or scientific field identified as a priority in the report developed pursuant to section 5508(d) of this title; and
(4) an environmental education practice, method, or technique which addresses an environmental issue which, in the judgment of the Administrator, is of high priority.

(d) Scope of program and implementing regulations

The program established by this section shall include solicitations for projects, selection of suitable projects from among those proposed, supervision of such projects, evaluation of the results of projects, and dissemination of information on the effectiveness and feasibility of the practices, methods, techniques and processes. Within one year of November 16, 1990, the Administrator shall publish regulations to assure satisfactory implementation of each element of the program authorized by this section.

(e) Solicitation notices

Within 90 days after the date on which amounts are first appropriated for carrying out this chapter, and each year thereafter, the Administrator shall publish a solicitation for environmental education grants. The solicitation notice shall prescribe the information to be included in the proposal and other information sufficient to permit the Administrator to assess the project.

(f) Applications

Any local education agency, college or university, State education agency or environmental agency, not-for-profit organization, or noncommercial educational broadcasting entity may submit an application to the Administrator in response to the solicitations required by subsection (e) of this section.

(g) Performance of projects

Each project under this section shall be performed by the applicant, or by a person satisfactory to the applicant and the Administrator.

(h) Matching requirements

Federal funds for any demonstration project under this section shall not exceed 75 percent of the total cost of such project. For the purposes of this section, the non-Federal share of project costs may be provided by inkind contributions and other noncash support. In cases where the Administrator determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, the Administrator may approve grants under this section with a matching requirement other than that specified in this subsection, including full Federal funding.

(i) Limitations on grants

Grants under this section shall not exceed $250,000. In addition, 25 percent of all funds obligated under this section in a fiscal year shall be for grants of not more than $5,000.


§ 5506. Environmental internships and fellowships

(a) Postsecondary students and in-service teachers

The Administrator shall, in consultation with the Office of Personnel Management and other appropriate Federal agencies, provide for internships by postsecondary level students and fellowships for in-service teachers with agencies of the Federal Government.

(b) Purpose

The purpose of internships and fellowships pursuant to this section shall be to provide college level students and in-service teachers with an opportunity to work with professional staff of Federal agencies involved in environmental issues and thereby gain an understanding and
appreciation of such issues and the skills and abilities appropriate to such professions.

(c) Minimum number of internships and fellowships

The Administrator shall, to the extent practicable, support not less than 250 internships each year and not less than 50 fellowships each year.

(d) Management of programs; eligible agencies

The internship and fellowship programs shall be managed by the Office of Environmental Education. Interns and fellows may serve in appropriate agencies of the Federal Government including, but not limited to, the Environmental Protection Agency, the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Council on Environmental Quality, Federal natural resource management agencies, the Department of Agriculture, and the National Science Foundation.

(e) Length of internships and fellowships; funding

Interns shall be hired on a temporary, full-time basis for not to exceed 6 months and shall be compensated appropriately. Fellows shall be hired on a temporary full-time basis for not to exceed 12 months and shall be compensated appropriately. Federal agencies hiring interns shall provide the funds necessary to support salaries and related costs.

(f) Eligible individuals

(1) Individuals eligible for participation in the internship program are students enrolled at accredited colleges or universities who have successfully completed not less than four courses or the equivalent in environmental sciences or studies, as determined by the Administrator.

(2) Individuals eligible for participation in the fellowship program are in-service teachers who are currently employed by a local education agency and have not less than 2 years experience in teaching environmental education, environmental sciences, or related courses.

(g) Applications

Individuals shall be selected for internships and fellowships based on applications which shall be in such form as the Administrator considers appropriate.

(h) Geographic, cultural, and minority representation

In selecting individuals for internships and fellowships, the Administrator shall provide for wide geographic, cultural, and minority representation.


§ 5507. Environmental education awards

(a) National awards

The Administrator shall provide for a series of national awards recognizing outstanding contributions to environmental education.

(b) Required awards

In addition to such other awards as the Administrator may provide for, national environmental awards shall include—

(1) The “Theodore Roosevelt Award” to be given in recognition of an outstanding career in environmental education, teaching, or administration;

(2) The “Henry David Thoreau Award” to be given in recognition of an outstanding contribution to literature on the natural environment and environmental pollution problems;

(3) The “Rachael Carson Award” to be given in recognition of an outstanding contribution in print, film, or broadcast media to public education and information on environmental issues or problems; and

(4) The “Gifford Pinchot Award” to be given in recognition of an outstanding contribution to education and training concerning forestry and natural resource management, including multiple use and sustained yield land management.

(c) Nomination by Environmental Education Advisory Council

Recipients of education awards provided for in subsection (b) of this section shall be nominated by the Environmental Education Advisory Council provided for in section 5506 of this title.

(d) President’s Environmental Youth Awards

The Administrator may provide for the “President’s Environmental Youth Awards” to be given to young people in grades kindergarten through twelfth for an outstanding project to promote local environmental awareness.

(e) Cash awards for elementary and secondary education teachers and local educational agencies

(1) The Chairman of the Council on Environmental Quality, on behalf of the President, is authorized to develop and administer an awards program to recognize elementary and secondary education teachers and their local educational agencies who demonstrate excellence in advancing environmental education through innovative approaches. One teacher, and the local education agency employing such teacher, from each State, including the District of Columbia and the Commonwealth of Puerto Rico, are eligible to be selected for an award pursuant to this subsection.

(2) The Chairman is authorized to provide a cash award of up to $2,500 to each teacher selected to receive an award pursuant to this section, which shall be used to further the recipient’s professional development in environmental education.

(3) The Chairman is also authorized to provide a cash award of up to $2,500 to the local education agency employing any teacher selected to receive an award pursuant to this section, which shall be used to fund environmental educational activities and programs. Such awards may not be used for construction costs, general expenses, salaries, bonuses, or other administrative expenses.


§ 5508. Environmental Education Advisory Council and Task Force

(a) Establishment

There is hereby established a National Environmental Education Advisory Council and a
Federal Task Force on Environmental Education.

(b) Advisory Council; duties; members; terms of office; compensation; termination

(1) The Advisory Council shall advice, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this chapter. With respect to such matters, the Council shall be the exclusive advisory entity for the Administrator. The Council may exchange information with other Advisory Councils established by the Administrator. The Office of Environmental Education shall provide staff support to the Council.

(2) The Advisory Council shall consist of 11 members appointed by the Administrator after consultation with the Secretary. Two members shall be appointed to represent primary and secondary education (one of whom shall be a classroom teacher); two members shall be appointed to represent colleges and universities; two members shall be appointed to represent not-for-profit organizations involved in environmental education; two members shall be appointed to represent State departments of education and natural resources; two representatives shall be appointed to represent business and industry; and one representative shall be appointed to represent senior Americans. A representative of the Secretary shall serve as an ex officio member of the Advisory Council. The conflict of interest provision at section 208(a) of title 18 shall not apply to members’ participation in particular matters which affect the financial interests of employers which they represent pursuant to this subsection.

(3) The Administrator shall provide that members of the Council represent the various geographic regions of the country, have minority representation, and that the professional backgrounds of the members include scientific, policy, and other appropriate disciplines.

(4) Each member of the Advisory Council shall hold office for a term of 3 years, except that—

(A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of the members first taking office shall expire as follows: four shall expire 3 years after November 16, 1990, four shall expire 2 years after November 16, 1990, and three shall expire 1 year after November 16, 1990, as designated by the Administrator at the time of appointment.

(5) Members of the Advisory Council appointed under this section shall, while attending meetings of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5.

(6) Section 14(a) of the Federal Advisory Committee Act relating to termination, shall not apply to the Advisory Council.

(c) Federal Task Force on Environmental Education; duties; members

(1) The Federal Task Force on Environmental Education shall advise, consult with and make recommendations to the Administrator on matters relating to implementation of this chapter and assure the coordination of such implementation activities with related activities of other Federal agencies.

(2) Membership of the Task Force shall include the—

(A) Department of Education,

(B) Department of the Interior,

(C) Department of Agriculture,

(D) the Environmental Protection Agency,

(E) National Oceanic and Atmospheric Administration,

(F) Council on Environmental Quality,

(G) Tennessee Valley Authority, and

(H) National Science Foundation.

(3) The Environmental Protection Agency shall chair the Task Force.

(4) The Administrator may ask other Federal agencies to participate in the meetings and activities of the Task Force where the Administrator finds it appropriate in carrying out the requirements of this chapter.

(d) Reports

(1) The Advisory Council shall, after providing for public review and comment, submit to the Congress, within 24 months of November 16, 1990, and biennially thereafter, a report which shall—

(A) describe and assess the extent and quality of environmental education in the Nation;

(B) provide a general description of the activities conducted pursuant to this chapter and related authorities over the previous 2-year period;

(C) summarize major obstacles to improving environmental education (including environmental education programs relating to national parks and wildlife refuges) and make recommendations for addressing such obstacles;

(D) identify personnel skills, education, and training needed to respond to current and anticipated environmental problems and make recommendations for actions to assure sufficient educational and training opportunities in these professions; and

(E) describe and assess the extent and quality of environmental education programs available to senior Americans and make recommendations thereon; describe the various Federal agency programs to further senior environmental education; and evaluate and make recommendations as to how such educational apparatuses could best be coordinated with nonprofit senior organizations across the

\[1\] See References in Text note below.
(2) The Federal Task Force on Environmental Education shall review and comment on a draft of the report to Congress.


§ 5509. National Environmental Education and Training Foundation

(a) Establishment and purposes

(1) Establishment

(A) There is hereby established the National Environmental Education and Training Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in the United States and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, educational institutions, community based environmental groups, and international organizations.

(B) The Foundation is a charitable and non-profit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of title 26. The Foundation is not an agency or establishment of the United States.

(2) Purposes

The purposes of the Foundation are—

(A) subject to the limitation contained in the final sentence of subsection (d) of this section, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

(3) Programs

The Foundation will develop, support, and operate programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

(b) Board of Directors

(1) Establishment and membership

(A) The Foundation shall have a governing Board of Directors (hereafter referred to in this section as ‘‘the Board’’), which shall consist of 13 directors, each of whom shall be knowledgeable or experienced in the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this chapter. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to environmental education and training.

(B) The Administrator of the Environmental Protection Agency shall, pursuant to paragraph (2), appoint the Director of the Office of Environmental Education established pursuant to section 5502 of this title as an ex-officio member of the Board. Ex officio membership shall also be offered to other Federal agencies or departments with an interest and/or experience in environmental education and training.

(C) Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(2) Appointment and terms

(A) Members of the Board shall be appointed by the Administrator of the Environmental Protection Agency.

(B) Within 90 days of November 16, 1990, and as appropriate thereafter, the Administrator shall publish in the Federal Register an announcement of appointments of Directors of the Board. At the same time, the Administrator shall transmit a copy of such announcement to the Education and Labor Committee and the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate. Such appointments shall become final and effective 90 days after publication in the Federal Register.

(C) The directors shall be appointed for terms of 4 years, except that the Administrator, in making the initial appointments to the Board, shall appoint 5 directors to a term of 2 years, 4 directors to a term of 3 years, and 4 directors to a term of 4 years. The Administrator shall appoint an individual to serve as
a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

(3) Chair
The Chair shall be elected by the Board from its members for a 2-year term.

(4) Quorum
A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(5) Meetings
The Board shall meet at the call of the Chair at least twice a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with this subsection.

(6) Reimbursement of expenses
Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(7) General powers
(A) The Board may complete the organization of the Foundation by—

(i) appointing officers and employees;

(ii) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this section; and

(iii) undertaking such other acts as may be necessary to carry out the provisions of this section.

(B) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(i) Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5 relating to competitive service, and may be paid without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(ii) The first officer or employee appointed by the Board shall be the Executive Director of the Foundation who—

(I) shall serve, at the direction of the Board, as the Secretary of the Board and the Foundation’s chief executive officer; and

(II) shall be experienced in matters relating to environmental education and training.

(c) Rights and obligations of Foundation

(1) In general
The Foundation—

(A) shall have perpetual succession;

(B) may conduct business throughout the several States, territories, and possessions of the United States and abroad;

(C) shall have its principal offices in the District of Columbia or in the greater metropolitan area; and

(D) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The service of notice to, or service of notice upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(2) Seal
The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(3) Powers
To carry out its purposes under subsection (a) of this section, the Foundation shall have, in addition to the powers otherwise given it under this section, the usual powers of a corporation acting as a trustee, including the power—

(A) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(B) to acquire by purchase or exchange any real or personal property or interest therein;

(C) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(D) to sue, or to be sued, and complain or defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(E) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(F) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

(d) Conditions on donations

(1) For the purposes of this section, a gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current future interest therein is for the benefit of the Foundation.

(2) No donation, gift, devise, bequest, property (either real or personal), voluntary services, or any other thing of value may be accepted by the Foundation if it—

(A) is contingent upon the transmission by the Foundation of materials or information prepared by the donor or a third party in such a fashion as to convey a particular point of view favorable to the economic interests of the donor or its constituents or associates; or

(B) in the judgment of the Board carries with it an explicit or implied requirement on the part of the Foundation to do a specific act
or make general representations which are to the benefit of the donor and which are not consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this chapter.

(3) No materials bearing “logos”, letterhead or other means of identification associated with a donor or third party may be transmitted by the Foundation, for use in environmental education and training except as required pursuant to subsection (f) of this section.

(e) Administrative services and support

Subject to the requirements of this subsection, the Administrator may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under subsection (b)(6) of this section, not to exceed then current Federal Government per diem rates, for a period of up to 4 years from November 16, 1990, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the costs of providing such services. With respect to personnel, the Administrator may provide no more than 1 full-time employee to serve the Foundation in a policy capacity, and may provide clerical and other support staff at a level equivalent to 2 full-time equivalent employees to the Foundation, for a period not to exceed 2 years from the date of initial assignment of any personnel for this purpose.

(f) Omitted

(g) Volunteer status

The Administrator may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Environmental Protection Agency, as volunteers in the performance of the functions authorized herein, in the manner provided for under this section.

(h) Audits and petition of Attorney General for equitable relief

For purposes of section 10101 of title 36, the Foundation shall be treated as a corporation in part B of subtitle II of title 36.

(i) United States release from liability

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation, or make general representations which are to the benefit of the donor or third party, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 5302 (title I, §302 of Pub. L. 101–509, set out in a note under section 5376 of Title 5).

References in other laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 5302 (title I, §302 of Pub. L. 101–509, set out in a note under section 5376 of Title 5).

§ 5510. Authorization

(a) Authorization of appropriations

There is hereby authorized to be appropriated to the Environmental Protection Agency to carry out this chapter not to exceed $12,000,000 for each fiscal year 1992 and 1993, not to exceed $13,000,000 for fiscal year 1994, and not to exceed $14,000,000 for each fiscal year 1995 and 1996.

(b) Limitations

Of such sums appropriated in a fiscal year, 25 percent shall be available for the activities of the Office of Environmental Education, 25 percent shall be available for the operation of the environmental education and training program, 38 percent shall be available for environmental education grants, 10 percent shall be available for support of the National Environmental Education and Training Foundation, and 2 percent shall be available to support awards pursuant to section 5507(e) of this title.

(c) Availability of funds to National Environmental Education and Training Foundation

Funds appropriated pursuant to this section may be made available to the National Environmental Education and Training Foundation to—

(1) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local governments; and
(2) provide administrative services under section 5509(d) of this title:

Provided. That the Administrator determines that such funds will be used to carry out the statutory purposes of the Foundation in a manner consistent with the goals, objectives and programs of this chapter.


CHAPTER 66—MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

§ 5601. Findings

The Congress finds that—

(1) for three decades, Congressman Morris K. Udall has served his country with distinction and honor;

(2) Congressman Morris K. Udall has had a lasting impact on this Nation’s environment, public lands, and natural resources, and has instilled in this Nation’s youth a love of the air, land, and water;

(3) Congressman Morris K. Udall has been a champion of the rights of Native Americans and Alaska Natives and has used his leadership in the Congress to strengthen tribal self-governance;

(4) it is a fitting tribute to the leadership, courage, and vision Congressman Morris K. Udall exemplifies to establish in his name programs to encourage the continued use, enjoyment, education, and exploration of our Nation’s rich and bountiful natural resources;

(5) the Foundation—

(A) since 1995, has operated exceptional scholarship, internship, and fellowship programs for areas of study related to the environment and Native American tribal policy and health care;

(B) since 1999, has provided valuable environmental conflict resolution services and leadership through the United States Institute for Environmental Conflict Resolution;

and

(C) is committed to continue making a substantial contribution toward public policy in the future by—

(i) playing a significant role in developing the next generation of environmental and Native American leaders; and

(ii) working with current leaders to improve decisionmaking on—

(I) challenging environmental, energy, and related economic problems; and

(II) tribal governance and economic issues;

(6) Stewart L. Udall, as a member of Congress, Secretary of the Interior, environmental lawyer, and author, has provided distinguished national leadership in environmental and Native American policy for more than 50 years;

(7) as Secretary of the Interior from 1961 to 1969, Stewart L. Udall oversaw the creation of 4 national parks, 6 national monuments, 8 national seashores and lakeshores, 9 recreation areas, 20 historic sites, and 56 wildlife refuges; and

(8) it is fitting that the leadership and vision of Stewart L. Udall in the areas of environmental and Native American policy be jointly honored with that of Morris K. Udall through the foundation bearing the Udall name.


AMENDMENTS


SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–90, § 1, Nov. 3, 2009, 123 Stat. 2976, provided that: ‘‘This Act [amending this section, sections 5602, 5603, 5605 to 5607, 5607b, and 5608 of this title, and provisions set out as note under this section] may be cited as the ‘Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act of 2009.’’’

SHORT TITLE OF 2003 AMENDMENT


SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–156, § 1, Feb. 11, 1998, 112 Stat. 8, provided that: ‘‘This Act [enacting sections 5607a and 5607b of this title and amending sections 5602 to 5607, 5608, and 5609 of this title] may be cited as the ‘Environmental Policy and Conflict Resolution Act of 1998.’’’

SHORT TITLE


REPEAL OF PREVIOUS LEGISLATION


§ 5602. Definitions

For the purposes of this chapter—

(1) the term ‘‘Board’’ means the Board of Trustees of the Foundation established under section 5603(b) of this title;

(2) the term ‘‘Center’’ means the Udall Center for Studies in Public Policy established at the University of Arizona in 1987;

(3) the term ‘‘eligible individual’’ means a citizen or national of the United States or a permanent resident alien of the United States;
(4) the term “environmental dispute” means a dispute or conflict relating to the environment, public lands, or natural resources;

(5) the term “Foundation” means the Morris K. Udall and Stewart L. Udall Foundation established under section 5603(a) of this title;

(6) the term “Institute” means the United States Institute for Environmental Conflict Resolution established pursuant to section 5605(a)(1)(D) of this title;

(7) the term “institution of higher education” has the same meaning given to such term by section 1001 of this title;

(8) the term “State” means each of the several States, the District of Columbia, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federal States of Micronesia, and the Republic of Palau (until the Compact of Free Association is ratified); and

(9) the term “Trust Fund” means the Morris K. Udall and Stewart L. Udall Trust Fund established in section 5606 of this title.

References in Text

For ratification of Compact of Free Association with the Republic of Palau, referred to in par. (8), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1001 of Title 48, Territories and Insular Possessions.

Amendments


Par. (17). Pub. L. 105–244, which directed the substitution of “section 1001” for “section 1141(a)” in par. (6), was executed by making the substitution in par. (7) to reflect the probable intent of Congress and the redesignation of par. (6) as (7) by Pub. L. 105–156, § 211. See below.

Pub. L. 105–156, § 2(1), (4), redesignated par. (6) as (7) and struck out “and” at end. Former par. (7) redesignated (8).

Par. (8). Pub. L. 105–156, § 2(1), (5), redesignated par. (7) as (8) and substituted “;” and “period for” for “;” and period for semicolon at end.

Effective Date of 1998 Amendment


§ 5603. Establishment of Morris K. Udall and Stewart L. Udall Foundation

(a) Establishment

There is established as an independent entity of the executive branch of the United States Government, the Morris K. Udall and Stewart L. Udall Foundation.

(b) Board of Trustees

The Foundation shall be subject to the supervision and direction of the Board of Trustees.

The Board shall be comprised of thirteen trustees, eleven of whom shall be voting members of the Board, as follows:

(1) Two Trustees, shall be appointed by the President, with the advice and consent of the Senate, after considering the recommendation of the Speaker of the House of Representatives, in consultation with the Minority Leader of the House of Representatives.

(2) Two Trustees, shall be appointed by the President, with the advice and consent of the Senate, after considering the recommendation of the President pro tempore of the Senate, in consultation with the Majority and Minority Leaders of the Senate.

(3) Five Trustees, not more than three of whom shall be of the same political party, shall be appointed by the President with the advice and consent of the Senate, who have shown leadership and interest in—

(A) the continued use, enjoyment, education, and exploration of our Nation’s rich and bountiful natural resources, such as presidents of major foundations involved with the environment; or

(B) in the improvement of the health status of Native Americans and Alaska Natives and in strengthening tribal self-governance, such as tribal leaders involved in health and public policy development affecting Native American and Alaska Native communities.

(4) The Secretary of the Interior, or the Secretary’s designee, who shall serve as a voting ex officio member of the Board but shall not be eligible to serve as Chairperson.

(5) The Secretary of Education, or the Secretary’s designee, who shall serve as a voting ex officio member of the Board but shall not be eligible to serve as Chairperson.

(6) The President of the University of Arizona shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.

(7) The chairperson of the President’s Council on Environmental Quality, who shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.

(c) Term of office

(1) In General.—The term of office of each member of the Board shall be six years, except that—

(A) in the case of the Trustees first taking office—

(i) as designated by the President, one Trustee appointed pursuant to subsection (b)(2) of this section and two trustees appointed pursuant to subsection (b)(3) of this section shall each serve two years; and

(ii) as designated by the President, one Trustee appointed pursuant to subsection

1 So in original. Probably should be capitalized.
2 So in original. No par. (2) has been enacted.
The Foundation shall be located in Tucson, Arizona.
(f) Executive Director
(1) In general
There shall be an Executive Director of the Foundation who shall be appointed by the Board. The Executive Director shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board. The Executive Director shall carry out such other functions consistent with the provisions of this chapter as the Board shall prescribe.
(2) Compensation
The Executive Director of the Foundation shall be compensated at a rate determined by the Board in accordance with section 5383 of title 5.
§ 5605. Authority of Foundation
(a) Authority of Foundation
(1) In general
(A) The Foundation, in consultation with the Center, is authorized to identify and conduct such programs, activities, and services as the Foundation considers appropriate to carry out the purposes described in section 5604 of this title. The Foundation shall have the au-

1So in original. The period probably should not appear.
authority to award scholarships, fellowships, internships, and grants and fund theCenter to carry out and manage other programs, activities and services.

(b) The Foundation may provide, directly or by contract, for the conduct of national competition for the purpose of selecting recipients of scholarships, fellowships, internships, and grants awarded under this chapter.

(c) The Foundation may award scholarships, fellowships, internships and grants to eligible individuals in accordance with the provisions of this chapter for study in fields related to the environment and Native American and Alaska Native health care and tribal public policy. Such scholarships, fellowships, internships and grants shall be awarded to eligible individuals who meet the minimum criteria established by the Foundation.

(D) INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION—

(i) IN GENERAL.—The Foundation shall—

(I) establish the United States Institute for Environmental Conflict Resolution as part of the Foundation; and

(II) identify and conduct such programs, activities, and services as the Foundation determines appropriate to permit the Foundation to provide assessment, mediation, training, and other related services to resolve environmental disputes.

(ii) GEOGRAPHIC PROXIMITY OF CONFLICT RESOLUTION PROVISION.—In providing assessment, mediation, training, and other related services under clause (i)(II) to resolve environmental disputes, the Foundation shall consider, to the maximum extent practicable, conflict resolution providers within the geographic proximity of the conflict.

(2) Scholarships

(A) Scholarships shall be awarded to outstanding undergraduate students who intend to pursue careers related to the environment and to outstanding Native American and Alaska Native undergraduate students who intend to pursue careers in health care and tribal public policy.

(B) An eligible individual awarded a scholarship under this chapter may receive payments under this chapter only during such periods as the Foundation finds that the eligible individual is maintaining satisfactory proficiency in, and is not engaging in gainful employment other than employment approved by the Foundation pursuant to regulations of the Board.

(C) The Foundation may require reports containing such information, in such form, and to be filed at such times as the Foundation determines to be necessary from any eligible individual awarded a scholarship under this chapter. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such individual is making satisfactory progress in, and is devoting essentially full time to study or research, except as otherwise provided in this subsection.

(3) Fellowships

Fellowships shall be awarded to—

(A) outstanding graduate students who intend to pursue advanced degrees in fields related to the environment and to outstanding Native American and Alaska Native graduate students who intend to pursue advanced degrees in health care and tribal public policy, including law and medicine; and

(B) faculty from a variety of disciplines to bring the expertise of such faculty to the Foundation.

(4) Internships

Internships shall be awarded to—

(A) deserving and qualified individuals to participate in internships in Federal, State and local agencies or in offices of major environmental organizations pursuant to section 5604 of this title; and

(B) deserving and qualified Native American and Alaska Native individuals to participate in internships in Federal, State and local agencies or in offices of major public health or public policy organizations pursuant to section 5604 of this title.

(5) Grants

The Foundation shall award grants to the Center—

(A) to provide for an annual panel of experts to discuss contemporary environmental issues;

(B) to conduct environmental policy research;

(C) to conduct research on Native American and Alaska Native health care issues and tribal public policy issues;

(D) for visiting policymakers to share the practical experiences of such for visiting policymakers with the Foundation; and

(E) to conduct training, research, and other activities under section 5604(7) of this title.

(6) Repository

The Foundation shall provide direct or indirect assistance from the proceeds of the Trust Fund to the Center to maintain the current site of the repository for Morris K. Udall’s papers and other such public papers as may be appropriate and assure such papers’ availability to the public.

(7) Coordination

The Foundation shall assist in the development and implementation of a Program for Environmental Policy Research and Environmental Conflict Resolution and Training to be located at the Center.

(b) Udall Scholars

Recipients of scholarships, fellowships, and internships under this chapter shall be known as “Udall Scholars”, “Udall Fellows”, and “Udall Interns”, respectively.

(c) Program priorities

The Foundation shall determine the priority of the programs to be carried out under this chapter and the amount of funds to be allocated for such programs. However, not less than 50 percent shall be utilized for the programs set forth in section 5604(a)(2) of this title, section 5604(a)(3) of this title, and section 5604(a)(4) of
this title, not more than 15 percent shall be used for salaries and other administrative purposes, and not less than 20 percent shall be appropriated to the Center for section 5604(a)(6) of this title, section 5604(a)(7) of this title conditioned on a 25-percent match from other sources and further conditioned on adequate space at the Center being made available for the Executive Director and other appropriate staff of the Foundation by the Center.


AMENDMENTS
Subsec. (b). Pub. L. 111–90, § 6(2), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “Recipients of scholarships, fellowships, internships, and grants under this chapter shall be known as ‘Morris K. Udall Scholars’.”

§ 5606. Establishment of Morris K. Udall and Stewart L. Udall Trust Fund

(a) Establishment of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the “Morris K. Udall and Stewart L. Udall Trust Fund” to be administered by a Foundation. The Trust Fund shall consist of amounts appropriated to it pursuant to section 5609(a) of this title and amounts credited to it under subsection (b) of this section.

(b) Investment of Trust Fund assets

(1) In general.—It shall be the duty of the Secretary of the Treasury to invest, at the direction of the Foundation Board, in full the amounts appropriated to the Trust Fund. Such investments shall be in public debt securities with maturities suitable to the needs of the Trust Fund. Investments in public debt securities shall bear interest at rates determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturity.


AMENDMENTS
2009—Pub. L. 111–90 substituted “and Stewart L. Udall” for “Scholarship and Excellence in National Environmental Policy” in section catchline and in subsection (a).

§ 5607. Expenditures and audit of Trust Fund

(a) In general

The Foundation shall pay from the interest and earnings of the Trust Fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the provisions of this chapter, including a reasonable amount for official reception and representation expenses, as determined by the Board, not to exceed $5,000 for a fiscal year.

(b) Audit by Government Accountability Office

The activities of the Foundation and the Center under this chapter may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the Government Accountability Office shall have access to all books, accounts, records, reports filed and all other papers, things, or property belonging to or in use by the Foundation and the Center, pertaining to such federally assisted activities and necessary to facilitate the audit.


AMENDMENTS
2009—Subsec. (a). Pub. L. 111–90 inserted before period at end “; including a reasonable amount for official reception and representation expenses, as determined by the Board, not to exceed $5,000 for a fiscal year”.

§ 5607a. Environmental Dispute Resolution Fund

(a) Establishment

There is established in the Treasury of the United States an Environmental Dispute Resolution Fund to be administered by the Foundation. The Fund shall consist of amounts appropriated to the Fund under section 5609(b) of this title and amounts paid into the Fund under section 5607b of this title.

(b) Expenditures

The Foundation shall expend from the Fund such sums as the Board determines are necessary to establish and operate the Institute, including such amounts as are necessary for salaries, administration, the provision of mediation and other services, and such other expenses as the Board determines are necessary, including not to exceed $1,000 annually for official reception and representation expenses.

(c) Distinction from Trust Fund

The Fund shall be maintained separately from the Trust Fund established under section 5606 of this title.

(d) Investment of amounts

(1) In general

The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

1 So in original. No par. (2) has been enacted.
§ 5607b

(2) Interest-bearing obligations

Investments may be made only in interest-bearing obligations of the United States.

(3) Acquisition of obligations

For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(4) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(5) Credits to Fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.


Prior Provisions

A prior section 10 of Pub. L. 102–259 was renumbered section 12 and is classified to section 5608 of this title.

Amendments

1998—Subsec. (b). Pub. L. 105–277 inserted before period at end ”, including not to exceed $1,000 annually for official reception and representation expenses”.

§ 5607b. Use of Institute by Federal agency or other entity

(a) Authorization

A Federal agency may use the Foundation and the Institute to provide assessment, mediation, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources.

(b) Payment

(1) In general

A Federal agency may enter into a contract and expend funds to obtain the services of the Institute.

(2) Payment into Environmental Dispute Resolution Fund

A payment from an executive agency on a contract entered into under paragraph (1) shall be paid into the Environmental Dispute Resolution Fund established under section 5607a of this title.

(e) Notification and concurrence

(1) Notification

An agency or instrumentality of the Federal Government shall notify the chairperson of the President’s Council on Environmental Quality when using the Foundation or the Institute to provide the services described in subsection (a) of this section.

(2) Notification descriptions

In a matter involving two or more agencies or instrumentalities of the Federal Government, notification under paragraph (1) shall include a written description of—

(A) the issues and parties involved;

(B) prior efforts, if any, undertaken by the agency to resolve or address the issue or issues;

(C) all Federal agencies or instrumentalities with a direct interest or involvement in the matter and a statement that all Federal agencies or instrumentalities agree to dispute resolution; and

(D) other relevant information.

(3) Concurrence

(A) In general

In a matter that involves two or more agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality), the agencies or instrumentalities of the Federal Government shall obtain the concurrence of the chairperson of the President’s Council on Environmental Quality before using the Foundation or Institute to provide the services described in subsection (a) of this section.

(B) Indication of concurrence or nonconcurrence

The chairperson of the President’s Council on Environmental Quality shall indicate concurrence or nonconcurrence under subparagraph (A) not later than 20 days after receiving notice under paragraph (2).

(d) Exceptions

(1) Legal issues and enforcement

(A) In general

A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) that concern purely legal issues or matters, interpretation or determination of law, or enforcement of law by one agency against another agency shall not be submitted to the Foundation or Institute.

(B) Applicability

Subparagraph (A) does not apply to a dispute or conflict concerning—

(i) agency implementation of a program or project;

(ii) a matter involving two or more agencies with parallel authority requiring facilitation and coordination of the various Government agencies; or

(iii) a nonlegal policy or decisionmaking matter that involves two or more agencies that are jointly operating a project.

(2) Other mandated mechanisms or avenues

A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) for which Congress by law has mandated another dispute resolution mechanism or avenue to address or resolve shall not be submitted to the Foundation or Institute.

(e) Non-Federal entities

(1) Non-Federal entities, including state and local governments, Native American tribal gov-

1 So in original. Probably should be capitalized.
erms, nongovernmental organizations and persons, as defined in section 1 of title 1, may use the Foundation and the Institute to provide assessment, mediation, or other related services in connection with a dispute or conflict involving the Federal government related to the environment, public lands, or natural resources.

(2) Payment into the Environmental Dispute Resolution Fund.—Entities utilizing services pursuant to this subsection shall reimburse the Institute for the costs of services provided. Such amounts shall be deposited into the Environmental Dispute Resolution Fund established under section 5607a of this title.

(f) Agency management or control

Use of the Foundation or Institute to provide independent and impartial assessment, mediation, or other dispute or conflict resolution under this section shall not be considered to be the establishment or use of an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 11 of Pub. L. 102–259 was renumbered section 13 and is classified to section 5609 of this title.

AMENDMENTS


1998—Pub. L. 105–277, § 101(h) [title V, § 517(a)], inserted “or other entity” after “Federal agency” in section catchline.


§ 5608. Administrative provisions

(a) In general

In order to carry out the provisions of this chapter, the Foundation may—

(1)(A) appoint such personnel as may be necessary to carry out the provisions of this chapter, without regard to the provisions of title 5 governing appointments in the competitive service; and

(B) fix the compensation of the personnel appointed under subparagraph (A) at a rate not to exceed the maximum rate for employees in grade GS–15 of the General Schedule under section 5302 of title 5, except that up to 4 employees (in addition to the Executive Director under section 5603(f)(2) of this title) may be paid at a rate determined by the Board in accordance with section 5383 of title 5.

(2) procure or fund the Center to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for level IV of the Executive Schedule under section 5315 of title 5;

(3) prescribe such regulations as the Foundation considers necessary governing the manner in which its functions shall be carried out; (4) accept, hold, administer, and utilize gifts, both real and personal, for the purpose of aiding or facilitating the work of the Foundation;

(5) accept and utilize the services of voluntary and noncompensated personnel and reimburse such personnel for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) enter into contracts, grants, or other arrangements or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board of Trustees, be entered into without performance or other bonds, and without regard to section 6101 of title 41;

(7) to 1 rent office space in the District of Columbia or its environs; and

(8) make other necessary expenditures.

(b) The Institute

The authorities set forth above shall, with the exception of paragraph (4), apply to the Institute established pursuant to section 5607a of this title and to the activities of the Foundation under section 5604(7) of this title.


CODIFICATION


AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–90, § 10(1), added par. (1) and struck out former par. (1) which read as follows: “appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees other than the Executive Director be compensated at a rate to exceed the maximum rate for employees in grade GS–15 of the General Schedule under section 5332 of title 5.”

Subsec. (a)(7), (8). Pub. L. 111–90, § 10(2)–(4), added par. (7) and redesignated former par. (7) as (8).

2000—Subsec. (b), Pub. L. 106–568 inserted before period at end “and to the activities of the Foundation under section 5604(7) of this title”.

1998—Pub. L. 105–277 designated existing provisions as subsec. (a) and added subsec. (b).

§ 5609. Authorization of appropriations

(a) Trust Fund

There is authorized to be appropriated to the Trust Fund $40,000,000 to carry out the provisions of this chapter.

(b) Environmental Dispute Resolution Fund

There is authorized to be appropriated to the Environmental Dispute Resolution Fund estab-
lished by section 5607a of this title $4,000,000 for each of fiscal years 2004 through 2008, of which—
(1) $3,000,000 shall be used to pay operations costs (including not more than $1,000 for official reception and representation expenses); and
(2) $1,000,000 shall be used for grants or other appropriate arrangements to pay the costs of services provided in a neutral manner relating to, and to support the participation of non-Federal entities (such as State and local governments, tribal governments, nongovernmental organizations, and individuals) in, environmental conflict resolution proceedings involving Federal agencies.

(c) Training of professionals in health care and public policy

There is authorized to be appropriated to carry out section 5604(7) of this title $12,300,000 for the 5-fiscal year period beginning with the fiscal year in which this subsection is enacted.


References in Text

This subsection, referred to in subsec. (c), was enacted by Pub. L. 106–568, which was approved Dec. 27, 2000.

Amendments

2003—Subsec. (b), Pub. L. 108–160 added subsec. (b) and struck out former subsec. (b) which read as follows: “There are authorized to be appropriated to the Environmental Dispute Resolution Fund established under section 5607a of this title—

(1) $1,250,000 for fiscal year 1998, of which—

(A) $3,000,000 shall be for capitalization; and

(B) $1,250,000 shall be for operation costs; and

(2) $1,250,000 for each of the fiscal years 1999 through 2002 for operation costs.”


1998—Pub. L. 105–156, § 8, designated existing provisions as subsec. (a), inserted heading, substituted “There is authorized to be appropriated to the Trust Fund” for “There are authorized to be appropriated to the Fund”, and added subsec. (b).

CHAPTER 67—CHRISTOPHER COLUMBUS FELLOWSHIP FOUNDATION

Sec.
5701. Purpose.
5702. Christopher Columbus Fellowship Foundation.
5703. Fellowship recipients.
5704. Stipends.
5705. Christopher Columbus Fellowship Fund.
5706. Audits.
5707. Executive Secretary of Foundation.
5708. Administrative provisions.
5709. Authorization of appropriations.

§ 5701. Purpose

(a) Establishment and purposes

There is established, as an independent establishment of the executive branch, the Christopher Columbus Fellowship Foundation (hereinafter in this chapter referred to as the “Foundation”).

(b) Membership

The Foundation shall be subject to the supervision and direction of the Board of Trustees. The Board shall be composed of 13 members as follows:

(1) 2 members appointed by the President in consultation with the President pro tempore of the Senate.
(2) 2 members appointed by the President in consultation with the Minority Leader of the Senate.
(3) 2 members appointed by the President in consultation with the Speaker of the House of Representatives.
(4) 2 members appointed by the President in consultation with the Minority Leader of the House of Representatives.
(5) 5 members appointed by the President.

(c) Chairman and Vice Chairman of Foundation

The President shall designate a Chairman and a Vice Chairman from among the members appointed by the President.

(d) Terms of office; vacancies

Each member of the Board of Trustees appointed under subsection (b) of this section shall serve for a term of 6 years from the expiration of the term of such member’s predecessor, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member’s predecessor was appointed shall be appointed for the remainder of such term; and
(2) of the members first appointed—

(A) 4 shall be appointed for a term of 2 years;
(B) 5 shall be appointed for a term of 4 years; and
(C) 4 shall be appointed for a term of 6 years,

as designated by the President.

(e) Expenses; no additional compensation

Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board.

§ 5703. Fellowship recipients

(a) Award

The Foundation is authorized to award fellowships to outstanding individuals to encourage new discoveries in all fields of endeavor for the benefit of mankind. Recipients shall be known as “Columbus Scholars”.

(b) Term

Fellowships shall be granted for such periods as the Foundation may prescribe but not to exceed 2 years.

(c) Selection

The Foundation may provide, directly or by contract, for the conduct of a nationwide competition for the selection of fellowship recipients.


§ 5704. Stipends

Each person awarded a fellowship under this chapter shall receive a stipend as determined by the Foundation.


§ 5705. Christopher Columbus Fellowship Fund

(a) In general

There is established in the Treasury a fund to be known as the Christopher Columbus Scholarship Fund (hereafter in this chapter referred to as the “fund”), which shall consist of—

(1) amounts deposited under subsection (d) of this section;

(2) obligations obtained under subsection (c) of this section;

(3) amounts contributed to the Foundation;

(4) amounts appropriated to the Foundation, authorized under section 5704 of this title; and

(5) all surcharges received by the Secretary of the Treasury from the sale of coins minted under the Christopher Columbus Quincentenary Coin Act.

(b) Investments

(1) Duty of Secretary to invest

The Secretary of the Treasury shall invest in full any amount appropriated or contributed to the fund.

(2) Authorized investments

Investments pursuant to paragraph (1) may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) Special obligations

The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt; except that, if such average rate is not a multiple of 3⁄8 of 1 percent, the rate of interest of such special obligations shall be the multiple of 3⁄8 of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue at the market price, is not in the public interest.

(c) Sale of obligations

Any obligations acquired by the fund (except special obligations issued exclusively to the fund in accordance with subsection (b)(3) of this section) may be sold by the Secretary at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) Interest

The interest on, and the proceeds from, the sale or redemption of any obligations held in the fund shall be credited to and form a part of the fund.

(e) Availability of fund

(1) Stipends

The fund shall be available to the Foundation for payment of stipends awarded under section 5704 of this title.

(2) Expenses

The Secretary of the Treasury is authorized to pay to the Foundation from the interest and earnings of the funds such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the provisions of this chapter.

(f) Disbursements

Disbursements from the fund shall be made on vouchers approved by the Foundation and signed by the Chairman.


References in Text


Amendments

2009—Subsec. (a)(4), (5). Pub. L. 111–8 added par. (4) and redesignated former par. (4) as (5).

§ 5706. Audits

The activities of the Foundation under this chapter may be audited by the Comptroller General of the United States. The Comptroller Gen-

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1 So in original. Probably should be “Fellowship”. 
§ 5707. Executive Secretary of Foundation

(a) Duties

There shall be an Executive Secretary of the Foundation who shall be appointed by the Board. The Executive Secretary shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board.

(b) Compensation

The Executive Secretary of the Foundation shall be compensated at an annual rate of basic pay not in excess of the amount payable for Executive Level V.


REFERENCES IN TEXT

Executive Level V, referred to in subsec. (b), probably means level V of the Executive Schedule, which is set out in section 5316 of Title 5, Government Organization and Employees.

§ 5708. Administrative provisions

(a) The Foundation may—

(1) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees (other than the Executive Secretary) be compensated at a rate in excess of the rate of basic pay payable for GS–15 of the General Schedule;

(2) procure temporary and intermittent services of such experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not in excess of the rate of basic pay payable for Executive Level V;

(3) prescribe such regulations as the Foundation may determine to be necessary governing the manner in which its functions shall be carried out;

(4) receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) enter into contracts, grants, or other arrangements, or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds, and without regard to section 6101 of title 41;

(7) make advances, progress, and other payments which the Board deems necessary under this chapter without regard to the provisions of section 3324(a) and (b) of title 31;

(8) rent office space;

(9) conduct programs in addition to or in conjunction with the Fellowship program which shall further the Foundation’s purpose of encouraging new discoveries in all fields of endeavor for the benefit of mankind; and

(10) to make other necessary expenditures.

(b) ANNUAL REPORT.—The Foundation shall submit to the President and to the Congress an annual report of its operations under this chapter.


REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

Executive Level V, referred to in subsec. (a)(2), probably means level V of the Executive Schedule, which is set out in section 5316 of Title 5, Government Organization and Employees.


In subsec. (a)(7), “section 3324(a) and (b) of title 31” substituted for reference to section 529 of title 31, United States Code, on authority of Pub. L. 97–298, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to submitting an annual report to Congress, see section 3003 of Pub. L. 106–31, as added, set out as a note under section 1113 of Title 31, Money and Finance, and page 156 of House Document No. 103–7.

§ 5709. Authorization of appropriations

There are authorized to be appropriated to the Foundation, such sums as may be necessary to carry out this chapter.


CHAPTER 68—NATIONAL EDUCATION REFORM

Sec. 5801. Purpose.

5802. Definitions.

SUBCHAPTER I—NATIONAL EDUCATION GOALS

5811. Purpose.

5812. National Education Goals.

SUBCHAPTER II—NATIONAL EDUCATION REFORM LEADERSHIP, STANDARDS, AND ASSESSMENTS

PART A—NATIONAL EDUCATION GOALS PANEL

5821 to 5827. Repealed.

PART B—LEADERSHIP IN EDUCATIONAL TECHNOLOGY

5861 to 5864. Repealed.

PART C—AUTHORIZATION OF APPROPRIATIONS

5871. Repealed.
§ 5801. Purpose

The purpose of this chapter is to provide a framework for meeting the National Education Goals established by subchapter I of this chapter by—

1. promoting coherent, nationwide, systemic education reform;
2. improving the quality of learning and teaching in the classroom and in the workplace;
3. defining appropriate and coherent Federal, State, and local roles and responsibilities for education reform and lifelong learning;
4. establishing valid and reliable mechanisms for—
   a. building a broad national consensus on American education reform;
   b. assisting in the development and certification of high-quality, internationally competitive content and student performance standards; and
   c. assisting in the development and certification of high-quality assessment measures that reflect the internationally competitive content and student performance standards;
5. supporting new initiatives at the Federal, State, local, and school levels to provide equal educational opportunity for all students to meet high academic and occupational skill standards and to succeed in the world of employment and civic participation;
6. providing a framework for the reauthorization of all Federal education programs by—
   a. creating a vision of excellence and equity that will guide all Federal education and related programs;
   b. providing for the establishment of high-quality, internationally competitive content and student performance standards and strategies that all students will be expected to achieve;
   c. encouraging and enabling all State educational agencies and local educational agencies to develop comprehensive improvement plans that will provide a coherent framework for the implementation of reauthorized Federal education and related programs in an integrated fashion that effectively educates all children to prepare them to participate fully as workers, parents, and citizens;
   d. providing resources to help individual schools, including those serving students with high needs, develop and implement comprehensive improvement plans; and
(E) promoting the use of technology to enable all students to achieve the National Education Goals; 
(7) stimulating the development and adoption of a voluntary national system of skill standards and certification to serve as a cornerstone of the national strategy to enhance workforce skills; and 
(8) assisting every elementary and secondary school that receives funds under this chapter to actively involve parents and families in supporting the academic work of their children at home and in providing parents with skills to advocate for their children at school.


REFERENCES IN TEXT
This chapter, referred to in text, was in the original ‘‘this Act’’, meaning Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 125, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS
1996—Par. (4)(B) to (D). Pub. L. 104–134, §101(d) [title VII, §703(a)(2)(A)], inserted ‘‘and’’ at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ‘‘assisting in the development and certification of opportunity-to-learn standards’’.
Par. (6)(C) to (F). Pub. L. 104–134, §101(d) [title VII, §703(a)(2)(B)], redesignated subpars. (D) to (F) as (C) to (E), respectively, and struck out former subpar. (C) which read as follows: ‘‘providing for the establishment of high-quality, internationally competitive opportunity-to-learn standards that all States, local educational agencies, and schools should achieve’’.

SHORT TITLE OF 1999 AMENDMENT
Pub. L. 106–25, §1, Apr. 29, 1999, 113 Stat. 41, provided that: ‘‘This Act [enacting sections 5891a and 5891b of this title, amending section 1415 of this title, and enacting provisions set out as notes under sections 1415 and 5891(a) of this title] may be cited as the ‘‘Education Flexibility Partnership Act of 1999’’.’’

SHORT TITLE
Section 1(a) of Pub. L. 103–227 provided that: ‘‘This Act (other than titles V and IX) [enacting this chapter (other than subchapters V and IX) and sections 3351 and 3425 of this title, amending sections 1107, 1221e–1, 1221h, 2421, 3381 to 3384, 3386, and 5093 of this title, section 3315 of Title 5, Government Organization and Employees, sections 1632, 1633, and 1635 of Title 29, Labor, and section 11903a of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 5093 and 6301 of this title and section 11901 of Title 42] may be cited as the ‘‘Goals 2000: Educate America Act’’.’’

§ 5802. Definitions
(a) Subchapters I, II, III, and X
As used in subchapters I, II, III, and X of this chapter—
(1) the terms ‘‘all students’’ and ‘‘all children’’ mean students or children from a broad range of backgrounds and circumstances, including disadvantaged students and children, students or children with diverse racial, ethnic, and cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians, students or children with disabilities, students or children with limited-English proficiency, school-aged students or children who have dropped out of school, migratory students or children, and academically talented students and children;
(2) the term ‘‘Bureau’’, unless otherwise provided, means the Bureau of Indian Affairs;
(3) the terms ‘‘community’’, ‘‘public’’, and ‘‘advocacy group’’ include representatives of organizations advocating for the education of American Indian, Alaska Native, and Native Hawaiian children and Indian tribes;
(4) the term ‘‘content standards’’ means broad descriptions of the knowledge and skills students should acquire in a particular subject area;
(5) the term ‘‘Governor’’ means the chief executive of the State;
(6) the terms ‘‘local educational agency’’ and ‘‘State educational agency’’ have the meaning given such terms in section 8801 of this title; 1
(7) the term ‘‘outlying areas’’ means Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Palau (until the effective date of the Compact of Free Association with the Government of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia;
(8) the term ‘‘performance standards’’ means concrete examples and explicit definitions of what students have to know and be able to do to demonstrate that such students are proficient in the skills and knowledge framed by content standards;
(9) the term ‘‘related services’’ has the same meaning given such term under section 1401 of this title;
(10) the term ‘‘State assessment’’ means measures of student performance which include at least 1 instrument of evaluation, and may include other measures of student performance, for a specific purpose and use which are intended to evaluate the progress of all students in the State toward learning the material in State content standards in 1 or more subject areas;
(11) the term ‘‘school’’ means a public school that is under the authority of the State educational agency or a local educational agency or, for the purpose of carrying out section 5895(b) 1 of this title, a school that is operated or funded by the Bureau;
(12) the term ‘‘Secretary’’, unless otherwise provided, means the Secretary of Education; and
(13) the term ‘‘State’’, unless otherwise provided, means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(b) Subchapters IV, V, VI, VII, VIII, and IX
For the purpose of subchapters IV, V, VI, VII, VIII, and IX of this chapter—
(1) except as provided in paragraph (3) and unless otherwise provided, the terms used in such subchapters have the same meanings given such terms in section 8801 of this title; 1

1 See References in Text note below.
(2) the term "Bureau", unless otherwise provided, means the Bureau of Indian Affairs; and
(3) the term "Secretary", unless otherwise provided, means the Secretary of Education.


REFERENCES IN TEXT

Subchapters I to X, referred to in text, were in the original references to titles I to X of Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 131–265. Titles I, V, VI, and VIII are classified generally to subchapters I (§ 5811 et seq.), V (§ 5931 et seq.), VI (§ 5951), and VIII (§ 5981 et seq.), respectively, of this chapter. Title II enacted subchapter II (§ 5821 et seq.) of this chapter and section 3225 of this title, amended section 5883 of this title and section 5315 of Title 5, Government Organization and Employees, and enacted provisions set out as a note under section 5893 of this title. Title VII enacted subchapter VII (§ 5961 et seq.) of this chapter and amended section 1221e–1 of this title. Titles III and IV were classified generally to subchapters III (§ 5881 et seq.) and IV (§ 5911 et seq.) of this chapter and section 5315 of this title, and IV (§ 5911 et seq.), respectively, of this chapter and were repealed by Pub. L. 108–113, div. B, § 1000(a)(4) [title III, § 310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A–265. Section 5895(b) of this title was repealed by Pub. L. 106–113. Title IX enacted subchapter IX (§ 6001 et seq.) of this chapter, and enacted provisions set out as a note under section 6205 of this title, repealed section 1221e of this title, and enacted provisions set out as notes under sections 1221e and 3155 of this title. Title X enacted subchapter X (§ 6001 et seq.) of this chapter, and enacted provisions set out as a note under section 5092 of this title and section 5315 of Title 5, Government Organization and Employees, and enacted provisions set out as a note under section 5893 of this title.

AMENDMENTS


1996—Subsec. (a)(7) to (14). Pub. L. 104–134 redesignated pars. (8) to (14) as (7) to (13), respectively, and struck out former par. (7) which read as follows: “the term ‘opportunity-to-learn standards’ means the criteria for, and the basis of, assessing the sufficiency or quality of the resources, practices, and conditions necessary at each level of the education system (schools, local educational agencies, and States) to provide all students with an opportunity to learn the material in voluntary national content standards or State content standards”.


§ 5811. Purpose

The purpose of this subchapter is to establish National Education Goals.


§ 5812. National Education Goals

The Congress declares that the National Education Goals are the following:

(1) School readiness

(A) By the year 2000, all children in America will start school ready to learn.

(B) The objectives for this goal are that—

(i) all children will have access to high-quality and developmentally appropriate preschool programs that help prepare children for school;

(ii) every parent in the United States will be a child’s first teacher and devote time each day to helping such parent’s preschool child learn, and parents will have access to the training and support parents need; and

(iii) children will receive the nutrition, physical activity experiences, and health care needed to arrive at school with healthy minds and bodies, and to maintain the mental alertness necessary to be prepared to learn, and the number of low-birthweight babies will be significantly reduced through enhanced prenatal health systems.

(2) School completion

(A) By the year 2000, the high school graduation rate will increase to at least 90 percent.

(B) The objectives for this goal are that—

(i) the Nation must dramatically reduce its school dropout rate, and 75 percent of the students who do drop out will successfully complete a high school degree or its equivalent; and

(ii) the gap in high school graduation rates between American students from minority backgrounds and their non-minority counterparts will be eliminated.

(3) Student achievement and citizenship

(A) By the year 2000, all students will leave grades 4, 8, and 12 having demonstrated competence over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation’s modern economy.

(B) The objectives for this goal are that—

(i) the academic performance of all students at the elementary and secondary level will increase significantly in every quartile, and the distribution of minority students in each quartile will more closely reflect the student population as a whole;

(ii) the percentage of all students who demonstrate the ability to reason, solve problems, apply knowledge, and write
communicate effectively will increase substantially;
(iii) all students will be involved in activities that promote and demonstrate good citizenship, good health, community service, and personal responsibility;
(iv) all students will have access to physical education and health education to ensure they are healthy and fit;
(v) the percentage of all students who are competent in more than one language will substantially increase; and
(vi) all students will be knowledgeable about the diverse cultural heritage of this Nation and about the world community.

(4) Teacher education and professional development

(A) By the year 2000, the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.

(B) The objectives for this goal are that—
(i) all teachers will have access to preservice teacher education and continuing professional development activities that will provide such teachers with the knowledge and skills needed to teach to an increasingly diverse student population with a variety of educational, social, and health needs;
(ii) all teachers will have continuing opportunities to acquire additional knowledge and skills needed to teach challenging subject matter and to use emerging methods, forms of assessment, and technologies;
(iii) States and school districts will create integrated strategies to attract, recruit, prepare, retrain, and support the continued professional development of teachers, administrators, and other educators, so that there is a highly talented work force of professional educators to teach challenging subject matter; and
(iv) partnerships will be established, whenever possible, among local educational agencies, institutions of higher education, parents, and local labor, business, and professional associations to provide and support programs for the professional development of educators.

(5) Mathematics and science

(A) By the year 2000, United States students will be first in the world in mathematics and science achievement.

(B) The objectives for this goal are that—
(i) mathematics and science education, including the metric system of measurement, will be strengthened throughout the system, especially in the early grades;
(ii) the number of teachers with a substantive background in mathematics and science, including the metric system of measurement, will increase by 50 percent; and
(iii) the number of United States undergraduate and graduate students, especially women and minorities, who complete degrees in mathematics, science, and engineering will increase significantly.

(6) Adult literacy and lifelong learning

(A) By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

(B) The objectives for this goal are that—
(i) every major American business will be involved in strengthening the connection between education and work;
(ii) all workers will have the opportunity to acquire the knowledge and skills, from basic to highly technical, needed to adapt to emerging new technologies, work methods, and markets through public and private educational, vocational, technical, workplace, or other programs;
(iii) the number of quality programs, including those at libraries, that are designed to serve more effectively the needs of the growing number of part-time and midcareer students will increase substantially;
(iv) the proportion of the qualified students, especially minorities, who enter college, who complete at least two years, and who complete their degree programs will increase substantially;
(v) the proportion of college graduates who demonstrate an advanced ability to think critically, communicate effectively, and solve problems will increase substantially; and
(vi) schools, in implementing comprehensive parent involvement programs, will offer more adult literacy, parent training and lifelong learning opportunities to improve the ties between home and school, and enhance parents' work and home lives.

(7) Safe, disciplined, and alcohol- and drug-free schools

(A) By the year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.

(B) The objectives for this goal are that—
(i) every school will implement a firm and fair policy on use, possession, and distribution of drugs and alcohol;
(ii) parents, businesses, governmental and community organizations will work together to ensure the rights of students to study in a safe and secure environment that is free of drugs and crime, and that schools provide a healthy environment and are a safe haven for all children;
(iii) every local educational agency will develop and implement a policy to ensure that all schools are free of violence and the unauthorized presence of weapons;
(iv) every local educational agency will develop a sequential, comprehensive kindergarten through twelfth grade drug and alcohol prevention education program;
(v) drug and alcohol curriculum should be taught as an integral part of sequential, comprehensive health education;
(vi) community-based teams should be organized to provide students and teachers with needed support; and
(vii) every school should work to eliminate sexual harassment.

(8) Parental participation

(A) By the year 2000, every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

(B) The objectives for this Goal are that—

(i) every State will develop policies to assist local schools and local educational agencies to establish programs for increasing partnerships that respond to the varying needs of parents and the home, including parents of children who are disadvantaged, bilingual, or parents of children with disabilities;

(ii) every school will actively engage parents and families in a partnership which supports the academic work of children at home and shared educational decisionmaking at school; and

(iii) parents and families will help to ensure that schools are adequately supported and will hold schools and teachers to high standards of accountability.


SUBCHAPTER II—NATIONAL EDUCATION REFORM LEADERSHIP, STANDARDS, AND ASSESSMENTS

PART A—NATIONAL EDUCATION GOALS PANEL


Effective Date of Repeal

Repeal effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

PART B—LEADERSHIP IN EDUCATIONAL TECHNOLOGY

PRIOR PROVISIONS


Section 5844, Pub. L. 103–227, title II, § 214, Mar. 31, 1994, 108 Stat. 147, required Council to submit annual reports to President, Secretary, appropriate committees of Congress, Governor of each State, and Goals Panel regarding its work.


Section 5851, Pub. L. 103–227, title II, § 221, Mar. 31, 1994, 108 Stat. 151, required Secretary to make grant, in amount not to exceed $500,000, to National Academy of Sciences or National Academy of Education to evaluate technical quality of work performed, and certain processes used, by Goals Panel and Council, and required recipient of grant to submit final report to Congress, Secretary, and the public regarding activities assisted under this section not later than Jan. 1, 1998.


PART C—AUTHORIZATION OF APPROPRIATIONS


Effective Date of Repeal

§ 5891a. Definitions
In this Act:

(1) Local educational agency; State educational agency; outlying area

The terms "local educational agency", "State educational agency", and "outlying area" have the meanings given in the terms in section 7801 of this title.

(2) Eligible school attendance area; school attendance area

The terms "eligible school attendance area" and "school attendance area" have the meanings given in the terms in section 6319(a)(2) of this title.

(3) Secretary

The term "Secretary" means the Secretary of Education.

(4) State

The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.

References in Text

This Act, referred to in text, is Pub. L. 106–25, Apr. 29, 1999, 113 Stat. 41, known as the Education Flexibility Partnership Act of 1999, which enacted sections 5891a and 5891b of this title, amended section 1415 of this title, and enacted provisions set out as notes under sections 1415 and 5891a of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 5871 of this title and Tables.

Codification

Section was enacted as part of the Education Flexibility Partnership Act of 1999, and not as part of the Goals 2000: Educate America Act which comprises this chapter.

Amendments


Effective Date of 2002 Amendment

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title and Tables.

Findings

Pub. L. 106–25, § 2, Apr. 29, 1999, 113 Stat. 41, provided that: "Congress makes the following findings:

(1) States differ substantially in demographics, in school governance, and in school finance and funding. The administrative and funding mechanisms that help schools in one State improve may not prove successful in other States.

(2) Although the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) and other Federal education statutes afford flexibility to State educational agencies and local educational agencies in implementing Federal programs, certain requirements of Federal education statutes or regulations may impede local efforts to reform and improve education.

(3) By granting waivers of certain statutory and regulatory requirements, the Federal Government can remove impediments for local educational agencies in implementing educational reforms and raising the achievement levels of all children.

(4) State educational agencies are closer to local school systems, implement statewide educational re-
forms with both Federal and State funds, and are responsible for maintaining accountability for local activities consistent with State standards and assessment systems. Therefore, State educational agencies are often in the best position to align waivers of Federal and State requirements with State and local initiatives.

(5) The Education Flexibility Partnership Demonstration Act [former 20 U.S.C. 5891(e)] allows State educational agencies the flexibility to waive certain Federal requirements, along with related State requirements, but allows only 12 States to qualify for such waivers.

(6) Expansion of waiver authority will allow for the waiver of statutory and regulatory requirements that impede implementation of State and local educational improvement plans, or that unnecessarily burden program administration, while maintaining the intent and purposes of affected programs, such as the important focus on improving mathematics and science performance under title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6601 et seq.] (Dwight D. Eisenhower Professional Development Program), and maintaining such fundamental requirements as those relating to civil rights, educational equity, and accountability.

(7) To achieve the State goals for the education of children in the State, the focus must be on results in raising the achievement of all students, not process.

§ 5891b. Education flexibility partnership

(a) Educational flexibility program

(1) Program authorized

(A) In general

The Secretary may carry out an educational flexibility program under which the Secretary authorizes a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to one or more programs described in subsection (b) of this section, other than requirements described in subsection (c) of this section, for any local educational agency or school within the State.

(B) Designation

Each eligible State participating in the program described in subparagraph (A) shall be known as an “Ed-Flex Partnership State.”

(2) Eligible State

For the purpose of this section the term “eligible State” means a State that—

(A) has—

(i) developed and implemented the challenging State content standards, challenging State student performance standards, and aligned assessments described in section 1111(b) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311(b)], and for which local educational agencies in the State are producing the individual school performance profiles required by section 1116(a)(3) of such Act; or

(ii) (I) developed and implemented the content standards described in clause (i);

(II) developed and implemented interim assessments; and

(III) made substantial progress (as determined by the Secretary) toward developing and implementing the performance standards and final aligned assessments described in clause (i), and toward having local educational agencies in the State produce the profiles described in clause (i);

(B) holds local educational agencies and schools accountable for meeting the educational goals described in the local applications submitted under paragraph (4) and for engaging in technical assistance and corrective actions consistent with section 1116 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6316], for the local educational agencies and schools that do not make adequate yearly progress as described in section 1111(b)(2) of such Act [20 U.S.C. 6311(b)(2)]; and

(C) waives State statutory or regulatory requirements relating to education while holding local educational agencies or schools within the State that are affected by such waivers accountable for the performance of the students who are affected by such waivers.

(3) State application

(A) In general

Each State educational agency desiring to participate in the educational flexibility program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall demonstrate that the eligible State has adopted an educational flexibility plan for the State that includes—

(i) a description of the process the State educational agency will use to evaluate applications from local educational agencies or schools requesting waivers of—

(I) Federal statutory or regulatory requirements as described in paragraph (1)(A); and

(II) State statutory or regulatory requirements relating to education;

(ii) a detailed description of the State statutory and regulatory requirements relating to education that the State educational agency will waive;

(iii) a description of clear educational objectives the State intends to meet under the educational flexibility plan;

(iv) a description of how the educational flexibility plan is consistent with and will assist in implementing the State comprehensive reform plan or, if a State does not have a comprehensive reform plan, a description of how the educational flexibility plan is coordinated with activities described in section 1111(b) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311(b)];

(v) a description of how the State educational agency will evaluate, (consistent with the requirements of title I of the Elementary and Secondary Education Act of 1965) [20 U.S.C. 6301 et seq.], the performance of students in the schools and local educational agencies affected by the waivers; and

1 See References in Text note below.
§ 5891b

(4) Local application

(A) In general

Each local educational agency or school requesting a waiver of a Federal statutory or regulatory requirement as described in paragraph (1)(A) and any relevant State statutory or regulatory requirement from a State educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency reasonably require. Each such application shall—

(i) indicate each Federal program affected and each statutory or regulatory requirement that will be waived;

(ii) describe the purposes and overall expected results of waiving such requirement;

(iii) describe, for each school year, specific, measurable, educational goals for each local educational agency or school affected by the proposed waiver, and for the students served by the local educational agency or school who are affected by the waiver;

(iv) explain why the waiver will assist the local educational agency or school in reaching such goals; and

(v) in the case of an application from a local educational agency, describe how the local educational agency will meet the requirements of paragraph (8).

(B) Approval and considerations

The Secretary may approve an application described in subparagraph (A) only if the Secretary determines that such application demonstrates substantial promise of assisting the State educational agency and affected local educational agencies and schools within the State in carrying out comprehensive educational reform, after considering—

(i) the eligibility of the State as described in paragraph (2);

(ii) the comprehensiveness and quality of the educational flexibility plan described in subparagraph (A);

(iii) the ability of the educational flexibility plan to ensure accountability for the activities and goals described in such plan;

(iv) the degree to which the State’s objectives described in subparagraph (A)(iii)—

(I) are clear and have the ability to be assessed; and

(II) take into account the performance of local educational agencies or schools, and students, particularly those affected by waivers;

(v) the significance of the State statutory or regulatory requirements relating to education that will be waived; and

(vi) the quality of the State educational agency’s process for approving applications for waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and for monitoring and evaluating the results of such waivers.

(5) Oversight and reporting

(A) Oversight

Each State educational agency participating in the educational flexibility program under this section shall annually monitor the activities of local educational agencies and schools receiving waivers under this section.

(B) State reports

(i) Annual reports

The State educational agency shall submit to the Secretary an annual report on the results of such oversight and the impact of the waivers on school and student performance.
(ii) Performance data

Not later than 2 years after the date a State is designated an Ed-Flex Partnership State, each such State shall include, as part of the State’s annual report submitted under clause (i), data demonstrating the degree to which progress has been made toward meeting the State’s educational objectives. The data, when applicable, shall include—

(I) information on the total number of waivers granted for Federal and State statutory and regulatory requirements under this section, including the number of waivers granted for each type of waiver;

(II) information describing the effect of the waivers on the implementation of State and local educational reforms pertaining to school and student performance;

(III) information describing the relationship of the waivers to the performance of schools and students affected by the waivers; and

(IV) an assurance from State program managers that the data reported under this section are reliable, complete, and accurate, as defined by the State, or a description of a plan for improving the reliability, completeness, and accuracy of such data as defined by the State.

(C) Secretary’s reports

The Secretary, not later than 2 years after April 29, 1999, and annually thereafter, shall—

(i) make each State report submitted under subparagraph (B) available to Congress and the public; and

(ii) submit to Congress a report that summarizes the State reports and describes the effects that the educational flexibility program under this section had on the implementation of State and local educational reforms and on the performance of students affected by the waivers.

(6) Duration of Federal waivers

(A) In general

The Secretary shall not approve the application of a State educational agency under paragraph (3) for a period exceeding 5 years, except that the Secretary may extend such period if the Secretary determines that such agency’s authority to grant waivers—

(i) has been effective in enabling such State or affected local educational agencies or schools to carry out their State or local reform plans and to continue to meet the accountability requirement described in paragraph (2)(C); and

(ii) has improved student performance.

(B) Performance review

Three years after the date a State is designated an Ed-Flex Partnership State, the Secretary shall review the performance of the State educational agency in granting waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and shall terminate such agency’s authority to grant such waivers if the Secretary determines, after notice and an opportunity for a hearing, that such agency’s performance (including performance with respect to meeting the objectives described in paragraph (3)(A)(iii)) has been inadequate to justify continuation of such authority.

(C) Renewal

In deciding whether to extend a request for a State educational agency’s authority to issue waivers under this section, the Secretary shall review the progress of the State educational agency to determine if the State educational agency—

(i) has made progress toward achieving the objectives described in the application submitted pursuant to paragraph (3)(A)(iii); and

(ii) demonstrates in the request that local educational agencies or schools affected by the waiver authority or waivers have made progress toward achieving the desired results described in the application submitted pursuant to paragraph (4)(A)(iii).

(7) Authority to issue waivers

Notwithstanding any other provision of law, the Secretary is authorized to carry out the educational flexibility program under this section for each of the fiscal years 1999 through 2004.

(8) Public notice and comment

Each State educational agency seeking waiver authority under this section and each local educational agency seeking a waiver under this section—

(A) shall provide the public with adequate and efficient notice of the proposed waiver authority or waiver, consisting of a description of the agency’s application for the proposed waiver authority or waiver in a widely read or distributed medium, including a description of any improved student performance that is expected to result from the waiver authority or waiver;

(B) shall provide the opportunity for parents, educators, and all other interested members of the community to comment regarding the proposed waiver authority or waiver;

(C) shall provide the opportunity described in subparagraph (B) in accordance with any applicable State law specifying how the comments may be received, and how the comments may be reviewed by any member of the public; and

(D) shall submit the comments received with the agency’s application to the Secretary or the State educational agency, as appropriate.

(b) Included programs

The statutory or regulatory requirements referred to in subsection (a)(1)(A) of this section are any such requirements for programs that are authorized under the following provisions and under which the Secretary provides funds to State educational agencies on the basis of a formula:
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(1) The following provisions of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.]:


(B) Subparts 2 and 3 of part A of title II [20 U.S.C. 6621 et seq., 6631 et seq.].

(C) Subpart 1 of part D of title II [20 U.S.C. 6751 et seq.].


(E) Subpart 1 of part A of title IV [20 U.S.C. 7111 et seq.].

(F) Part A of title V [20 U.S.C. 7201 et seq.].


(c) Waivers not authorized

The Secretary and the State educational agency may not waive under subsection (a)(1)(A) of this section any statutory or regulatory requirement—

(1) relating to—

(A) maintenance of effort;

(B) comparability of services;

(C) equitable participation of students and professional staff in private schools;

(D) parental participation and involvement;

(E) distribution of funds to States or to local educational agencies;

(F) serving eligible school attendance areas in rank order under section 1113(a)(3) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a)(3)];

(G) the selection of a school attendance area or school under subsections (a) and (b) of section 1113 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a), (b)]; except that a State educational agency may grant a waiver to allow a school attendance area or school to participate in activities under part A of title I of such Act [20 U.S.C. 6311 et seq.] if the percentage of children from low-income families in the school attendance area of such school or who attend such school is not less than 10 percentage points below the lowest percentage of such children for any school attendance area or school of the local educational agency that meets the requirements of such subsections (a) and (b) of this section;

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

(I) applicable civil rights requirements; and

(2) unless the underlying purposes of the statutory requirements of the program for which a waiver is granted continue to be met to the satisfaction of the Secretary.

(d) Treatment of existing Ed-Flex Partnership States

(1) In general

Except as provided in paragraphs (3) and (4), this section shall not apply to a State educational agency that has been granted waiver authority under the provisions of law described in paragraph (2) for the duration of the waiver authority.

(2) Applicable provisions

The provisions of law referred to in paragraph (1) are as follows:

(A) Section 311(e) of the Goals 2000: Educate America Act.

(B) The proviso referring to such section 311(e) under the heading "EDUCATION REFORM" in the Department of Education Appropriations Act, 1996 (Public Law 104–134; 110 Stat. 1321–229).

(3) Special rule

If a State educational agency granted waiver authority pursuant to the provisions of law described in subparagraph (A) or (B) of paragraph (2) applies to the Secretary for waiver authority under this section—

(A) the Secretary shall review the progress of the State educational agency in achieving the objectives set forth in the application submitted pursuant to section 311(e) of the Goals 2000: Educate America Act; and

(B) the Secretary shall administer the waiver authority granted under this section in accordance with the requirements of this section.

(4) Technology

In the case of a State educational agency granted waiver authority under the provisions of law described in subparagraph (A) or (B) of paragraph (2), the Secretary shall permit a State educational agency to expand, on or after April 29, 1999, the waiver authority to include programs under subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 3136 of such Act).1

(e) Publication

A notice of the Secretary’s decision to authorize State educational agencies to issue waivers under this section, including a description of the rationale the Secretary used to approve applications under subsection (a)(3)(B) of this section, shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to State educational agencies, interested parties (including educators, parents, students, and advocacy and civil rights organizations), and the public.


References in Text

Section 1116(a)(3) of such Act, referred to in subsec. (a)(2)(A)(i), means section 1116(a)(3) of Pub. L. 89–10. Section 1116 of Pub. L. 89–10, which was classified to section 6317 of this title, was omitted in the general amendment of subchapter I (§6301 et seq.) of chapter 70 of this title, and a new section 1116, which is classified to section 6316 of this title, was enacted, by Pub. L. 107–110, title I, §101, Jan. 8, 2002, 115 Stat. 1321. Section 1116(b) of such Act, referred to in subsec. (a)(3)(A)(v), (b)(1), and (d), means section 1116(b) of Pub. L. 89–10, which was classified to section 6317 of this title, was omitted in the general amendment of subchapter I (§6301 et seq.) of chapter 70 of this title, and a new section 1116, which is classified to section 6316 of this title, was enacted, by Pub. L. 107–110, title I, §101, Jan. 8, 2002, 115 Stat. 1321.
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TITLE 20—EDUCATION

§§ 5892 to 5895

(c)(1)(G), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of this title. Title I of the Act is classified generally to subchapter I (§6311 et seq.) of chapter 70 of this title. Part A of title I of the Act is classified generally to part A (§6311 et seq.) of subchapter I of chapter 70 of this title. Subpart 3 of part B of title I is classified generally to subpart 3 (§6321 et seq.) of part B of subchapter I of chapter 70 of this title. Parts C, D, and F of title I are classified generally to parts C (§6391 et seq.), D (§6421 et seq.), and F (§6511 et seq.), respectively, of subchapter I of chapter 70 of this title. Subparts 2 and 3 of part A of title II are classified generally to subparts 2 (§6621 et seq.) and 3 (§6631 et seq.), respectively, of part A of subchapter II of chapter 70 of this title. Subpart 4 of part B of title III is classified generally to subpart 4 (§6861 et seq.) of part B of subchapter III of chapter 70 of this title. Subpart 1 of part A of title IV is classified generally to subpart 1 (§7111 et seq.) of part A of subchapter IV of chapter 70 of this title. Part A of title V is classified generally to part A (§7201 et seq.) of subchapter V of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

Title I of the Act is classified generally to subpart 2 (§6621 et seq.) of part A of title I of the Elementary and Secondary Education Act of 1965 (other than sections 5891(b) and 5892(a).)

(2) DETERMINATION

Any designation of a State as an Educational Flexibility Partnership State that was in effect on September 30, 2004, shall be extended until the date of enactment of an Act that reauthorizes programs under part A of title I of the Elementary and Secondary Education Act of 1965, if the Secretary finds that the designation justifies the extension of the designation.

ADDITIONAL STATE EDUCATIONAL AGENCIES AUTHORIZED TO WAIVE FEDERAL REQUIREMENTS

Section was enacted as part of the Education Flexibility Partnership Act of 1999, and not as part of the Goals 2000: Educate America Act which comprises this chapter.

AMENDMENTS


2002—Subsec. (b), Pub. L. 107–110 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The statutory or regulatory requirements referred to in subsection (a)(1)(A) of this section are any such requirements for programs carried out under the following provisions:”

(1) Title I of the Elementary and Secondary Education Act of 1965 (other than sections (a) and (c) of section 1116 of such Act).


(3) Subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 5136 of such Act).

(4) Title IV of the Elementary and Secondary Education Act of 1965.

(5) Title VI of the Elementary and Secondary Education Act of 1965.


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.
§ 5961. Short title; statement of purpose

(a) Short title

This subchapter may be cited as the “Safe Schools Act of 1994”.

(b) Statement of purpose

It is the purpose of this subchapter to help local school systems achieve Goal Six of the National Education Goals, which provides that by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning, by ensuring that all schools are safe and free of violence.


REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title VII of Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 204, which enacted this subchapter and amended section 1221e-1 of this title.

§ 5962. Safe schools program authorized

(a) Authority

(1) In general

From funds appropriated pursuant to the authority of subsection (b)(1) of this section, the Secretary shall make competitive grants to eligible local educational agencies to enable such agencies to carry out projects and activities designed to achieve Goal Six of the National Education Goals by helping to ensure that all schools are safe and free of violence.

(2) Grant duration and amount

Grants under this subchapter may not exceed—

(A) two fiscal years in duration; and

(B) $3,000,000.

(3) Geographic distribution

To the extent practicable, grants under this subchapter shall be awarded to eligible local educational agencies serving rural, as well as urban, areas.

(b) Authorization of appropriations and reservation

(1) Authorization

There are authorized to be appropriated $50,000,000 for fiscal year 1994 to carry out this subchapter.

(2) Reservation

The Secretary is authorized in each fiscal year to reserve not more than 10 percent of the amount appropriated pursuant to the authority of paragraph (1) to carry out national activities described in section 5966 of this title, of which 50 percent of such amount shall be available in such fiscal year to carry out the program described in section 5966(b) of this title.


§ 5963. Eligible applicants

(a) In general

To be eligible to receive a grant under this subchapter, a local educational agency shall demonstrate in the application submitted pursuant to section 5964(a) of this title that such agency—

(1) serves an area in which there is a high rate of—

(A) homicides committed by persons between the ages 5 to 18, inclusive;

(B) referrals of youth to juvenile court;

(C) youth under the supervision of the courts;

(D) expulsions and suspensions of students from school;

(E) referrals of youth, for disciplinary reasons, to alternative schools; or

(F) victimization of youth by violence, crime, or other forms of abuse; and

(2) has serious school crime, violence, and discipline problems, as indicated by other appropriate data.

(b) Priority

In awarding grants under this subchapter, the Secretary shall give priority to a local educational agency that submits an application that assures a strong local commitment to the projects or activities assisted under this subchapter, such as—

(1) the formation of partnerships among the local educational agency, a community-based organization, a nonprofit organization with a demonstrated commitment to or expertise in developing education programs or providing educational services to students or the public, a local law enforcement agency, or any combination thereof; and

(2) a high level of youth participation in such projects or activities.


§ 5964. Applications and plans

(a) Application

In order to receive a grant under this subchapter, an eligible local educational agency shall submit to the Secretary an application that includes—

(1) an assessment of the current violence and crime problems in the schools to be served by the grant and in the community to be served by the applicant;

(2) an assurance that the applicant has written policies regarding school safety, student discipline, and the appropriate handling of violent or disruptive acts;

(3) a description of the schools and communities to be served by the grant, the activities and projects to be carried out with grant funds, and how these activities and projects will help to reduce the current violence and crime problems in the schools and communities served;

(4) a description of educational materials to be developed in the first most predominate non-English language of the schools and communities to be served by the grant, if applicable;

1 So in original. Probably should be “Goal Seven”.

2 So in original. Probably should be “Goal Seven”.

3 So in original. Probably should be “Goal Seven”.
(5) if the local educational agency receives Federal education funds, an explanation of how activities assisted under this subchapter will be coordinated with and support any systemic education improvement plan prepared with such funds; 

(6) the applicant's plan to establish school-level advisory committees, which include faculty, parents, staff, and students, for each school to be served by the grant and a description of how each committee will assist in assessing that school's violence and discipline problems as well as in designing appropriate programs, policies, and practices to combat such problems; 

(7) the applicant's plan for collecting baseline and future data, by individual schools, to monitor violence and discipline problems and to measure the applicant's progress in achieving the purpose of this subchapter; 

(8) a description of how, in subsequent fiscal years, the grantee will integrate the violence prevention activities the grantee carries out with funds under this subchapter with activities carried out under the grantee's comprehensive plan for drug and violence prevention adopted under the Drug-Free Schools and Communities Act of 1986; 

(9) a description of how the grantee will coordinate the grantee's school crime and violence prevention efforts with education, law enforcement, judicial, health, and social service programs supported under the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.], and other appropriate agencies and organizations serving the community; 

(10) a description of how the grantee will inform parents about the extent of crime and violence in their children's schools and maximize the participation of parents in the grantee's violence prevention activities; 

(11) an assurance that grant funds under this subchapter will be used to supplement and not supplant State and local funds that would, in the absence of funds under this subchapter, be made available by the applicant for the purposes of the grant; 

(12) an assurance that the applicant will cooperate with, and provide assistance to, the Secretary in gathering statistics and other data the Secretary determines are necessary to determine the effectiveness of projects and activities assisted under this subchapter or the extent of school violence and discipline problems throughout the Nation; and 

(13) such other information as the Secretary may require. 

(b) Plan

In order to receive funds under this subchapter for a second year, a grantee shall submit to the Secretary a comprehensive, long-term, school safety plan for reducing and preventing school violence and discipline problems. Such plan shall contain a description of how the grantee will coordinate the grantee's school crime and violence prevention efforts with education, law enforcement, judicial, health, social service, and other appropriate agencies and organizations serving the community.

References in Text


§ 5965. Use of funds

(a) In general

A local educational agency shall use grant funds received under this subchapter for one or more of the following activities:

(1) Identifying and assessing school violence and discipline problems, including coordinating needs assessment activities with education, law enforcement, judicial, health, social service, and other appropriate agencies and organizations, juvenile justice programs, and gang prevention activities.

(2) Conducting school safety reviews or violence prevention reviews of programs, policies, practices, and facilities to determine what changes are needed to reduce or prevent violence and promote safety and discipline.

(3) Planning for comprehensive, long-term strategies for addressing and preventing school violence and discipline problems through the involvement and coordination of school programs with other education, law enforcement, judicial, health, social service, and other appropriate agencies and organizations.

(4) Training school personnel in programs of demonstrated effectiveness in addressing violence, including violence prevention, conflict resolution, anger management, peer mediation, and identification of high-risk youth.

(5) Activities which involve parents in efforts to promote school safety and prevent school violence.

(6) Community education programs, including video- and technology-based projects, informing parents, businesses, local government, the media and other appropriate entities about—

(A) the local educational agency's plan to promote school safety and reduce and prevent school violence and discipline problems; and

(B) the need for community support.

(7) Coordination of school-based activities designed to promote school safety and reduce or prevent school violence and discipline problems with related efforts of education, law enforcement, judicial, health, social service, and other appropriate agencies and organizations and juvenile justice programs.

(8) Developing and implementing violence prevention activities and materials, including—
§ 5966. National activities

(a) National activities

(1) In general

To carry out the purpose of this subchapter, the Secretary—
(A) is authorized to use funds reserved under section 5962(b)(2) of this title to—
(i) conduct national leadership activities such as research, program development and evaluation, data collection, public awareness activities, training and technical assistance, dissemination (through appropriate research entities assisted by the Department of Education) of information on successful projects, activities, and strategies developed pursuant to this subchapter;
(ii) provide grants to noncommercial telecommunications entities for the production and distribution of national video-based projects that provide young people with models for conflict resolution and responsible decisionmaking; and
(iii) conduct peer review of applications under this subchapter; and
(B) shall develop a written safe schools model so that all schools can develop models that enable all students to participate regardless of any language barrier.

(2) Special rule

The Secretary may carry out the activities described in paragraph (1) directly, through interagency agreements, or through grants, contracts or cooperative agreements.

(b) National model city

The Secretary shall designate the District of Columbia as a national model city and shall provide funds made available pursuant to section 5962(b)(2) of this title in each fiscal year to a local educational agency serving the District of Columbia in an amount sufficient to enable such agency to carry out a comprehensive program to address school and youth violence.

§ 5967. Reports

(a) Report to Secretary

Each local educational agency that receives funds under this subchapter shall submit to the Secretary a report not later than March 1, 1995, that describes progress achieved in carrying out the plan described in section 5964(b) of this title.

(b) Report to Congress

The Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report not later than October 1, 1995, which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under section 5964(a) of this title, and an evaluation of programs assisted under this subchapter.
§ 5968. Coordination of Federal assistance

The Secretary, as a member of the Coordinating Council on Juvenile Justice and Delinquency Prevention of the Department of Justice, shall coordinate the programs and activities carried out under this subchapter with the programs and activities carried out by the departments and offices represented within the Council that provide assistance under other Federal law for purposes that are determined by the Secretary to be similar to the purpose of this subchapter, in order to avoid redundancy and coordinate Federal assistance, research, and programs for youth violence prevention.


§ 5980. Definitions

(1) the term “eligible entity” means a State educational agency, an institution of higher education or a State higher education agency, or a public or private nonprofit organization, with experience in coordinating or conducting teacher training seminars in American government and civics education, or a consortium thereof; and

(2) the term “State higher education agency” means the officer or agency primarily responsible for the State supervision of higher education.


§ 5981. Short title

This subchapter may be cited as the “Minority-Focused Civics Education Act of 1994”.


§ 5982. Purposes

It is the purpose of this subchapter—

(1) to encourage improved instruction for minorities and Native Americans in American government and civics through a national program of accredited summer teacher training and staff development seminars or institutes followed by academic year inservice training programs conducted on college and university campuses or other appropriate sites, for—

(A) social studies and other teachers responsible for American history, government, and civics classes; and

(B) other educators who work with minority and Native American youth; and

(2) through such improved instruction to improve minority and Native American student knowledge and understanding of the American system of government.


§ 5983. Grants authorized; authorization of appropriations

(a) Grants authorized

(1) In general

The Secretary is authorized to make grants to eligible entities for the development and implementation of seminars in American government and civics for elementary and secondary school teachers and other educators who work with minority and Native American students.

(2) Award rule

In awarding grants under this subchapter, the Secretary shall ensure that there is wide geographic distribution of such grants.

(b) Authorization of appropriations

There are authorized to be appropriated $5,000,000 for fiscal 1995, and such sums as may be necessary for each of the fiscal years 1996, 1997, and 1998, to carry out this subchapter.


§ 5984. Applications

(a) Application required

Each eligible entity desiring a grant under this subchapter shall submit an application to the Secretary, at such time, in such manner and containing or accompanied by such information as the Secretary may reasonably require.

(b) Contents of application

Each application submitted pursuant to subsection (a) of this section shall—

(1) define the learning objectives and course content of each seminar to be held and describe the manner in which seminar participants shall receive substantive academic instruction in the principles, institutions and processes of American government;

(2) provide assurances that educators successfully participating in each seminar will qualify for either graduate credit or professional development or advancement credit according to the criteria established by a State or local educational agency;

(3) describe the manner in which seminar participants shall receive exposure to a broad array of individuals who are actively involved in the political process, including political party representatives drawn equally from the major political parties, as well as representatives of other organizations involved in the political process;

(4) provide assurances that the seminars will be conducted on a nonpartisan basis;

(5) describe the manner in which the seminars will address the role of minorities or Native Americans in the American political process, including such topics as—
(A) the history and current political state of minorities or Native Americans;
(B) recent research on minority or Native American political socialization patterns and cognitive learning styles; and
(C) studies of political participation patterns of minorities or Native Americans;
(6) describe the pedagogical elements for teachers that will enable teachers to develop effective strategies and lesson plans for teaching minorities or Native American students at the elementary and secondary school levels;
(7) identify the eligible entities which will conduct the seminars for which assistance is sought;
(8) in the case that the eligible entity is an institution of higher education, describe the plans for collaborating with national organizations in American government and civics education;
(9) provide assurances that during the academic year educators participating in the summer seminars will provide inservice training programs based upon what such educators have learned and the curricular materials such educators have developed or acquired for their peers in their school systems with the approval and support of their school administrators; and
(10) describe the activities or services for which assistance is sought, including activities and services such as—
(A) development of seminar curricula;
(B) development and distribution of instructional materials;
(C) scholarships for participating teachers; and
(D) program assessment and evaluation.

(c) Priority
The Secretary, in approving applications for assistance under this subchapter, shall give priority to applications which demonstrate that—
(1) the applicant will serve teachers who teach in schools with a large number or concentration of economically disadvantaged students;
(2) the applicant has demonstrated national experience in conducting or coordinating accredited summer seminars in American government or civics education for elementary and secondary school teachers;
(3) the applicant will coordinate or conduct seminars on a national or multistate basis through a collaboration with an institution of higher education, State higher education agency or a public or private nonprofit organization, with experience in coordinating or conducting teacher training programs in American government and civics education;
(4) the applicant will coordinate or conduct seminars designed for more than one minority student population and for Native Americans; and
(5) the applicant will coordinate or conduct seminars that offer a combination of academic instruction in American government, exposure to the practical workings of the political system, and training in appropriate pedagogical techniques for working with minority and Native American students.
(4) The investment goal of the Federal research, development, and dissemination function should be at least 1 percent of the total amount of funds spent on education.

(5) Nationwide model programs and reliable interventions should be demonstrated and replicated, and for such purposes, programs should be established to conduct research and evaluations, and to disseminate information.

(6) The Office should develop a national dissemination policy that will advance the goal of placing a national treasure chest of research results, models, and materials at the disposal of the education decisionmakers of the United States.

(7) A National Educational Research Policy and Priorities Board should be established to work collaboratively with the Assistant Secretary to forge a national consensus with respect to a long-term agenda for educational research, development, dissemination, and the activities of the Office.

(8) Existing research and development entities should adopt expanded, proactive roles and new institutions should be created to promote knowledge development necessary to accelerate the application of research findings to high priority areas.

(9) Greater use should be made of existing technologies in efforts to improve the educational system of the United States, including efforts to disseminate research findings.

(10) Minority educational researchers are inadequately represented throughout the Department of Education, but particularly in the Office. The Office therefore should assume a leadership position in the recruitment, retention, and promotion of qualified minority educational researchers.

(11) The coordination of the mission of the Office with that of other components of the Department of Education is critical. The Office should improve the coordination of the educational research, development, and dissemination function with those of other Federal agencies.


REFERENCES IN TEXT


NOTES


The Office of Educational Research and Improvement

The Office of Educational Research and Improvement was established by section 3419 of this title. Section 3419 was repealed and a new section 3419 establishing the Institute of Educational Sciences was enacted by Pub. L. 107–279, title IV, § 402(2), Nov. 5, 2002, 116 Stat. 2079.

PART A—GENERAL PROVISIONS REGARDING OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT


PART B—NATIONAL EDUCATIONAL RESEARCH POLICY AND PRIORITIES BOARD


PART C—NATIONAL RESEARCH INSTITUTES


PART D—NATIONAL EDUCATION DISSEMINATION SYSTEM


PART E—NATIONAL LIBRARY OF EDUCATION


PART F—CERTAIN MULTITYEAR GRANTS AND CONTRACTS

CODIFICATION

This part was, in the original, part J of title IX of Pub. L. 103–227 and has been designated part F of this subchapter for purposes of codification.

§ 6052. Continuation of awards

(a) In general

Notwithstanding any other provision of law, from funds appropriated under subsection (b) of this section, the Secretary—
(1) shall continue to fund any multiyear grant or contract awarded under section 3141 and parts A and C of title XIII of the Elementary and Secondary Education Act of 1965 (as such provisions were in effect on the day preceding January 8, 2002), for the duration of that multiyear award in accordance with its terms; and

(2) may extend, on a year-to-year basis, any multiyear grant or contract awarded under an authority described in paragraph (1) that expires after January 8, 2002, but before the enactment of successor authority to this subchapter.1

(b) Authorization of appropriations

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out subsection (a) of this section.


REFERENCES IN TEXT


This subchapter, referred to in subsec. (a)(2), was in the original “this Act” and has been translated as reading “this title” to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of this title.

PART G—COMPREHENSIVE REGIONAL ASSISTANCE CENTERS

CODIFICATION


PART H—NATIONAL DIFFUSION NETWORK

CODIFICATION


Another section 1001 of Pub. L. 103–227 is classified to section 6001 of this title.


PART I—EISENHOWER REGIONAL MATHEMATICS AND SCIENCE EDUCATION CONSORTIA

CODIFICATION

Part M of title IX of Pub. L. 103–227, which comprised this part, was designated part I of this subchapter for

1 See References in Text note below.


Another section 1031 of Pub. L. 103–227 is set out as a note under section 6301 of this title.


Another section 1032 of Pub. L. 103–227 enacted section 3351 of this title and amended sections 3381 to 3384 and 3386 of this title prior to the general amendment of chapter 47 of this title by Pub. L. 103–382.

SUBCHAPTER X—MISCELLANEOUS

PART A—MISCELLANEOUS PROVISIONS

§ 6061. School prayer

No funds authorized to be appropriated under this chapter may be used by any State or local educational agency to adopt policies that prevent voluntary prayer and meditation in public schools.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original this “Act”, meaning Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 125, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Another section 1011 of Pub. L. 103–227 was classified to section 6054 of this title, prior to repeal by Pub. L. 107–279.

§ 6062. Funding for Individuals with Disabilities Education Act

(a) Findings

The Congress finds that—

(1) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.] was established with the commitment of forty percent Federal funding but currently receives only eight percent Federal funding;

(2) this funding shortfall is particularly burdensome to school districts and schools in low-income areas which serve higher than average proportions of students with disabilities and have fewer local resources to contribute; and

(3) it would cost the Federal Government approximately $10,000,000,000 each year to fully fund the Individuals with Disabilities Education Act.
(b) Sense of Congress

It is the sense of the Congress that the Federal Government should provide States and communities with adequate resources under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.] as soon as reasonably possible through the reallocation of noneducation funds within the current budget monetary constraints.


REFERENCES IN TEXT

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

CODIFICATION

Another section 1012 of Pub. L. 103–227 was classified to section 609a of this title, prior to repeal by Pub. L. 107–279.

§ 6063. Study of Goals 2000 and students with disabilities

(a) Study required

(1) In general

Not later than 180 days after March 31, 1994, the Secretary shall make appropriate arrangements with the National Academy of Sciences or the National Academy of Education to conduct a comprehensive study of the inclusion of children with disabilities in school reform activities assisted under the Goals 2000: Educate America Act [20 U.S.C. 5801 et seq.].

(2) “Children with disabilities” defined

For purposes of this section, the term “children with disabilities” has the same meaning given such term in section 1401 of this title.

(b) Study components

The study conducted under subsection (a) of this section shall include—

(1) an evaluation of the National Education Goals and objectives, curriculum reforms, standards, and other programs and activities intended to achieve those goals;

(2) a review of the adequacy of assessments and measures used to gauge progress towards meeting National Education Goals and any national and State standards, and an examination of other methods or accommodations necessary or desirable to collect data on the educational progress of children with disabilities, and the costs of such methods and accommodations;

(3) an examination of what incentives or assistance might be provided to States to develop improvement plans that adequately address the needs of children with disabilities;

(4) the relation of the Goals 2000: Educate America Act [20 U.S.C. 5801 et seq.] to other Federal laws governing or affecting the education of children with disabilities; and

(5) such other issues as the National Academy of Sciences or the National Academy of Education considers appropriate.

(c) Study panel membership

Any panel constituted in furtherance of the study to be conducted under subsection (a) of this section shall include consumer representatives.

(d) Findings and recommendations

The Secretary shall request the National Academy of Sciences or the National Academy of Education to submit an interim report of its findings and recommendations to the President and Congress not later than 12 months, and a final report not later than 24 months, from the date of the completion of procurement relating to the study.

(e) Funding

From funds appropriated to the Secretary for research related to individuals with disabilities the Secretary shall make available $600,000 for fiscal year 1994, and such sums as may be necessary for fiscal year 1995, to carry out this section. Amounts made available under this subsection shall remain available until expended.


REFERENCES IN TEXT

The Goals 2000: Educate America Act, referred to in subsecs. (a)(1) and (b)(4), is Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 125 (except titles V and IX), as amended, which is classified principally to this chapter (except subchapters V (§5961 et seq.) and IX (§6801 et seq.)). For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

§ 6064. Contraceptive devices

The Department of Health and Human Services and the Department of Education shall ensure that all federally funded programs which provide for the distribution of contraceptive devices to emancipated minors develop procedures to encourage, to the extent practical, family participation in such programs.


§ 6065. Assessments

(a) Subchapter II

No funds provided under subchapter II of this chapter shall be used to develop or undertake assessments that will be used to make decisions regarding the graduation, grade promotion, or retention of students for 5 years after March 31, 1994.

(b) Subchapter III

Assessments developed with funds under subchapter III of this chapter may be used for decisions regarding graduation, grade promotion, or retention of students only on the condition that students have been prepared in the content for which the students are being assessed.


REFERENCES IN TEXT

Subchapters II and III of this chapter, referred to in text, were in the original references to titles II and III, respectively, of Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 133, 157. Title II enacted subchapter II of this chapter.

1 See References in Text note below.
and section 3425 of this title, amended section 5008 of this title and section 3535 of Title 5, Government Organization and Employees, and enacted provisions set out as a note under section 5063 of this title. Title III was classified generally to subchapter III (§5881 et seq.) of this chapter and was repealed by Pub. L. 106–113, div. B, §1000(a)(4) [title III, §310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A–265.

§ 6066. Public schools

Except as provided in section 5890 of this title, nothing in this chapter shall be construed to authorize the use of funds under subchapter III of this chapter to directly or indirectly benefit any school other than a public school.


REFERENCES IN TEXT


Subchapter III of this chapter, referred to in text, was in the original a reference to title III of Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 157, which was classified generally to subchapter III (§5881 et seq.) of this chapter and was repealed by Pub. L. 106–113, div. B, §1000(a)(4) [title III, §310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A–265.

§ 6067. Sense of Congress

It is the sense of the Congress that—

(1) no funds appropriated pursuant to this chapter should be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with chapter 83 of title 41;

(2) in the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this chapter, entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products;

(3) in providing financial assistance under this chapter, the head of each Federal agency should provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress; and

(4) if it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning to any product sold in or shipped to the United States that is not made in the United States, such person should be ineligible to receive any contract or subcontract made with funds provided pursuant to this chapter, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations, as such sections existed on March 31, 1984.


CODIFICATION


Another section 1022 of Pub. L. 103–227 was classified to section 6055a of this title, prior to repeal by Pub. L. 107–279.

PART B—ENVIRONMENTAL TOBACCO SMOKE

CODIFICATION

This part was, in the original, part C of title X of Pub. L. 103–227 and has been designated part B of this subchapter for purposes of codification.

Similar provisions relating to environmental tobacco smoke are contained in part C (§7181 et seq.) of subchapter IV of chapter 70 of this title.

§ 6081. Short title

This part may be cited as the “Pro-Children Act of 1994”.


§ 6082. Definitions

As used in this part:

(1) Children

The term “children” means individuals who have not attained the age of 18.

(2) Children’s services

The term “children’s services” means the provision on a routine or regular basis of health, day care, education, or library services—

(A) that are funded, after March 31, 1994, directly by the Federal Government or through State or local governments, by Federal grant, loan, loan guarantee, or contract programs—

(1) administered by either the Secretary of Health and Human Services or the Secretary of Education (other than services provided and funded solely under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]; or

(ii) administered by the Secretary of Agriculture in the case of a clinic (as defined in 7 CFR 246.2) under section 17(b)(6) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(6)), or

(B) that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds, as determined by the appropriate Secretary in any enforcement action under this subchapter, except that nothing in clause (ii) of subparagraph (A) is intended to include facilities (other than clinics) where coupons are redeemed under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(3) Person

The term “person” means any State or local subdivision thereof, agency of such State or subdivision, corporation, or partnership that owns or operates or otherwise controls and provides children’s services or any individual who owns or operates or otherwise controls and provides such services.

(4) Indoor facility

The term “indoor facility” means a building that is enclosed.

1 See References in Text note below.

2 So in original. No subsec. (a) has been enacted.
(5) Secretary

The term “Secretary” means the Secretary of Health and Human Services.


References in Text


The Social Security Act, referred to in par. (2)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

This subchapter, referred to in par. (2)(B), was in the original “this title”, meaning title X of Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 265, which enacted this subchapter and section 1303 of this title, amended sections 1107, 1232h, 2421, 3381 to 3384, and 3386 of this title, sections 1632, 1633, and 1635 of Title 29, Labor, and section 11903a of Title 42, and enacted provisions set out as notes under section 2701 of this title and section 11901 of Title 42.

§ 6083. Nonsmoking policy for children’s services

(a) Prohibition

After March 31, 1994, no person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) Additional prohibition

After March 31, 1994, no person shall permit smoking within any indoor facility (or portion thereof) owned or leased or contracted for by such person for the provision of routine or regular kindergartens, elementary, or secondary education or library services to children.

(c) Federal agencies

(1) Kindergarten, elementary, or secondary education or library services

After March 31, 1994, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

(2) Health or day care or early childhood development services

After March 31, 1994, no Federal agency shall permit smoking within any indoor facility (or portion thereof) operated by such agency, directly or by contract, to provide routine or regular health or day care or early childhood development (Head Start) services to children, except that this paragraph shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

(d) Notice

The prohibitions in subsections (a) through (c) of this section shall be incorporated by publication of a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children’s services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after March 31, 1994, whichever occurs first.

(e) Special waiver

(1) In general

On receipt of an application, the head of the Federal agency may grant a special waiver to a person described in subsection (a) of this section who employs individuals who are members of a labor organization and provide children’s services pursuant to a collective bargaining agreement that—

(A) took effect before March 31, 1994; and

(B) includes provisions relating to smoking privileges that are in violation of the requirements of this section.

(2) Termination of waiver

A special waiver granted under this subsection shall terminate on the earlier of—

(A) the first expiration date (after March 31, 1994) of the collective bargaining agreement containing the provisions relating to smoking privileges; or

(B) the date that is 1 year after March 31, 1994.

(f) Civil penalties

(1) In general

Any failure to comply with a prohibition in this section shall be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty under this section, the total amount shall not exceed the amount of Federal funds received by such person for the fiscal year in which the continuing violations occurred. For the purpose of the prohibition in subsection (c) of this section, the term “person” shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

development (Head Start) services to children, except that this paragraph shall not apply to—
(2) Administrative proceeding

A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued, by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice thereof to such person by certified mail with return receipt and provide therein an opportunity to request in writing not later than 30 days after the date of receipt of such notice such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple form to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing which should be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

(3) Circumstances affecting penalty or order

In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) such other matters as justice may require.

(4) Modification

The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the United States or its agencies or instrumentalities owes to the person against whom the penalty is assessed.

(5) Petition for review

Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review thereof with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy thereof to the Secretary or the Secretary's designee. The petition shall be filed not later than 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) Failure to comply

If a person fails to pay an assessment of a civil penalty or comply with an order, after either or both are final under this section, or after a court under paragraph (5) has entered a final judgment in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at the then prevailing rates from the day either or both are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.


§ 6084. Preemption

Nothing in this part is intended to preempt any provision of law of a State or political subdivision of a State that is more restrictive than a provision of this part.


CHAPTER 69—SCHOOL-TO-WORK OPPORTUNITIES

§§ 6101 to 6104. Omitted

Codification

Sections 6101 to 6104 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.


Short Title

Section 1(a) of Pub. L. 103–239 provided that: ‘‘This Act [enacting this chapter, amending former sections 2394b and 2394c and section 441 of this title, former section 1699 of Title 29, Labor, and former sections 11449 and 11450 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 4401 and 4441 of this title] may be cited as the ‘School-to-Work Opportunities Act of 1994’.‘’

SUBCHAPTER I—SCHOOL-TO-WORK OPPORTUNITIES BASIC PROGRAM COMPONENTS

§§ 6111 to 6114. Omitted

Codification

Sections 6111 to 6114 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.


SUBCHAPTER II—SCHOOL-TO-WORK OPPORTUNITIES SYSTEM DEVELOPMENT AND IMPLEMENTATION GRANTS TO STATES

PART A—STATE DEVELOPMENT GRANTS

§§ 6121 to 6127. Omitted

CODIFICATION
Sections 6121 to 6127 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.

PART B—STATE IMPLEMENTATION GRANTS

§§ 6141 to 6148. Omitted

CODIFICATION
Sections 6141 to 6148 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.

PART C—DEVELOPMENT AND IMPLEMENTATION GRANTS FOR SCHOOL-TO-WORK PROGRAMS FOR INDIAN YOUTHS

§§ 6161, 6162. Omitted

CODIFICATION
Sections 6161 and 6162 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.

SUBCHAPTER III—FEDERAL IMPLEMENTATION GRANTS TO LOCAL PARTNERSHIPS

§§ 6171 to 6177. Omitted

CODIFICATION
Sections 6171 to 6177 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.

SUBCHAPTER IV—NATIONAL PROGRAMS

§§ 6191 to 6196. Omitted

CODIFICATION
Sections 6191 to 6196 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.
Section 6191, Pub. L. 103–239, title IV, §401, May 4, 1994, 108 Stat. 594, authorized projects to further the purposes of this chapter.

SUBCHAPTER V—WAIVER OF STATUTORY AND REGULATORY REQUIREMENTS

§§ 6211 to 6215. Omitted

CODIFICATION
Sections 6211 to 6215 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.
§§ 6231 to 6235

**SUBCHAPTER VI—GENERAL PROVISIONS**

**§§ 6231 to 6235. Omitted**

**Codification**

Sections 6231 to 6235 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.


§§ 6231 to 6235 were omitted pursuant to section 6251 of this title which provided that the authority under this chapter terminated on Oct. 1, 2001.

**SUBCHAPTER VII—TECHNICAL PROVISIONS**

**§ 6251. Omitted**

**Codification**


**CHAPTER 70—STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS**

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8061 to 8067. Repealed.

**SUBPART 2—CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION**

8071 to 8071j. Repealed.

**PART D—ARTS IN EDUCATION**

**SUBPART 1—ARTS EDUCATION**

8091. Repealed.

**SUBPART 2—CULTURAL PARTNERSHIPS FOR AT-RISK CHILDREN AND YOUTH**

8101 to 8105. Repealed.

**PART E—INEXPENSIVE BOOK DISTRIBUTION PROGRAM**

8131. Repealed.

**PART F—CIVIC EDUCATION**

8141 to 8143. Repealed.
(6) improving and strengthening accountability, teaching, and learning by using State assessment systems designed to ensure that students are meeting challenging State academic achievement and content standards and increasing achievement overall, but especially for the disadvantaged;

(7) providing greater decisionmaking authority and flexibility to schools and teachers in exchange for greater responsibility for student performance;

(8) providing children an enriched and accelerated educational program, including the use of schoolwide programs or additional services that increase the amount and quality of instructional time;

(9) promoting schoolwide reform and ensuring the availability of children to effective, scientifically based instructional strategies and challenging academic content;

(10) significantly elevating the quality of instruction by providing staff in participating schools with substantial opportunities for professional development;

(11) coordinating services under all parts of this subchapter with each other, with other educational services, and, to the extent feasible, with other agencies providing services to youth, children, and families; and

(12) affording parents substantial and meaningful opportunities to participate in the education of their children.


Prior Provisions


A prior section 1001 of Pub. L. 89–10 was classified to section 1701 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Effective Date


"(a) IN GENERAL.—Except as otherwise provided in this Act [see Tables for classification], this Act, and the amendments made by this Act, shall be effective upon the date of enactment of this Act [Jan. 8, 2002]."

"(b) NONCOMPETITIVE PROGRAMS.—With respect to noncompetitive programs under which any funds are allotted by the Secretary of Education to recipients on the basis of a formula, this Act, and the amendments made by this Act, shall take effect on July 1, 2002.

"(c) COMPETITIVE PROGRAMS.—With respect to programs that are conducted by the Secretary on a competitive basis, this Act, and the amendments made by this Act, shall take effect with respect to appropriations for use under those programs for fiscal year 2002.

"(d) IMPACT AID.—With respect to title VIII (Impact Aid) [probably means title VIII of Pub. L. 89–10, 20 U.S.C. section 701 et seq.], this Act, and the amendments made by this Act, shall take effect with respect to appropriations for use under that title for fiscal year 2002."

Short Title of 2002 Amendments

Pub. L. 106–554, §1(a)(4) [div. B, title XVI, §1601], Dec. 21, 2000, 114 Stat. 2763, 2763A–528, provided that: 'This title [amending sections 6302, 6311, 6312 to 6368, 6389b, 6394, 6651a, 6661, and 8801 of this title and sections 2025 and 2026 of Title 25, Indians, and enacting provisions set out as a note under section 6361 of this title] may be cited as the ‘Literacy Involves Families Together Act.’"

Short Title of 2000 Amendments

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1701], Dec. 21, 2000, 114 Stat. 2763, 2763A–335, provided that: ‘This title [enacting part F of subchapter III of this chapter, amending section 130 of this title and section 254 of Title 47, Telecommunications, and enacting provisions set out as notes under sections 7001 and 7134 of this title and sections 324, 659, and 902 of Title 47] may be cited as the ‘Children’s Internet Protection Act.’"

Short Title of 1998 Amendments

Pub. L. 106–396, §1 [§107], Nov. 21, 1998, 112 Stat. 3622, provided that: ‘This Act [enacting sections 8065a to 8065d of this title and amending sections 731, 7351, 8061 to 8065, 8066, 8067, and 8801 of this title] may be cited as the ‘Charter School Expansion Act of 1998.’"


Short Title of 1994 Amendments

Section 1 of Pub. L. 103–382 provided that: ‘This Act [enacting sections 8065a to 8065d of this title and amending sections 731, 7351, 8061 to 8065, 8066, 8067, and 8801 of this title] may be cited as the ‘Impact Aid Reauthorization Act of 2000.’"

Short Title of 1992 Amendment

Pub. L. 102–545, §1, Oct. 27, 1992, 106 Stat. 3586, provided that: ‘This Act [see Tables for classification] may be cited as the ‘Ready to Learn Act.’"

Short Title of 1991 Amendment


Short Title of 1990 Amendment

Pub. L. 101–600, §1, Nov. 16, 1990, 104 Stat. 3602, provided that: ‘This Act [see Tables for classification] may be cited as the ‘School Dropout Prevention and Basic Skills Improvement Act of 1990.’"

Short Title of 1989 Amendment


Short Title of 1988 Amendments

Pub. L. 100–569, title II, §201, Oct. 31, 1988, 102 Stat. 2862, provided that: ‘This title [see Tables for classi-
fication] may be cited as the ‘National Geography Studies Centers Act’.”

Pub. L. 100–297, §1(a), Apr. 28, 1988, 102 Stat. 130, provided:

“‘This Act [see Tables for classification] may be cited as the ‘Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988’.”

Short Title of 1984 Amendment


“That this Act [see Tables for classification] may be cited as the ‘Education Amendments of 1984’.”

Short Title of 1978 Amendment

Pub. L. 95–561, §1, Nov. 1, 1978, 92 Stat. 2143, provided:

“That this Act [see Tables for classification] may be cited as the ‘Education Amendments of 1978’.”

Short Title of 1977 Amendment

Pub. L. 95–112, §1, Sept. 24, 1977, 91 Stat. 911, provided:

“That this Act [see Tables for classification] may be cited as the ‘Education Amendments of 1977’.”

Short Title of 1974 Amendment

Pub. L. 93–380, §1, Aug. 21, 1974, 88 Stat. 484, provided:

“That this Act [see Tables for classification] may be cited as the ‘Education Amendments of 1974’.”

Short Title of 1970 Amendment


Short Title of 1968 Amendment

Pub. L. 90–247, §1, Jan. 2, 1968, 81 Stat. 783, provided:

“That this Act [see Tables for classification] may be cited as the ‘Elementary and Secondary Education Amendments of 1967’.”

Short Title of 1966 Amendment

Pub. L. 89–750, §1, Nov. 3, 1966, 80 Stat. 1191, provided:

“That this Act [see Tables for classification] may be cited as the ‘Elementary and Secondary Education Amendments of 1966’.”

Short Title


“That this Act (enacting this chapter) may be cited as the ‘Elementary and Secondary Education Act of 1965’.”


Continuation of Awards


“Notwithstanding any other provision of this Act [see Tables for classification] or the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), in the case of—

“(1) a person or entity that, prior to the date of enactment of this Act [Jan. 8, 2002], was awarded funds appropriated under the Department of Education Appropriations Act, 2001 (Pub. L. 106–554, §114(a)(1) [title III], see Tables for classification) for new teacher recruitment initiatives; or

“(2) a person or agency that, prior to the date of enactment of this Act [Jan. 8, 2002], was awarded a grant or contract under part K of title X of the Elementary and Secondary Education Act of 1965 (formerly 20 U.S.C. 6331 et seq.), the Secretary of Education shall continue to provide funds in accordance with the terms of such award until the date on which the award period terminates.”


“(a) IN GENERAL.—Notwithstanding any other provision of this Act [see Tables for classification] or the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), in the case of any agency or consortium that was awarded a grant under section 5111 of the Elementary and Secondary Education Act of 1965 (former) 20 U.S.C. 7211) or any person or agency that was awarded a contract or grant under part B, D, or E of title X of the Elementary and Secondary Education Act of 1965 (formerly 20 U.S.C. 6301 et seq., 8001 et seq., 8131 et seq.), prior to the date of enactment of this Act [Jan. 8, 2002], the Secretary of Education shall continue to provide funds in accordance with the terms of such award until the date on which the award period terminates under such terms.

“(b) SPECIAL RULE.—Notwithstanding any other provision of this Act, any person or agency that was awarded or entered into a grant, contract, or cooperative agreement under part B of title V of the Elementary and Secondary Education Act of 1965 (formerly 20 U.S.C. 7231 et seq.), prior to the date of enactment of this Act [Jan. 8, 2002] shall continue to receive funds in accordance with the terms of such grant, contract, or agreement until the date on which the grant, contract, or agreement period terminates under such terms.”

Pub. L. 107–110, title X, §1082, Jan. 8, 2002, 115 Stat. 2083, provided that: “Notwithstanding any other provision of this Act [see Tables for classification] or the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), in the case of a person or entity that was awarded a grant, relating to preparing tomorrow’s teachers to use technology, that was made pursuant to section 3122 of the Elementary and Secondary Education Act of 1965 (formerly 20 U.S.C. 6832) prior to the date of enactment of this Act [Jan. 8, 2002], the Secretary of Education shall continue to provide funds in accordance with the terms of such award until the date on which the award period terminates.”

Transition Provisions


“(a) MULTI-YEAR AWARDS.—Except as otherwise provided in this Act [see Tables for classification], the recipient of a multi-year award under the Elementary and Secondary Education Act of 1965 (Pub. L. 89–10, 20 U.S.C. 6301 et seq.), prior to general amendment by Pub. L. 107–110, as that Act was in effect prior to the date of enactment of this Act [Jan. 8, 2002], shall continue to receive funds in accordance with the terms of that award, except that no additional funds may be awarded after September 30, 2002.

“(b) PLANNING AND TRANSITION.—Notwithstanding any other provision of law, a recipient of funds under the Elementary and Secondary Education Act of 1965, as that Act was in effect prior to the date of enactment of this Act, may use funds available to the recipient under that predecessor authority to carry out necessary and reasonable planning and transition activities in order to ensure an orderly implementation of programs authorized by this Act, and the amendments made by this Act.

“(c) ORDERLY TRANSITION.—The Secretary shall take such steps as are necessary to provide for the orderly
transition to, and implementation of, programs authorized by this Act, and by the amendments made by this Act, from programs authorized by the Elementary and Secondary Education Act of 1965, as that Act was in effect prior to the date of enactment of this Act.

Pub. L. 103–382, §3(b), Oct. 20, 1994, 108 Stat. 3519, provided that: “Notwithstanding any other provision of law, a recipient of funds under the Elementary and Secondary Education Act of 1965 [Pub. L. 89–10, formerly chapter 47 (§2701 et seq.) of this title, prior to general amendment by Pub. L. 103–382, §101], as such Act was in effect on the day preceding the date of enactment of this Act [Oct. 20, 1994], may use funds available to such recipient under such predecessor authority to carry out necessary and reasonable planning and transition activities in order to implement programs authorized by this Act [see Tables for classification].”

BUDGET COMPLIANCE

Pub. L. 103–382, title V, §561, Oct. 20, 1994, 108 Stat. 4038, provided that: “Any authority or requirement to make funds available under this Act [see Tables for classification] shall be effective only to the extent provided in appropriations Acts.”

Pub. L. 100–297, title VI, §6102, Apr. 28, 1988, 102 Stat. 431, provided that: “Any new spending authority (within the meaning of section 6101 of the Congressional Budget Act of 1974 [2 U.S.C. 651]) which is provided under this Act [see Tables for classification] shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriations Acts.”

EX. ORD. NO. 13153. ACTIONS TO IMPROVE LOW-PERFORMING SCHOOLS

Ex. Ord. No. 13153, May 3, 2000, 65 F.R. 26475, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Elementary and Secondary Education Act of 1965 (ESEA) [20 U.S.C. 6301 et seq.], the Department of Education Appropriations Act, 2000 (as contained in Public Law 106–113) [Pub. L. 106–113, div. B, §1000(a)(4) (title III), Nov. 29, 1999, 113 Stat. 1535, 1561A–242, see Tables for classification], and in order to take actions to improve low-performing schools, it is hereby ordered as follows:

SECTION 1. Policy. Since 1993, this Administration has sought to raise standards for students and to increase accountability in public education while investing more resources in elementary and secondary schools. While much has been accomplished—there has been progress in math and reading achievement, particularly for low-achieving students and students in our highest poverty schools—much more can be done, especially for low-performing schools.

A. 2. Technical Assistance and Capacity Building. (a) The Secretary of Education (or his designee) shall work with State and local educational agencies (“LEAs”) to develop and implement a comprehensive strategy for providing technical assistance and other assistance to States and LEAs to strengthen their capacity to improve the performance of schools identified as low performing. This comprehensive strategy shall include a number of steps, such as:

(1) providing States, school districts, and schools receiving funds from the school improvement fund established by Public Law 106–113, as well as other districts and schools identified for school improvement or corrective action under Title I of the ESEA [20 U.S.C. 6301 et seq.], with access to the latest research and information on best practices, including research on instruction and educator professional development, and with the opportunity to learn from exemplary schools and exemplary State and local intervention strategies and from each other, in order to improve achievement for all students in the low-performing schools;

(2) determining effective ways of providing low-performing schools with access to resources from other Department of Education programs, such as funds from the Comprehensive School Reform Demonstration Program, the Reading Excellence Act [Pub. L. 105–277, div. A, §3101 (title VIII), Oct. 21, 1998, 112 Stat. 2681–337, 2681–391, see Tables for classification], the Eisenhower Professional Development Program, the Class Size Reduction Program, and the 21st Century Community Learning Centers Program, and to make effective use of these funds and Title I funds;

(3) providing States and LEAs with information on effective strategies to improve the quality of the teaching force, including strategies for identifying and retaining highly qualified teachers in high-poverty schools, and implementing research-based professional development programs aligned with challenging standards;

(4) helping States and school districts build partnerships with technical assistance providers, including, but not limited to, federally funded laboratories and centers, foundations, businesses, community-based organizations, institutions of higher education, reform model providers, and other organizations that can help local schools improve;

(5) identifying previously low-performing schools that have made significant achievement gains, and States and school districts that have been effective in improving the achievement of all students in low-performing schools, which can serve as models and resources;

(6) providing assistance and information on how to effectively involve parents in the school-improvement process, including effectively involving and informing parents at the beginning of the school year about improvement goals for their school as well as the goals for their own children, and reporting on progress made in achieving these goals;

(7) providing States and LEAs with information on effective approaches to school accountability, including the effectiveness of such strategies as school restructuring, peer review teams, and financial rewards and incentives;

(8) providing LEAs with information and assistance on the design and implementation of approaches to choice among public schools that create incentives for improvement throughout the local educational agency, especially in the lowest-performing schools, and that maximize the opportunity of students in low-performing schools to attend a higher-performing public school;

(9) exploring the use of well-trained tutors to raise student achievement through initiatives such as “America Reads,” “America Counts,” and other work-study opportunities to help low-performing schools;

(10) using a full range of strategies for disseminating information about effective practices, including interactive electronic communications;

(11) working with the Department of Interior, Bureau of Indian Affairs (BIA), to provide technical assistance to BIA-funded low-performing schools; and

(12) taking other steps that can help improve the quality of teaching and instruction in low-performing schools.

(b) The Secretary shall, to the extent permitted by law, take whatever steps the Secretary finds necessary and appropriate to redirect the resources and technical assistance capability of the Department of Education (“Department”) to assist States and localities in improving low-performing schools, and to ensure that the dissemination of research to help turn around low-performing schools is a priority of the Department.

SEC. 3. SCHOOL IMPROVEMENT REPORT. To monitor the progress of LEAs and schools in turning around failing schools, including those now receiving grants from the School Improvement Fund, the Secretary shall prepare an annual School Improvement Report, to be published in September of each year, beginning in 2000. The report shall:

(a) describe trends in the numbers of LEAs and schools identified as needing improvement and subse-
quent changes in the academic performance of their students;
(b) identify best practices and significant research findings that can be used to help turn around low-performing LEAs and schools; and
(c) document ongoing efforts as a result of this order and other Federal efforts to assist States and local school districts in intervening in low-performing schools, including improving teacher quality. This report shall be publicly accessible.

Sec. 4. Compliance Monitoring System. Consistent with the implementation of the School Improvement Fund, the Secretary shall strengthen the Department's monitoring of ESEA requirements for identifying and turning around low-performing schools, as well as any new requirements established for the School Improvement Fund by Public Law 106–113. The Secretary shall give priority to provisions that have the greatest bearing on identifying and turning around low-performing schools, including sections 1116 and 1117 of the ESEA [20 U.S.C. 6316, 6317], and to developing an ongoing, focused, and systematic process for monitoring these provisions. This improved compliance monitoring shall be designed to:
(a) ensure that States and LEAs comply with ESEA requirements;
(b) assist States and LEAs in implementing effective procedures and strategies that reflect the best research available, as well as the experience of successful schools, school districts, and States as they address similar objectives and challenges; and
(c) assist States, LEAs, and schools in making the most effective use of available Federal resources.

Sec. 5. Consultation. The Secretary shall, where appropriate, consult with executive agencies, State and local education officials, educators, community-based groups, and others in carrying out this Executive order.

Judicial Review
Consultation

D. The Secretary shall, where appropriate, consult with executive agencies, State and local education officials, educators, community-based groups, and others in carrying out this Executive order.

Pub. L. 100–297, title VI, § 6301, Apr. 28, 1988, 102 Stat. 431, provided that: “Except as otherwise provided, for the purpose of this Act [see Tables for classification] the terms used in this Act have the meanings provided under section 1471 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 [formerly 20 U.S.C. 2891].”

§ 6302. Authorization of appropriations
(a) Local educational agency grants
For the purpose of carrying out part A of this subchapter, there are authorized to be appropriated—
(1) $13,500,000,000 for fiscal year 2002;
(2) $16,000,000,000 for fiscal year 2003;
(3) $18,500,000,000 for fiscal year 2004;
(4) $20,500,000,000 for fiscal year 2005;
(5) $22,750,000,000 for fiscal year 2006; and
(6) $25,000,000,000 for fiscal year 2007.

(b) Reading First
(1) Reading First
For the purpose of carrying out subpart 1 of part B of this subchapter, there are authorized to be appropriated $900,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(2) Early Reading First
For the purpose of carrying out subpart 2 of part B of this subchapter, there are authorized to be appropriated $75,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(3) Even Start
For the purpose of carrying out subpart 3 of part B of this subchapter, there are authorized to be appropriated $260,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(4) Improving literacy through school libraries
For the purpose of carrying out subpart 4 of part B of this subchapter, there are authorized to be appropriated $250,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(c) Education of migratory children
For the purpose of carrying out part C of this subchapter, there are authorized to be appropriated $110,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(d) Prevention and intervention programs for youth who are neglected, delinquent, or at risk
For the purpose of carrying out part D of this subchapter, there are authorized to be appropriated $50,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(e) Federal activities
(1) Sections 6491 and 6492
For the purpose of carrying out sections 6491 and 6492 of this title, there are authorized to be appropriated such sums as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.

(2) Section 6494
(A) In general
For the purpose of carrying out section 6494 of this title, there are authorized to be appropriated such sums as may be necessary for fiscal year 2002 and for each of the 5 succeeding fiscal years.

(B) Special rule
Of the funds appropriated pursuant to subparagraph (A), not more than 30 percent may be used for teachers associated with students participating in the programs described in subsections (a)(1), (b)(1), and (c)(1) of this section.

(f) Comprehensive school reform
For the purpose of carrying out part F of this subchapter, there are authorized to be appropriated such sums as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.

(g) Advanced placement
For the purposes of carrying out part G of this subchapter, there are authorized to be appropriated such sums for fiscal year 2002 and each 5 succeeding fiscal year.

(h) School dropout prevention
For the purpose of carrying out part H of this subchapter, there are authorized to be appro-
printed $125,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years, of which—

(1) up to 10 percent shall be available to carry out subsection 1 of part H of this subchapter for each fiscal year; and

(2) the remainder shall be available to carry out subsection 2 of part H of this subchapter for each fiscal year.

(i) School improvement

For the purpose of carrying out section 6303(g) of this title, there are authorized to be appropriated $500,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.


PRIOR PROVISIONS


A prior section 1002 of Pub. L. 89–10 was renumbered section 9002 and was classified to section 3382 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 6303. School improvement

(a) State reservations

Each State shall reserve 2 percent of the amount the State receives under subpart 2 of part A of this subchapter for fiscal years 2002 and 2003, and 4 percent of the amount received under such subpart for fiscal years 2004 through 2007, to carry out subsection (b) of this section and to carry out the State’s responsibilities under sections 6316 and 6317 of this title, including carrying out the State educational agency’s statewide system of technical assistance and support for local educational agencies.

(b) Uses

Of the amount reserved under subsection (a) of this section for any fiscal year, the State educational agency—

(1) shall allocate not less than 95 percent of that amount directly to local educational agencies for schools identified for school improvement, corrective action, and restructuring, for activities under section 6316(b) of this title; or

(2) may, with the approval of the local educational agency, directly provide for these activities or arrange for their provision through other entities such as school support teams or educational service agencies.

(c) Priority

The State educational agency, in allocating funds to local educational agencies under this section, shall give priority to local educational agencies that—

(1) serve the lowest-achieving schools; and

(2) demonstrate the greatest need for such funds; and

(3) demonstrate the strongest commitment to ensuring that such funds are used to enable the lowest-achieving schools to meet the progress goals in school improvement plans under section 6316(b)(3)(A)(V) of this title.

(d) Unused funds

If, after consultation with local educational agencies in the State, the State educational agency determines that the amount of funds reserved to carry out subsection (b) of this section is greater than the amount needed to provide the assistance described in that subsection, the State educational agency shall allocate the excess amount to local educational agencies in accordance with—

(1) the relative allocations the State educational agency made to those agencies for that fiscal year under subpart 2 of part A of this subchapter; or

(2) section 6338(c) of this title.

(e) Special rule

Notwithstanding any other provision of this section, the amount of funds reserved by the State educational agency under subsection (a) of this section in any fiscal year shall not decrease the amount of funds each local educational agency receives under subpart 21 below the amount received by such local educational agency under such subpart for the preceding fiscal year.

(f) Reporting

The State educational agency shall make publicly available a list of those schools that have received funds or services pursuant to sub-section (b) of this section and the percentage of students from each school from families with incomes below the poverty line.

(g) Assistance for local school improvement

(1) Program authorized

The Secretary shall award grants to States to enable the States to provide subgrants to local educational agencies for the purpose of providing assistance for school improvement consistent with section 6316 of this title.

(2) State allotments

Such grants shall be allotted among States, the Bureau of Indian Affairs, and the outlying areas, in proportion to the funds received by the States, the Bureau of Indian Affairs, and the outlying areas, respectively, for the fiscal year under parts A, C, and D of this subchapter. The Secretary shall expeditiously allot a portion of such funds to States for the purpose of assisting local educational agencies and schools that were in school improvement status on the date preceding January 8, 2002.

(3) Reallocations

If a State does not receive funds under this sub-section, the Secretary shall reallocate such funds to other States in the same proportion funds are allocated under paragraph (2).

(4) State applications

Each State educational agency that desires to receive funds under this subsection shall submit an application to the Secretary at such time, and containing such information, as the

1 So in original. Probably should be “subpart 2 of part A of this subchapter”.

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Secretary shall reasonably require, except that such requirement shall be waived if a State educational agency submitted such information as part of its State plan under this part. Each State application shall describe how the State educational agency will allocate such funds in order to assist the State educational agency and local educational agencies in complying with school improvement, corrective action, and restructuring requirements of section 6316 of this title.

(5) Local educational agency grants

A grant to a local educational agency under this subsection shall be—

(A) of sufficient size and scope to support the activities required under sections 6316 and 6317 of this title, but not less than $50,000 and not more than $500,000 for each participating school;

(B) integrated with other funds awarded by the State under this chapter; and

(C) renewable for two additional 1-year periods if schools are meeting the goals in their school improvement plans developed under section 6316 of this title.

(6) Priority

The State, in awarding such grants, shall give priority to local educational agencies with the lowest-achieving schools that demonstrate—

(A) the greatest need for such funds; and

(B) the strongest commitment to ensuring that such funds are used to provide adequate resources to enable the lowest-achieving schools to meet the goals under school and local educational agency improvement, corrective action, and restructuring plans under section 6316 of this title.

(7) Allocation

A State educational agency that receives a grant under this subsection shall allocate at least 95 percent of the grant funds directly to local educational agencies for schools identified for school improvement, corrective action, or restructuring to carry out activities under section 6316(b) of this title, or may, with the approval of the local educational agency, directly provide for these activities or arrange for their provision through other entities such as school support teams or educational service agencies.

(8) Administrative costs

A State educational agency that receives a grant award under this subsection may reserve not more than 5 percent of such grant funds for administration, evaluation, and technical assistance expenses.

(9) Local awards

Each local educational agency that applies for assistance under this subsection shall describe how it will provide the lowest-achieving schools the resources necessary to meet goals under school and local educational agency improvement, corrective action, and restructuring plans under section 6316 of this title.

§ 6304. State administration

(a) In general

Except as provided in subsection (b) of this section, to carry out administrative duties assigned under parts A, C, and D of this subchapter, each State may reserve the greater of—

(1) 1 percent of the amounts received under such parts; or

(2) $400,000 ($50,000 in the case of each outlying area).

(b) Exception

If the sum of the amounts appropriated for parts A, C, and D of this subchapter is equal to or greater than $14,000,000,000, then the reservation described in subsection (a)(1) of this section shall not exceed 1 percent of the amount the State would receive, if $14,000,000,000 were allocated among the States for parts A, C, and D of this subchapter.

§ 6311. State plans

(a) Plans required

(1) In general

For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan, developed by the State educational agency, in consultation with local educational agencies, teachers, principals, pupil services personnel, administrators (including administrators of programs described in other parts of this subchapter), other staff, and parents, that satisfies the requirements of this section and that is coordinated with other programs under this chapter, the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.], the Head Start Act [42 U.S.C. 9831 et seq.], the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.], and the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.].

(2) Consolidated plan

A State plan submitted under paragraph (1) may be submitted as part of a consolidated plan under section 7842 of this title.
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(b) Academic standards, academic assessments, and accountability

(1) Challenging academic standards

(A) In general

Each State plan shall demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.

(B) Same standards

The academic standards required by subparagraph (A) shall be the same academic standards that the State applies to all schools and children in the State.

(C) Subjects

The State shall have such academic standards for all public elementary school and secondary school children, including children served under this part, in subjects determined by the State, but including at least mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science, which shall include the same knowledge, skills, and levels of achievement expected of all children.

(D) Challenging academic standards

Standards under this paragraph shall include—

(i) challenging academic content standards in academic subjects that—
   (I) specify what children are expected to know and be able to do;
   (II) contain coherent and rigorous content; and
   (III) encourage the teaching of advanced skills; and

(ii) challenging student academic achievement standards that—
   (I) are aligned with the State’s academic content standards;
   (II) describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the State academic content standards; and
   (III) describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving children toward mastering the proficient and advanced levels of achievement.

(E) Information

For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed, such academic standards, the State plan shall describe a strategy for ensuring that students are taught the same knowledge and skills in such subjects and held to the same expectations as are all children.

(F) Existing standards

Nothing in this part shall prohibit a State from revising, consistent with this section, any standard adopted under this part before or after January 8, 2002.

(2) Accountability

(A) In general

Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph. Each State accountability system shall—

(i) be based on the academic standards and academic assessments adopted under paragraphs (1) and (3), and other academic indicators consistent with subparagraph (C)(vi) and (vii), and shall take into account the achievement of all public elementary school and secondary school students;

(ii) be the same accountability system the State uses for all public elementary schools and secondary schools or all local educational agencies in the State, except that public elementary schools, secondary schools, and local educational agencies not participating under this part are not subject to the requirements of section 6316 of this title; and

(iii) include sanctions and rewards, such as bonuses and recognition, the State will use to hold local educational agencies and public elementary schools and secondary schools accountable for student achievement and for ensuring that they make adequate yearly progress in accordance with the State’s definition under subparagraphs (B) and (C).

(B) Adequate yearly progress

Each State plan shall demonstrate, based on academic assessments described in paragraph (3), and in accordance with this paragraph, what constitutes adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, toward enabling all public elementary school and secondary school students to meet the State’s student academic achievement standards, while working toward the goal of narrowing the achievement gaps in the State, local educational agencies, and schools.

(C) Definition

“ Adequate yearly progress” shall be defined by the State in a manner that—

(i) applies the same high standards of academic achievement to all public elementary school and secondary school students in the State;

(ii) is statistically valid and reliable;

(iii) results in continuous and substantial academic improvement for all students;

(iv) measures the progress of public elementary schools, secondary schools and local educational agencies and the State based primarily on the academic assessments described in paragraph (3);
(v) includes separate measurable annual objectives for continuous and substantial improvement for each of the following:

(I) The achievement of all public elementary school and secondary school students,

(II) The achievement of—

(aa) economically disadvantaged students;

(bb) students from major racial and ethnic groups;

(cc) students with disabilities; and

(dd) students with limited English proficiency;

except that disaggregation of data under subclause (II) shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

(vi) in accordance with subparagraph (D), includes graduation rates for public secondary school students (defined as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years) and at least one other academic indicator, as determined by the State for all public elementary school students; and

(vii) in accordance with subparagraph (D), at the State’s discretion, may also include other academic indicators, as determined by the State for all public school students, measured separately for each group described in clause (v), such as achievement on additional State or locally administered assessments, decreases in grade-to-grade retention rates, attendance rates, and changes in the percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(D) Requirements for other indicators

In carrying out subparagraph (C)(vi) and (vii), the State—

(i) shall ensure that the indicators described in those provisions are valid and reliable, and are consistent with relevant, nationally recognized professional and technical standards, if any; and

(ii) except as provided in subparagraph (I)(i), may not use those indicators to reduce the number of, or change, the schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 6316 of this title if those additional indicators were not used, but may use them to identify additional schools for school improvement or in need of corrective action or restructuring.

(E) Starting point

Each State, using data for the 2001–2002 school year, shall establish the starting point for measuring, under subparagraphs (G) and (H), the percentage of students meeting or exceeding the State’s proficient level of academic achievement on the State assessments under paragraph (3) and pursuant to the timeline described in subparagraph (F). The starting point shall be, at a minimum, based on the higher of the percentage of students at the proficient level who are in—

(i) the State’s lowest achieving group of students described in subparagraph (C)(v)(II); or

(ii) the school at the 20th percentile in the State, based on enrollment, among all schools ranked by the percentage of students at the proficient level.

(F) Timeline

Each State shall establish a timeline for adequate yearly progress. The timeline shall ensure that not later than 12 years after the end of the 2001–2002 school year, all students in each group described in subparagraph (C)(v) will meet or exceed the State’s proficient level of academic achievement on the State assessments under paragraph (3).

(G) Measurable objectives

Each State shall establish statewide annual measurable objectives, pursuant to subparagraph (C)(v), for meeting the requirements of this paragraph, and which—

(i) shall be set separately for the assessments of mathematics and reading or language arts under subsection (a)(3) of this section;

(ii) shall be the same for all schools and local educational agencies in the State;

(iii) shall identify a single minimum percentage of students who are required to meet or exceed the proficient level on the academic assessments that applies separately to each group of students described in subparagraph (C)(v);

(iv) shall ensure that all students will meet or exceed the State’s proficient level of academic achievement on the State assessments within the State’s timeline under subparagraph (F); and

(v) may be the same for more than 1 year, subject to the requirements of subparagraph (H).

(H) Intermediate goals for annual yearly progress

Each State shall establish intermediate goals for meeting the requirements, including the measurable objectives in subparagraph (G), of this paragraph and that shall—

(i) increase in equal increments over the period covered by the State’s timeline under subparagraph (F);

(ii) provide for the first increase to occur in not more than 2 years; and

(iii) provide for each following increase to occur in not more than 3 years.

(I) Annual improvement for schools

Each year, for a school to make adequate yearly progress under this paragraph—

(i) each group of students described in subparagraph (C)(v) must meet or exceed the objectives set by the State under subparagraph (G), except that if any group de-
(3) Academic assessments

(A) In general

Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State’s challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science assessments until the beginning of the 2007–2008 school year.

(B) Use of assessments

Each State educational agency may incorporate the data from the assessments under this paragraph into a State-developed longitudinal data system that links student test scores, length of enrollment, and graduation records over time.

(C) Requirements

Such assessments shall—

(i) be the same academic assessments used to measure the achievement of all children;

(ii) be aligned with the State’s challenging academic content and student academic achievement standards, and provide coherent information about student attainment of such standards;

(iii) be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards;

(iv) be used only if the State educational agency provides to the Secretary evidence from the test publisher or other relevant sources that the assessments used are of adequate technical quality for each purpose required under this chapter and are consistent with the requirements of this section, and such evidence is made public by the Secretary upon request;

(v) (I) except as otherwise provided for grades 3 through 8 under clause vii, measure the proficiency of students in, at a minimum, mathematics and reading or language arts, and be administered not less than once during—

(aa) grades 3 through 5;

(bb) grades 6 through 9; and

(cc) grades 10 through 12;

(II) beginning not later than school year 2007–2008, measure the proficiency of all students in science and be administered not less than one time during—

(aa) grades 3 through 5;

(bb) grades 6 through 9; and

(cc) grades 10 through 12;

(vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding;

(vii) beginning not later than school year 2005–2006, measure the achievement of students against the challenging State academic content and student academic achievement standards in each of grades 3
through 8 in, at a minimum, mathematics, and reading or language arts, except that the Secretary may provide the State 1 additional year if the State demonstrates that exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, prevented full implementation of the academic assessments by that deadline and that the State will complete implementation within the additional 1-year period; (viii) at the discretion of the State, measure the proficiency of students in academic subjects not described in clauses (v), (vi), (vii) in which the State has adopted challenging academic content and academic achievement standards; (ix) provide for—
(I) the participation in such assessments of all students; (II) the reasonable adaptations and accommodations for students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act [20 U.S.C. 1401(3)]) necessary to measure the academic achievement of such students relative to State academic content and State student academic achievement standards; and (III) the inclusion of limited English proficient students, who shall be assessed in a valid and reliable manner and provided reasonable accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency as determined under paragraph (7); (x) notwithstanding subclause (III), the academic assessment (using tests written in English) of reading or language arts of any student who has attended school in the United States (not including Puerto Rico) for three or more consecutive school years, except that if the local educational agency determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what such student knows and can do, the local educational agency may make a determination to assess such student in the appropriate language other than English for a period that does not exceed two additional consecutive years, provided that such student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what such student knows and can do on tests (written in English) of reading or language arts; (xi) include students who have attended schools in a local educational agency for a full academic year but have not attended a single school for a full academic year, except that the performance of students who have attended more than 1 school in the local educational agency in any academic year shall be used only in determining the progress of the local educational agency; (xii) produce individual student interpretive, descriptive, and diagnostic reports, consistent with clause (iii) that allow parents, teachers, and principals to understand and address the specific academic needs of students, and include information regarding achievement on academic assessments aligned with State academic achievement standards, and that are provided to parents, teachers, and principals, as soon as is practicably possible after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand; (xiii) enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to non-disabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged, except that, in the case of a local educational agency or a school, such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student; (xiv) be consistent with widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, and be tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information; and (xv) enable itemized score analyses to be produced and reported, consistent with clause (iii), to local educational agencies and schools, so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students as indicated by the students' achievement on assessment items.

(D) Deferral
A State may defer the commencement, or suspend the administration, but not cease the development of the assessments described in this paragraph, that were not required prior to January 8, 2002, for 1 year for each year for which the amount appropriated for grants under section 7301(b)(2) of this title is less than—
(i) $370,000,000 for fiscal year 2002;
(ii) $380,000,000 for fiscal year 2003;
(iii) $390,000,000 for fiscal year 2004; and
(iv) $400,000,000 for fiscal years 2005 through 2007.

(4) Special rule
Academic assessment measures in addition to those in paragraph (3) that do not meet the requirements of such paragraph may be included in the assessment under paragraph (3)
as additional measures, but may not be used in lieu of the academic assessments required under paragraph (3). Such additional assessment measures may not be used to reduce the number of or change, the schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 6316 of this title if such additional indicators were not used, but may be used to identify additional schools for school improvement or in need of corrective action or restructuring except as provided in paragraph (2)(I)(i).

(5) State authority

If a State educational agency provides evidence, which is satisfactory to the Secretary, that neither the State educational agency nor any other State government official, agency, or entity has sufficient authority, under State law, to adopt curriculum content and student academic achievement standards, and academic assessments aligned with such academic standards, which will be applicable to all students enrolled in the State's public elementary schools and secondary schools, then the State educational agency may meet the requirements of this subsection by—

(A) adopting academic standards and academic assessments that meet the requirements of this subsection, on a statewide basis, and limiting their applicability to students served under this part; or

(B) adopting and implementing policies that ensure that each local educational agency in the State that receives grants under this part will adopt curriculum content and student academic achievement standards, and academic assessments aligned with such standards, which—

(i) meet all of the criteria in this subsection and any regulations regarding such standards and assessments that the Secretary may publish; and

(ii) are applicable to all students served by each such local educational agency.

(6) Language assessments

Each State plan shall identify the languages other than English that are present in the participating student population and indicate the languages for which yearly student academic assessments are not available and are needed. The State shall make every effort to develop such assessments and may request assistance from the Secretary if linguistically accessible academic assessment measures are needed. Upon request, the Secretary shall assist with the identification of appropriate academic assessment measures in the needed languages, but shall not mandate a specific academic assessment or mode of instruction.

(7) Academic assessments of English language proficiency

Each State plan shall demonstrate that local educational agencies in the State will, beginning not later than school year 2002–2003, provide for an annual assessment of English proficiency (measuring students' oral language, reading, and writing skills in English) of all students with limited English proficiency in the schools served by the State educational agency, except that the Secretary may provide the State 1 additional year if the State demonstrates that exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, prevented full implementation of this paragraph by that deadline and that the State will complete implementation within the additional 1-year period.

(8) Requirement

Each State plan shall describe—

(A) how the State educational agency will assist each local educational agency and school affected by the State plan to develop the capacity to comply with each of the requirements of sections 6312(c)(1)(D), 6314(b), and 6315(c) of this title that is applicable to such agency or school;

(B) how the State educational agency will assist each local educational agency and school affected by the State plan to provide additional educational assistance to individual students assessed as needing help to achieve the State's challenging academic achievement standards;

(C) the specific steps the State educational agency will take to ensure that both schoolwide programs and targeted assistance schools provide instruction by highly qualified instructional staff as required by sections 6314(b)(1)(C) and 6315(c)(1)(E) of this title, including steps that the State educational agency will take to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and the measures that the State educational agency will use to evaluate and publicly report the progress of the State educational agency with respect to such steps;

(D) an assurance that the State educational agency will assist local educational agencies in developing or identifying high-quality effective curricula aligned with State academic achievement standards and how the State educational agency will disseminate such curricula to each local educational agency and school within the State; and

(E) such other factors the State educational agency determines appropriate to provide students an opportunity to achieve the knowledge and skills described in the challenging academic content standards adopted by the State.

(9) Factors affecting student achievement

Each State plan shall include an assurance that the State educational agency will coordinate and collaborate, to the extent feasible and necessary as determined by the State educational agency, with agencies providing services to children, youth, and families, with respect to local educational agencies within the State that are identified under section 6316 of this title and that request assistance with addressing major factors that have significantly affected the academic achievement of students in the local educational agency or schools served by such agency.
(10) Use of academic assessment results to improve student academic achievement

Each State plan shall describe how the State educational agency will ensure that the results of the State assessments described in paragraph (3)—

(A) will be promptly provided to local educational agencies, schools, and teachers in a manner that is clear and easy to understand, but not later than before the beginning of the next school year; and

(B) be used by those local educational agencies, schools, and teachers to improve the educational achievement of individual students.

(c) Other provisions to support teaching and learning

Each State plan shall contain assurances that—

(1) the State educational agency will meet the requirements of subsection (h)(1) of this section and, beginning with the 2002–2003 school year, will produce the annual State report cards described in such subsection, except that the Secretary may provide the State educational agency 1 additional year if the State educational agency demonstrates that exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, prevented full implementation of this paragraph by that deadline and that the State will complete implementation within the additional 1-year period;

(2) the State will, beginning in school year 2002–2003, participate in biennial State academic assessments of 4th and 8th grade reading and mathematics under the National Assessment of Educational Progress carried out under section 9622(b)(2) of this title if the Secretary pays the costs of administering such assessments;

(3) the State educational agency, in consultation with the Governor, will include, as a component of the State plan, a plan to carry out the responsibilities of the State under sections 6316 and 6317 of this title, including carrying out the State educational agency’s statewide system of technical assistance and support for local educational agencies;

(4) the State educational agency will work with other agencies, including educational service agencies or other local consortia, and institutions to provide technical assistance to local educational agencies and schools, including technical assistance in providing professional development under section 6319 of this title, technical assistance under section 6317 of this title, and technical assistance relating to parental involvement under section 6318 of this title;

(5)(A) where educational service agencies exist, the State educational agency will consider providing professional development and technical assistance through such agencies; and

(B) where educational service agencies do not exist, the State educational agency will consider providing professional development and technical assistance through other cooperative agreements such as through a consortium of local educational agencies;

(6) the State educational agency will notify local educational agencies and the public of the content and student academic achievement standards and academic assessments developed under this section, and of the authority to operate schoolwide programs, and will fulfill the State educational agency’s responsibilities regarding local educational agency improvement and school improvement under section 6316 of this title, including such corrective actions as are necessary;

(7) the State educational agency will provide the least restrictive and burdensome regulations for local educational agencies and individual schools participating in a program assisted under this part;

(8) the State educational agency will inform the Secretary and the public of how Federal laws, if at all, hinder the ability of States to hold local educational agencies and schools accountable for student academic achievement;

(9) the State educational agency will encourage schools to consolidate funds from other Federal, State, and local sources for schoolwide reform in schoolwide programs under section 6314 of this title;

(10) the State educational agency will modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate funds from other Federal, State, and local sources for schoolwide programs under section 6314 of this title;

(11) the State educational agency has involved the committee of practitioners established under section 6753(b) of this title in developing the plan and monitoring its implementation;

(12) the State educational agency will inform local educational agencies in the State of the local educational agency’s authority to transfer funds under subchapter VI of this chapter, to obtain waivers under part D of subchapter IX of this chapter, and, if the State is an Ed-Flex Partnership State, to obtain waivers under the Education Flexibility Partnership Act of 1999;

(13) the State educational agency will coordinate activities funded under this part with other Federal activities as appropriate; and

(14) the State educational agency will encourage local educational agencies and individual schools participating in a program assisted under this part to offer family literacy services (using funds under this part), if the agency or school determines that a substantial number of students served under this part by the agency or school have parents who do not have a secondary school diploma or its recognized equivalent or who have low levels of literacy.

(d) Parental involvement

Each State plan shall describe how the State educational agency will support the collection and dissemination to local educational agencies and schools of effective parental involvement practices. Such practices shall—

(1) be based on the most current research that meets the highest professional and tech-
tical standards, on effective parental involvement that fosters achievement to high standards for all children; and
(2) be geared toward lowering barriers to greater participation by parents in school planning, review, and improvement experienced.

(e) Peer review and Secretarial approval

(1) Secretarial duties
The Secretary shall—
(A) establish a peer-review process to assist in the review of State plans;
(B) appoint individuals to the peer-review process who are representative of parents, teachers, State educational agencies, and local educational agencies, and who are familiar with educational standards, assessments, accountability, the needs of low-performing schools, and other educational needs of students;
(C) approve a State plan within 120 days of its submission unless the Secretary determines that the plan does not meet the requirements of this section;
(D) if the Secretary determines that the State plan does not meet the requirements of subsection (a), (b), or (c) of this section, immediately notify the State of such determination and the reasons for such determination;
(E) not decline to approve a State’s plan before—
(i) offering the State an opportunity to revise its plan;
(ii) providing technical assistance in order to assist the State to meet the requirements of subsections (a), (b), and (c) of this section; and
(iii) providing a hearing; and
(F) have the authority to disapprove a State plan for not meeting the requirements of this part, but shall not have the authority to require a State, as a condition of approval of the State plan, to include in, or delete from, such plan one or more specific elements of the State’s academic content standards or to use specific academic assessment instruments or items.

(2) State revisions
A State plan shall be revised by the State educational agency if it is necessary to satisfy the requirements of this section.

(f) Duration of the plan

(1) In general
Each State plan shall—
(A) remain in effect for the duration of the State’s participation under this part; and
(B) be periodically reviewed and revised as necessary by the State educational agency to reflect changes in the State’s strategies and programs under this part.

(2) Additional information
If significant changes are made to a State’s plan, such as the adoption of new State academic content standards and State student achievement standards, new academic assessments, or a new definition of adequate yearly progress, such information shall be submitted to the Secretary.

(g) Penalties

(1) Failure to meet deadlines enacted in 1994
(A) In general
If a State fails to meet the deadlines established by the Improving America’s Schools Act of 1994 (or under any waiver granted by the Secretary or under any compliance agreement with the Secretary) for demonstrating that the State has in place challenging academic content standards and student achievement standards, and a system for measuring and monitoring adequate yearly progress, the Secretary shall withhold 25 percent of the funds that would otherwise be available to the State for State administration and activities under this part in each year until the Secretary determines that the State meets those requirements.

(B) No extension
Notwithstanding any other provision of law, 90 days after January 8, 2002, the Secretary shall not grant any additional waivers of, or enter into any additional compliance agreements to extend, the deadlines described in subparagraph (A) for any State.

(2) Failure to meet requirements enacted in 2001
If a State fails to meet any of the requirements of this section, other than the requirements described in paragraph (1), then the Secretary may withhold funds for State administration under this part until the Secretary determines that the State has fulfilled those requirements.

(h) Reports

(1) Annual State report card
(A) In general
Not later than the beginning of the 2002–2003 school year, unless the State has received a 1-year extension pursuant to subsection (c)(1) of this section, a State that receives assistance under this part shall prepare and disseminate an annual State report card.

(B) Implementation
The State report card shall be—
(i) concise; and
(ii) presented in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.

(C) Required information
The State shall include in its annual State report card—
(i) information, in the aggregate, on student achievement at each proficiency level on the State academic assessments described in subsection (b)(3) of this section (disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged, except that such disaggregation shall not be required in a
case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

(ii) information that provides a comparison between the actual achievement levels of each group of students described in subsection (b)(2)(C)(v) of this section and the State’s annual measurable objectives for each such group of students on each of the academic assessments required under this part;

(iii) the percentage of students not tested (disaggregated by the same categories and subject to the same exception described in clause (i));

(iv) the most recent 2-year trend in student achievement in each subject area, and for each grade level, for which assessments under this section are required;

(v) aggregate information on any other indicators used by the State to determine the adequate yearly progress of students in achieving State academic achievement standards;

(vi) graduation rates for secondary school students consistent with subsection (b)(2)(C)(vii) of this section;

(vii) information on the performance of local educational agencies in the State regarding making adequate yearly progress, including the number and names of each school identified for school improvement under section 6316 of this title; and

(viii) the professional qualifications of teachers in the State, the percentage of such teachers teaching with emergency or provisional credentials, and the percentage of classes in the State not taught by highly qualified teachers, in the aggregate and disaggregated by high-poverty compared to low-poverty schools which, for the purpose of this clause, means schools in the top quartile of poverty and the bottom quartile of poverty in the State.

(D) Optional information

The State may include in its annual State report card such other information as the State believes will best provide parents, students, and other members of the public with information regarding the progress of each of the State’s public elementary schools and public secondary schools. Such information may include information regarding—

(i) school attendance rates;

(ii) average class size in each grade;

(iii) academic achievement and gains in English proficiency of limited English proficient students;

(iv) the incidence of school violence, drug abuse, alcohol abuse, student suspensions, and student expulsions;

(v) the extent and type of parental involvement in the schools;

(vi) the percentage of students completing advanced placement courses, and the rate of passing of advanced placement tests; and

(vii) a clear and concise description of the State’s accountability system, including a description of the criteria by which the State evaluates school performance, and the criteria that the State has established, consistent with subsection (b)(2) of this section, to determine the status of schools regarding school improvement, corrective action, and restructuring.

(2) Annual local educational agency report cards

(A) Report cards

(i) In general

Not later than the beginning of the 2002–2003 school year, a local educational agency that receives assistance under this part shall prepare and disseminate an annual local educational agency report card, except that the State educational agency may provide the local educational agency 1 additional year if the local educational agency demonstrates that exceptional or unforeseen circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency, prevented full implementation of this paragraph by that deadline and that the local educational agency will complete implementation within the additional 1-year period.

(ii) Special rule

If a State educational agency has received an extension pursuant to subsection (c)(1) of this section, then a local educational agency within that State shall not be required to include the information required under paragraph (1)(C) in such report card during such extension.

(B) Minimum requirements

The State educational agency shall ensure that each local educational agency collects appropriate data and includes in the local educational agency’s annual report the information described in paragraph (1)(C) as applied to the local educational agency and each school served by the local educational agency, and—

(i) in the case of a local educational agency—

(I) the number and percentage of schools identified for school improvement under section 6316(c) of this title and how long the schools have been so identified; and

(II) information that shows how students served by the local educational agency achieved on the statewide academic assessment compared to students in the State as a whole; and

(ii) in the case of a school—

(I) whether the school has been identified for school improvement; and

(II) information that shows how the school’s students achieved on the statewide academic assessment and other indicators of adequate yearly progress compared to students in the local educational agency and the State as a whole.
(C) Other information
A local educational agency may include in its annual local educational agency report card any other appropriate information, whether or not such information is included in the annual State report card.

(D) Data
A local educational agency or school shall only include in its annual local educational agency report card data that are sufficient to yield statistically reliable information, as determined by the State, and that do not reveal personally identifiable information about an individual student.

(E) Public dissemination
The local educational agency shall, not later than the beginning of the 2002–2003 school year, unless the local educational agency has received a 1-year extension pursuant to subparagraph (A), publicly disseminate the information described in this paragraph to all schools in the school district served by the local educational agency and to all parents of students attending those schools in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand, and make the information widely available through public means, such as posting on the Internet, distribution to the media, and distribution through public agencies, except that if a local educational agency issues a report card for all students, the local educational agency may include the information under this section as part of such report.

(3) Preexisting report cards
A State educational agency or local educational agency that was providing public report cards on the performance of students, schools, local educational agencies, or the State prior to January 8, 2002, may use those report cards for the purpose of this subsection, so long as any such report card is modified, as may be needed, to contain the information required by this subsection.

(4) Annual State report to the Secretary
Each State educational agency receiving assistance under this part shall report annually to the Secretary, and make widely available within the State—

(A) beginning with school year 2002–2003, information on the State's progress in developing and implementing the academic assessments described in subsection (b)(3) of this section;

(B) beginning not later than school year 2002–2003, information on the achievement of students on the academic assessments required by subsection (b)(3) of this section, including the disaggregated results for the categories of students identified in subsection (b)(2)(C)(v) of this section;

(C) in any year before the State begins to provide the information described in subparagraph (B), information on the results of student academic assessments (including disaggregated results) required under this section;

(D) beginning not later than school year 2002–2003, unless the State has received an extension pursuant to subsection (c)(1) of this section, information on the acquisition of English proficiency by children with limited English proficiency;

(E) the number and names of each school identified for school improvement under section 6318(c) of this title, the reason why each school was so identified, and the measures taken to address the achievement problems of such schools;

(F) the number of students and schools that participated in public school choice and supplemental service programs and activities under this subchapter; and

(G) beginning not later than the 2002–2003 school year, information on the quality of teachers and the percentage of classes being taught by highly qualified teachers in the State, local educational agency, and school.

(5) Report to Congress
The Secretary shall transmit annually to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report that provides national and State-level data on the information collected under paragraph (4).

(6) Parents right-to-know
(A) Qualifications
At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the agency will provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

(i) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

(ii) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived.

(iii) The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

(iv) Whether the child is provided services by paraprofessionals and, if so, their qualifications.

(B) Additional information
In addition to the information that parents may request under subparagraph (A), a school that receives funds under this part shall provide to each individual parent—

(i) information on the level of achievement of the parent's child in each of the State academic assessments as required under this part; and

(ii) timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by, a teacher who is not highly qualified.
(C) Format

The notice and information provided to parents under this paragraph shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.

(i) Privacy

Information collected under this section shall be collected and disseminated in a manner that protects the privacy of individuals.

(j) Technical assistance

The Secretary shall provide a State educational agency, at the State educational agency’s request, technical assistance in meeting the requirements of this section, including the provision of advice by experts in the development of high-quality academic assessments, the setting of State standards, the development of measures of adequate yearly progress that are valid and reliable, and other relevant areas.

(k) Voluntary partnerships

A State may enter into a voluntary partnership with another State to develop and implement the academic assessments and standards required under this section.

(l) Construction

Nothing in this part shall be construed to prescribe the use of the academic assessments described in this part for student promotion or graduation purposes.

(m) Special rule with respect to Bureau-funded schools

In determining the assessments to be used by each operated or funded by BIA school receiving funds under this part, the following shall apply:

(1) Each such school that is accredited by the State in which it is operating shall use the assessments the State has developed and implemented to meet the requirements of this section, or such other appropriate assessment as approved by the Secretary of the Interior.

(2) Each such school that is accredited by a regional accrediting organization shall adopt an appropriate assessment, in consultation with and with the approval of, the Secretary of the Interior and consistent with assessments adopted by other schools in the same State or region, that meets the requirements of this section.

(3) Each such school that is accredited by a tribal accrediting agency or tribal division of education shall use an assessment developed by such agency or division, except that the Secretary of the Interior shall ensure that such assessment meets the requirements of this section.


REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (a)(1), is title V of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.


Prior Provisions


A prior section 1111 of Pub. L. 89–10 was classified to section 2768 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

Amendments


2002—Subsec. (c)(2). Pub. L. 107–279 substituted “section 922(b)(2) of this title” for “section 901(b)(2) of this title”.

§ 6312. Local educational agency plans

(a) Plans required

(1) Subgrants

A local educational agency may receive a subgrant under this part for any fiscal year
only if such agency has on file with the State educational agency a plan, approved by the State educational agency, that is coordinated with other programs under this chapter, the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.], the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.], and other Acts, as appropriate.

(2) Consolidated application

The plan may be submitted as part of a consolidated application under section 7845 of this title.

(b) Plan provisions

(1) In general

In order to help low-achieving children meet challenging achievement academic standards, each local educational agency plan shall include—

(A) a description of high-quality student academic assessments, if any, that are in addition to the academic assessments described in the State plan under section 6311(b)(3) of this title, that the local educational agency and schools served under this part will use—

(i) to determine the success of children served under this part in meeting the State student academic achievement standards, and to provide information to teachers, parents, and students on the progress being made toward meeting the State student academic achievement standards described in section 6311(b)(1)(D)(ii) of this title;

(ii) to assist in diagnosis, teaching, and learning in the classroom in ways that best enable low-achieving children served under this part to meet State student achievement academic standards and do well in the local curriculum;

(iii) to determine what revisions are needed to projects under this part so that such children meet the State student academic achievement standards; and

(iv) to identify effectively students who may be at risk for reading failure or who are having difficulty reading, through the use of screening, diagnostic, and classroom-based instructional reading assessments, as defined under section 6368 of this title;

(B) at the local educational agency’s discretion, a description of any other indicators that will be used in addition to the academic indicators described in section 6311 of this title for the uses described in such section;

(C) a description of how the local educational agency will provide additional educational assistance to individual students assessed as needing help in meeting the State’s challenging student academic achievement standards;

(D) a description of the strategy the local educational agency will use to coordinate programs under this part with programs under subchapter II of this chapter to provide professional development for teachers and principals, and, if appropriate, pupil services personnel, administrators, parents and other staff, including local educational agency level staff in accordance with sections 6318 and 6319 of this title;

(E) a description of how the local educational agency will coordinate and integrate services provided under this part with other educational services at the local educational agency or individual school level, such as—

(i) Even Start, Head Start, Reading First, Early Reading First, and other preschool programs, including plans for the transition of participants in such programs to local elementary school programs; and

(ii) services for children with limited English proficiency, children with disabilities, migratory children, neglected or delinquent youth, Indian children served under part A of subchapter VII of this chapter, homeless children, and immigrant children in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program;

(F) an assurance that the local educational agency will participate, if selected, in the State National Assessment of Educational Progress in 4th and 8th grade reading and mathematics carried out under section 9622(b)(2) of this title;

(G) a description of the poverty criteria that will be used to select school attendance areas under section 6313 of this title;

(H) a description of how teachers, in consultation with parents, administrators, and pupil services personnel, in targeted assistance schools under section 6315 of this title, will identify the eligible children most in need of services under this part;

(I) a general description of the nature of the programs to be conducted by such agency’s schools under sections 6314 and 6315 of this title and, where appropriate, educational services outside such schools for children living in local institutions for neglected or delinquent children, and for neglected and delinquent children in community day school programs;

(J) a description of how the local educational agency will ensure that migratory children and formerly migratory children who are eligible to receive services under this part are selected to receive such services on the same basis as other children who are selected to receive services under this part;

(K) if appropriate, a description of how the local educational agency will use funds under this part to support preschool programs for children, particularly children participating in Early Reading First, or in a Head Start or Even Start program, which services may be provided directly by the local educational agency or through a subcontract with the local Head Start agency designated by the Secretary of Health and Human Services under section 9836 of title 42, or an agency operating an Even Start
program, an Early Reading First program, or another comparable public early childhood development program;

(L) a description of the actions the local educational agency will take to assist its low-achieving schools identified under section 6316 of this title as in need of improvement;

(M) a description of the actions the local educational agency will take to implement public school choice and supplemental services, consistent with the requirements of section 6316 of this title;

(N) a description of how the local educational agency will meet the requirements of section 6319 of this title;

(O) a description of the services the local educational agency will provide homeless children, including services provided with funds reserved under section 6313(c)(3)(A) of this title;

(P) a description of the strategy the local educational agency will use to implement effective parental involvement under section 6318 of this title; and

(Q) where appropriate, a description of how the local educational agency will use funds under this part to support after school (including before school and summer school) and school-year extension programs.

(2) Exception

The academic assessments and indicators described in subparagraphs (A) and (B) of paragraph (1) shall not be used—

(A) in lieu of the academic assessments required under section 6311(b)(3) of this title and other State academic indicators under section 6311(b)(2) of this title; or

(B) to reduce the number of, or change which, schools would otherwise be subject to school improvement, corrective action, or restructuring under section 6316 of this title, if such additional assessments or indicators described in such subparagraphs were not used, but such assessments and indicators may be used to identify additional schools for school improvement or in need of corrective action or restructuring.

(c) Assurances

(1) In general

Each local educational agency plan shall provide assurances that the local educational agency will—

(A) inform eligible schools and parents of schoolwide program authority and the ability of such schools to consolidate funds from Federal, State, and local sources;

(B) provide technical assistance and support to schoolwide programs;

(C) work in consultation with schools as the schools develop the schools’ plans pursuant to section 6314 of this title and assist schools as the schools implement such plans or undertake activities pursuant to section 6315 of this title so that each school can make adequate yearly progress toward meeting the State student academic achievement standards;

(D) fulfill such agency’s school improvement responsibilities under section 6316 of this title, including taking actions under paragraphs (7) and (8) of section 6316(b) of this title;

(E) provide services to eligible children attending private elementary schools and secondary schools in accordance with section 6320 of this title, and timely and meaningful consultation with private school officials regarding such services;

(F) take into account the experience of model programs for the educationally disadvantaged, and the findings of relevant scientifically based research indicating that services may be most effective if focused on students in the earliest grades at schools that receive funds under this part;

(G) in the case of a local educational agency that chooses to use funds under this part to provide early childhood development services to low-income children below the age of compulsory school attendance, ensure that such services comply with the education performance standards in effect under section 9835a(a)(1)(B) of title 42;

(H) work in consultation with schools as the schools develop and implement their plans or activities under sections 6318 and 6319 of this title;

(I) comply with the requirements of section 6319 of this title regarding the qualifications of teachers and paraprofessionals and professional development;

(J) inform eligible schools of the local educational agency’s authority to obtain waivers on the schools’ behalf under subchapter IX of this chapter and, if the State is an Ed-Flex Partnership State, to obtain waivers under the Education Flexibility Partnership Act of 1999;

(K) coordinate and collaborate, to the extent feasible and necessary as determined by the local educational agency, with the State educational agency and other agencies providing services to children, youth, and families with respect to a school in school improvement, corrective action, or restructuring under section 6316 of this title if such a school requests assistance from the local educational agency in addressing major factors that have significantly affected student achievement at the school;

(L) ensure, through incentives for voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers;

(M) use the results of the student academic assessments required under section 6311(b)(3) of this title, and other measures or indicators available to the agency, to review annually the progress of each school served by the agency and receiving funds under this part to determine whether all of the schools are making the progress necessary to ensure that all students will meet the State’s proficient level of achievement on the State academic assessments described in section 6311(b)(3) of this title within 12 years from the end of the 2001–2002 school year;
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(d) Plan development and duration

(1) Consultation

Each local educational agency plan shall be developed in consultation with teachers, principals, administrators (including administrators of programs described in other parts of this subchapter), and other appropriate school personnel, and with parents of children in schools served under this part.

(2) Duration

Each such plan shall be submitted for the first year for which this part is in effect following January 8, 2002, and shall remain in effect for the duration of the agency’s participation under this part.

(3) Review

Each local educational agency shall periodically review and, as necessary, revise its plan.

(e) State approval

(1) In general

Each local educational agency plan shall be filed according to a schedule established by the State educational agency.

(2) Approval

The State educational agency shall approve a local educational agency’s plan only if the State educational agency determines that the local educational agency’s plan—

(A) enables schools served under this part to substantially help children served under this part meet the academic standards expected of all children described in section 6311(b)(1) of this title; and

(B) meets the requirements of this section.

(3) Review

The State educational agency shall review the local educational agency’s plan to determine if such agencies activities are in accordance with sections 6318 and 6319 of this title.

(f) Program responsibility

The local educational agency plan shall reflect the shared responsibility of schools, teachers, and the local educational agency in making decisions regarding activities under sections 6314 and 6315 of this title.

(g) Parental notification

(1) In general

(A) Notice

Each local educational agency using funds under this part to provide a language instruction educational program as determined in part C of subchapter III of this chapter shall, not later than 30 days after the beginning of the school year, inform a parent or parents of a limited English proficient child identified for participation or participating in, such a program of—

(i) the reasons for the identification of their child as limited English proficient and in need of placement in a language instruction educational program;

(ii) the child’s level of English proficiency, how such level was assessed, and the status of the child’s academic achievement;

(iii) the methods of instruction used in the program in which their child is, or will be participating, and the methods of instruction used in other available programs, including how such programs differ in content, instructional goals, and the use of English and a native language in instruction;

(iv) how the program in which their child is, or will be participating, will meet the educational strengths and needs of their child;

(v) how such program will specifically help their child learn English, and meet age-appropriate academic achievement standards for grade promotion and graduation;

(vi) the specific exit requirements for the program, including the expected rate of transition from such program into classrooms that are not tailored for limited English proficient children, and the expected rate of graduation from secondary school for such program if funds under this part are used for children in secondary schools;

(vii) in the case of a child with a disability, how such program meets the objectives of the individualized education program of the child;
(viii) information pertaining to parental rights that includes written guidance—
(I) detailing—
   (aa) the right that parents have to have their child immediately removed from such program upon their request; and
   (bb) the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available; and

(II) assisting parents in selecting among various programs and methods of instruction, if more than one program or method is offered by the eligible entity.

(B) Separate notification

In addition to providing the information required to be provided under paragraph (1), each eligible entity that is using funds provided under this part to provide a language instruction educational program, and that has failed to make progress on the annual measurable achievement objectives described in section 6842 of this title for any fiscal year for which part A is in effect, shall separately inform a parent or the parents of a child identified for participation in such program, or participating in such program, of such failure not later than 30 days after such failure occurs.

(2) Notice

The notice and information provided in paragraph (1) to a parent or parents of a child identified for participation in a language instruction educational program for limited English proficient children shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.

(3) Special rule applicable during the school year

For those children who have not been identified as limited English proficient prior to the beginning of the school year the local educational agency shall notify parents within the first 2 weeks of the child being placed in a language instruction educational program consistent with paragraphs (1) and (2).

(4) Parental participation

Each local educational agency receiving funds under this part shall implement an effective means of outreach to parents of limited English proficient students to inform the parents regarding how the parents can be involved in the education of their children, and be active participants in assisting their children to attain English proficiency, achieve at high levels in core academic subjects, and meet challenging State academic achievement standards and State academic content standards expected of all students, including holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents of students assisted under this part.

(5) Basis for admission or exclusion

A student shall not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.


References in Text

The Individuals with Disabilities Education Act, referred to in subsec. (a)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.


Prior Provisions


Amendments


§ 6313. Eligible school attendance areas

(a) Determination

A local educational agency shall use funds received under this part only in eligible school attendance areas.
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(2) Eligible school attendance areas
For the purposes of this part—

(A) the term “school attendance area” means, in relation to a particular school, the geographical area in which the children who are normally served by that school reside; and

(B) the term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole.

(3) Ranking order
If funds allocated in accordance with subsection (c) of this section are insufficient to serve all eligible school attendance areas, a local educational agency shall—

(A) annually rank, without regard to grade spans, such agency’s eligible school attendance areas in which the concentration of children from low-income families exceeds 75 percent from highest to lowest according to the percentage of children from low-income families; and

(B) serve such eligible school attendance areas in rank order.

(4) Remaining funds
If funds remain after serving all eligible school attendance areas under paragraph (3), a local educational agency shall—

(A) annually rank such agency’s remaining eligible school attendance areas from highest to lowest either by grade span or for the entire local educational agency according to the percentage of children from low-income families; and

(B) serve such eligible school attendance areas in rank order either within each grade-span grouping or within the local educational agency as a whole.

(5) Measures
The local educational agency shall use the same measure of poverty, which measure shall be the number of children ages 5 through 17 in poverty counted in the most recent census data approved by the Secretary, the number of children eligible for free and reduced priced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], the number of children in families receiving assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], the number of children eligible to receive medical assistance under the Medicaid program, or a composite of such indicators, with respect to all school attendance areas in the local educational agency—

(A) to identify eligible school attendance areas;

(B) to determine the ranking of each area; and

(C) to determine allocations under subsection (c) of this section.

(6) Exception
This subsection shall not apply to a local educational agency with a total enrollment of less than 1,000 children.

(7) Waiver for desegregation plans
The Secretary may approve a local educational agency’s written request for a waiver of the requirements of subsections (a) and (c) of this section, and permit such agency to treat as eligible, and serve, any school that children attend with a State-ordered, court-ordered school desegregation plan or a plan that continues to be implemented in accordance with a State-ordered or court-ordered desegregation plan, if—

(A) the number of economically disadvantaged children enrolled in the school is at least 25 percent of the school’s total enrollment; and

(B) the Secretary determines on the basis of a written request from such agency and in accordance with such criteria as the Secretary establishes, that approval of that request would further the purposes of this part.

(b) Local educational agency discretion

(1) In general
Notwithstanding subsection (a)(2) of this section, a local educational agency may—

(A) designate as eligible any school attendance area or school in which at least 35 percent of the children are from low-income families;

(B) use funds received under this part in a school that is not in an eligible school attendance area, if the percentage of children from low-income families enrolled in the school is equal to or greater than the percentage of such children in a participating school attendance area of such agency;

(C) designate and serve a school attendance area or school that is not eligible under this section, but that was eligible and that was served in the preceding fiscal year, but only for 1 additional fiscal year; and

(D) elect not to serve an eligible school attendance area or eligible school that has a higher percentage of children from low-income families if—

(i) the school meets the comparability requirements of section 6321(c) of this title;

(ii) the school is receiving supplemental funds from other State or local sources that are spent according to the requirements of section 6314 or 6315 of this title; and

(iii) the funds expended from such other sources equal or exceed the amount that would be provided under this part.

(2) Special rule
Notwithstanding paragraph (1)(D), the number of children attending private elementary schools and secondary schools who are to receive services, and the assistance such children are to receive under this part, shall be determined without regard to whether the public school attendance area in which such children reside is assisted under subparagraph (A).

(c) Allocations

(1) In general
A local educational agency shall allocate funds received under this part to eligible
school attendance areas or eligible schools, identified under subsections (a) and (b) of this section, in rank order, on the basis of the total number of children from low-income families in each area or school.

(2) Special rule
(A) In general
Except as provided in subparagraph (B), the per-pupil amount of funds allocated to each school attendance area or school under paragraph (1) shall be at least 125 percent of the per-pupil amount of funds a local educational agency received for that year under the poverty criteria described by the local educational agency in the plan submitted under section 6312 of this title, except that this paragraph shall not apply to a local educational agency that only serves schools in which the percentage of such children is 35 percent or greater.

(B) Exception
A local educational agency may reduce the amount of funds allocated under subparagraph (A) for a school attendance area or school by the amount of any supplemental State and local funds expended in that school attendance area or school for programs that meet the requirements of section 6314 or 6315 of this title.

(3) Reservation
A local educational agency shall reserve such funds as are necessary under this part to provide services comparable to those provided to children in schools funded under this part to serve—

(1) homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where children may live;

(2) children in local institutions for neglected children; and

(3) if appropriate, children in local institutions for delinquent children, and neglected or delinquent children in community day school programs.

(4) Financial incentives and rewards reservation
A local educational agency may reserve such funds as are necessary from those funds received by the local educational agency under subchapter II of this chapter, and not more than 5 percent of those funds received by the local educational agency under this section and identified for school improvement, corrective action, and restructuring under section 6316(b) of this title for the purpose of attracting and retaining qualified and effective teachers.


References in Text


Prior Provisions

§ 6314. Schoolwide programs
(a) Use of funds for schoolwide programs
(1) In general
A local educational agency may consolidate and use funds under this part, together with other Federal, State, and local funds, in order to upgrade the entire educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from such families.

(2) Identification of students not required
(A) In general
No school participating in a schoolwide program shall be required—

(i) to identify particular children under this part as eligible to participate in a schoolwide program; or

(ii) to provide services to such children that are supplementary, as otherwise required by section 6321(b) of this title.

(B) Supplemental funds
A school participating in a schoolwide program shall use funds available to carry out this section only to supplement the amount of funds that would, in the absence of funds under this part, be made available from non-Federal sources for the school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency.

(3) Exemption from statutory and regulatory requirements
(A) Exemption
Except as provided in subsection (b) of this section, the Secretary may, through publication of a notice in the Federal Register, exempt schoolwide programs under this section from statutory or regulatory provisions of any other noncompetitive formula grant program administered by the Secretary (other than formula or discretionary grant programs under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], except as provided in section 613(a)(2)(D) of such Act [20 U.S.C. 1413(a)(2)(D)]), or any dis-
cretionary grant program administered by the Secretary, to support schoolwide programs if the intent and purposes of such other programs are met.

(B) Requirements

A school that chooses to use funds from such other programs shall not be relieved of the requirements relating to health, safety, civil rights, student and parental participation and involvement, services to private school children, maintenance of effort, comparability of services, uses of Federal funds to supplement, not supplant non-Federal funds, or the distribution of funds to State educational agencies or local educational agencies that apply to the receipt of funds from such programs.

(C) Records

A school that consolidates and uses funds from different Federal programs under this section shall not be required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular funds as long as the school maintains records that demonstrate that the schoolwide program, considered as a whole, addresses the intent and purposes of each of the Federal programs that were consolidated to support the schoolwide program.

(4) Professional development

Each school receiving funds under this part for any fiscal year shall devote sufficient resources to effectively carry out the activities described in subsection (b)(1)(D) of this section in accordance with section 6319 of this title for such fiscal year, except that a school may enter into a consortium with another school to carry out such activities.

(b) Components of a schoolwide program

(1) In general

A schoolwide program shall include the following components:

(A) A comprehensive needs assessment of the entire school (including taking into account the needs of migratory children as defined in section 6399(2) of this title) that is based on information which includes the achievement of children in relation to the State academic content standards and the State student academic achievement standards described in section 6311(b)(1) of this title.

(B) Schoolwide reform strategies that—

(i) provide opportunities for all children to meet the State’s proficient and advanced levels of student academic achievement described in section 6311(b)(1)(D) of this title;

(ii) use effective methods and instructional strategies that are based on scientifically based research that—

(I) strengthen the core academic program in the school;

(II) increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities, and help provide an enriched and accelerated curriculum; and

(iii)(I) include strategies for meeting the educational needs of historically underserved populations;

(ii)(I) include strategies to address the needs of all children in the school, but particularly the needs of low-achieving children and those at risk of not meeting the State student academic achievement standards who are members of the target population of any program that is included in the schoolwide program, which may include—

(aa) counseling, pupil services, and mentoring services;

(bb) college and career awareness and preparation, such as college and career guidance, personal finance education, and innovative teaching methods, which may include applied learning and team-teaching strategies; and

(cc) the integration of vocational and technical education programs; and

(II) address how the school will determine if such needs have been met; and

(iv) are consistent with, and are designed to implement, the State and local improvement plans, if any.

(C) Instruction by highly qualified teachers

(D) In accordance with section 6319 of this title and subsection (a)(4) of this section, high-quality and ongoing professional development for teachers, principals, and para-professionals and, if appropriate, pupil services personnel, parents, and other staff to enable all children in the school to meet the State’s student academic achievement standards.

(E) Strategies to attract high-quality highly qualified teachers to high-need schools.

(F) Strategies to increase parental involvement in accordance with section 6318 of this title, such as family literacy services.

(G) Plans for assisting preschool children in the transition from early childhood programs, such as Head Start, Early Start, Early Reading First, or a State-run preschool program, to local elementary school programs.

(H) Measures to include teachers in the decisions regarding the use of academic assessments described in section 6311(b)(3) of this title in order to provide information on, and to improve, the achievement of individual students and the overall instructional program.

(I) Activities to ensure that students who experience difficulty mastering the proficient or advanced levels of academic achievement standards required by section 6311(b)(1) of this title shall be provided with effective, timely additional assistance which shall include measures to ensure that students’ difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance.

(J) Coordination and integration of Federal, State, and local services and programs,
including programs supported under this chapter, violence prevention programs, nutrition programs, housing programs, Head Start, adult education, vocational and technical education, and job training.

(2) Plan

(A) In general

Any eligible school that desires to operate a schoolwide program shall first develop (or amend a plan for such a program that was in existence on the day before January 8, 2002), in consultation with the local educational agency and its school support team or other technical assistance provider under section 6317 of this title, a comprehensive plan for reforming the total instructional program in the school that—

(i) describes how the school will implement the components described in paragraph (1);

(ii) describes how the school will use resources under this part and from other sources to implement those components;

(iii) includes a list of State educational agency and local educational agency programs and other Federal programs under subsection (a)(3) of this section that will be consolidated in the schoolwide program; and

(iv) describes how the school will provide individual student academic assessment results in a language the parents can understand, including an interpretation of those results, to the parents of a child who participates in the academic assessments required by section 6311(b)(3) of this title.

(B) Plan development

The comprehensive plan shall be—

(i) developed during a one-year period, unless—

(I) the local educational agency, after considering the recommendation of the technical assistance providers under section 6317 of this title, determines that less time is needed to develop and implement the schoolwide program; or

(II) the school is operating a schoolwide program on the day preceding January 8, 2002, in which case such school may continue to operate such program, but shall develop amendments to its existing plan during the first year of assistance after that date to reflect the provisions of this section;

(ii) developed with the involvement of parents and other members of the community to be served and individuals who will carry out such plan, including teachers, principals, and administrators (including administrators of programs described in other parts of this subchapter), and, if appropriate, pupil services personnel, technical assistance providers, school staff, and, if the plan relates to a secondary school, students from such school;

(iii) in effect for the duration of the school’s participation under this part and reviewed and revised, as necessary, by the school;

(iv) available to the local educational agency, parents, and the public, and the information contained in such plan shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand; and

(v) if appropriate, developed in coordination with programs under Reading First, Early Reading First, Even Start, the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.], and the Head Start Act [42 U.S.C. 9831 et seq.].

(c) Prekindergarten program

A school that is eligible for a schoolwide program under this section may use funds made available under this part to establish or enhance prekindergarten programs for children below the age of 6, such as Even Start programs or Early Reading First programs.


REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (a)(3)(A), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.


PRIOR PROVISIONS


AMENDMENTS


§ 6315. Targeted assistance schools

(a) In general

In all schools selected to receive funds under section 6313(c) of this title that are ineligible for a schoolwide program under section 6314 of this title, or that choose not to operate such a schoolwide program, a local educational agency serving such school may use funds received under this part only for programs that provide
services to eligible children under subsection (b) of this section identified as having the greatest need for special assistance.

(b) Eligible children

(1) Eligible population

(A) In general

The eligible population for services under this section is—
(i) children not older than age 21 who are entitled to a free public education through grade 12; and
(ii) children who are not yet at a grade level at which the local educational agency provides a free public education.

(B) Eligible children from eligible population

From the population described in subparagraph (A), eligible children are children identified by the school as failing, or most at risk of failing, to meet the State’s challenging student academic achievement standards on the basis of multiple, educationally related, objective criteria established by the local educational agency and supplemented by the school, except that children from preschool through grade 2 shall be selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures.

(2) Children included

(A) In general

Children who are economically disadvantaged, children with disabilities, migrant children or limited English proficient children, are eligible for services under this part on the same basis as other children selected to receive services under this part.

(B) Head Start, Even Start, or Early Reading First children

A child who, at any time in the 2 years preceding the year for which the determination is made, participated in a Head Start, Even Start, or Early Reading First program, or in preschool services under this subchapter, is eligible for services under this part.

(C) Part C children

A child who, at any time in the 2 years preceding the year for which the determination is made, received services under part C of this subchapter is eligible for services under this part.

(D) Neglected or delinquent children

A child in a local institution for neglected or delinquent children and youth or attending a community day program for such children is eligible for services under this part.

(E) Homeless children

A child who is homeless and attending any school served by the local educational agency is eligible for services under this part.

(3) Special rule

Funds received under this part may not be used to provide services that are otherwise required by law to be made available to children described in paragraph (2) but may be used to coordinate or supplement such services.

(c) Components of a targeted assistance school program

(1) In general

To assist targeted assistance schools and local educational agencies to meet their responsibility to provide for all their students served under this part the opportunity to meet the State’s challenging student academic achievement standards in subjects as determined by the State, each targeted assistance program under this section shall—
(A) use such program’s resources under this part to help participating children meet such State’s challenging student academic achievement standards expected for all children;
(B) ensure that planning for students served under this part is incorporated into existing school planning;
(C) use effective methods and instructional strategies that are based on scientifically based research that strengthen the core academic program of the school and that—
(i) give primary consideration to providing extended learning time, such as an extended school year, before- and after-school, and summer programs and opportunities;
(ii) help provide an accelerated, high-quality curriculum, including applied learning; and
(iii) minimize removing children from the regular classroom during regular school hours for instruction provided under this part;
(D) coordinate with and support the regular education program, which may include services to assist preschool children in the transition from early childhood programs such as Head Start, Even Start, Early Reading First or State-run preschool programs to elementary school programs;
(E) provide instruction by highly qualified teachers;
(F) in accordance with subsection (e)(3) of this section and section 6319 of this title, provide opportunities for professional development with resources provided under this part, and, to the extent practicable, from other sources, for teachers, principals, and paraprofessionals, including, if appropriate, pupil services personnel, parents, and other staff, who work with participating children in programs under this section or in the regular education program;
(G) provide strategies to increase parental involvement in accordance with section 6318 of this title, such as family literacy services; and
(H) coordinate and integrate Federal, State, and local services and programs, including programs supported under this chapter, violence prevention programs, nutrition programs, housing programs, Head Start, adult education, vocational and technical education, and job training.

(2) Requirements

Each school conducting a program under this section shall assist participating children
selected in accordance with subsection (b) of this section to meet the State's proficient and advanced levels of achievement by—

(A) the coordinating of resources provided under this part with other resources; and

(B) reviewing, on an ongoing basis, the progress of participating children and revising the targeted assistance program, if necessary, to provide additional assistance to enable such children to meet the State's challenging student academic achievement standards, such as an extended school year, before- and after-school, and summer programs and opportunities, training for teachers regarding how to identify students who need additional assistance, and training for teachers regarding how to implement student academic achievement standards in the classroom.

d) Integration of professional development

To promote the integration of staff supported with funds under this part into the regular educational settings where appropriate.

(1) Comprehensive services

Nothing in this section shall be construed to prohibit a school from serving students under this section simultaneously with students with similar educational needs, in the same educational settings where appropriate.

(2) Professional development

Each school receiving funds under this part for any fiscal year shall devote sufficient re- sources to carry out effectively the professional development activities described in subparagraph (F) of subsection (c)(1) of this section in accordance with section 6319 of this title for such fiscal year, and a school may enter into a consortium with another school to carry out such activities.


PRIOR PROVISIONS


§6316. Academic assessment and local educational agency and school improvement

(a) Local review

(1) In general

Each local educational agency receiving funds under this part shall—

(A) use the State academic assessments and other indicators described in the State plan to review annually the progress of each school served under this part to determine whether the school is making adequate yearly progress as defined in section 6311(b)(2) of this title;

(B) at the local educational agency's discretion, use any academic assessments or any other academic indicators described in the local educational agency's plan under section 6312(b)(1)(A) and (B) of this title to review annually the progress of each school served under this part to determine whether the school is making adequate yearly progress as defined in section 6311(b)(2) of this title, except that the local educational agency may not use such indicators (other than as provided for in section 6311(b)(2)(I) of this title) if the indicators reduce the number or change the schools that would otherwise be subject to school improvement, corrective action, or restructuring under this section if such additional indicators were not used, but may identify additional schools for school improvement or in need of corrective action or restructuring;

(C) publicize and disseminate the results of the local annual review described in paragraph (I) to parents, teachers, principals, schools, and the community so that the teachers, principals, other staff, and schools can continually refine, in an instructionally useful manner, the program of instruction to help all children served under this part meet the challenging State student academic achievement standards established under section 6311(b)(1) of this title; and

(D) review the effectiveness of the actions and activities the schools are carrying out under this part with respect to parental involvement, professional development, and other activities assisted under this part.

(2) Available results

The State educational agency shall ensure that the results of State academic assess-
ments administered in that school year are available to the local educational agency before the beginning of the next school year.

(b) School improvement

(1) General requirements

(A) Identification

Subject to subparagraph (C), a local educational agency shall identify for school improvement any elementary school or secondary school served under this part that fails, for 2 consecutive years, to make adequate yearly progress as defined in the State’s plan under section 6311(b)(2) of this title.

(B) Deadline

The identification described in subparagraph (A) shall take place before the beginning of the school year following such failure to make adequate yearly progress.

(C) Application

Subparagraph (A) shall not apply to a school if almost every student in each group specified in section 6311(b)(2)(C)(v) of this title enrolled in such school is meeting or exceeding the State’s proficient level of academic achievement.

(D) Targeted assistance schools

To determine if an elementary school or a secondary school that is conducting a targeted assistance program under section 6315 of this title should be identified for school improvement, corrective action, or restructuring under this section, a local educational agency may choose to review the progress of only the students in the school who are served, or are eligible for services, under this part.

(E) Public school choice

(i) In general

In the case of a school identified for school improvement under this paragraph, the local educational agency shall, not later than the first day of the school year following such identification, provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, which may include a public charter school, that has not been identified for school improvement under this paragraph, unless such an option is prohibited by State law.

(ii) Rule

In providing students the option to transfer to another public school, the local educational agency shall give priority to the lowest achieving children from low-income families, as determined by the local educational agency for purposes of allocating funds to schools under section 6313(c)(1) of this title.

(F) Transfer

Students who use the option to transfer under subparagraph (E) and paragraph (5)(A), (7)(C)(i), or (8)(A)(i) or subsection (c)(10)(C)(vii) of this section shall be enrolled in classes and other activities in the public school to which the students transfer in the same manner as all other children at the public school.

(2) Opportunity to review and present evidence; time limit

(A) Identification

Before identifying an elementary school or a secondary school for school improvement under paragraphs (1) or (5)(A), (7), or (8) believes, or a majority of the parents of the students enrolled in such school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the local educational agency, which shall consider that evidence before making a final determination.

(B) Evidence

If the principal of a school proposed for identification under paragraph (1), (5)(A), (7), or (8) believes, or a majority of the parents of the students enrolled in such school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the local educational agency, which shall consider that evidence before making a final determination.

(C) Final determination

Not later than 30 days after a local educational agency provides the school with the opportunity to review such school-level data, the local educational agency shall make public a final determination on the status of the school with respect to the identification.

(3) School plan

(A) Revised plan

After the resolution of a review under paragraph (2), each school identified under paragraph (1) for school improvement shall, not later than 3 months after being so identified, develop or revise a school plan, in consultation with parents, school staff, the local educational agency serving the school, and outside experts, for approval by such local educational agency. The school plan shall cover a 2-year period and—

(i) incorporate strategies based on scientifically based research that will strengthen the core academic subjects in the school and address the specific academic issues that caused the school to be identified for school improvement, and may include a strategy for the implementation of a comprehensive school reform model that includes each of the components described in part F of this subchapter;

(ii) adopt policies and practices concerning the school’s core academic subjects that have the greatest likelihood of ensuring that all groups of students specified in section 6311(b)(2)(C)(v) of this title and enrolled in the school will meet the State’s proficient level of achievement on the State academic assessment described in
section 6311(b)(3) of this title not later than 12 years after the end of the 2001–2002 school year;

(iii) provide an assurance that the school will spend not less than 10 percent of the funds made available to the school under section 6313 of this title for each fiscal year that the school is in school improvement status, for the purpose of providing to the school’s teachers and principal high-quality professional development that—

(I) directly addresses the academic achievement problem that caused the school to be identified for school improvement;

(II) meets the requirements for professional development activities under section 6319 of this title; and

(III) is provided in a manner that affords increased opportunity for participating in that professional development;

(iv) specify how the funds described in clause (iii) will be used to remove the school from school improvement status;

(v) establish specific annual, measurable objectives for continuous and substantial progress by each group of students specified in section 6311(b)(2)(C)(v) of this title and enrolled in the school that will ensure that all such groups of students will, in accordance with adequate yearly progress as defined in section 6311(b)(2) of this title, meet the State’s proficient level of achievement on the State academic assessment described in section 6311(b)(3) of this title not later than 12 years after the end of the 2001–2002 school year;

(vi) describe how the school will provide written notice about the identification to parents of each student enrolled in such school, in a format and, to the extent practicable, in a language that the parents can understand;

(vii) specify the responsibilities of the school, the local educational agency, and the State educational agency serving the school under the plan, including the technical assistance to be provided by the local educational agency under paragraph (4) and the local educational agency’s responsibilities under section 6221 of this title;

(viii) include strategies to promote effective parental involvement in the school;

(ix) incorporate, as appropriate, activities before school, after school, during the summer, and during any extension of the school year; and

(x) incorporate a teacher mentoring program.

(B) Conditional approval

The local educational agency may condition approval of a school plan under this paragraph on—

(I) inclusion of one or more of the corrective actions specified in paragraph (7)(C)(iv); or

(ii) feedback on the school improvement plan from parents and community leaders.

(C) Plan implementation

Except as provided in subparagraph (D), a school shall implement the school plan (including a revised plan) expeditiously, but not later than the beginning of the next full school year following the identification under paragraph (1).

(D) Plan approved during school year

Notwithstanding subparagraph (C), if a plan is not approved prior to the beginning of a school year, such plan shall be implemented immediately upon approval.

(E) Local educational agency approval

The local educational agency, within 45 days of receiving a school plan, shall—

(i) establish a peer review process to assist with review of the school plan; and

(ii) promptly review the school plan, work with the school as necessary, and approve the school plan if the plan meets the requirements of this paragraph.

(4) Technical assistance

(A) In general

For each school identified for school improvement under paragraph (1), the local educational agency serving the school shall ensure the provision of technical assistance as the school develops and implements the school plan under paragraph (3) throughout the plan’s duration.

(B) Specific assistance

Such technical assistance—

(i) shall include assistance in analyzing data from the assessments required under section 6311(b)(3) of this title, and other examples of student work, to identify and address problems in instruction, and problems if any, in implementing the parental involvement requirements described in section 6318 of this title, the professional development requirements described in section 6319 of this title, and the responsibilities of the school and local educational agency under the school plan, and to identify and address solutions to such problems;

(ii) shall include assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research and that have proven effective in addressing the specific instructional issues that caused the school to be identified for school improvement;

(iii) shall include assistance in analyzing and revising the school’s budget so that the school’s resources are more effectively allocated to the activities most likely to increase student academic achievement and to remove the school from school improvement status; and

(iv) may be provided—

(I) by the local educational agency, through mechanisms authorized under section 6317 of this title; or

(II) by the State educational agency, an institution of higher education (that is in full compliance with all the report-
ing provisions of title II of the Higher Education Act of 1965 (20 U.S.C. 1021 et seq.), a private not-for-profit organization or for-profit organization, an educational service agency, or another entity approved by that agency shall be based on scientifically based research.

(C) Scientifically based research

Technical assistance provided under this section by a local educational agency or an entity approved by that agency shall be based on scientifically based research.

(5) Failure to make adequate yearly progress after identification

In the case of any school served under this part that fails to make adequate yearly progress, as set out in the State’s plan under section 6311(b)(2) of this title, by the end of the first full school year after identification under paragraph (1), the local educational agency serving such school—
(A) shall continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency in accordance with subparagraphs (E) and (F);
(B) shall make supplemental educational services available consistent with subsection (e)(1) of this section; and
(C) shall continue to provide technical assistance.

(6) Notice to parents

A local educational agency shall promptly provide to a parent or parents (in an understandable and uniform format and, to the extent practicable, in a language the parents can understand) of each student enrolled in an elementary school or a secondary school identified for school improvement under paragraph (1), for corrective action under paragraph (7), or for restructuring under paragraph (8)—
(A) an explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary schools or secondary schools served by the local educational agency and the State educational agency involved;
(B) the reasons for the identification;
(C) an explanation of what the school identified for school improvement is doing to address the problem of low achievement;
(D) an explanation of what the local educational agency or State educational agency is doing to help the school address the achievement problem;
(E) an explanation of how the parents can become involved in addressing the academic issues that caused the school to be identified for school improvement; and
(F) an explanation of the parents’ option to transfer their child to another public school under paragraphs (1)(E), (5)(A), (7)(C)(i), with (8)(A)(i)—and subsection (c)(10)(C)(vii) of this section (with transportation provided by the agency when required by paragraph (9)) or to obtain supplemental educational services for the child, in accordance with subsection (e) of this section.

(7) Corrective action

(A) In general

In this subsection, the term “corrective action” means action, consistent with State law, that—
(i) substantially and directly responds to—
(I) the consistent academic failure of a school that caused the local educational agency to take such action; and
(II) any underlying staffing, curriculum, or other problems in the school; and
(ii) is designed to increase substantially the likelihood that each group of students described in \(2\) 6311(b)(2)(C) of this title enrolled in the school identified for corrective action will meet or exceed the State’s proficient levels of achievement on the State academic assessments described in section 6311(b)(3) of this title.

(B) System

In order to help students served under this part meet challenging State student academic achievement standards, each local educational agency shall implement a system of corrective action in accordance with subparagraphs (C) through (E).

(C) Role of local educational agency

In the case of any school served by a local educational agency under this part that fails to make adequate yearly progress, as defined by the State under section 6311(b)(2) of this title, by the end of the second full school year after the identification under paragraph (1), the local educational agency shall—
(i) continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, in accordance with paragraph (1)(E) and (F);
(ii) continue to provide technical assistance consistent with paragraph (4) while instituting any corrective action under clause (iv);
(iii) continue to make supplemental educational services available, in accordance with subsection (e) of this section, to children who remain in the school; and
(iv) identify the school for corrective action and take at least one of the following corrective actions:
(I) Replace the school staff who are relevant to the failure to make adequate yearly progress.
(II) Institute and fully implement a new curriculum, including providing appropriate professional development for all relevant staff, that is based on scientifically based research and offers substantial promise of improving educational achievement for low-achieving students and enabling the school to make adequate yearly progress.
(III) Significantly decrease management authority at the school level.

\(^{2}\)So in original. Probably should be followed by “section”.

(IV) Appoint an outside expert to advise the school on its progress toward making adequate yearly progress, based on its school plan under paragraph (3).

(V) Extend the school year or school day for the school.

(VI) Restructure the internal organizational structure of the school.

(D) Delay

Notwithstanding any other provision of this paragraph, the local educational agency may delay, for a period not to exceed 1 year, implementation of the requirements under paragraph (5), corrective action under this paragraph, or restructuring under paragraph (8) if the school makes adequate yearly progress for 1 year or if its failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency or school. No such period shall be taken into account in determining the number of consecutive years of failure to make adequate yearly progress.

(E) Publication and dissemination

The local educational agency shall publish and disseminate information regarding any corrective action the local educational agency takes under this paragraph at a school—

(i) to the public and to the parents of each student enrolled in the school subject to corrective action;

(ii) in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand; and

(iii) through such means as the Internet, the media, and public agencies.

(8) Restructuring

(A) Failure to make adequate yearly progress

If, after 1 full school year of corrective action under paragraph (7), a school subject to such corrective action continues to fail to make adequate yearly progress, then the local educational agency shall—

(i) continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, in accordance with paragraph (1)(E) and (F);

(ii) continue to make supplemental educational services available, in accordance with subsection (e) of this section, to children who remain in the school; and

(iii) prepare a plan and make necessary arrangements to carry out subparagraph (B).

(B) Alternative governance

Not later than the beginning of the school year following the year in which the local educational agency implements subparagraph (A), the local educational agency shall implement one of the following alternative governance arrangements for the school consistent with State law:

(i) Reopening the school as a public charter school.

(ii) Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.

(iii) Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school.

(iv) Turning the operation of the school over to the State educational agency, if permitted under State law and agreed to by the State.

(v) Any other major restructuring of the school’s governance arrangement that makes fundamental reforms, such as significant changes in the school’s staffing and governance, to improve student academic achievement in the school and that has substantial promise of enabling the school to make adequate yearly progress as defined in the State plan under section 6311(b)(2) of this title. In the case of a rural local educational agency with a total of less than 600 students in average daily attendance at the schools that are served by the agency and all of whose schools have a School Locale Code of 7 or 8, as determined by the Secretary, the Secretary shall, at such agency’s request, provide technical assistance to such agency for the purpose of implementing this clause.

(C) Prompt notice

The local educational agency shall—

(i) provide prompt notice to teachers and parents whenever subparagraph (A) or (B) applies; and

(ii) provide the teachers and parents with an adequate opportunity to—

(I) comment before taking any action under those subparagraphs; and

(II) participate in developing any plan under subparagraph (A)(iii).

(9) Transportation

In any case described in paragraph (1)(E) for schools described in paragraphs (1)(A), (5), (7)(C)(i), and (8)(A), and subsection (c)(10)(C)(vii) of this section, the local educational agency shall provide, or shall pay for the provision of, transportation for the student attending the school to make adequate yearly progress.

(10) Funds for transportation and supplemental educational services

(A) In general

Unless a lesser amount is needed to comply with paragraph (9) and to satisfy all requests for supplemental educational services under subsection (e) of this section, a local educational agency shall spend an amount equal to 20 percent of its allocation under subpart 2 of this part, from which the agency shall spend—

(i) an amount equal to 5 percent of its allocation under subpart 2 of this part to provide, or pay for, transportation under paragraph (9);

(ii) an amount equal to 5 percent of its allocation under subpart 2 of this part to provide supplemental educational services under subsection (e) of this section; and
(iii) an amount equal to the remaining 10 percent of its allocation under subpart 2 of this part for transportation under paragraph (9), supplemental educational services under subsection (e) of this section, or both, as the agency determines.

(B) Total amount
The total amount described in subparagraph (A)(ii) is the maximum amount the local educational agency shall be required to spend under this part on supplemental educational services described in subsection (e) of this section.

(C) Insufficient funds
If the amount of funds described in subparagraph (A)(ii) and (iii) and available to provide services under this subsection is insufficient to provide supplemental educational services to each child whose parents request the services, the local educational agency shall give priority to providing the services to the lowest-achieving children.

(D) Prohibition
A local educational agency shall not, as a result of the application of this paragraph, reduce by more than 15 percent the total amount made available under section 6313(c) of this title to a school described in paragraph (7)(C) or (8)(A) of subsection (b) of this section.

(11) Cooperative agreement
In any case described in paragraph (1)(E), (5)(A), (7)(C)(i), or (8)(A)(i), or subsection (c)(10)(C)(vii) of this section if all public schools served by the local educational agency to which a child may transfer are identified for school improvement, corrective action or restructuring, the agency shall, to the extent practicable, establish a cooperative agreement for school improvement, corrective action or restructuring.

(12) Duration
If any school identified for school improvement, corrective action, or restructuring makes adequate yearly progress for two consecutive school years, the local educational agency shall no longer subject the school to the requirements of school improvement, corrective action or restructuring, the agency shall, to the extent practicable, establish a cooperative agreement with other local educational agencies in the area for a transfer.

(13) Special rule
A local educational agency shall permit a child who transferred to another school under this subsection to remain in that school until the child has completed the highest grade in that school. The obligation of the local educational agency to provide, or to provide for, transportation for the child ends at the end of a school year if the local educational agency determines that the school from which the child transferred is no longer identified for school improvement or subject to corrective action or restructuring.

(14) State educational agency responsibilities
The State educational agency shall—

(A) make technical assistance under section 6317 of this title available to schools identified for school improvement, corrective action, or restructuring under this subsection consistent with section 6317(a)(2) of this title;

(B) if the State educational agency determines that a local educational agency failed to carry out its responsibilities under this subsection, take such corrective actions as the State educational agency determines to be appropriate and in compliance with State law;

(C) ensure that academic assessment results under this part are provided to schools before any identification of a school may take place under this subsection; and

(D) for local educational agencies or schools identified for improvement under this subsection, notify the Secretary of major factors that were brought to the attention of the State educational agency under section 6311(b)(9) of this title that have significantly affected student academic achievement.

(c) State review and local educational agency improvement

(1) In general
A State shall—

(A) annually review the progress of each local educational agency receiving funds under this part to determine whether schools receiving assistance under this part are making adequate yearly progress as defined in section 6311(b)(2) of this title toward meeting the State’s student academic achievement standards and to determine if each local educational agency is carrying out its responsibilities under this section and sections 6317, 6318, and 6319 of this title; and

(B) publicize and disseminate to local educational agencies, teachers and other staff, parents, students, and the community the results of the State review, including statistically sound disaggregated results, as required by section 6311(b)(2) of this title.

(2) Rewards
In the case of a local educational agency that, for 2 consecutive years, has exceeded adequate yearly progress as defined in the State plan under section 6311(b)(2) of this title, the State may make rewards of the kinds described under section 6317 of this title to the agency.

(3) Identification of local educational agency for improvement
A State shall identify for improvement any local educational agency that, for 2 consecutive years, including the period immediately prior to January 8, 2002, failed to make adequate yearly progress as defined in the State’s plan under section 6311(b)(2) of this title.

(4) Targeted assistance schools
When reviewing targeted assistance schools served by a local educational agency, a State educational agency may choose to review the progress of only the students in such schools
who are served, or are eligible for services, under this part.

(5) **Opportunity to review and present evidence**

(A) **Review**

Before identifying a local educational agency for improvement under paragraph (3) or corrective action under paragraph (10), a State educational agency shall provide the local educational agency with an opportunity to review the data, including academic assessment data, on which the proposed identification is based.

(B) **Evidence**

If the local educational agency believes that the proposed identification is in error for statistical or other substantive reasons, the agency may provide supporting evidence to the State educational agency, which shall consider the evidence before making a final determination not later than 30 days after the State educational agency provides the local educational agency with the opportunity to review such data under subparagraph (A).

(6) **Notification to parents**

The State educational agency shall promptly provide to the parents (in a format and, to the extent practicable, in a language the parents can understand) of each student enrolled in a school served by a local educational agency identified for improvement, the results of the review under paragraph (1) and, if the agency is identified for improvement, the reasons for that identification and how parents can participate in upgrading the quality of the local educational agency.

(7) **Local educational agency revisions**

(A) **Plan**

Each local educational agency identified under paragraph (3) shall, not later than 3 months after being so identified, develop or revise a local educational agency plan, in consultation with parents, school staff, and others. Such plan shall—

(i) incorporate scientifically based research strategies that strengthen the core academic program in schools served by the local educational agency;

(ii) identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State’s student academic achievement standards;

(iii) address the professional development needs of the instructional staff serving the agency by committing to spend not less than 10 percent of the funds received by the local educational agency under subpart 2 of this part for each fiscal year in which the agency is identified for improvement for professional development (including funds reserved for professional development under subsection (b)(3)(A)(iii) of this section), but excluding funds reserved for professional development under section 6319 of this title;

(iv) include specific measurable achievement goals and targets for each of the groups of students identified in the disaggregated data pursuant to section 6311(b)(2)(C)(v) of this title, consistent with adequate yearly progress as defined under section 6311(b)(2) of this title;

(v) address the fundamental teaching and learning needs in the schools of that agency, and the specific academic problems of low-achieving students, including a determination of why the local educational agency’s prior plan failed to bring about increased student academic achievement;

(vi) incorporate, as appropriate, activities before school, after school, during the summer, and during an extension of the school year;

(vii) specify the responsibilities of the State educational agency and the local educational agency under the plan, including specifying the technical assistance to be provided by the State educational agency under paragraph (9) and the local educational agency’s responsibilities under section 6321 of this title; and

(viii) include strategies to promote effective parental involvement in the school.

(B) **Implementation**

The local educational agency shall implement the plan (including a revised plan) expeditiously, but not later than the beginning of the next school year after the school year in which the agency was identified for improvement.

(9) **State educational agency responsibility**

(A) **Technical or other assistance**

For each local educational agency identified under paragraph (3), the State educational agency shall provide technical or other assistance if requested, as authorized under section 6317 of this title, to better enable the local educational agency to—

(i) develop and implement the local educational agency’s plan; and

(ii) work with schools needing improvement.

(B) **Methods and strategies**

Technical assistance provided under this section by the State educational agency or an entity authorized by such agency shall be supported by effective methods and instructional strategies based on scientifically based research. Such technical assistance shall address problems, if any, in implementing the parental involvement activities described in section 6318 of this title and the professional development activities described in section 6319 of this title.

(10) **Corrective action**

In order to help students served under this part meet challenging State student academic achievement standards, each State shall implement a system of corrective action in accordance with the following:

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§ 6316

Title 20—Education

(A) Definition

As used in this paragraph, the term “corrective action” means action, consistent with State law, that—

(i) substantially and directly responds to the consistent academic failure that caused the State to take such action and to any underlying staffing, curricular, or other problems in the agency; and

(ii) is designed to meet the goal of having all students served under this part achieve at the proficient and advanced student academic achievement levels.

(B) General requirements

After providing technical assistance under paragraph (9) and subject to subparagraph (E), the State—

(i) may take corrective action at any time with respect to a local educational agency that has been identified under paragraph (3);

(ii) shall take corrective action with respect to any local educational agency that fails to make adequate yearly progress, as defined by the State, by the end of the second full school year after the identification of the agency under paragraph (3); and

(iii) shall continue to provide technical assistance while instituting any corrective action under clause (i) or (ii).

(C) Certain corrective actions required

In the case of a local educational agency identified for corrective action, the State educational agency shall take at least one of the following corrective actions:

(i) Deferring programmatic funds or reducing administrative funds.

(ii) Instituting and fully implementing a new curriculum that is based on State and local academic content and achievement standards, including providing appropriate professional development based on scientifically based research for all relevant staff, that offers substantial promise of improving educational achievement for low-achieving students.

(iii) Replacing the local educational agency personnel who are relevant to the failure to make adequate yearly progress.

(iv) Removing particular schools from the jurisdiction of the local educational agency and establishing alternative arrangements for public governance and supervision of such schools.

(v) Appointing, through the State educational agency, a receiver or trustee to administer the affairs of the local educational agency in place of the superintendent and school board.

(vi) Abolishing or restructuring the local educational agency.

(vii) Authorizing students to transfer from a school operated by the local educational agency to a higher-performing public school operated by another local educational agency in accordance with subsections (b)(1)(E) and (F) of this section, and providing to such students transportation (or the costs of transportation) to such schools consistent with subsection (b)(9) of this section, in conjunction with carrying out not less than one additional action described under this subparagraph.

(D) Hearing

Prior to implementing any corrective action under this paragraph, the State educational agency shall provide notice and a hearing to the affected local educational agency. If State law provides for such notice and hearing, the hearing shall take place not later than 45 days following the decision to implement corrective action.

(E) Notice to parents

The State educational agency shall publish, and disseminate to parents and the public, information on any corrective action the State educational agency takes under this paragraph through such means as the Internet, the media, and public agencies.

(F) Delay

Notwithstanding subparagraph (B)(ii), a State educational agency may delay, for a period not to exceed 1 year, implementation of corrective action under this paragraph if the local educational agency makes adequate yearly progress for 1 year or its failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency. No such period shall be taken into account in determining the number of consecutive years of failure to make adequate yearly progress.

(11) Special rule

If a local educational agency makes adequate yearly progress for two consecutive school years beginning after the date of identification of the agency under paragraph (3), the State educational agency need no longer identify the local educational agency for improvement or subject the local educational agency to corrective action for the succeeding school year.

(d) Construction

Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

(e) Supplemental educational services

(1) Supplemental educational services

In the case of any school described in paragraph (5), (7), or (8) of subsection (b) of this section, the local educational agency serving such school shall, subject to this subsection, arrange for the provision of supplemental educational services to eligible children in the school from a provider with a demonstrated record of effectiveness, that is selected by the parents and approved for that purpose by the
State educational agency in accordance with reasonable criteria, consistent with paragraph (5), that the State educational agency shall adopt.

(2) Local educational agency responsibilities

Each local educational agency subject to this subsection shall—

(A) provide, at a minimum, annual notice to parents (in an understandable and uniform format and, to the extent practicable, in a language the parents can understand) of—

(i) the availability of services under this subsection;

(ii) the identity of approved providers of those services that are within the local educational agency or whose services are reasonably available in neighboring local educational agencies; and

(iii) a brief description of the services, qualifications, and demonstrated effectiveness of each such provider;

(B) if requested, assist parents in choosing a provider from the list of approved providers maintained by the State;

(C) apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all students; and

(D) not disclose to the public the identity of any student who is eligible for, or receiving, supplemental educational services under this subsection without the written permission of the parents of the student.

(3) Agreement

In the case of the selection of an approved provider by a parent, the local educational agency shall enter into an agreement with such provider. Such agreement shall—

(A) require the local educational agency to develop, in consultation with parents (and the provider chosen by the parents), a statement of specific achievement goals for the student, how the student’s progress will be measured, and a timetable for improving achievement that, in the case of a student with disabilities, is consistent with the student’s individualized education program under section 1414(d) of this title;

(B) describe how the student’s parents and the student’s teacher or teachers will be regularly informed of the student’s progress;

(C) provide for the termination of such agreement if the provider is unable to meet such goals and timetables;

(D) contain provisions with respect to the making of payments to the provider by the local educational agency; and

(E) prohibit the provider from disclosing to the public the identity of any student eligible for, or receiving, supplemental educational services under this subsection without the written permission of the parents of such student.

(4) State educational agency responsibilities

A State educational agency shall—

(A) in consultation with local educational agencies, parents, teachers, and other interested members of the public, promote maximum participation by providers to ensure, to the extent practicable, that parents have as many choices as possible;

(B) develop and apply objective criteria, consistent with paragraph (5), to potential providers that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the State academic content and student achievement standards adopted under section 6311(b)(1) of this title;

(C) maintain an updated list of approved providers across the State, by school district, from which parents may select;

(D) develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by approved providers under this subsection, and for withdrawing approval from providers that fail, for 2 consecutive years, to contribute to increasing the academic proficiency of students served under this subsection as described in subparagraph (B); and

(E) provide annual notice to potential providers of supplemental educational services of the opportunity to provide services under this subsection and of the applicable procedures for obtaining approval from the State educational agency to be an approved provider of those services.

(5) Criteria for providers

In order for a provider to be included on the State list under paragraph (4)(C), a provider shall agree to carry out the following:

(A) Provide parents of children receiving supplemental educational services under this subsection and the appropriate local educational agency with information on the progress of the children in increasing achievement, in a format and, to the extent practicable, a language that such parents can understand;

(B) Ensure that instruction provided and content used by the provider are consistent with the instruction provided and content used by the local educational agency and State, and are aligned with State student academic achievement standards;

(C) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(D) Ensure that all instruction and content under this subsection are secular, neutral, and nonideological.

(6) Amounts for supplemental educational services

The amount that a local educational agency shall make available for supplemental educational services for each child receiving those services under this subsection shall be the lesser of—

(A) the amount of the agency’s allocation under subpart 2 of this part, divided by the number of children from families below the poverty level counted under section 6333(c)(1)(A) of this title; or

(B) the actual costs of the supplemental educational services received by the child.
(7) Funds provided by State educational agency
Each State educational agency may use funds that the agency reserves under this part, and part A of subchapter V of this chapter, to assist local educational agencies that do not have sufficient funds to provide services under this subsection for all eligible students requesting such services.

(8) Duration
The local educational agency shall continue to provide supplemental educational services to a child receiving such services under this subsection until the end of the school year in which such services were first received.

(9) Prohibition
Nothing contained in this subsection shall permit the making of any payment for religious worship or instruction.

(10) Waiver
(A) Requirement
At the request of a local educational agency, a State educational agency may waive, in whole or in part, the requirement of this subsection to provide supplemental educational services if the State educational agency determines that—
(i) none of the providers of those services on the list approved by the State educational agency under paragraph (4)(C) makes those services available in the area served by the local educational agency or within a reasonable distance of that area; and
(ii) the local educational agency provides evidence that it is not able to provide those services.

(B) Notification
The State educational agency shall notify the local educational agency, within 30 days of receiving the local educational agency’s request for a waiver under subparagraph (A), whether the request is approved or disapproved and, if disapproved, the reasons for the disapproval, in writing.

(11) Special rule
If State law prohibits a State educational agency from carrying out one or more of its responsibilities under paragraph (4) with respect to those who provide, or seek approval to provide, supplemental educational services, each local educational agency in the State shall carry out those responsibilities with respect to its students who are eligible for those services.

(12) Definitions
In this subsection—
(A) the term “eligible child” means a child from a low-income family, as determined by the local educational agency for purposes of allocating funds to schools under section 6313(c)(1) of this title;
(B) the term “provider” means a non-profit entity, a for-profit entity, or a local educational agency that—
(i) has a demonstrated record of effectiveness in increasing student academic achievement;
(ii) is capable of providing supplemental educational services that are consistent with the instructional program of the local educational agency and the academic standards described under section 6311 of this title; and
(iii) is financially sound; and
(C) the term “supplemental educational services” means tutoring and other supplemental academic enrichment services that are—
(i) in addition to instruction provided during the school day; and
(ii) are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children on the academic assessments required under section 6311 of this title and attain proficiency in meeting the State’s academic achievement standards.

(f) Schools and LEAs previously identified for improvement or corrective action

(1) Schools
(A) School improvement
(i) Schools in school-improvement status before January 8, 2002
Any school that was in the first year of school improvement status under this section on the day preceding January 8, 2002 (as this section was in effect on such day) shall be treated by the local educational agency as a school that is in the first year of school improvement status under paragraph (1).

(ii) Schools in school-improvement status for 2 or more years before January 8, 2002
Any school that was in school improvement status under this section for two or more consecutive school years preceding January 8, 2002 (as this section was in effect on such day) shall be treated by the local educational agency as a school described in subsection (b)(5) of this section.

(B) Corrective action
Any school that was in corrective action status under this section on the day preceding January 8, 2002 (as this section was in effect on such day) shall be treated by the local educational agency as a school described in paragraph (1).

(2) LEAs
(A) LEA improvement
A State shall identify for improvement under subsection (c)(3) of this section any local educational agency that was in improvement status under this section as this section was in effect on the day preceding January 8, 2002.

(B) Corrective action
A State shall identify for corrective action under subsection (c)(10) of this section any local educational agency that was in corrective action status under this section as this section was in effect on the day preceding January 8, 2002.
(C) Special rule

For the schools and other local educational agencies described under paragraphs (1) and (2), as required, the State shall ensure that public school choice in accordance with subparagraphs (b)(1)(E) and (F) and supplemental education services in accordance with subsection (e) of this section are provided not later than the first day of the 2002–2003 school year.

(D) Transition

With respect to a determination that a local educational agency has for 2 consecutive years failed to make adequate yearly progress as defined in the State plan under section 6311(b)(2) of this title, such determination shall include in such 2-year period any continuous period of time immediately preceding January 8, 2002, during which the agency has failed to make such progress.

(g) Schools funded by the Bureau of Indian Affairs

(1) Adequate yearly progress for Bureau funded schools

(A) Development of definition

(i) Definition

The Secretary of the Interior, in consultation with the Secretary if the Secretary of Interior requests the consultation, using the process set out in section 2018(b) of title 25, shall define adequate yearly progress, consistent with section 6311(b) of this title, for the schools funded by the Bureau of Indian Affairs on a regional or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools.

(ii) Use of definition

The Secretary of the Interior, consistent with clause (i), may use the definition of adequate yearly progress that the State in which the school that is funded by the Bureau is located uses consistent with section 6311(b) of this title, or in the case of schools that are located in more than one State, the Secretary of the Interior may use whichever State definition of adequate yearly progress that best meets the unique circumstances and needs of such school or schools and the students served.

(B) Waiver

The tribal governing body or school board of a school funded by the Bureau of Indian Affairs may waive, in part or in whole, the definition of adequate yearly progress established pursuant to paragraph (A) where such definition is determined by such body or school board to be inappropriate. If such definition is waived, the tribal governing body or school board shall, within 60 days thereafter, submit to the Secretary of Interior a proposal for an alternative definition of adequate yearly progress, consistent with section 6311(b) of this title, that takes into account the unique circumstances and needs of such school or schools and the students served.

The Secretary of Interior shall, in consultation with the Secretary if the Secretary of Interior requests the consultation, either directly or through a contract, provide technical assistance, upon request, to a tribal governing body or school board of a school funded by the Bureau of Indian Affairs that seeks to develop an alternative definition of adequate yearly progress.

(2) Accountability for BIA schools

For the purposes of this section, schools funded by the Bureau of Indian Affairs shall be considered schools subject to subsection (b) of this section, as specifically provided for in this subsection, except that such schools shall not be subject to subsection (c) of this section, or the requirements to provide public school choice and supplemental educational services under subsections (b) and (e) of this section.

(3) School improvement for Bureau schools

(A) Contract and grant schools

For a school funded by the Bureau of Indian Affairs which is operated under a contract issued by the Secretary of the Interior pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or under a grant issued by the Secretary of the Interior pursuant to the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.), the school board of such school shall be responsible for meeting the requirements of subsection (b) of this section relating to development and implementation of any school improvement plan as described in subsections (b)(1) through (b)(3) of this section, and subsection (b)(5) of this section, other than subsection (b)(1)(E) of this section. The Bureau of Indian Affairs shall be responsible for meeting the requirements of subsection (b)(4) of this section relating to technical assistance.

(B) Bureau operated schools

For schools operated by the Bureau of Indian Affairs, the Bureau shall be responsible for meeting the requirements of subsection (b) of this section relating to development and implementation of any school improvement plan as described in subsections (b)(1) through (b)(5) of this section, other than subsection (b)(1)(E) of this section.

(4) Corrective action and restructuring for Bureau-funded schools

(A) Contract and grant schools

For a school funded by the Bureau of Indian Affairs which is operated under a con-
tract issued by the Secretary of the Interior pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or under a grant issued by the Secretary of the Interior pursuant to the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.), the school board of such school shall be responsible for meeting the requirements of subsection (b) of this section relating to corrective action and restructuring as described in subsection (b)(7) and (b)(8) of this section. Any action taken by such school board under subsection (b)(7) or (b)(8) of this section shall take into account the unique circumstances and structure of the Bureau of Indian Affairs-funded school system and the laws governing that system.

(B) Bureau operated schools

For schools operated by the Bureau of Indian Affairs, the Bureau shall be responsible for meeting the requirements of subsection (b) of this section relating to corrective action and restructuring as described in subsection (b)(7) and (b)(8) of this section. Any action taken by the Bureau under subsection (b)(7) or (b)(8) of this section shall take into account the unique circumstances and structure of the Bureau of Indian Affairs-funded school system and the laws governing that system.

(5) Annual report

On an annual basis, the Secretary of the Interior shall report to the Secretary of Education and to the appropriate committees of Congress regarding any agencies funded by the Bureau of Indian Affairs which have been identified for school improvement. Such report shall include—

(A) the identity of each school;

(B) a statement from each affected school board regarding the factors that lead to such identification; and

(C) an analysis by the Secretary of the Interior, in consultation with the Secretary if the Secretary of the Interior requests the consultation, as to whether sufficient resources were available to enable such school to achieve adequate yearly progress.

(h) Other agencies

After receiving the notice described in subsection (b)(14)(D) of this section, the Secretary may notify, to the extent feasible and necessary as determined by the Secretary, other relevant Federal agencies regarding the major factors that were determined by the State educational agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding the major factors as determined by the Secretary, other relevant agencies regarding


The Indian Self-Determination Act, referred to in subsec. (g)(3)(A), (4)(A), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.


PRIOR PROVISIONS


A prior section 1116 of Pub. L. 89–10 was classified to section 6317 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

6317. School support and recognition

(a) System for support

(1) In general

Each State shall establish a statewide system of intensive and sustained support and improvement for local educational agencies and schools receiving funds under this part, in order to increase the opportunity for all students served by those agencies and schools to meet the State’s academic content standards and student academic achievement standards.

(2) Priorities

In carrying out this subsection, a State shall—

(A) first, provide support and assistance to local educational agencies with schools subject to corrective action under section 6316 of this title and assist those schools, in accordance with section 6316(b)(11) of this title, for which a local educational agency has failed to carry out its responsibilities under paragraphs (7) and (8) of section 6316(b) of this title;

(B) second, provide support and assistance to other local educational agencies with schools identified as in need of improvement under section 6316(b) of this title; and

(C) third, provide support and assistance to other local educational agencies and schools participating under this part that need that support and assistance in order to achieve the purpose of this part.

(3) Regional centers

Such a statewide system shall, to the extent practicable, work with and receive support and assistance from regional educational laboratories established under part D of the Education Sciences Reform Act of 2002 [20 U.S.C. 9561 et seq.] and comprehensive centers established under the Educational Technical Assistance Act of 2002 [20 U.S.C. 9601 et seq.] and the comprehensive regional technical assistance
centers and the regional educational laboratories under section 6041(h) of this title (as such section existed on the day before November 5, 2002), or other providers of technical assistance.

(4) Statewide system

(A) In order to achieve the purpose described in paragraph (1), the statewide system shall include, at a minimum, the following approaches:

(i) Establishing school support teams in accordance with subparagraph (C) for assignment to, and working in, schools in the State that are described in paragraph (2).

(ii) Providing such support as the State educational agency determines necessary and available in order to ensure the effectiveness of such teams.

(iii) Designating and using distinguished teachers and principals who are chosen from schools served under this part that have been especially successful in improving academic achievement.

(iv) Devising additional approaches to providing the assistance described in paragraph (1), such as providing assistance through institutions of higher education and educational service agencies or other local consortia, and private providers of scientifically based technical assistance.

(B) PRIORITY.—The State educational agency shall give priority to the approach described in clause (i) of subparagraph (A).

(5) School support teams

(A) Composition

Each school support team established under this section shall be composed of persons knowledgeable about scientifically based research and practice on teaching and learning and about successful statewide projects, school reform, and improving educational opportunities for low-achieving students, including—

(i) highly qualified or distinguished teachers and principals;

(ii) pupil services personnel;

(iii) parents;

(iv) representatives of institutions of higher education;

(v) representatives of regional educational laboratories or comprehensive regional technical assistance centers;

(vi) representatives of outside consultant groups; or

(vii) other individuals as the State educational agency, in consultation with the local educational agency, may determine appropriate.

(B) Functions

Each school support team assigned to a school under this section shall—

(i) review and analyze all facets of the school’s operation, including the design and operation of the instructional program, and assist the school in developing recommendations for improving student performance in that school;

(ii) collaborate with parents and school staff and the local educational agency serving the school in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to improve student performance and help the school meet its goals for improvement, including adequate yearly progress under section 6311(b)(2)(B) of this title;

(iii) evaluate, at least semiannually, the effectiveness of school personnel assigned to the school, including identifying outstanding teachers and principals, and make findings and recommendations to the school, the local educational agency, and, where appropriate, the State educational agency; and

(iv) make additional recommendations as the school implements the plan described in clause (ii) to the local educational agency and the State educational agency concerning additional assistance that is needed by the school or the school support team.

(C) Continuation of assistance

After one school year, from the beginning of the activities, such school support team, in consultation with the local educational agency, may recommend that the school support team continue to provide assistance to the school, or that the local educational agency or the State educational agency, as appropriate, take alternative actions with regard to the school.

(b) State recognition

(1) Academic achievement awards program

(A) In general

Each State receiving a grant under this part—

(i) shall establish a program for making academic achievement awards to recognize schools that meet the criteria described in subparagraph (B); and

(ii) as appropriate and as funds are available under subsection (c)(2)(A) of this section, may financially reward schools served under this part that meet the criteria described in clause (ii).

(B) Criteria

The criteria referred to in subparagraph (A) are that a school—

(i) significantly closed the achievement gap between the groups of students described in section 6311(b)(2) of this title; or

(ii) exceeded their adequate yearly progress, consistent with section 6311(b)(2) of this title, for 2 or more consecutive years.

(2) Distinguished schools

Of those schools meeting the criteria described in paragraph (2), each State shall designate as distinguished schools those schools that have made the greatest gains in closing the achievement gap as described in subparagraph (B)(i) or exceeding adequate yearly progress as described in subparagraph (B)(ii). Such distinguished schools may serve as models for and provide support to other schools, especially schools identified for improvement.
under section 6316 of this title, to assist such schools in meeting the State’s academic content standards and student academic achievement standards.

(3) Awards to teachers
A State program under paragraph (1) may also recognize and provide financial awards to teachers teaching in a school described in such paragraph that consistently makes significant gains in academic achievement in the areas in which the teacher provides instruction, or to teachers or principals designated as distinguished under subsection (a)(4)(A)(iii) of this section.

(c) Funding

(1) In general
Each State—

(A) shall use funds reserved under section 6303(a) of this title and may use funds made available under section 6303(g) of this title for the approaches described under subsection (a)(4)(A) of this section; and

(B) shall use State administrative funds authorized under section 6303(a) of this title to establish the statewide system of support described under subsection (a) of this section.

(2) Reservations of funds by State

(A) Awards program
For the purpose of carrying out subsection (b)(1) of this section, each State receiving a grant under this part may reserve, from the amount (if any) by which the funds received by the State under subpart 2 of this part for a fiscal year exceed the amount received by the State under that subpart for the preceding fiscal year, not more than 5 percent of such excess amount.

(B) Teacher awards
For the purpose of carrying out subsection (b)(3) of this section, a State educational agency may reserve such funds as necessary from funds made available under section 6613 of this title.

(3) Use within 3 years
Notwithstanding any other provision of law, the amount reserved under subparagraph (A) by a State for each fiscal year shall remain available to the State until expended for a period not exceeding 3 years receipt of funds.

(4) Special allocation rule for schools in high-poverty areas

(A) In general
Each State shall distribute not less than 75 percent of any amount reserved under paragraph (2)(A) for each fiscal year to schools described in subparagraph (B), or to teachers in those schools consistent with subsection (b)(3) of this section.

(B) School described
A school described in subparagraph (A) is a school whose student population is in the highest quartile of schools statewide in terms of the percentage of children from low income families.


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 1117 of Pub. L. 89–10 was classified to section 6318 of this title prior to the general amendment of this subchapter by Pub. L. 107–110.

AMENDMENTS

2002—Subsec. (a)(3). Pub. L. 107–279 inserted “regional educational laboratories established under part E of the Education Sciences Reform Act of 2002 and comprehensive centers established under the Educational Technical Assistance Act of 2002 and” after “assistance from” and “(as such section existed on the day before November 5, 2002)” after “section 641(h) of this title”.

§6318. Parental involvement

(a) Local educational agency policy

(1) In general
A local educational agency may receive funds under this part only if such agency implements programs, activities, and procedures for the involvement of parents in programs assisted under this part consistent with this section. Such programs, activities, and procedures shall be planned and implemented with meaningful consultation with parents of participating children.

(2) Written policy
Each local educational agency that receives funds under this part shall develop jointly with, agree on with, and distribute to, parents of participating children a written plan and associated activities that are consistent with this part of the Education Sciences Reform Act of 2002 and with the education agency’s plan developed under section 6312 of this title.
title, and the process of school review and improvement under section 6316 of this title;  
(B) provide the coordination, technical assistance, and other support necessary to assist participating schools in planning and implementing effective parent involvement activities to improve student academic achievement and school performance;  
(C) build the schools’ and parents’ capacity for strong parental involvement as described in subsection (e) of this section;  
(D) coordinate and integrate parental involvement strategies under this part with parental involvement strategies under other programs, such as the Head Start program, Reading First program, Early Reading First program, Even Start program, Parents as Teachers program, and Home Instruction Program for Preschool Youngsters, and State-run preschool programs;  
(E) conduct, with the involvement of parents, an annual evaluation of the content and effectiveness of the parental involvement policy in improving the academic quality of the schools served under this part, including identifying barriers to greater participation by parents in activities authorized by this section (with particular attention to parents who are economically disadvantaged, are disabled, have limited English proficiency, have limited literacy, or are of any racial or ethnic minority background), and use the findings of such evaluation to design strategies for more effective parental involvement, and to revise, if necessary, the parental involvement policies described in this section; and  
(F) involve parents in the activities of the schools served under this part.  
(3) Reservation  
(A) In general  
Each local educational agency shall reserve not less than 1 percent of such agency’s allocation under subpart 2 of this part to carry out this section, including promoting family literacy and parenting skills, except that this paragraph shall not apply if 1 percent of such agency’s allocation under subpart 2 of this part for the fiscal year for which the determination is made is $5,000 or less.  
(B) Parental input  
Parents of children receiving services under this part shall be involved in the decisions regarding how funds reserved under subparagraph (A) are allotted for parental involvement activities.  
(C) Distribution of funds  
Not less than 95 percent of the funds reserved under subparagraph (A) shall be distributed to schools served under this part.  
(b) School parental involvement policy  
(1) In general  
Each school served under this part shall develop with, and distribute to, parents of participating children a written parental involvement policy, agreed on by such parents, that shall describe the means for carrying out the requirements of subsections (c) through (f) of this section. Parents shall be notified of the policy in an understandable and uniform format and, to the extent practicable, provided in a language the parents can understand. Such policy shall be made available to the local community and updated periodically to meet the changing needs of parents and the school.  
(2) Special rule  
If the school has a parental involvement policy that applies to all parents, such school may amend that policy, if necessary, to meet the requirements of this subsection.  
(3) Amendment  
If the local educational agency involved has a school district-level parental involvement policy that applies to all parents, such agency may amend that policy, if necessary, to meet the requirements of this subsection.  
(4) Parental comments  
If the plan under section 6312 of this title is not satisfactory to the parents of participating children, the local educational agency shall submit any parent comments with such plan when such local educational agency submits the plan to the State.  
(c) Policy involvement  
Each school served under this part shall—  
(1) convene an annual meeting, at a convenient time, to which all parents of participating children shall be invited and encouraged to attend, to inform parents of their school’s participation under this part and to explain the requirements of this part, and the right of the parents to be involved;  
(2) offer a flexible number of meetings, such as meetings in the morning or evening, and may provide, with funds provided under this part, transportation, child care, or home visits, as such services relate to parental involvement;  
(3) involve parents, in an organized, ongoing, and timely way, in the planning, review, and improvement of programs under this part, including the planning, review, and improvement of the school parental involvement policy and the joint development of the schoolwide program plan under section 6314(b)(2) of this title, except that if a school has in place a process for involving parents in the joint planning and design of the school’s programs, the school may use that process, if such process includes an adequate representation of parents of participating children;  
(4) provide parents of participating children—  
(A) timely information about programs under this part;  
(B) a description and explanation of the curriculum in use at the school, the forms of academic assessment used to measure student progress, and the proficiency levels students are expected to meet; and  
(C) if requested by parents, opportunities for regular meetings to formulate suggestions and to participate, as appropriate, in decisions relating to the education of their children, and respond to any such suggestions as soon as practicably possible; and
(5) if the schoolwide program plan under section 6314(b)(2) of this title is not satisfactory to the parents of participating children, submit any parent comments on the plan when the school makes the plan available to the local educational agency.

(d) Shared responsibilities for high student academic achievement

As a component of the school-level parental involvement policy developed under subsection (b) of this section, each school served under this part shall jointly develop with parents for all children served under this part a school-parent compact that outlines how parents, the entire school staff, and students will share the responsibility for improved student academic achievement and the means by which the school and parents will build and develop a partnership to help children achieve the State’s high standards. Such compact shall—

(1) describe the school’s responsibility to provide high-quality curriculum and instruction in a supportive and effective learning environment that enables the children served under this part to meet the State’s student academic achievement standards, and the ways in which each parent will be responsible for supporting their children’s learning, such as monitoring attendance, homework completion, and television watching; volunteering in their child’s classroom; and participating, as appropriate, in decisions relating to the education of their children and positive use of extracurricular time; and

(2) address the importance of communication between teachers and parents on an ongoing basis through, at a minimum—

(A) parent-teacher conferences in elementary schools, at least annually, during which the compact shall be discussed as the compact relates to the individual child’s achievement;

(B) frequent reports to parents on their children’s progress; and

(C) reasonable access to staff, opportunities to volunteer and participate in their child’s class, and observation of classroom activities.

(e) Building capacity for involvement

To ensure effective involvement of parents and to support a partnership among the school involved, parents, and the community to improve student academic achievement, each school and local educational agency assisted under this part—

(1) shall provide assistance to parents of children served by the school or local educational agency, as appropriate, in understanding such topics as the State’s academic content standards, State and local student academic achievement standards, State and local academic assessments, the requirements of this part, and how to monitor a child’s progress and work with educators to improve the achievement of their children;

(2) shall provide materials and training to help parents to work with their children to improve their children’s achievement, such as literacy training and using technology, as appropriate, to foster parental involvement;

(3) shall educate teachers, pupil services personnel, principals, and other staff, with the assistance of parents, in the value and utility of contributions of parents, and in how to reach out to, communicate with, and work with parents as equal partners, implement and coordinate parent programs, and build ties between parents and the school;

(4) shall, to the extent feasible and appropriate, coordinate and integrate parent involvement programs and activities with Head Start, Reading First, Early Reading First, Even Start, the Home Instruction Programs for Preschool Youngsters, the Parents as Teachers Program, and public preschool and other programs, and conduct other activities, such as parent resource centers, that encourage and support parents in more fully participating in the education of their children;

(5) shall ensure that information related to school and parent programs, meetings, and other activities is sent to the parents of participating children in a format and, to the extent practicable, in a language the parents can understand;

(6) may involve parents in the development of training for teachers, principals, and other educators to improve the effectiveness of such training;

(7) may provide necessary literacy training from funds received under this part if the local educational agency has exhausted all other reasonably available sources of funding for such training;

(8) may pay reasonable and necessary expenses associated with local parental involvement activities, including transportation and child care costs, to enable parents to participate in school-related meetings and training sessions;

(9) may train parents to enhance the involvement of other parents;

(10) may arrange school meetings at a variety of times, or conduct in-home conferences between teachers or other educators, who work directly with participating children, with parents who are unable to attend such conferences at school, in order to maximize parental involvement and participation;

(11) may adopt and implement model approaches to improving parental involvement;

(12) may establish a districtwide parent advisory council to provide advice on all matters related to parental involvement in programs supported under this section;

(13) may develop appropriate roles for community-based organizations and businesses in parent involvement activities; and

(14) shall provide such other reasonable support for parental involvement activities under this section as parents may request.

(f) Accessibility

In carrying out the parental involvement requirements of this part, local educational agencies and schools, to the extent practicable, shall provide full opportunities for the participation of parents with limited English proficiency, parents with disabilities, and parents of migratory children, including providing information and school reports required under section 6311 of this
(g) Information from parental information and resource centers

In a State where a parental information and resource center is established to provide training, information, and support to parents and individuals who work with local parents, local educational agencies, and schools receiving assistance under this part, each local educational agency or school that receives assistance under this part and is located in the State shall assist parents and parental organizations by informing such parents and organizations of the existence and purpose of such centers.

(h) Review

The State educational agency shall review the local educational agency’s parental involvement policies and practices to determine if the policies and practices meet the requirements of this section.


PRIOR PROVISIONS


A prior section 1118 of Pub. L. 89–10 was classified to section 6319 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§6319. Qualifications for teachers and paraprofessionals

(a) Teacher qualifications and measurable objectives

(1) In general

Beginning with the first day of the first school year after January 8, 2002, each local educational agency receiving assistance under this part shall ensure that all teachers hired after such day and teaching in a program supported with funds under this part are highly qualified.

(2) State plan

As part of the plan described in section 6312 of this title, each local educational agency receiving assistance under this part shall develop a plan to ensure that all teachers teaching in core academic subjects within the State are highly qualified not later than the end of the 2005–2006 school year. Such plan shall establish annual measurable objectives for each local educational agency and school that, at a minimum—

(A) shall include an annual increase in the percentage of highly qualified teachers at each local educational agency and school, to ensure that all teachers teaching in core academic subjects in each public elementary school and secondary school are highly qualified not later than the end of the 2005–2006 school year;

(B) shall include an annual increase in the percentage of teachers who are receiving high-quality professional development to enable such teachers to become highly qualified and successful classroom teachers; and

(C) may include such other measures as the State educational agency determines to be appropriate to increase teacher qualifications.

(3) Local plan

As part of the plan described in section 6312 of this title, each local educational agency receiving assistance under this part shall develop a plan to ensure that all teachers teaching within the school district served by the local educational agency are highly qualified not later than the end of the 2005–2006 school year.

(b) Reports

(1) Annual State and local reports

(A) Local reports

Each State educational agency described in subsection (a)(2) of this section shall require each local educational agency receiving funds under this part to publicly report, each year, beginning with the 2002–2003 school year, the annual progress of the local educational agency as a whole and of each of the schools served by the agency, in meeting the measurable objectives described in subsection (a)(2) of this section.

(B) State reports

Each State educational agency receiving assistance under this part shall prepare and submit each year, beginning with the 2002–2003 school year, a report to the Secretary, describing the State educational agency’s progress in meeting the measurable objectives described in subsection (a)(2) of this section.

(C) Information from other reports

A State educational agency or local educational agency may submit information from the reports described in section 6311(h) of this title for the purposes of this subsection, if such report is modified, as may be necessary, to contain the information required by this subsection, and may submit such information as a part of the reports required under section 6311(h) of this title.

(2) Annual reports by the Secretary

Each year, beginning with the 2002–2003 school year, the Secretary shall publicly report the annual progress of State educational agencies, local educational agencies, and schools, in meeting the measurable objectives described in subsection (a)(2) of this section.

(c) New paraprofessionals

(1) In general

Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired after January 8, 2002, and working in a program supported with funds under this part shall have—

(A) completed at least 2 years of study at an institution of higher education;

(B) obtained an associate’s (or higher) degree; or

(C) met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment—
(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

(2) Clarification
The receipt of a secondary school diploma (or its recognized equivalent) shall be necessary but not sufficient to satisfy the requirements of paragraph (1)(C).

(d) Existing paraprofessionals
Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired before January 8, 2002, and working in a program supported with funds under this part shall, not later than 4 years after January 8, 2002, satisfy the requirements of subsection (c) of this section.

(e) Exceptions for translation and parental involvement activities
Subsections (c) and (d) of this section shall not apply to a paraprofessional—
(1) who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under this part by acting as a translator; or
(2) whose duties consist solely of conducting parental involvement activities consistent with section 6318 of this title.

(f) General requirement for all paraprofessionals
Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals working in a program supported with funds under this part, regardless of the paraprofessionals’ hiring date, have earned a secondary school diploma or its recognized equivalent.

(g) Duties of paraprofessionals
(1) In general
Each local educational agency receiving assistance under this part shall ensure that a paraprofessional working in a program supported with funds under this part is not assigned a duty inconsistent with this subsection.

(2) Responsibilities paraprofessionals may be assigned
A paraprofessional described in paragraph (1)—
(A) may be assigned—
(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

(3) Additional limitations
A paraprofessional described in paragraph (1)—
(A) may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with this section; and
(B) may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

(h) Use of funds
A local educational agency receiving funds under this part may use such funds to support ongoing training and professional development to assist teachers and paraprofessionals in satisfying the requirements of this section.

(i) Verification of compliance
(1) In general
In verifying compliance with this section, each local educational agency, at a minimum, shall require that the principal of each school operating a program under section 6314 or 6315 of this title attest annually in writing as to whether such school is in compliance with the requirements of this section.

(2) Availability of information
Copies of attestations under paragraph (1)—
(A) shall be maintained at each school operating a program under section 6314 or 6315 of this title and at the main office of the local educational agency; and
(B) shall be available to any member of the general public on request.

(j) Combinations of funds
Funds provided under this part that are used for professional development purposes may be combined with funds provided under subchapter II of this chapter, other Acts, and other sources.

(k) Special rule
Except as provided in subsection (l) of this section, no State educational agency shall require a school or a local educational agency to expend a specific amount of funds for professional development activities under this part, except that this paragraph shall not apply with respect to requirements under section 6316(c)(3) of this title.

(l) Minimum expenditures
Each local educational agency that receives funds under this part shall use not less than 5 percent, or more than 10 percent, of such funds for each of fiscal years 2002 and 2003, and not less than 5 percent of the funds for each subsequent fiscal year, for professional development activities to ensure that teachers who are not highly qualified become highly qualified not later than the end of the 2005–2006 school year.
§ 6320. Participation of children enrolled in private schools

(a) General requirement

(1) In general

To the extent consistent with the number of eligible children identified under section 6315(b) of this title in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs, and shall ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to sections 6319 and 6320 of this title.

(2) Secular, neutral, nonideological

Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological.

(3) Equity

Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

(4) Expenditures

Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years.

(5) Provision of services

The local educational agency may provide services under this section directly or through contracts with public and private agencies, organizations, and institutions.

(b) Consultation

(1) In general

To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency’s programs under this part, on issues such as—

(A) how the children’s needs will be identified;

(B) what services will be offered;

(C) how, where, and by whom the services will be provided;

(D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;

(E) the size and scope of the equitable services to be provided to the eligible private school children, and the proportion of funds that is allocated under subsection (a)(4) of this section for such services;

(F) the method or sources of data that are used under subsection (c) of this section and section 6313(c)(1) of this title to determine the number of children from low-income families in participating school attendance areas who attend private schools;

(G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers; and

(H) how, if the agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local educational agency has chosen not to use a contractor.

(2) Timing

Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

(3) Discussion

Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

(4) Documentation

Each local educational agency shall maintain in the agency’s records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has taken place to the State educational agency.

(5) Compliance

(A) In general

A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.
(B) Procedure
If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

(c) Allocation for equitable service to private school students
(1) Calculation
A local educational agency shall have the final authority, consistent with this section, to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools by—
(A) using the same measure of low income used to count public school children;
(B) using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable;
(C) applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to the number of private school children who reside in that school attendance area; or
(D) using an equated measure of low income correlated with the measure of low income used to count public school children.

(2) Complaint process
Any dispute regarding low-income data for private school students shall be subject to the complaint process authorized in section 7883 of this title. ¹

(d) Public control of funds
(1) In general
The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

(2) Provision of services
(A) Provider
The provision of services under this section shall be provided—
(i) by employees of a public agency; or
(ii) through contract by such public agency with an individual, association, agency, or organization.

(B) Requirement
In the provision of such services, such employee, individual, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

(e) Standards for a bypass
If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines that a local educational agency has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall—
(1) waive the requirements of this section for such local educational agency;
(2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 7883 and 7884 of this title; and
(3) in making the determination under this subsection, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.


REFERENCES IN TEXT
Section 7883, referred to in subsec. (c)(2), was in the original “section 9505”, and was translated as reading “section 9503” of Pub. L. 89–10, 93 Stat. 3555, related to professional development, prior to the general amendment of this subchapter by Pub. L. 107–110, to reflect the probable intent of Congress, because provisions authorizing complaint process are contained in section 9503.

PRIOR PROVISIONS

A prior section 1120 of Pub. L. 89–10 was classified to section 6321 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 6321. Fiscal requirements
(a) Maintenance of effort
A local educational agency may receive funds under this part for any fiscal year only if the State educational agency involved finds that the local educational agency has maintained the agency’s fiscal effort in accordance with section 7901 of this title.

(b) Federal funds to supplement, not supplant, non-Federal funds
(1) In general
A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.

(2) Special rule
No local educational agency shall be required to provide services under this part through a particular instructional method or in a particular instructional setting in order to demonstrate such agency’s compliance with paragraph (1).

(c) Comparability of services
(1) In general
(A) Comparable services
Except as provided in paragraphs (4) and (5), a local educational agency may receive
funds under this part only if State and local funds will be used in schools served under this part to provide services that, taken as a whole, are at least comparable to services in schools that are not receiving funds under this part.

(B) Substantially comparable services

If the local educational agency is serving all of such agency’s schools under this part, such agency may receive funds under this part only if such agency will use State and local funds to provide services that, taken as a whole, are substantially comparable in each school.

(C) Basis

A local educational agency may meet the requirements of subparagraphs (A) and (B) on a grade-span by grade-span basis or a school-by-school basis.

(2) Written assurance

(A) Equivalence

A local educational agency shall be considered to have met the requirements of paragraph (1) if such agency has filed with the State educational agency a written assurance that such agency has established and implemented—

(i) a local educational agency-wide salary schedule;

(ii) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and

(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(B) Determinations

For the purpose of this subsection, in the determination of expenditures per pupil from State and local funds, or instructional salaries per pupil from State and local funds, staff salary differentials for years of employment shall not be included in such determinations.

(C) Exclusions

A local educational agency need not include unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year in determining comparability of services under this subsection.

(3) Procedures and records

Each local educational agency assisted under this part shall—

(A) develop procedures for compliance with this subsection; and

(B) maintain records that are updated biennially documenting such agency’s compliance with this subsection.

(4) Inapplicability

This subsection shall not apply to a local educational agency that does not have more than one building for each grade span.

(5) Compliance

For the purpose of determining compliance with paragraph (1), a local educational agency may exclude State and local funds expended for—

(A) language instruction educational programs; and

(B) the excess costs of providing services to children with disabilities as determined by the local educational agency.

(d) Exclusion of funds

For the purpose of complying with subsections (b) and (c) of this section, a State educational agency or local educational agency may exclude supplemental State or local funds expended in any school attendance area or school for programs that meet the intent and purposes of this part.


Prior Provisions


A prior section 1120A of Pub. L. 89–10 was classified to section 6322 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 6322. Coordination requirements

(a) In general

Each local educational agency receiving assistance under this part shall carry out the activities described in subsection (b) of this section with Head Start agencies and, if feasible, other entities carrying out early childhood development programs such as the Early Reading First program.

(b) Activities

The activities referred to in subsection (a) of this section are activities that increase coordination between the local educational agency and a Head Start agency and, if feasible, other entities carrying out early childhood development programs, such as the Early Reading First program, serving children who will attend the schools of the local educational agency, including—

(1) developing and implementing a systematic procedure for receiving records regarding such children, transferred with parental consent from a Head Start program or, where applicable, another early childhood development program such as the Early Reading First program;

(2) establishing channels of communication between school staff and their counterparts (including teachers, social workers, and health staff) in such Head Start agencies or other entities carrying out early childhood development programs such as the Early Reading First program, as appropriate, to facilitate coordination of programs;

(3) conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start teachers or, if appropriate, private teachers from other early childhood development programs such as the Early Reading First program, to discuss the developmental and other needs of individual children;
(4) organizing and participating in joint transition-related training of school staff, Head Start program staff, Early Reading First program staff, and, where appropriate, other early childhood development program staff; and

(5) linking the educational services provided by such local educational agency with the services provided by local Head Start agencies and entities carrying out Early Reading First programs.

(c) Coordination of regulations

The Secretary shall work with the Secretary of Health and Human Services to coordinate regulations promulgated under this part with regulations promulgated under the Head Start Act [42 U.S.C. 9831 et seq.].


§ 6331. Grants for the outlying areas and the Secretary of the Interior

(a) Reservation of funds

From the amount appropriated for payments to States for any fiscal year under section 6302(a) and 6337(f) of this title, the Secretary shall reserve a total of 1 percent to provide assistance to:

(1) the outlying areas in the amount determined in accordance with subsection (b) of this section; and

(2) the Secretary of the Interior in the amount necessary to make payments pursuant to subsection (d) of this section.

(b) Assistance to outlying areas

(1) Funds reserved

From the amount made available for any fiscal year under subsection (a) of this section, the Secretary shall award grants to local educational agencies in the outlying areas.

(2) Competitive grants

Until each appropriate outlying area enters into an agreement for extension of United States educational assistance under the Compact of Free Association after January 8, 2002, the Secretary shall carry out the competition described in paragraph (3), except that the amount reserved to carry out such competition shall not exceed $5,000,000.

(3) Limitation for competitive grants

(A) Competitive grants

The Secretary shall use funds described in paragraph (2) to award grants to the outlying areas and freely associated States to carry out the purposes of this part.

(B) Award basis

The Secretary shall award grants under subparagraph (A) on a competitive basis, taking into consideration the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii.

(C) Uses

Except as provided in subparagraph (D), grant funds awarded under this paragraph may be used only—

(1) for programs described in this chapter, including teacher training, curriculum development, instructional materials, or general school improvement and reform; and

(2) to provide direct educational services that assist all students with meeting challenging State academic content standards.

(D) Administrative costs

The Secretary may provide not more than 5 percent of the amount reserved for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory under subparagraph (B).

(4) Special rule

The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the freely associated States under this section.

(c) Definitions

For the purpose of subsections (a) and (b) of this section—

(1) the term “freely associated states” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau; and

(2) the term “outlying area” means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(d) Allotment to the Secretary of the Interior

(1) In general

The amount allotted for payments to the Secretary of the Interior under subsection (a)(2) of this section for any fiscal year shall be, as determined pursuant to criteria established by the Secretary, the amount necessary to meet the special educational needs of—

(A) Indian children on reservations served by elementary schools and secondary schools for Indian children operated or supported by the Department of the Interior; and

Subpart 2—Allocations
(B) out-of-State Indian children in elementary schools and secondary schools in local educational agencies under special contracts with the Department of the Interior.

(2) Payments

From the amount allotted for payments to the Secretary of the Interior under subsection (a)(2) of this section, the Secretary of the Interior shall make payments to local educational agencies, on such terms as the Secretary determines will best carry out the purposes of this part, with respect to out-of-State Indian children described in paragraph (1). The amount of such payment may not exceed, for each such child, the greater of—

(A) 40 percent of the average per-pupil expenditure in the State in which the agency is located; or

(B) 48 percent of such expenditure in the United States.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 6332. Allocations to States

(a) Allocation formula

Of the amount appropriated under section 6302(a) of this title to carry out this part for each of fiscal years 2002–2007 (referred to in this subsection as the current fiscal year)—

(1) an amount equal to the amount made available to carry out section 6333 of this title for fiscal year 2001 shall be allocated in accordance with section 6333 of this title;

(2) an amount equal to the amount made available to carry out section 6334 of this title for fiscal year 2001 shall be allocated in accordance with section 6334 of this title; and

(3) an amount equal to 100 percent of the amount, if any, by which the amount made available to carry out sections 6333, 6334, and 6335 of this title for the current fiscal year exceeds the amount available to carry out sections 6333 and 6334 of this title for fiscal year 2001 shall be allocated in accordance with section 6335 of this title.

(b) Adjustments where necessitated by appropriations

(1) In general

If the sums available under this subpart for any fiscal year are insufficient to pay the full amounts that all local educational agencies in States are eligible to receive under sections 6333, 6334, and 6335 of this title for such year, the Secretary shall ratably reduce the allocations to such local educational agencies, subject to subsections (c) and (d) of this section.

(2) Additional funds

If additional funds become available for making payments under sections 6333, 6334, and 6335 of this title for such fiscal year, allocations that were reduced under paragraph (1) shall be increased on the same basis as they were reduced.

(c) Hold-harmless amounts

(1) Amounts for sections 6333, 6334, and 6335

For each fiscal year, the amount made available to each local educational agency under each of sections 6333, 6334, and 6335 of this title shall be—

(A) not less than 95 percent of the amount made available for the preceding fiscal year if the number of children counted for grants under section 6333 of this title is not less than 30 percent of the total number of children aged 5 to 17 years, inclusive, in the local educational agency;

(B) not less than 90 percent of the amount made available for the preceding fiscal year if the percentage described in subparagraph (A) is between 15 percent and 30 percent; and

(C) not less than 85 percent of the amount made available for the preceding fiscal year if the percentage described in subparagraph (A) is below 15 percent.

(2) Payments

If sufficient funds are appropriated, the amounts described in paragraph (1) shall be paid to all local educational agencies that received grants under section 6334 of this title for the preceding fiscal year, regardless of whether the local educational agency meets the minimum eligibility criteria for that fiscal year described in section 6334(a)(1)(A) of this title except that a local educational agency that does not meet such minimum eligibility criteria for 4 consecutive years shall no longer be eligible to receive a hold harmless amount referred to in paragraph (1).

(3) Applicability

Notwithstanding any other provision of law, the Secretary shall not take into consideration the hold-harmless provisions of this subsection for any fiscal year for purposes of calculating State or local allocations for the fiscal year under any program administered by the Secretary other than a program authorized under this part.

(4) Population data

For any fiscal year for which the Secretary calculates grants on the basis of population data for counties, the Secretary shall apply the hold-harmless percentages in paragraphs (1) and (2) to counties and, if the Secretary’s allocation for a county is not sufficient to meet the hold-harmless requirements of this subsection for every local educational agency within that county, the State educational agency shall reallocate funds proportionately from all other local educational agencies in the State that are receiving funds in excess of
the hold-harmless amounts specified in this subsection.

(d) Ratable reductions

(1) In general

If the sums made available under this subpart for any fiscal year are insufficient to pay the full amounts that local educational agencies in all States are eligible to receive under subsection (c) of this section for such year; the Secretary shall ratably reduce such amounts for such year.

(2) Additional funds

If additional funds become available for making payments under subsection (c) of this section for such fiscal year; amounts that were reduced under paragraph (1) shall be increased on the same basis as such amounts were reduced.

(e) Definition

For the purpose of this section and sections 6333, 6334, 6335, and 6337 of this title; the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.


§ 6333. Basic grants to local educational agencies

(a) Amount of grants

(1) Grants for local educational agencies and Puerto Rico

Except as provided in paragraph (4) and in section 6338 of this title, the grant that a local educational agency is eligible to receive under this section for a fiscal year is the amount determined by multiplying—

(A) the number of children counted under subsection (c) of this section; and

(B) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this subparagraph shall not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

(2) Calculation of grants

(A) Allocations to local educational agencies

The Secretary shall calculate grants under this section on the basis of the number of children counted under subsection (c) of this section for local educational agencies, unless the Secretary and the Secretary of Commerce determine that some or all of those data are unreliable or that their use would be otherwise inappropriate, in which case—

(i) the two Secretaries shall publicly disclose the reasons for their determination in detail; and

(ii) paragraph (3) shall apply.

(B) Allocations to large and small local educational agencies

(i) For any fiscal year to which this paragraph applies, the Secretary shall calculate grants under this section for each local educational agency.

(ii) The amount of a grant under this section for each large local educational agency shall be the amount determined under clause (i).

(iii) For small local educational agencies, the State educational agency may either—

(I) distribute grants under this section in amounts determined by the Secretary under clause (i); or

(II) use an alternative method approved by the Secretary to distribute the portion of the State's total grants under this section that is based on those small agencies.

(iv) An alternative method under clause (iii)(II) shall be based on population data that the State educational agency determines best reflect the current distribution of children in poor families among the State's small local educational agencies that meet the eligibility criteria of subsection (b) of this section.

(v) If a small local educational agency is dissatisfied with the determination of its grant by the State educational agency under clause (iii)(II), it may appeal that determination to the Secretary, who shall respond not later than 45 days after receipt of such appeal.

(vi) As used in this subparagraph—

(I) the term "large local educational agency" means a local educational agency serving an area with a total population of 20,000 or more; and

(II) the term "small local educational agency" means a local educational agency serving an area with a total population of less than 20,000.

(3) Allocations to counties

(A) Calculation

For any fiscal year to which this paragraph applies, the Secretary shall calculate grants under this section on the basis of the number of children counted under subsection (c) of this section for counties, and State educational agencies shall suballocate county amounts to local educational agencies, in accordance with regulations issued by the Secretary.

(B) Direct allocations

In any State in which a large number of local educational agencies overlap county boundaries, or for which the State believes it has data that would better target funds than allocating them by county, the State educational agency may apply to the Secretary for authority to make the allocations under this subpart for a particular fiscal year directly to local educational agencies without regard to counties.

(C) Allocations to local educational agencies

If the Secretary approves the State educational agency's application under subparagraph (B), the State educational agency shall provide the Secretary an assurance that such allocations shall be made—

(i) using precisely the same factors for determining a grant as are used under this subpart; or
(ii) using data that the State educational agency submits to the Secretary for approval that more accurately target poverty.

(D) Appeal

The State educational agency shall provide the Secretary an assurance that it will establish a procedure through which a local educational agency that is dissatisfied with its determinations under subparagraph (B) may appeal directly to the Secretary for a final determination.

(4) Puerto Rico

(A) In general

For each fiscal year, the grant that the Commonwealth of Puerto Rico shall be eligible to receive under this section shall be the amount determined by multiplying the number of children counted under subsection (c) of this section for the Commonwealth of Puerto Rico by the product of—

(i) subject to subparagraph (B), the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

(ii) 32 percent of the average per-pupil expenditure in the United States.

(B) Minimum percentage

The percentage in subparagraph (A)(i) shall not be less than—

(i) for fiscal year 2002, 77.5 percent;

(ii) for fiscal year 2003, 80.0 percent;

(iii) for fiscal year 2004, 82.5 percent;

(iv) for fiscal year 2005, 85.0 percent;

(v) for fiscal year 2006, 82.5 percent; and

(vi) for fiscal year 2007 and succeeding fiscal years, 100.0 percent.

(C) Limitation

If the application of subparagraph (B) would result in any of the 50 States or the District of Columbia receiving less under this subpart than it received under this subpart for the preceding fiscal year, the percentage in subparagraph (A) shall be the greater of—

(i) the percentage in subparagraph (A)(i);

(ii) the percentage specified in subparagraph (B) for the preceding fiscal year; or

(iii) the percentage used for the preceding fiscal year.

(b) Minimum number of children to qualify

A local educational agency is eligible for a basic grant under this section for any fiscal year only if the number of children counted under subsection (c) of this section for that agency is both—

(1) 10 or more; and

(2) more than 2 percent of the total school-age population in the agency’s jurisdiction.

(c) Children to be counted

(1) Categories of children

The number of children to be counted for purposes of this section is the aggregate of—

(A) the number of children aged 5 to 17, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2);

(B) the number of children (determined under paragraph (4) for either the preceding year as described in that paragraph, or for the second preceding year, as the Secretary finds appropriate) aged 5 to 17, inclusive, in the school district of such agency in institutions for neglected and delinquent children (other than such institutions operated by the United States), but not counted pursuant to subpart 1 of part D of this subchapter for the purposes of a grant to a State agency, or being supported in foster homes with public funds; and

(C) the number of children aged 5 to 17, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (4).

(2) Determination of number of children

For the purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data, described in paragraph (3), available from the Department of Commerce. The District of Columbia and the Commonwealth of Puerto Rico shall be treated as individual local educational agencies. If a local educational agency contains two or more counties in their entirety, then each county will be treated as if such county were a separate local educational agency for purposes of calculating grants under this section. The total of grants for such counties shall be allocated to such a local educational agency, which local educational agency shall distribute to schools in each county within such agency a share of the local educational agency’s total grant that is no less than the county’s share of the population counts used to calculate the local educational agency’s grant.

(3) Population updates

(A) In general

In fiscal year 2002 and each subsequent fiscal year, the Secretary shall use updated data on the number of children, aged 5 to 17, inclusive, from families below the poverty level for counties or local educational agencies, published by the Department of Commerce, unless the Secretary and the Secretary of Commerce determine that the use of the updated population data would be inappropriate or unreliable. If appropriate and reliable data are not available annually, the Secretary shall use data which are updated every 2 years.

(B) Inappropriate or unreliable data

If the Secretary and the Secretary of Commerce determine that some or all of the data referred to in subparagraph (A) are inappropriate or unreliable, the Secretary and the Secretary of Commerce shall publicly disclose their reasons.

(C) Criteria of poverty

In determining the families that are below the poverty level, the Secretary shall use
the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census, as the criteria have been updated by increases in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics.

(4) Other children to be counted

(A) For the purpose of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, who are supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to the Secretary at the time of such determination, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year in which the Secretary’s determination is made, then on the basis of the most recent reliable data available to the Secretary at the time of such determination.

(B) Except for the data on children living in institutions for neglected or delinquent children, the Secretary of Health and Human Services shall collect and transmit the information required by this subparagraph to the Secretary not later than January 1 of each year.

(D) For the purpose of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

(5) Estimate

When requested by the Secretary, the Secretary of Commerce shall make a special updated estimate of the number of children of such ages who are from families below the poverty level (as determined under paragraph (1)(A)) in each school district, and the Secretary is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information.

(d) State minimum

Notwithstanding section 6332 of this title, the aggregate amount allotted for all local educational agencies within a State may not be less than the lesser of—

(1) 0.25 percent of the total amount allocated to States under this section for fiscal year 2001, plus 0.35 percent of the total amount allocated to States under this section in excess of the amount allocated for fiscal year 2001; or

(2) the average of—

(A) the amount calculated in paragraph (1), above; and

(B) the number of children in such State counted under subsection (c) of this section in the fiscal year multiplied by 150 percent of the national average per-pupil payment made with funds available under this section for that year.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 6334. Concentration grants to local educational agencies

(a) Eligibility for and amount of grants

(1) In general

(A) Except as otherwise provided in this paragraph, each local educational agency which is eligible for a grant under section 6333 of this title for any fiscal year is eligible for an additional grant under this section for that fiscal year if the number of children counted under section 6333(c) of this title in the agency exceeds either—

(i) 6,500; or

(ii) 15 percent of the total number of children aged 5 through 17 in the agency.

(B) Notwithstanding section 6332 of this title, no State shall receive less than the lesser of—

(i) 0.25 percent of the total amount allocated to States under this section for fiscal year 2001, plus 0.35 percent of the total amount allocated to States under this section in excess of the amount allocated for fiscal year 2001; or

(ii) the average of—

(I) the amount calculated under clause (i); and

(II) the greater of—

(aa) $340,000; or

(bb) the number of children in such State counted for purposes of this section in that fiscal year multiplied by 150 percent of the national average per-pupil payment made with funds available under this section for that year.
§ 6335. Targeted grants to local educational agencies

(a) Eligibility of local educational agencies

(1) In general

A local educational agency in a State is eligible to receive a targeted grant under this section for any fiscal year if—

(A) the number of children in the local educational agency counted under section 6333(c) of this title, before application of the weighted child count described in subsection (c) of this section, is at least 10; and

(B) if the number of children counted for grants under section 6333(c) of this title, before application of the weighted child count described in subsection (c) of this section, is at least 5 percent of the total number of children aged 5 to 17 years, inclusive, in the school district of the local educational agency.

(2) Special rule

For any fiscal year for which the Secretary distributes funds under this section on the basis of counties, funds made available as a result of applying this subsection shall be reallocated by the State educational agency to other eligible local educational agencies in the State in proportion to the distribution of other funds under this section.

(b) Grants for local educational agencies, the District of Columbia, and the Commonwealth of Puerto Rico

(1) In general

The amount of the grant that a local educational agency in a State (other than the Commonwealth of Puerto Rico) is eligible to receive under this section for any fiscal year shall be the product of—

(A) the weighted child count determined under subsection (c) of this section; and

(B) the amount determined under section 6333(a)(4) of this title for the Commonwealth of Puerto Rico.

(2) Puerto Rico

For each fiscal year, the amount of the grant the Commonwealth of Puerto Rico is eligible to receive under this section shall be equal to the number of children counted under subsection (c) of this section for that fiscal year.

(c) Weighted child count

(1) Weights for allocations to counties

(A) In general

For each fiscal year, the weighted child count described in subsection (c) of this title that exceed the statewide average percentage of such children or the statewide average number of such children shall receive any funds on the basis of that fiscal year.

(b) Small States

In any State for which on January 8, 2002, the number of children counted under section 6333(c) of this title is less than 0.25 percent of the number of those children counted for all States, the State educational agency shall allocate funds under this section among the local educational agencies in the State either—

(1) in accordance with paragraphs (2) and (4) of subsection (a) of this section; or

(2) based on their respective concentrations and numbers of children counted under section 6333(c) of this title, except that only those local educational agencies with concentrations or numbers of children counted under section 6333(c) of this title that exceed the statewide average percentage of such children or the statewide average number of such children shall receive any funds on the basis of that fiscal year.

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counties, whose total population aged 5 to 17, inclusive, multiplied by 1.0;
(ii) the number of such children who constitute not more than 15.00 percent, inclusive, of the county’s total population aged 5 to 17, inclusive, multiplied by 1.0;
(iii) the number of such children who constitute not more than 19.00 percent, of such population, multiplied by 1.75;
(iv) the number of such children who constitute more than 22.11 percent, but not more than 24.20 percent, of such population, multiplied by 2.5;
(v) the number of such children who constitute more than 29.20 percent, of such population, multiplied by 4.0.

(C) By number of children

The amount referred to in subparagraph (A) is determined by adding—
(i) the number of children determined under section 6333(c) of this title who constitute not more than 692, inclusive, of the agency’s total population aged 5 to 17, inclusive, multiplied by 1.0;
(ii) the number of such children between 692 and 2,262, inclusive, in such population, multiplied by 1.5;
(iii) the number of children between 2,263 and 7,851, inclusive, in such population, multiplied by 2.0;
(iv) the number of such children between 7,852 and 35,514, inclusive, in such population, multiplied by 2.5; and
(v) the number of such children between 35,515 and 23,917, inclusive, in such population, multiplied by 3.0.

(D) Puerto Rico

Notwithstanding subparagraph (A), the weighting factor for the Commonwealth of Puerto Rico under this paragraph shall not be greater than the total number of children counted under section 6333(c) of this title multiplied by 1.82.

(2) Weights for allocations to local educational agencies

(A) In general

For each fiscal year for which the Secretary uses local educational agency data, the weighted child count used to determine a local educational agency’s grant under this section is the larger of the two amounts determined under subparagraphs (B) and (C).

(B) By percentage of children

The amount referred to in subparagraph (A) is determined by adding—
(i) the number of children determined under section 6333(c) of this title for that local educational agency who constitute not more than 15.58 percent, inclusive, of the agency’s total population aged 5 to 17, inclusive, multiplied by 1.0;
(ii) the number of such children who constitute more than 15.58 percent, but not more than 22.11 percent, of such population, multiplied by 1.75;
(iii) the number of such children who constitute more than 22.11 percent, but not more than 30.16 percent, of such population, multiplied by 2.5;
(iv) the number of such children who constitute more than 30.16 percent, but not more than 38.24 percent, of such population, multiplied by 3.25; and
(v) the number of such children who constitute more than 38.24 percent of such population, multiplied by 4.0.

(C) By number of children

The amount referred to in subparagraph (A) is determined by adding—
(i) the number of children determined under section 6333(c) of this title who constitute not more than 691, inclusive, of the agency’s total population aged 5 to 17, inclusive, multiplied by 1.0;
(ii) the number of such children between 692 and 2,262, inclusive, in such population, multiplied by 1.5;
(iii) the number of such children between 2,263 and 7,851, inclusive, in such population, multiplied by 2.0;
(iv) the number of such children between 7,852 and 35,514, inclusive, in such population, multiplied by 2.5; and
(v) the number of such children in excess of 35,514 in such population, multiplied by 3.0.

(D) Puerto Rico

Notwithstanding subparagraph (A), the weighting factor for the Commonwealth of Puerto Rico under this paragraph shall not be greater than the total number of children counted under section 6333(c) of this title multiplied by 1.82.

(d) Calculation of grant amounts

Grant amounts under this section shall be calculated in the same manner as grant amounts are calculated under section 6333(a)(2) and (3) of this title.

(e) State minimum

Notwithstanding any other provision of this section or section 6332 of this title, from the total amount available for any fiscal year to carry out this section, each State shall be allotted at least the lesser of—
(1) 0.35 percent of the total amount available to carry out this section; or
(2) the average of—
(A) 0.35 percent of the total amount available to carry out this section; and
(B) 150 percent of the national average grant under this section per child described in section 6333(c) of this title, without application of a weighting factor, multiplied by the State’s total number of children described in section 6333(c) of this title, without application of a weighting factor.


PRIOR PROVISIONS

§ 6336. Adequacy of funding of targeted grants to local educational agencies in fiscal years after fiscal year 2001

(a) Findings

Congress makes the following findings:

(1) The current Basic Grant Formula for the distribution of funds under this part often does not provide funds for the economically disadvantaged students for which such funds are targeted.

(2) Any school district in which more than 2 percent of the students live below the poverty level qualifies for funding under the Basic Grant Formula. As a result, 9 out of every 10 school districts in the country receive some form of aid under the Formula.

(3) Fifty-eight percent of all schools receive at least some funding under this part, including many suburban schools with predominantly well-off students.

(4) One out of every 5 schools with concentrations of poor students between 50 and 75 percent receive no funding at all under this part.

(5) In passing the Improving America’s Schools Act in 1994, Congress declared that grants under this part would more sharply target high poverty schools by using the Targeted Grant Formula, but annual appropriation Acts have prevented the use of that formula.

(6) The advantage of the Targeted Grant Formula over other funding formulas under this part is that the Targeted Grant Formula provides increased grants per poor child as the percentage of economically disadvantaged children in a school district increases.

(7) Studies have found that the poverty of a child’s family is much more likely to be associated with educational disadvantage if the family lives in an area with large concentrations of poor families.

(8) States with large populations of high poverty students would receive significantly more funding if more funds under this part were allocated through the Targeted Grant Formula.

(9) Congress has an obligation to allocate funds under this part so that such funds will positively affect the largest number of economically disadvantaged students.

(b) Limitation on allocation of subchapter I funds contingent on adequate funding of targeted grants

Pursuant to section 6332 of this title, the total amount allocated in any fiscal year after fiscal year 2001 for programs and activities under this part shall not exceed the amount allocated in fiscal year 2001 for such programs and activities unless the amount available for targeted grants to local educational agencies under section 6335 of this title in the applicable fiscal year meets the requirements of section 6332(a) of this title.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 6337. Education finance incentive grant program

(a) Grants

From funds appropriated under subsection (f) of this section the Secretary is authorized to make grants to States, from allotments under subsection (b) of this section, to carry out the programs and activities of this part.

(b) Distribution based upon fiscal effort and equity

(1) In general

(A) In general

Except as provided in subparagraph (B), funds appropriated pursuant to subsection (f) of this section shall be allotted to each State based upon the number of children counted under section 6333(c) of this title in such State multiplied by the product—

(i) the amount in section 6333(a)(1)(B) of this title for all States other than the Commonwealth of Puerto Rico, except that the amount determined under that subparagraph shall not be less than 34 percent or more than 46 percent of the average per pupil expenditure in the United States, and the amount in section 6333(a)(4) of this title for the Commonwealth of Puerto Rico, except that the amount in section 6333(a)(4)(A)(i) of this title shall be 94 percent of the average per pupil expenditure in the United States; multiplied by

(ii) such State’s effort factor described in paragraph (2); multiplied by

(iii) 1.30 minus such State’s equity factor described in paragraph (9).

(B) State minimum

Notwithstanding any other provision of this section or section 6332 of this title, from the total amount available for any fiscal year to carry out this section, each State shall be allotted at least the lesser of—

(i) 0.35 percent of total appropriations; or

(ii) the average of—

(I) 0.35 percent of the total amount available to carry out this section; and

(II) 150 percent of the national average grant under this section per child described in section 6333(c) of this title, without application of a weighting factor, multiplied by the State’s total number of children described in section 6333(c) of this title, without application of a weighting factor.

(2) Effort factor

(A) In general

Except as provided in subparagraph (B), the effort factor for a State shall be deter-
agencies under the following provisions. Within § 6337

(a) The Secretary shall allocate to local educational agencies under this section shall be distributed to schools on a basis consistent with section 6313 of this title, and may only be used to carry out activities under this part. A local educational agency in a State is eligible to receive a targeted grant under this section for any fiscal year if—

(A) the number of children in the local educational agency counted under section 6333(c) of this title, before application of the weighted child count described in paragraph (3), is at least 10; and

(B) if the number of children counted for grants under section 6333(c) of this title, before application of the weighted child count described in paragraph (3), is at least 5 percent of the total number of children aged 5 to 17 years, inclusive, in the school district of the local educational agency.

For any fiscal year for which the Secretary allocates funds under this section on the basis of counties, funds made available as a result of applying this subsection shall be reallocated by the State educational agency to other eligible local educational agencies in the State in proportion to the distribution of other funds under this section.

§ 6337 (d) Allocation of funds to eligible local educational agencies

Funds received by States under this section shall be allocated within States to eligible local educational agencies on the basis of weighted child counts calculated in accordance with paragraphs (1), (2), or (3), as appropriate for each State.

§ 6337 (1) States with an equity factor less than .10

In States with an equity factor less than .10, the weighted child counts referred to in subsection (d) of this section shall be calculated as follows:

(A) Weights for allocations to counties

(i) In general

For each fiscal year for which the Secretary uses county population data to calculate grants, the weighted child count used to determine a county’s allocation under this section is the larger of the two amounts determined under clauses (ii) and (iii).

(ii) By percentage of children

The amount referred to in clause “(i)” is determined by adding—

(I) the number of children determined under section 6333(c) of this title for that county who constitute not more than 15.00 percent, inclusive, of the county’s total population aged 5 to 17, inclusive, multiplied by 1.0;

(II) the number of such children who constitute more than 15.00 percent, but not more than 19.00 percent, of such population, multiplied by 1.75;

(III) the number of such children who constitute more than 19.00 percent, but not more than 24.20 percent, of such population, multiplied by 2.5;

(c) Use of funds; eligibility of local educational agencies

All funds awarded to each State under this section shall be allocated to local educational agencies under the following provisions. Within

1 So in original. The opening quotation marks probably should not appear.
(IV) the number of such children who constitute more than 24.20 percent, but not more than 29.20 percent, of such population, multiplied by 2.0; and

(V) the number of such children who constitute more than 29.20 percent of such population, multiplied by 4.0.

(iii) By number of children

The amount referred to in clause (i) is determined by adding

(I) the number of children determined under section 6333(c) of this title who constitute not more than 2,311, inclusive, of the county’s total population aged 5 to 17, inclusive, multiplied by 1.0;

(II) the number of such children between 2,312 and 7,913, inclusive, in such population, multiplied by 1.5;

(III) the number of such children between 7,914 and 93,810, inclusive, in such population, multiplied by 2.0;

(IV) the number of such children between 93,811 in such population, multiplied by 2.5; and

(V) the number of such children in excess of 35,514 in such population, multiplied by 3.0.

(B) Weights for allocations to local educational agencies

(i) In general

For each fiscal year for which the Secretary uses local educational agency data, the weighted child count used to determine a local educational agency’s grant under this section is the larger of the two amounts determined under clauses (ii) and (iii).

(ii) By percentage of children

The amount referred to in clause (i) is determined by adding—

(I) the number of children determined under section 6333(c) of this title for that local educational agency who constitute not more than 15.00 percent, inclusive, of the agency’s total population aged 5 to 17, inclusive, multiplied by 1.0;

(II) the number of such children who constitute more than 15.00 percent, but not more than 19.00 percent, of such population, multiplied by 1.5;

(III) the number of such children who constitute more than 19.00 percent, but not more than 24.20 percent, of such population, multiplied by 2.0;

(IV) the number of such children who constitute more than 24.20 percent, but not more than 29.20 percent, of such population, multiplied by 3.0; and

(V) the number of such children who constitute more than 29.20 percent of such population, multiplied by 4.0.

(iii) By number of children

The amount referred to in clause (i) is determined by adding

(I) the number of children determined under section 6333(c) of this title who constitute not more than 691, inclusive, of the agency’s total population aged 5 to 17, inclusive, multiplied by 1.0;

(II) the number of such children between 692 and 2,262, inclusive, in such population, multiplied by 1.5;

(III) the number of such children between 2,263 and 7,851, inclusive, in such population, multiplied by 2.0;

(IV) the number of such children between 7,852 and 35,514, inclusive, in such population, multiplied by 2.5; and

(V) the number of such children in excess of 35,514 in such population, multiplied by 3.0.

(2) States with an equity factor greater than or equal to .10 and less than .20

In States with an equity factor greater than or equal to .10 and less than .20, the weighted child counts referred to in subsection (d) of this section shall be calculated as follows:

(A) Weights for allocations to counties

(i) In general

For each fiscal year for which the Secretary uses county population data to calculate grants, the weighted child count used to determine a county’s allocation under this section is the larger of the two amounts determined under clauses (ii) and (iii).

(ii) By percentage of children

The amount referred to in clause (i) is determined by adding—

(I) the number of children determined under section 6333(c) of this title for that county who constitute not more than 15.00 percent, inclusive, of the county’s total population aged 5 to 17, inclusive, multiplied by 1.0;

(II) the number of such children who constitute more than 15.00 percent, but not more than 19.00 percent, of such population, multiplied by 1.5;

(III) the number of such children who constitute more than 19.00 percent, but not more than 24.20 percent, of such population, multiplied by 2.0;

(IV) the number of such children who constitute more than 24.20 percent, but not more than 29.20 percent, of such population, multiplied by 3.0; and

(V) the number of such children who constitute more than 29.20 percent of such population, multiplied by 4.0.

(iii) By number of children

The amount referred to in clause (i) is determined by adding

(I) the number of children determined under section 6333(c) of this title who constitute not more than 691, inclusive, of the county’s total population aged 5 to 17, inclusive, multiplied by 1.0;

(II) the number of such children between 692 and 2,262, inclusive, in such population, multiplied by 1.5;

(III) the number of such children between 2,263 and 7,851, inclusive, in such population, multiplied by 2.0;

(IV) the number of such children between 7,852 and 35,514, inclusive, in such population, multiplied by 2.5; and

(V) the number of such children in excess of 35,514 in such population, multiplied by 3.0.
(V) the number of such children in excess of 93,811 in such population, multiplied by 4.5.

(B) Weights for allocations to local educational agencies

(i) In general
For each fiscal year for which the Secretary uses local educational agency data, the weighted child count used to determine a local educational agency's grant under this section is the larger of the two amounts determined under clauses (ii) and (iii).

(ii) By percentage of children
The amount referred to in clause (i) is determined by adding—
(I) the number of children determined under section 6333(c) of this title who constitute not more than 19.00 percent, inclusive, of the agency's total population aged 5 to 17, inclusive, multiplied by 1.0;
(II) the number of such children who constitute more than 19.00 percent, but not more than 24.20 percent, of such population, multiplied by 1.5;
(III) the number of such children who constitute more than 24.20 percent, but not more than 29.20 percent of such population, multiplied by 6.0; and
(V) the number of such children who constitute more than 29.20 percent of such population, multiplied by 8.0.

(iii) By number of children
The amount referred to in clause (i) is determined by adding—
(I) the number of children determined under section 6333(c) of this title for that local educational agency who constitute not more than 691, inclusive, of the agency's total population aged 5 to 17, inclusive, multiplied by 1.0;
(II) the number of such children who constitute not more than 2,311, inclusive, of such population, multiplied by 1.5;
(III) the number of such children between 2,312 and 7,913, inclusive, in such population, multiplied by 2.0; and
(V) the number of such children in excess of 93,811 in such population, multiplied by 6.0.

(B) Weights for allocations to local educational agencies

(i) In general
For each fiscal year for which the Secretary uses county population data to calculate grants, the weighted child count used to determine a county's allocation under this section is the larger of the two amounts determined under clauses (ii) and (iii).

(ii) By percentage of children
The amount referred to in clause (i) is determined by adding—
(I) the number of children determined under section 6333(c) of this title for that county who constitute not more than 15.00 percent, inclusive, of the county's total population aged 5 to 17, inclusive, multiplied by 1.0;
(II) the number of such children who constitute more than 15.00 percent, but not more than 19.00 percent, of such population, multiplied by 2.0;
(III) the number of such children who constitute more than 19.00 percent, but not more than 24.20 percent, of such population, multiplied by 4.0;
(IV) the number of such children who constitute more than 24.20 percent, but not more than 29.20 percent, of such population, multiplied by 6.0; and
(V) the number of such children who constitute more than 29.20 percent of such population, multiplied by 8.0.

(iii) By number of children
The amount referred to in clause (i) is determined by adding—
(I) the number of children determined under section 6333(c) of this title who constitute not more than 2,311, inclusive, of the county's total population aged 5 to 17, inclusive, multiplied by 1.0;
(II) the number of such children who constitute not more than 2,311, inclusive, of such population, multiplied by 2.0;
(III) the number of such children between 2,312 and 7,913, inclusive, in such population, multiplied by 2.0; and
(V) the number of such children in excess of 93,811 in such population, multiplied by 6.0.

(3) States with an equity factor greater than or equal to .20
In States with an equity factor greater than or equal to .20, the weighted child counts referred to in subsection (d) of this section shall be calculated as follows:

(A) Weights for allocations to counties

(i) In general
For each fiscal year for which the Secretary uses county population data to determine a county's allocation under this section is the larger of the two amounts determined under clauses (ii) and (iii).
(II) the number of such children who constitute more than 15.58 percent, but not more than 22.11 percent, of such population, multiplied by 2.0;

(III) the number of such children who constitute more than 22.11 percent, but not more than 30.16 percent, of such population, multiplied by 4.0;

(IV) the number of such children who constitute more than 30.16 percent, but not more than 38.24 percent, of such population, multiplied by 6.0; and

(V) the number of such children who constitute more than 38.24 percent of such population, multiplied by 8.0.

(iii) By number of children

The amount referred to in clause (i) is determined by adding—

(I) the number of children determined under section 6333(c) of this title who constitute not more than 691, inclusive, of the agency’s total population aged 5 to 17, inclusive, multiplied by 1.0;

(II) the number of such children between 692 and 2,262, inclusive, in such population, multiplied by 2.0;

(III) the number of such children between 2,263 and 7,851, inclusive, in such population, multiplied by 3.0;

(IV) the number of such children between 7,852 and 35,514, inclusive, in such population, multiplied by 4.5; and

(V) the number of such children in excess of 35,514 in such population, multiplied by 6.0.

(e) Maintenance of effort

(1) In general

Except as provided in paragraph (2), a State is entitled to receive its full allotment of funds under this section for any fiscal year if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the fiscal year preceding the fiscal year for which the determination is made was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

(2) Reduction of funds

The Secretary shall reduce the amount of funds awarded to any State under this section in any fiscal year in the exact proportion to which the State fails to meet the requirements of paragraph (1) by falling below 90 percent of both the fiscal effort per student and aggregate expenditures (using the measure most favorable to the State), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) Waivers

The Secretary may waive, for 1 fiscal year only, the requirements of this subsection if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2002 and for each of the 5 succeeding fiscal years.

(g) Adjustments where necessitated by appropriations

(1) In general

If the sums available under this section for any fiscal year are insufficient to pay the full amounts that all local educational agencies in States are eligible to receive under this section for such year, the Secretary shall ratably reduce the allocations to such local educational agencies, subject to paragraphs (2) and (3).

(2) Additional funds

If additional funds become available for making payments under this section for such fiscal year, allocations that were reduced under paragraph (1) shall be increased on the same basis as they were reduced.

(3) Hold-harmless amounts

For each fiscal year, if sufficient funds are available, the amount made available to each local educational agency under this section shall be

(A) not less than 95 percent of the amount made available for the preceding fiscal year if the number of children counted for grants under section 6333 of this title is not less than 30 percent of the total number of children aged 5 to 17 years, inclusive, in the local educational agency;

(B) not less than 90 percent of the amount made available for the preceding fiscal year if the percentage described in subparagraph (A) is between 15 percent and 30 percent; and

(C) not less than 85 percent of the amount made available for the preceding fiscal year if the percentage described in subparagraph (A) is below 15 percent.

(4) Applicability

Notwithstanding any other provision of law, the Secretary shall not take into consideration the hold-harmless provisions of this subsection for any fiscal year for purposes of calculating State or local allocations for the fiscal year under any program administered by the Secretary other than a program authorized under this part.


Prior Provisions


A prior section 1125A of Pub. L. 89–10 was classified to section 6336 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.
§ 6338. Special allocation procedures
(a) Allocations for neglected children
(1) In general
If a State educational agency determines that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children who are living in institutions for neglected children as described in section 6333(c)(1)(B) of this title, the State educational agency shall, if such agency assumes responsibility for the special educational needs of such children, receive the portion of such local educational agency’s allocation under sections 6333, 6334, 6335, and 6337 of this title that is attributable to such children.
(2) Special rule
If the State educational agency does not assume such responsibility, any other State or local public agency that does assume such responsibility shall receive that portion of the local educational agency’s allocation.
(b) Allocations among local educational agencies
The State educational agency may allocate the amounts of grants under sections 6333, 6334, 6335, and 6337 of this title among the affected local educational agencies—
(1) if two or more local educational agencies serve, in whole or in part, the same geographical area;
(2) if a local educational agency provides free public education for children who reside in the school district of another local educational agency; or
(3) to reflect the merger, creation, or change of boundaries of one or more local educational agencies.
(c) Reallocation
If a State educational agency determines that the amount of a grant a local educational agency would receive under sections 6333, 6334, 6335, and 6337 of this title is more than such local educational agency will use, the State educational agency shall make the excess amount available to other local educational agencies in the State that need additional funds in accordance with criteria established by the State educational agency.

§ 6339. Carryover and waiver
(a) Limitation on carryover
Notwithstanding section 1225(b) of this title or any other provision of law, not more than 15 percent of the funds allocated to a local educational agency for any fiscal year under this subpart (but not including funds received through any reallocation under this subpart) may remain available for obligation by such agency for one additional fiscal year.
(b) Waiver
A State educational agency may, once every 3 years, waive the percentage limitation in subsection (a) of this section if—
(1) the agency determines that the request of a local educational agency is reasonable and necessary; or
(2) supplemental appropriations for this subpart become available.
(c) Exclusion
The percentage limitation under subsection (a) of this section shall not apply to any local educational agency that receives less than $50,000 under this subpart for any fiscal year.

PART B—STUDENT READING SKILLS IMPROVEMENT GRANTS

§ 6361. Purposes
The purposes of this subpart are as follows:
(1) To provide assistance to State educational agencies and local educational agencies in establishing reading programs for students in kindergarten through grade 3 that are based on scientifically based reading research, to ensure that every student can read at grade level or above not later than the end of grade 3.
(2) To provide assistance to State educational agencies and local educational agencies in preparing teachers, including special education teachers, through professional development and other support, so the teachers can identify specific reading barriers facing their students and so the teachers have the tools to effectively help their students learn to read.
(3) To provide assistance to State educational agencies and local educational agencies in selecting or administering screening, diagnostic, and classroom-based instructional reading assessments.
(4) To provide assistance to State educational agencies and local educational agencies in selecting or developing effective instructional materials (including classroom-based materials to assist teachers in implementing the essential components of reading instruction), programs, learning systems, and strategies to implement methods that have been proven to prevent or remediate reading failure within a State.
(5) To strengthen coordination among schools, early literacy programs, and family literacy programs to improve reading achievement for all children.
§ 6362. Formula grants to State educational agencies

(a) In general

(1) Authorization to make grants

In the case of each State educational agency that in accordance with section 6363 of this title submits to the Secretary an application for a 6-year period, the Secretary, from amounts appropriated under section 6302(b)(1) of this title and subject to the application’s approval, shall make a grant to the State educational agency for the uses specified in subsections (c) and (d) of this section. For each fiscal year, the funds provided under the grant shall equal the allotment determined for the State educational agency under subsection (b) of this section.

(2) Duration of grants

Subject to subsection (e)(3) of this section, a grant under this section shall be awarded for a period of not more than 6 years.

(b) Determination of amount of allotments

(1) Reservations from appropriations

From the total amount made available to carry out this subpart for a fiscal year, the Secretary—

(A) shall reserve one-half of 1 percent for allotments for the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be distributed among these outlying areas on the basis of their relative need, as determined by the Secretary in accordance with the purposes of this subpart;

(B) shall reserve one-half of 1 percent for the Secretary of the Interior for programs under this subpart in schools operated or funded by the Bureau of Indian Affairs;

(C) may reserve not more than 2½ percent or $25,000,000, whichever is less, to carry out section 6365 of this title (relating to external evaluation) and section 6366 of this title (relating to national activities);

(D) shall reserve $5,000,000 to carry out sections 6367 and 6374 of this title (relating to information dissemination); and

(E) for any fiscal year, beginning with fiscal year 2004, for which the amount appropriated to carry out this subpart exceeds the amount appropriated for fiscal year 2003, shall reserve, to carry out section 6364 of this title, the lesser of—

(i) $90,000,000; or

(ii) 10 percent of such excess amount.

(2) State allotments

In accordance with paragraph (3), the Secretary shall allot among each of the States the total amount made available to carry out this subpart for any fiscal year and not reserved under paragraph (1).

(3) Determination of State allotment amounts

(A) In general

Subject to subparagraph (B), the Secretary shall allot the amount made available under paragraph (2) for a fiscal year among the States in proportion to the number of children, aged 5 to 17, who reside within the State and are from families with incomes below the poverty line for the most recent fiscal year for which satisfactory data are available, compared to the number of such individuals who reside in all such States for that fiscal year.

(B) Exceptions

(i) Minimum grant amount

Subject to clause (ii), no State receiving an allotment under subparagraph (A) may receive less than one-fourth of 1 percent of the total amount allotted under such subparagraph.

(ii) Puerto Rico

The percentage of the amount allotted under subparagraph (A) that is allotted to the Commonwealth of Puerto Rico for a fiscal year may not exceed the percentage that was received by the Commonwealth of Puerto Rico of the funds allocated to all States under subpart 2 of part A of this subchapter for the preceding fiscal year.

(4) Distribution of subgrants

The Secretary may make a grant to a State educational agency only if the State educational agency agrees to expend at least 80 percent of the amount of the funds provided under the grant for the purpose of making, in accordance with subsection (c) of this section, competitive subgrants to eligible local educational agencies.

(5) Reallotment

If a State educational agency described in paragraph (2) does not apply for an allotment under this section for any fiscal year, or if the State educational agency’s application is not approved, the Secretary shall reallocate such amount to the remaining State educational agencies in accordance with paragraph (3).

(6) Definition of State

For purposes of this subchapter, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Subgrants to local educational agencies

(1) Authorization to make subgrants

In accordance with paragraph (2), a State educational agency that receives a grant under this section shall make competitive subgrants to eligible local educational agencies.

(2) Allocation

(A) Minimum subgrant amount

In making subgrants under paragraph (1), a State educational agency shall allocate to
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... each eligible local educational agency that receives such a subgrant, at a minimum, an amount that bears the same relation to the funds made available under subsection (b)(4) of this section as the amount the eligible local educational agency received under part A of this subchapter for the preceding fiscal year bears to the amount all the local educational agencies in the State received under part A of this subchapter for the preceding fiscal year.

(B) Priority

In making subgrants under paragraph (1), a State educational agency shall give priority to eligible local educational agencies in which at least—

(i) 15 percent of the children served by the eligible local educational agency are from families with incomes below the poverty line; or

(ii) 6,500 children served by the eligible local educational agency are from families with incomes below the poverty line.

(3) Notice

A State educational agency receiving a grant under this section shall provide notice to all eligible local educational agencies in the State of the availability of competitive subgrants under this subsection and of the requirements for applying for the subgrants.

(4) Local application

To be eligible to receive a subgrant under this subsection, an eligible local educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require.

(5) State requirement

In distributing subgrant funds to eligible local educational agencies under this subsection, a State educational agency shall—

(A) provide funds in sufficient size and scope to enable the eligible local educational agencies to improve reading instruction; and

(B) provide the funds in amounts related to the number or percentage of students in kindergarten through grade 3 who are reading below grade level.

(6) Limitation to certain schools

In distributing subgrant funds under this subsection, an eligible local educational agency shall provide funds only to schools that both—

(A) are among the schools served by that eligible local educational agency with the highest percentages or numbers of students in kindergarten through grade 3 reading below grade level, based on the most currently available data; and

(B)(i) are identified for school improvement under section 6316(b) of this title; or

(ii) have the highest percentages or numbers of children counted under section 6333(c) of this title.

(7) Local uses of funds

(A) Required uses

Subject to paragraph (8), an eligible local educational agency that receives a subgrant under this subsection shall use the funds provided under the subgrant to carry out the following activities:

(i) Selecting and administering screening, diagnostic, and classroom-based instructional reading assessments.

(ii) Selecting and implementing a learning system or program of reading instruction based on scientifically based reading research that—

(I) includes the essential components of reading instruction; and

(II) provides such instruction to the children in kindergarten through grade 3 in the schools served by the eligible local educational agency, including children who—

(aa) may have reading difficulties;

(bb) are at risk of being referred to special education based on these difficulties;

(cc) have been evaluated under section 614 of the Individuals with Disabilities Education Act [20 U.S.C. 1414] but, in accordance with section 614(b)(5) of that Act [20 U.S.C. 1414(b)(5)], have not been identified as being a child with a disability (as defined in section 602 of that Act [20 U.S.C. 1401]);

(dd) are being served under such Act [20 U.S.C. 1400 et seq.] primarily due to being identified as being a child with a specific learning disability (as defined in section 602 of that Act [20 U.S.C. 1401]) related to reading;

(ee) are deficient in the essential components of reading skills, as listed in subparagraphs (A) through (E) of section 6368(3) of this title; or

(ff) are identified as having limited English proficiency.

(iii) Procuring and implementing instructional materials, including education technology such as software and other digital curricula, that are based on scientifically based reading research.

(iv) Providing professional development for teachers of kindergarten through grade 3, and special education teachers of kindergarten through grade 12, that—

(I) will prepare these teachers in all of the essential components of reading instruction;

(II) shall include—

(aa) information on instructional materials, programs, strategies, and approaches based on scientifically based reading research, including early intervention, classroom reading materials, and remedial programs and approaches; and

(bb) instruction in the use of screening, diagnostic, and classroom-based instructional reading assessments and other procedures that effectively identify students who may be at risk for reading failure or who are having difficulty reading;

(III) shall be provided by eligible professional development providers; and
(IV) will assist teachers in becoming highly qualified in reading instruction in accordance with the requirements of section 6319 of this title.

(v) Collecting and summarizing data—
   (I) to document the effectiveness of activities carried out under this subpart in individual schools and in the local educational agency as a whole; and
   (II) to stimulate and accelerate improvement by identifying the schools that produce significant gains in reading achievement.

(vi) Reporting data for all students and categories of students described in section 6311(b)(2)(C)(v)(II) of this title.

(vii) Promoting reading and library programs that provide access to engaging reading material, including coordination with programs funded through grants received under subpart 4 of this part, where applicable.

(B) Additional uses

Subject to paragraph (8), an eligible local educational agency that receives a subgrant under this subsection may use the funds provided under the subgrant to carry out the following activities:

(i) Humanities-based family literacy programs (which may be referred to as “Prime Time Family Reading Time”) that bond families around the acts of reading and using public libraries.

(ii) Providing training in the essential components of reading instruction to a parent or other individual who volunteers to be a student’s reading tutor, to enable such parent or individual to support instructional practices that are based on scientifically based reading research and are being used by the student’s teacher.

(iii) Assisting parents, through the use of materials and reading programs, strategies, and approaches (including family literacy services) that are based on scientifically based reading research, to encourage reading and support their child’s reading development.

(8) Local planning and administration

An eligible local educational agency that receives a subgrant under this subsection may use not more than 3.5 percent of the funds provided under the subgrant for planning and administration.

(d) State uses of funds

(1) In general

A State educational agency that receives a grant under this section may expend not more than a total of 20 percent of the grant funds to carry out the activities described in paragraphs (3), (4), and (5).

(2) Priority

A State educational agency shall give priority to carrying out the activities described in paragraphs (3), (4), and (5) for schools described in subsection (c)(6) of this section.

(3) Professional inservice and preservice development and review

A State educational agency may expend not more than 65 percent of the amount of the funds made available under paragraph (1)—

(A) to develop and implement a program of professional development for teachers, including special education teachers, of kindergarten through grade 3 that—

(i) will prepare these teachers in all the essential components of reading instruction;

(ii) shall include—

(I) information on instructional materials, programs, strategies, and approaches based on scientifically based reading research, including early intervention and reading remediation materials, programs, and approaches; and

(II) instruction in the use of screening, diagnostic, and classroom-based instructional reading assessments and other scientifically based procedures that effectively identify students who may be at risk for reading failure or who are having difficulty reading; and

(iii) shall be provided by eligible professional development providers;

(B) to strengthen and enhance preservice courses for students preparing, at all public institutions of higher education in the State, to teach kindergarten through grade 3 by—

(i) reviewing such courses to determine whether the courses’ content is consistent with the findings of the most current scientifically based reading research, including findings on the essential components of reading instruction;

(ii) following up such reviews with recommendations to ensure that such institutions offer courses that meet the highest standards; and

(iii) preparing a report on the results of such reviews, submitting the report to the reading and literacy partnership for the State established under section 6363(d) of this title, and making the report available for public review by means of the Internet; and

(C) to make recommendations on how the State licensure and certification standards in the area of reading might be improved.

(4) Technical assistance for local educational agencies and schools

A State educational agency may expend not more than 25 percent of the amount of the funds made available under paragraph (1) for one or more of the following:

(A) Assisting local educational agencies in accomplishing the tasks required to design and implement a program under this subpart, including—

(i) selecting and implementing a program or programs of reading instruction based on scientifically based reading research;

(ii) selecting screening, diagnostic, and classroom-based instructional reading assessments; and
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Planning, administration, and reporting

(A) Expenditure of funds

A State educational agency may expend not more than 10 percent of the amount of funds made available under paragraph (1) for the activities described in this paragraph.

(B) Planning and administration

A State educational agency that receives a grant under this section may expend funds made available under subparagraph (A) for planning and administration relating to the activities assisted under this subpart, including the following:

(i) Administering the distribution of competitive subgrants to eligible local educational agencies under subsection (c) of this section and section 6364(d) of this title.

(ii) Assessing and evaluating, on a regular basis, eligible local educational agency activities assisted under this subpart, with respect to whether they have been effective in increasing the number of children in grades 1, 2, and 3 who can read at or above grade level.

(C) Annual reporting

(i) In general

A State educational agency that receives a grant under this section shall expend funds made available under subparagraph (A) to provide the Secretary annually with a report on the implementation of this subpart.

(ii) Information included

Each report under this subparagraph shall include information on the following:

(I) Evidence that the State educational agency is fulfilling its obligations under this subpart.

(II) Specific identification of those schools and local educational agencies that report the largest gains in reading achievement.

(III) The progress the State educational agency and local educational agencies within the State are making in reducing the number of students served under this subpart in grades 1, 2, and 3 who are reading below grade level, as demonstrated by such information as teacher reports and school evaluations of mastery of the essential components of reading instruction.

(IV) Evidence on whether the State educational agency and local educational agencies within the State have significantly increased the number of students reading at grade level or above, significantly increased the percentages of students described in section 6311(b)(2)(C)(v)(II) of this title who are reading at grade level or above, and successfully implemented this subpart.

(iii) Privacy protection

Data in the report shall be reported in a manner that protects the privacy of individuals.

(iv) Contract

To the extent practicable, a State educational agency shall enter into a contract with an entity that conducts scientifically based reading research, under which contract the entity will assist the State educational agency in producing the reports required to be submitted under this subparagraph.

(e) Review

(1) Progress report

(A) Submission

Not later than 60 days after the termination of the third year of the grant period, each State educational agency receiving a grant under this section shall submit a progress report to the Secretary.

(B) Information included

The progress report shall include information on the progress the State educational agency and local educational agencies within the State are making in reducing the number of students served under this subpart in grades 1, 2, and 3 who are reading below grade level (as demonstrated by such information as teacher reports and school evaluations of mastery of the essential components of reading instruction). The report shall also include evidence from the State educational agency and local educational agencies within the State that the State educational agency and the local educational agencies have significantly increased the number of students reading at grade level or above, significantly increased the percentages of students described in section 6311(b)(2)(C)(v)(II) of this title who are reading at grade level or above, and successfully implemented this subpart.

(2) Peer review

The progress report described in paragraph (1) shall be reviewed by the peer review panel convened under section 6363(c)(2) of this title.

(3) Consequences of insufficient progress

After submission of the progress report described in paragraph (1), if the Secretary determines that the State educational agency is not making significant progress in meeting
the purposes of this subpart, the Secretary may withhold from the State educational agency, in whole or in part, further payments under this section in accordance with section 1234d of this title or take such other action authorized by law as the Secretary determines necessary, including providing technical assistance upon request of the State educational agency.

(f) Funds not used for State level activities

Any portion of funds described in subsection (d)(1) of this section that a State educational agency does not expend in accordance with subsection (d)(1) of this section shall be expended for the purpose of making subgrants in accordance with subsection (c) of this section.

(g) Supplement, not supplant

A State or local educational agency shall use funds received under this subpart only to supplement the level of non-Federal funds that, in the absence of funds under this subpart, would be expended for activities authorized under this subpart, and not to supplant those non-Federal funds.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS


§ 6363. State formula grant applications

(a) Applications

(1) In general

A State educational agency that desires to receive a grant under section 6362 of this title shall submit an application to the Secretary at such time and in such form as the Secretary may require. The application shall contain the information described in subsection (b) of this section.

(2) Special application provisions

For those State educational agencies that have received a grant under part C of title II (as such part was in effect on the day before January 8, 2002), the Secretary shall establish a modified set of requirements for an application under this section that takes into account the information already submitted and approved under that program and minimizes the duplication of effort on the part of such State educational agencies.

(b) Contents

An application under this section shall contain the following:

(1) An assurance that the Governor of the State, in consultation with the State educational agency, has established a reading and literacy partnership described in subsection (d) of this section, and a description of how such partnership—

(A) coordinated the development of the application; and

(B) will assist in the oversight and evaluation of the State educational agency’s activities under this subpart.

(2) A description, if applicable, of the State’s strategy to expand, continue, or modify activities authorized under part C of title II (as such part was in effect on the day before January 8, 2002).

(3) An assurance that the State educational agency, and any local educational agencies receiving a subgrant from that State educational agency under section 6362 of this title, will, if requested, participate in the external evaluation under section 6365 of this title.

(4) A State educational agency plan containing a description of the following:

(A) How the State educational agency will assist local educational agencies in identifying screening, diagnostic, and classroom-based instructional reading assessments.

(B) How the State educational agency will assist local educational agencies in identifying instructional materials, programs, strategies, and approaches, based on scientifically based reading research, including early intervention and reading remediation materials, programs, and approaches.

(C) How the State educational agency will ensure that professional development activities related to reading instruction and provided under section 6362 of this title are—

(i) coordinated with other Federal, State, and local level funds, and used effectively to improve instructional practices for reading; and

(ii) based on scientifically based reading research.

(D) How the activities assisted under section 6362 of this title will address the needs of teachers and other instructional staff in implementing the essential components of reading instruction.

(E) How subgrants made by the State educational agency under section 6362 of this title will meet the requirements of section 6362 of this title, including how the State educational agency will ensure that eligible local educational agencies receiving subgrants under section 6362 of this title will use practices based on scientifically based reading research.
(F) How the State educational agency will, to the extent practicable, make grants to eligible local educational agencies in both rural and urban areas.

(G) How the State educational agency will build on, and promote coordination among literacy programs in the State (including federally funded programs such as programs under the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.], the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], and subpart 2 of this part), to increase the effectiveness of the programs in improving reading for adults and children and to avoid duplication of the efforts of the program.

(H) How the State educational agency will assess and evaluate, on a regular basis, eligible local educational agency activities assisted under section 6362 of this title, with respect to whether the activities have been effective in achieving the purposes of section 6362 of this title.

(I) Any other information that the Secretary may reasonably require.

c) Approval of applications

(1) In general

The Secretary shall approve an application of a State educational agency under this section only if such application meets the requirements of this section.

(2) Peer review

(A) In general

The Secretary, in consultation with the National Institute for Literacy, shall convene a panel to evaluate applications under this section. At a minimum, the panel shall include—

(i) three individuals selected by the Secretary;
(ii) three individuals selected by the National Institute for Literacy;
(iii) three individuals selected by the National Research Council of the National Academy of Sciences; and
(iv) three individuals selected by the Eunice Kennedy Shriver National Institute of Child Health and Human Development.

(B) Experts

The panel shall include—

(i) experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this section;
(ii) experts who provide professional development to individuals who teach reading to children and adults based on scientifically based reading research;
(iii) experts who provide professional development to other instructional staff based on scientifically based reading research; and
(iv) an individual who has expertise in screening, diagnostic, and classroom-based instructional reading assessments.

(C) Recommendations

The panel shall recommend grant applications from State educational agencies under this section to the Secretary for funding or for disapproval.

d) Reading and literacy partnerships

(1) In general

For a State educational agency to receive a grant under section 6362 of this title, the Governor of the State, in consultation with the State educational agency, shall establish a reading and literacy partnership.

(2) Required participants

The reading and literacy partnership shall include the following participants:

(A) The Governor of the State.
(B) The chief State school officer.
(C) The chairman and the ranking member of each committee of the State legislature that is responsible for education policy.
(D) A representative, selected jointly by the Governor and the chief State school officer, of at least one eligible local educational agency.
(E) A representative, selected jointly by the Governor and the chief State school officer, of a community-based organization working with children to improve their reading skills, particularly a community-based organization using tutors and scientifically based reading research.
(F) State directors of appropriate Federal or State programs with a strong reading component.

(3) Optional participants

The reading and literacy partnership may include additional participants, who shall be selected jointly by the Governor and the chief State school officer, and who may include a representative of—

(A) an institution of higher education operating a program of teacher preparation in the State that is based on scientifically based reading research;
(B) a local educational agency;
(C) a private nonprofit or for-profit eligible professional development provider providing instruction based on scientifically based reading research;
(D) an adult education provider;
(E) a volunteer organization that is involved in reading programs; or
(F) a school library or a public library that offers reading or literacy programs for children or families.

(4) Preexisting partnership

If, before January 8, 2002, a State educational agency established a consortium,
partnership, or any other similar body that was considered a reading and literacy partnership for purposes of part C of title II of this Act (as such part was in effect on January 8, 2002), that consortium, partnership, or body may be considered a reading and literacy partnership for purposes of this subsection consistent with the provisions of this subpart.


REFERENCES IN TEXT


(c) Distribution of targeted assistance grants

(1) In general

The Secretary shall make a grant to each State educational agency with an application approved under this section in an amount that bears the same relation to the amount made available to carry out this section for a fiscal year as the number of children counted under section 6333(c) of this title for the State bears to the number of such children so counted for all States with applications approved for that year.

(2) Peer review

The peer review panel convened under section 6333(c)(2) of this title shall review the applications submitted under this subsection. The panel shall recommend such applications to the Secretary for funding or for disapproval.

(3) Application contents

A State educational agency that desires to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall include the following:

(A) Evidence that the State educational agency has met the criteria described in subsection (a) of this section.

(B) Evidence that the State educational agency has carried out its obligations under section 6333 of this title.

(C) The amount of funds requested by the State educational agency and a description of the criteria the State educational agency intends to use in distributing subgrants to eligible local educational agencies under this section to continue or expand activities under subsection (d)(5) of this section.

(D) Evidence that the State educational agency has increased significantly the percentage of students reading at grade level or above.

(E) Any additional evidence that demonstrates success in the implementation of this section.

(d) Subgrants to eligible local educational agencies

(1) In general

The Secretary may make a grant to a State educational agency under this section only if the State educational agency agrees to expend 100 percent of the amount of the funds provided under the grant for the purpose of mak-
§ 6365. External evaluation

(a) In general

From funds reserved under section 6362(b)(1)(C) of this title, the Secretary shall contract with an independent organization outside of the Department for a 5-year, rigorous, scientifically valid, quantitative evaluation of this subpart.

(b) Process

The evaluation under subsection (a) of this section shall be conducted by an organization that is capable of designing and carrying out an independent evaluation that identifies the effects of specific activities carried out by State educational agencies and local educational agencies under this subpart on improving reading instruction. Such evaluation shall take into account factors influencing student performance that are not controlled by teachers or education administrators.

(c) Analysis

The evaluation under subsection (a) of this section shall include the following:

(1) An analysis of the relationship between each of the essential components of reading instruction and overall reading proficiency.

(2) An analysis of whether assessment tools used by State educational agencies and local educational agencies measure the essential components of reading.

(3) Analysis of how State reading standards correlate with the essential components of reading instruction.

(4) An analysis of whether the receipt of a targeted assistance grant under section 6364 of this title results in an increase in the number of children who read proficiently.

(5) A measurement of the extent to which specific instructional materials improve reading proficiency.

(6) A measurement of the extent to which specific screening, diagnostic, and classroom-based instructional reading assessments assist teachers in identifying specific reading deficiencies.

(7) A measurement of the extent to which professional development programs implemented by State educational agencies using funds received under this subpart improve reading instruction.

(8) A measurement of how well students preparing to enter the teaching profession are prepared to teach the essential components of reading instruction.

(9) An analysis of changes in students’ interest in reading and time spent reading outside of school.

(10) Any other analysis or measurement pertinent to this subpart that is determined to be appropriate by the Secretary.

(d) Program improvement

The findings of the evaluation conducted under this section shall be provided to State educational agencies and local educational agencies on a periodic basis for use in program improvement.

§ 6366. National activities

From funds reserved under section 6362(b)(1)(C) of this title, the Secretary—

(a) may provide technical assistance in achieving the purposes of this subpart to State educational agencies, local educational agencies, and schools requesting such assistance;

(b) shall, at a minimum, evaluate the impact of services provided to children under this subpart with respect to their referral to, and eligibility for, special education services under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], the Head Start Act [42 U.S.C. 9831 et seq.], and the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.]; and

(c) shall carry out the external evaluation as described in section 6365 of this title.

§ 6367. Information dissemination

(a) In general

From funds reserved under section 6362(b)(1)(D) of this title, the National Institute for Literacy, in collaboration with the Secretary of Education, the Secretary of Health and Human Services, and the Director of the Eunice Kennedy Shriver National Institute of Child Health and Human Development shall—

(1) disseminate information on scientifically based reading research pertaining to children, youth, and adults;

(2) identify and disseminate information about schools, local educational agencies, and State educational agencies that have effectively developed and implemented classroom reading programs that meet the requirements of this subpart, including those State educational agencies, local educational agencies, and schools that have been identified as effective through the evaluation and peer review provisions of this subpart; and

(3) support the continued identification and dissemination of information on reading programs that contain the essential components of reading instruction as supported by scientifically based reading research, that can lead to improved reading outcomes for children, youth, and adults.

(b) Dissemination and coordination

At a minimum, the National Institute for Literacy shall disseminate the information described in subsection (a) of this section to—

(1) recipients of Federal financial assistance under this subchapter, subchapter III of this chapter, the Head Start Act [42 U.S.C. 9831 et seq.], the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], and the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.]; and

(2) each Bureau funded school (as defined in section 2001 of title 25).

(c) Use of existing networks

In carrying out this section, the National Institute for Literacy shall, to the extent practicable, use existing information and dissemination networks developed and maintained through other public and private entities including through the Department and the National Center for Family Literacy.

(d) National Institute for Literacy

For purposes of funds reserved under section 6362(b)(1)(D) of this title to carry out this section, the National Institute for Literacy shall administer such funds in accordance with section 9252(b) of this title (relating to the establishment and administration of the National Institute for Literacy).

References in Text

The Individuals with Disabilities Education Act, referred to in par. (2), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

Prior Provisions


§ 6367. Information dissemination

(a) In general

From funds reserved under section 6362(b)(1)(D) of this title, the National Institute for Literacy, in collaboration with the Secretary of Education, the Secretary of Health and Human Services, and the Director of the Eunice Kennedy Shriver National Institute of Child Health and Human Development shall—

(1) disseminate information on scientifically based reading research pertaining to children, youth, and adults;

(2) identify and disseminate information about schools, local educational agencies, and State educational agencies that have effectively developed and implemented classroom reading programs that meet the requirements of this subpart, including those State educational agencies, local educational agencies, and schools that have been identified as effective through the evaluation and peer review provisions of this subpart; and

References in Text


The Individuals with Disabilities Education Act, referred to in subsec. (b)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1400 of this title and Tables.

Prior Provisions

§ 6368. Definitions

In this subpart:

(1) Eligible local educational agency

The term “eligible local educational agency” means a local educational agency that—

(A) is among the local educational agencies in the State with the highest numbers or percentages of students in kindergarten through grade 3 reading below grade level, based on the most currently available data; and

(B) has—

(i) jurisdiction over a geographic area that includes an area designated as an empowerment zone, or an enterprise community, under part I of subchapter U of chapter 1 of title 26;

(ii) jurisdiction over a significant number or percentage of schools that are identified for school improvement under section 6316(b) of this title; or

(iii) the highest numbers or percentages of children who are counted under section 6333(c) of this title, in comparison to other local educational agencies in the State.

(2) Eligible professional development provider

The term “eligible professional development provider” means a provider of professional development in reading instruction to teachers, including special education teachers, that is based on scientifically based reading research.

(3) Essential components of reading instruction

The term “essential components of reading instruction” means explicit and systematic instruction in—

(A) phonemic awareness;

(B) phonics;

(C) vocabulary development;

(D) reading fluency, including oral reading skills; and

(E) reading comprehension strategies.

(4) Instructional staff

The term “instructional staff”—

(A) means individuals who have responsibility for teaching children to read; and

(B) includes principals, teachers, supervisors of instruction, librarians, library school media specialists, teachers of academic subjects other than reading, and other individuals who have responsibility for assisting children to learn to read.

(5) Reading

The term “reading” means a complex system of deriving meaning from print that requires all of the following:

(A) The skills and knowledge to understand how phonemes, or speech sounds, are connected to print.

(B) The ability to decode unfamiliar words.

(C) The ability to read fluently.

(D) The development of appropriate active strategies to construct meaning from print.

(E) The development and maintenance of a motivation to read.

(6) Scientifically based reading research

The term “scientifically based reading research” means research that—

(A) applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and

(B) includes research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and

(iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(7) Screening, diagnostic, and classroom-based instructional reading assessments

(A) In general

The term “screening, diagnostic, and classroom-based instructional reading assessments” means—

(i) screening reading assessments;

(ii) diagnostic reading assessments; and

(iii) classroom-based instructional reading assessments.

(B) Screening reading assessment

The term “screening reading assessment” means an assessment that is—

(i) valid, reliable, and based on scientifically based reading research; and

(ii) a brief procedure designed as a first step in identifying children who may be at high risk for delayed development or academic failure and in need of further diagnosis of their need for special services or additional reading instruction.

(C) Diagnostic reading assessment

The term “diagnostic reading assessment” means an assessment that is—

(i) valid, reliable, and based on scientifically based reading research; and

(ii) used for the purpose of—

(I) identifying a child’s specific areas of strengths and weaknesses so that the child has learned to read by the end of grade 3;

(II) determining any difficulties that a child may have in learning to read and the potential cause of such difficulties; and
§ 6371. Purposes; definitions

(a) Purposes

The purposes of this subpart are as follows:

(1) To support local efforts to enhance the early language, literacy, and prereading development of preschool age children, particularly those from low-income families, through strategies and professional development that are based on scientifically based reading research.

(2) To provide preschool age children with cognitive learning opportunities in high-quality language and literature-rich environments, so that the children can attain the fundamental knowledge and skills necessary for optimal reading development in kindergarten and beyond.

(3) To demonstrate language and literacy activities based on scientifically based reading research that supports the age-appropriate development of—

(A) recognition, leading to automatic recognition of letters of the alphabet;

(B) knowledge of letter sounds, the blending of sounds, and the use of increasingly complex vocabulary;

(C) an understanding that written language is composed of phonemes and letters each representing one or more speech sounds that in combination make up syllables, words, and sentences;

(D) spoken language, including vocabulary and oral comprehension abilities; and

(E) knowledge of the purposes and conventions of print.

(4) To use screening assessments to effectively identify preschool age children who may be at risk for reading failure.

(5) To integrate such scientific reading research–based instructional materials and literacy activities with existing programs of preschools, child care agencies and programs, Head Start centers, and family literacy services.

(b) Definitions

For purposes of this subpart:

(1) Eligible applicant

The term "eligible applicant" means—

(A) one or more local educational agencies that are eligible to receive a subgrant under subpart 1 of this part;

(B) one or more public or private organizations or agencies, acting on behalf of one or more programs that serve preschool age children (such as a program at a Head Start center, a child care program, or a family literacy program), which organizations or agencies shall be located in a community served by a local educational agency described in subparagraph (A); or

(C) one or more local educational agencies described in subparagraph (A) in collaboration with one or more organizations or agencies described in subparagraph (B).

(2) Scientifically based reading research

The term "scientifically based reading research" has the same meaning given to that term in section 6368 of this title.

(3) Screening reading assessment

The term "screening reading assessment" has the same meaning given to that term in section 6368 of this title.

SUBPART 2—EARLY READING FIRST

§ 6372. Local Early Reading First grants

(a) Program authorized

From amounts appropriated under section 6302(b)(2) of this title, the Secretary shall award...
grants, on a competitive basis, for periods of not more than 6 years, to eligible applicants to enable the eligible applicants to carry out the authorized activities described in subsection (d) of this section.

(b) Applications
An eligible applicant that desires to receive a grant under this section shall submit an application to the Secretary, which shall include a description of—

(1) the programs to be served by the proposed project, including demographic and socioeconomic information on the preschool age children enrolled in the programs;
(2) how the proposed project will enhance the school readiness of preschool age children in high-quality oral language and literature-rich environments;
(3) how the proposed project will prepare and provide ongoing assistance to staff in the programs, through professional development and other support, to provide high-quality language, literacy, and prereading activities using scientifically based reading research, for preschool age children;
(4) how the proposed project will provide services and use instructional materials that are based on scientifically based reading research on early language acquisition, prereading activities, and the development of spoken vocabulary skills;
(5) how the proposed project will help staff in the programs to meet more effectively the diverse needs of preschool age children in the community, including such children with limited English proficiency, disabilities, or other special needs;
(6) how the proposed project will integrate such instructional materials and literacy activities with existing preschool programs and family literacy services;
(7) how the proposed project will help children, particularly children experiencing difficulty with spoken language, prereading, and early reading skills, to make the transition from preschool to formal classroom instruction in school;
(8) if the eligible applicant has received a subgrant under subpart 1 of this part, how the activities conducted under this subpart will be coordinated with the eligible applicant’s activities under subpart 1 of this part at the kindergarten through grade 3 level;
(9) how the proposed project will evaluate the success of the activities supported under this subpart in enhancing the early language, literacy, and prereading development of preschool age children served by the project; and
(10) such other information as the Secretary may require.

(c) Approval of local applications
The Secretary shall select applicants for funding under this subpart based on the quality of the applications and the recommendations of a peer review panel convened under section 6363(c)(2) of this title, that includes, at a minimum, three individuals, selected from the entities described in clauses (ii), (iii), and (iv) of section 6363(c)(2)(A) of this title, who are experts in early reading development and early childhood development.

(d) Authorized activities
An eligible applicant that receives a grant under this subpart shall use the funds provided under the grant to carry out the following activities:

(1) Providing preschool age children with high-quality oral language and literature-rich environments in which to acquire language and prereading skills.
(2) Providing professional development that is based on scientifically based reading research knowledge of early language and reading development for the staff of the eligible applicant and that will assist in developing the preschool age children’s—
   (A) recognition, leading to automatic recognition, of letters of the alphabet, knowledge of letters, sounds, blending of letter sounds, and increasingly complex vocabulary;
   (B) understanding that written language is composed of phonemes and letters each representing one or more speech sounds that in combination make up syllables, words, and sentences;
   (C) spoken language, including vocabulary and oral comprehension abilities; and
   (D) knowledge of the purposes and conventions of print.
(3) Identifying and providing activities and instructional materials that are based on scientifically based reading research for use in developing the skills and abilities described in paragraph (2).
(4) Acquiring, providing training for, and implementing screening reading assessments or other appropriate measures that are based on scientifically based reading research to determine whether preschool age children are developing the skills described in this subsection.
(5) Integrating such instructional materials, activities, tools, and measures into the programs offered by the eligible applicant.

(e) Award amounts
The Secretary may establish a maximum award amount, or ranges of award amounts, for grants under this subpart.


PRIOR PROVISIONS

§ 6373. Federal administration
The Secretary shall consult with the Secretary of Health and Human Services to coordinate the activities under this subpart with preschool age programs administered by the Department of Health and Human Services.


PRIOR PROVISIONS
§ 6374. Information dissemination

From the funds the National Institute for Literacy receives under section 6302(b)(1)(D) of this title, the National Institute for Literacy, in consultation with the Secretary, shall disseminate information regarding projects assisted under this subpart that have proven effective.


PRIOR PROVISIONS

A prior section 1224 of Pub. L. 89–10 was classified to section 2794 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 6375. Reporting requirements

Each eligible applicant receiving a grant under this subpart shall report annually to the Secretary regarding—

(a) the research-based instruction, materials, and activities being used in the programs funded under the grant;

(b) the types of programs funded under the grant and the ages of children served by such programs;

(c) the qualifications of the program staff who provide early literacy instruction under such programs and the type of ongoing professional development provided to such staff; and

(d) the results of the evaluation described in section 6372(b)(9) of this title.


PRIOR PROVISIONS


§ 6376. Evaluation

(a) In general

From the total amount made available under section 6302(b)(2) of this title for the period beginning October 1, 2002, and ending September 30, 2006, the Secretary shall reserve not more than $3,000,000 to conduct an independent evaluation of the effectiveness of this subpart.

(b) Reports

(1) Interim report

Not later than October 1, 2004, the Secretary shall submit an interim report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(2) Final report

Not later than September 30, 2006, the Secretary shall submit a final report to the committees described in paragraph (1).

(c) Contents

The reports submitted under subsection (b) of this section shall include information on the following:

(1) How the grant recipients under this subpart are improving the prereading skills of preschool children.

(2) The effectiveness of the professional development program assisted under this subpart.

(3) How early childhood teachers are being prepared with scientifically based reading research on early reading development.

(4) What activities and instructional practices are most effective.

(5) How prereading instructional materials and literacy activities based on scientifically based reading research are being integrated into preschools, child care agencies and programs, programs carried out under the Head Start Act [42 U.S.C. 9831 et seq.], and family literacy programs.

(6) Any recommendations on strengthening or modifying this subpart.


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 1226 of Pub. L. 89–10 was classified to section 2796 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

SUBPART 3—WILLIAM F. GOODLING EVEN START FAMILY LITERACY PROGRAMS

§ 6381. Statement of purpose

It is the purpose of this subpart to help break the cycle of poverty and illiteracy by—

(1) improving the educational opportunities of the Nation’s low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program, to be referred to as “Even Start”; and

(2) establishing a program that shall—

(A) be implemented through cooperative projects that build on high-quality existing community resources to create a new range of services;

(B) promote the academic achievement of children and adults;

(C) assist children and adults from low-income families to achieve to challenging State content standards and challenging State student achievement standards; and

(D) use instructional programs based on scientifically based reading research and addressing the prevention of reading difficulties for children and adults, to the extent such research is available.


§ 6381a. Program authorized

(a) Reservation for migrant programs, outlying areas, and Indian tribes

(1) In general

For each fiscal year, the Secretary shall reserve 5 percent of the amount appropriated
under section 6302(b)(3) of this title (or, if such appropriated amount exceeds $200,000,000, 6 percent of such amount) for programs, under such terms and conditions as the Secretary shall establish, that are consistent with the purposes of this subsection, and according to their relative needs, for—

(A) children of migratory workers;
(B) the outlying areas; and
(C) Indian tribes and tribal organizations.

(2) Special rule

After December 21, 2000, the Secretary shall award a grant, on a competitive basis, of sufficient size and for a period of sufficient duration to demonstrate the effectiveness of a family literacy program in a prison that houses women and their preschool age children and that has the capability of developing a program of high quality.

(3) Coordination of programs for American Indians

The Secretary shall ensure that programs under paragraph (1)(C) are coordinated with family literacy programs operated by the Bureau of Indian Affairs in order to avoid duplication and to encourage the dissemination of information on high-quality family literacy programs serving American Indians.

(b) Reservation for Federal activities

(1) Evaluation, technical assistance, program improvement, and replication activities

Subject to paragraph (2), from amounts appropriated under section 6302(b)(3) of this title, the Secretary may reserve not more than 3 percent of such amounts for purposes of—

(A) carrying out the evaluation required by section 6381h of this title; and
(B) providing, through grants or contracts with eligible organizations, technical assistance, program improvement, and replication activities.

(2) Research

In any fiscal year, if the amount appropriated under section 6302(b)(3) of this title for such year—

(A) is equal to or less than the amount appropriated for the preceding fiscal year, the Secretary may reserve from such amount only the amount necessary to continue multi-year activities carried out pursuant to this title that began during or prior to the fiscal year preceding the fiscal year for which the determination is made; or

(B) exceeds the amount appropriated for the preceding fiscal year, then the Secretary shall reserve from such excess amount $2,000,000 or 50 percent, whichever is less, to carry out section 6381h(b) of this title.

(c) Reservation for grants

(1) Grants authorized

(A) In general

For any fiscal year for which at least one State educational agency applies and submits an application that meets the requirements and goals of this subsection and for which the amount appropriated under section 6302(b)(3) of this title exceeds the amount appropriated under that section for the preceding fiscal year, the Secretary shall reserve, from the amount of the excess remaining after the application of subsection (b)(2) of this section, the amount of the remainder or $1,000,000, whichever is less, to award grants, on a competitive basis, to State educational agencies to enable them to plan and implement statewide family literacy initiatives to coordinate and, where appropriate, integrate existing Federal, State, and local literacy resources consistent with the purposes of this subpart.

(B) Coordination and integration

The coordination and integration described in subparagraph (A) shall include coordination and integration of funds available under the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.], the Head Start Act [42 U.S.C. 9831 et seq.], this subpart, part A of this subchapter, and part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

(C) Restriction

No State educational agency may receive more than one grant under this subsection.

(2) Consortia

(A) Establishment

To receive a grant under this subsection, a State educational agency shall establish a consortium of State-level programs under the following provisions of laws:

(i) This subchapter (other than part D).
(ii) The Head Start Act [42 U.S.C. 9831 et seq.].
(iv) All other State-funded preschool programs and programs providing literacy services to adults.

(B) Plan

To receive a grant under this subsection, the consortium established by a State educational agency shall create a plan to use a portion of the State educational agency’s resources, derived from the programs referred to in subparagraph (A), to strengthen and expand family literacy services in the State.

(C) Coordination with subpart 1

The consortium shall coordinate its activities under this paragraph with the activities of the reading and literacy partnership for the State educational agency established under section 6363(d) of this title, if the State educational agency receives a grant under section 6362 of this title.

(3) Reading instruction

Statewide family literacy initiatives implemented under this subsection shall base reading instruction on scientifically based reading research.

(4) Technical assistance

The Secretary shall provide, directly or through a grant or contract with an organization with experience in the development and
operation of successful family literacy services, technical assistance to State educational agencies receiving a grant under this subsection.

(5) Matching requirement

The Secretary shall not make a grant to a State educational agency under this subsection unless the State educational agency agrees that, with respect to the costs to be incurred by the eligible consortium in carrying out the activities for which the grant was awarded, the State educational agency will make available non-Federal contributions in an amount equal to not less than the Federal funds provided under the grant.

(d) State educational agency allocation

(1) In general

From amounts appropriated under section 6302(b)(3) of this title and not reserved under subsection (a), (b), or (c) of this section, the Secretary shall make grants to State educational agencies from allocations under paragraph (2).

(2) Allocations

Except as provided in paragraph (3), from the total amount available under paragraph (1) for allocation to State educational agencies in any fiscal year, each State educational agency shall be eligible to receive a grant under paragraph (1) in an amount that bears the same ratio to the total amount as the amount allocated under part A of this subchapter to that State educational agency bears to the total amount allocated under that part to all State educational agencies.

(3) Minimum

No State educational agency shall receive a grant under paragraph (1) in any fiscal year in an amount that is less than $250,000, or one-half of 1 percent of the amount appropriated under section 6302(b)(3) of this title and not reserved under subsections (a), (b), and (c) of this section for such year, whichever is greater.

(e) Definitions

For the purpose of this subpart—

(1) the term "eligible entity" means a partnership composed of—

(A) a local educational agency; and

(B) a nonprofit community-based organization, a public agency other than a local educational agency, an institution of higher education, or a public or private nonprofit organization other than a local educational agency, of demonstrated quality;

(2) the term "eligible organization" means any public or private nonprofit organization with a record of providing effective services to family literacy providers, such as the National Center for Family Literacy, Parents as Teachers, Inc., the Home Instruction Program for Preschool Youngsters, and the Home and School Institute, Inc.;

(3) the terms "Indian tribe" and "tribal organization" have the meanings given those terms in section 450B of title 25;

(4) the term "scientifically based reading research" has the meaning given that term in section 6368 of this title; and

(5) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.


REFERENCES IN TEXT


§6381b. State educational agency programs

(a) State educational agency level activities

Each State educational agency that receives a grant under section 6381a(d)(1) of this title may use not more than a total of 6 percent of the grant funds for the costs of—

(1) administration, which amount shall not exceed half of the total;

(2) providing, through one or more subgrants or contracts, technical assistance for program improvement and replication, to eligible entities that receive subgrants under subsection (b) of this section; and

(3) carrying out sections 6381i and 6381c of this title.

(b) Subgrants for local programs

(1) In general

Each State educational agency shall use the grant funds received under section 6381a(d)(1) of this title and not reserved under subsection (a) of this section to award subgrants to eligible entities to carry out Even Start programs.

(2) Minimum subgrant amounts

(A) In general

Except as provided in subparagraphs (B) and (C), no State educational agency shall award a subgrant under paragraph (1) in an amount less than $75,000.

(B) Subgrantees in ninth and succeeding years

No State educational agency shall award a subgrant under paragraph (1) in an amount less than $52,500 to an eligible entity for a fiscal year to carry out an Even Start program that is receiving assistance under this subpart or its predecessor authority for the ninth (or any subsequent) fiscal year.

(C) Exception for single subgrant

A State educational agency may award one subgrant in each fiscal year of sufficient
§ 6381c. Uses of funds

(a) In general

In carrying out an Even Start program under this subpart, a recipient of funds under this subpart shall use those funds to pay the Federal share of the cost of providing intensive family literacy services that involve parents and children, from birth through age 7, in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.

(b) Federal share limitation

(1) In general

(A) Federal share

Except as provided in paragraph (2), the Federal share under this subpart may not exceed—
(i) 90 percent of the total cost of the program in the first year that the program receives assistance under this subpart or its predecessor authority;
(ii) 80 percent in the second year;
(iii) 70 percent in the third year;
(iv) 60 percent in the fourth year;
(v) 50 percent in the fifth, sixth, seventh, and eighth such years; and
(vi) 35 percent in any subsequent year.

(B) Remaining cost

The remaining cost of a program assisted under this subpart may be provided in cash or in kind, fairly evaluated, and may be obtained from any source, including other Federal funds under this chapter.

(2) Waiver

The State educational agency may waive, in whole or in part, the Federal share described in paragraph (1) for an eligible entity if the entity—
(A) demonstrates that it otherwise would not be able to participate in the program assisted under this subpart; and
(B) negotiates an agreement with the State educational agency with respect to the amount of the remaining cost to which the waiver will be applicable.

(3) Prohibition

Federal funds provided under this subpart may not be used for the indirect costs of a program assisted under this subpart, except that the Secretary may waive this paragraph if an eligible recipient of funds reserved under section 6381a(a)(1)(C) of this title demonstrates to the Secretary’s satisfaction that the recipient otherwise would not be able to participate in the program assisted under this subpart.

(c) Use of funds for family literacy services

(1) In general

A State educational agency may use a portion of funds reserved under section 6381b(a) of this title, to assist eligible entities receiving a subgrant under section 6381b(b) of this title in improving the quality of family literacy services provided under Even Start programs under this subpart, except that in no case may a State educational agency’s use of funds for this purpose for a fiscal year result in a decrease from the level of activities and services provided to program participants in the preceding year.

(2) Priority

In carrying out paragraph (1), a State educational agency shall give priority to programs that were of low quality, as evaluated based on the indicators of program quality developed by the State educational agency under section 6381i of this title.

(3) Technical assistance to help local programs raise additional funds

In carrying out paragraph (1), a State educational agency may use the funds referred to in that paragraph to provide technical assistance to help local programs of demonstrated effectiveness to access and leverage additional funds for the purpose of expanding services and reducing waiting lists, including requesting and applying for non-Federal resources.

(4) Technical assistance and training

Assistance under paragraph (1) shall be in the form of technical assistance and training, provided by a State educational agency through a grant, contract, or cooperative agreement with an entity that has experience in offering high-quality training and technical assistance to family literacy providers.

§ 6381d. Program elements

Each program assisted under this subpart shall—
(1) include the identification and recruitment of families most in need of services provided under this subpart, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators;
(2) include screening and preparation of parents, including teenage parents, and children to enable those parents and children to participate fully in the activities and services provided under this subpart, including testing, referral to necessary counselling, other developmental and support services, and related services;
(3) be designed to accommodate the participants’ work schedule and other responsibilities, including the provision of support services, when those services are unavailable from other sources, necessary for participation in the activities assisted under this subpart, such as—
(A) scheduling and locating of services to allow joint participation by parents and children;
(B) child care for the period that parents are involved in the program provided under this subpart; and

(C) transportation for the purpose of enabling parents and their children to participate in programs authorized by this subpart;

(4) include high-quality, intensive instructional programs that promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs;

(5) with respect to the qualifications of staff the cost of whose salaries are paid, in whole or in part, with Federal funds provided under this subpart, ensure that—

(A) not later than December 21, 2004—

(i) a majority of the individuals providing academic instruction—


(B) who are within the State's compulsory school attendance age range, so long as a local educational agency provides (or ensures the availability of) the basic education component required under this subpart, or who are attending secondary school; and


The Individuals with Disabilities Education Act, referred to in par. (9)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.


§6381e. Eligible participants

(a) In general

Except as provided in subsection (b) of this section, eligible participants in an Even Start program are—

(1) a parent or parents—

(A) who are eligible for participation in adult education and literacy activities under the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.]; or

(B) who are within the State’s compulsory school attendance age range, so long as a local educational agency provides (or ensures the availability of) the basic education component required under this subpart, or who are attending secondary school; and
(2) the child or children, from birth through age 7, of any individual described in paragraph (1).

(b) Eligibility for certain other participants

(1) In general

Family members of eligible participants described in subsection (a) of this section may participate in activities and services provided under this subpart, when appropriate to serve the purpose of this subpart.

(2) Special rule

Any family participating in a program assisted under this subpart that becomes ineligible to participate as a result of one or more members of the family becoming ineligible to participate may continue to participate in the program until all members of the family become ineligible to participate, which—

(A) in the case of a family in which ineligibility was due to the child or children of the family attaining the age of 8, shall be in 2 years or when the parent or parents become ineligible due to educational advancement, whichever occurs first; and

(B) in the case of a family in which ineligibility was due to the educational advancement of the parent or parents of the family, shall be when all children in the family attain the age of 8.

(3) Children 8 years of age or older

If an Even Start program assisted under this subpart collaborates with a program under part A of this subchapter, and funds received under the part A program contribute to paying the costs of providing programs under this subpart to children 8 years of age or older, the Even Start program may, notwithstanding subsection (a)(2) of this section, permit the participation of children 8 years of age or older if the focus of the program continues to remain on families with young children.

(2) to provide access to the special training necessary to prepare staff for the program, which may be offered by an eligible organization.

(c) Plan

(1) In general

The application shall also include a plan of operation and continuous improvement for the program, that includes—

(A) a description of the program objectives, strategies to meet those objectives, and how those strategies and objectives are consistent with the program indicators established by the State;

(B) a description of the activities and services that will be provided under the program, including a description of how the program will incorporate the program elements required by section 6381d of this title;

(C) a description of the population to be served and an estimate of the number of participants to be served;

(D) as appropriate, a description of the applicant’s collaborative efforts with institutions of higher education, community-based organizations, the State educational agency, private elementary schools, or other eligible organizations in carrying out the program for which assistance is sought;

(E) a statement of the methods that will be used—

(i) to ensure that the programs will serve families most in need of the activities and services provided by this subpart;

(ii) to provide services under this subpart to individuals with special needs, such as individuals with limited English proficiency and individuals with disabilities; and

(iii) to encourage participants to remain in the program for a time sufficient to meet the program’s purpose;

(F) a description of how the plan is integrated with other programs under this chapter or other Acts, as appropriate; and

(G) a description of how the plan provides for rigorous and objective evaluation of progress toward the program objectives described in subparagraph (A) and for continuing use of evaluation data for program improvement.

(2) Duration of the plan

Each plan submitted under paragraph (1) shall—

(A) remain in effect for the duration of the eligible entity’s participation under this subpart;

(B) be periodically reviewed and revised by the eligible entity as necessary.

(d) Consolidated application

The plan described in subsection (c)(1) of this section may be submitted as part of a consolidated application under section 7815 of this title.
§ 6381g. Award of subgrants

(a) Selection process

(1) In general

The State educational agency shall establish a review panel in accordance with paragraph (3) that will approve applications that—

(A) are most likely to be successful in—

(i) meeting the purpose of this subpart; and

(ii) effectively implementing the program elements required under section 6381d of this title;

(B) demonstrate that the area to be served by the program has a high percentage or a large number of children and families who are in need of those services as indicated by high levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators, such as a high percentage of children to be served by the program who reside in a school attendance area served by a local educational agency eligible for participation in programs under part A of this subchapter, a high number or percentage of parents who have been victims of domestic violence, or a high number or percentage of parents who are receiving assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(C) provide services for at least a 3-year age range, which may begin at birth;

(D) demonstrate the greatest possible cooperation and coordination between a variety of relevant service providers in all phases of the program;

(E) include cost-effective budgets, given the scope of the application;

(F) demonstrate the applicant’s ability to provide the non-Federal share required by section 6381c(b) of this title;

(G) are representative of urban and rural regions of the State; and

(H) show the greatest promise for providing models that may be adopted by other family literacy projects and other local educational agencies.

(2) Priority for subgrants

The State educational agency shall give priority for subgrants under this subsection to applications that—

(A) target services primarily to families described in paragraph (1)(B); or

(B) are located in areas designated as empowerment zones or enterprise communities.

(3) Review panel

A review panel shall consist of at least three members, including one early childhood professional, one adult education professional, and one individual with expertise in family literacy programs, and may include other individuals, such as one or more of the following:

(A) A representative of a parent-child education organization.

(B) A representative of a community-based literacy organization.

(C) A member of a local board of education.

(D) A representative of business and industry with a commitment to education.

(E) An individual who has been involved in the implementation of programs under this subchapter in the State.

(b) Duration

(1) In general

Subgrants under this subpart may be awarded for a period not to exceed 4 years.

(2) Startup period

The State educational agency may provide subgrant funds to an eligible recipient, at the recipient’s request, for a 3- to 6-month startup period during the first year of the 4-year grant period, which may include staff recruitment and training, and the coordination of services, before requiring full implementation of the program.

(3) Continuing eligibility

In awarding subgrant funds to continue a program under this subpart after the first year, the State educational agency shall review the progress of each eligible entity in meeting the objectives of the program referred to in section 6381h(c)(1)(A) of this title and shall evaluate the program based on the indicators of program quality developed by the State under section 6381i of this title.

(4) Insufficient progress

The State educational agency may refuse to award subgrant funds to an eligible entity if the agency finds that the eligible entity has not sufficiently improved the performance of the program, as evaluated based on the indicators of program quality developed by the State under section 6381i of this title, after—

(A) providing technical assistance to the eligible entity; and

(B) affording the eligible entity notice and an opportunity for a hearing.

(5) Grant renewal

(A) An eligible entity that has previously received a subgrant under this subpart may reapply under this subpart for additional subgrants.

(B) The Federal share of any subgrant renewed under subparagraph (A) shall be limited in accordance with section 6381c(b) of this title.

References in Text


§ 6381h. Evaluation

From funds reserved under section 6381a(b)(1) of this title, the Secretary shall provide for an independent evaluation of programs assisted under this subpart—

(1) to determine the performance and effectiveness of programs assisted under this subpart;
§ 6381i. Indicators of program quality

Each State educational agency receiving funds under this subpart shall develop, based on the best available research and evaluation data, indicators of program quality for programs assisted under this subpart. The indicators shall be used to monitor, evaluate, and improve those programs within the State. The indicators shall include the following:

1. With respect to eligible participants in a program who are adults—
   (A) achievement in the areas of reading, writing, English-language acquisition, problem solving, and numeracy;
   (B) receipt of a secondary school diploma or a general equivalency diploma (GED);
   (C) entry into a postsecondary school, job retraining program, or employment or career advancement, including the military; and
   (D) such other indicators as the State may develop.

2. With respect to eligible participants in a program who are children—
   (A) improvement in ability to read on grade level or reading readiness;
   (B) school attendance;
   (C) grade retention and promotion; and
   (D) such other indicators as the State may develop.

§ 6381j. Research

(a) In general

The Secretary shall carry out, through grant or contract, research into the components of successful family literacy services, in order to—

1. improve the quality of existing programs assisted under this subpart or other family literacy programs carried out under this chapter or the Adult Education and Family Literacy Act [20 U.S.C. 9201 et seq.]; and

2. develop models for new programs to be carried out under this chapter or the Adult Education and Family Literacy Act.

(b) Scientifically based research on family literacy

1. In general

From amounts reserved under section 6381a(b)(2) of this title, the National Institute for Literacy, in consultation with the Secretary, shall carry out research that—

(A) is scientifically based reading research; and

(B) determines—

(i) the most effective ways of improving the literacy skills of adults with reading difficulties; and

(ii) how family literacy services can best provide parents with the knowledge and skills the parents need to support their children’s literacy development.

(2) Use of expert entity

The National Institute for Literacy, in consultation with the Secretary, shall carry out the research described in paragraph (1) through an entity, including a Federal agency, that has the expertise to carry out longitudinal studies of the development of literacy skills in children and has developed effective interventions to help children with reading difficulties.

(c) Dissemination

The National Institute for Literacy shall disseminate, pursuant to section 6367 of this title, the results of the research described in subsections (a) and (b) of this section to State educational agencies and recipients of subgrants under this subpart.

§ 6383. Improving literacy through school libraries

(a) Purposes

The purpose of this subpart is to improve literacy skills and academic achievement of students by providing students with increased ac-
cess to up-to-date school library materials, a well-equipped, technologically advanced school library media center, and well-trained, professionally certified school library media specialists.

(b) Reservation

From the funds appropriated under section 6302(b)(4) of this title for a fiscal year, the Secretary shall reserve—

(1) one-half of 1 percent to award assistance under this section to the Bureau of Indian Affairs to carry out activities consistent with the purpose of this subpart; and

(2) one-half of 1 percent to award assistance under this section to the outlying areas according to their respective needs for assistance under this subpart.

(c) Grants

(1) Competitive grants to eligible local educational agencies

If the amount of funds appropriated under section 6302(b)(4) of this title for a fiscal year is less than $100,000,000, then the Secretary shall award grants, on a competitive basis, to eligible local educational agencies under subsection (e) of this section.

(2) Formula grants to States

If the amount of funds appropriated under section 6302(b)(4) of this title for a fiscal year equals or exceeds $100,000,000, then the Secretary shall award grants to State educational agencies from allotments under subsection (d) of this section.

(3) Definition of eligible local educational agency

In this section the term “eligible local educational agency” means—

(A) in the case of a local educational agency receiving assistance made available under paragraph (1), a local educational agency in which 20 percent of the students served by the local educational agency are from families with incomes below the poverty line; and

(B) in the case of a local educational agency receiving assistance from State allocations made available under paragraph (2), a local educational agency in which—

(i) 15 percent of the students who are served by the local educational agency are from such families; or

(ii) the percentage of students from such families who are served by the local educational agency is greater than the state-wide percentage of children from such families.

(d) State grants

(1) Allotments

From funds made available under subsection (c)(2) of this section and not reserved under subsections (b) and (j) of this section for a fiscal year, the Secretary shall allot to each State educational agency having an application approved under subsection (f)(1) of this section an amount that bears the same relation to the funds as the amount the State educational agency received under part A of this subchapter for the preceding fiscal year bears to the amount all such State educational agencies received under part A of this subchapter for the preceding fiscal year, to in-crease literacy and reading skills by improving school libraries.

(2) Competitive grants to eligible local educational agencies

Each State educational agency receiving an allotment under paragraph (1) for a fiscal year—

(A) may reserve not more than 3 percent of the allotted funds to provide technical assistance, disseminate information about school library media programs that are effective and based on scientifically based research, and pay administrative costs related to activities under this section; and

(B) shall use the allotted funds that remain after making the reservation under subparagraph (A) to award grants, for a period of 1 year, on a competitive basis, to eligible local educational agencies in the State that have an application approved under subsection (f)(2) of this section for activities described in subsection (g) of this section.

(3) Reallocation

If a State educational agency does not apply for an allotment under this section for any fiscal year, or if the State educational agency’s application is not approved, the Secretary shall reallocate the amount of the State educational agency’s allotment to the remaining State educational agencies in accordance with paragraph (1).

(e) Direct competitive grants to eligible local educational agencies

(1) In general

From amounts made available under subsection (c)(1) of this section and not reserved under subsections (b) and (j) of this section for a fiscal year, the Secretary shall award grants, on a competitive basis, to eligible local educational agencies that have applications approved under subsection (f)(2) of this section for activities described in subsection (g) of this section.

(2) Duration

The Secretary shall award grants under this subsection for a period of 1 year.

(3) Distribution

The Secretary shall ensure that grants under this subsection are equitably distributed among the different geographic regions of the United States, and among local educational agencies serving urban and rural areas.

(f) Applications

(1) State educational agency

Each State educational agency desiring assistance under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall require. The application shall contain a description of—

(A) how the State educational agency will assist eligible local educational agencies in
meeting the requirements of this section and in using scientifically based research to implement effective school library media programs; and

(b) the standards and techniques the State educational agency will use to evaluate the quality and impact of activities carried out under this section by eligible local educational agencies to determine the need for technical assistance and whether to continue to provide additional funding to the agencies under this section.

(2) Eligible local educational agency

Each eligible local educational agency desiring assistance under this section shall submit to the Secretary or State educational agency, as appropriate, an application at such time, in such manner, and containing such information as the Secretary or State educational agency, respectively, shall require. The application shall contain a description of—

(A) a needs assessment relating to the need for school library media improvement, based on the age and condition of school library media resources, including book collections, access of school library media centers to advanced technology, and the availability of well-trained, professionally certified school library media specialists, in schools served by the eligible local educational agency;

(B) the manner in which the eligible local educational agency will use the funds made available through the grant to carry out the activities described in subsection (g) of this section;

(C) how the eligible local educational agency will extensively involve school library media specialists, teachers, administrators, and parents in the activities assisted under this section, and the manner in which the eligible local educational agency will carry out the activities described in subsection (g) of this section using programs and materials that are grounded in scientifically based research;

(D) the manner in which the eligible local educational agency will effectively coordinate the funds and activities provided under this section with Federal, State, and local funds and activities under this subpart and other literacy, library, technology, and professional development funds and activities; and

(E) the manner in which the eligible local educational agency will collect and analyze data on the quality and impact of activities carried out under this section by schools served by the eligible local educational agency.

(g) Local activities

Funds under this section may be used to—

(1) acquire up-to-date school library media resources, including books;

(2) acquire and use advanced technology, incorporated into the curricula of the school, to develop and enhance the information literacy, information retrieval, and critical thinking skills of students;

(3) facilitate Internet links and other resource-sharing networks among schools and school library media centers, and public and academic libraries, where possible;

(4) provide professional development described in section 6372(d)(2) of this title for school library media specialists, and activities that foster increased collaboration between school library media specialists, teachers, and administrators; and

(5) provide students with access to school libraries during nonschool hours, including the hours before and after school, during weekends, and during summer vacation periods.

(h) Accountability and reporting

(1) Local reports

Each eligible local educational agency that receives funds under this section for a fiscal year shall report to the Secretary or State educational agency, as appropriate, on how the funding was used and the extent to which the availability of, the access to, and the use of, up-to-date school library media resources in the elementary schools and secondary schools served by the eligible local educational agency was increased.

(2) State report

Each State educational agency that receives funds under this section shall compile the reports received under paragraph (1) and submit the compiled reports to the Secretary.

(i) Supplement, not supplant

Funds made available under this section shall be used to supplement, and not supplant, other Federal, State, and local funds expended to carry out activities relating to library, technology, or professional development activities.

(j) National activities

(1) Evaluations

From the funds appropriated under section 6302(b)(4) of this title for each fiscal year, the Secretary shall reserve not more than 1 percent for annual, independent, national evaluations of the activities assisted under this section and their impact on improving the reading skills of students. The evaluations shall be conducted not later than 3 years after January 8, 2002, and biennially thereafter.

(2) Report to Congress

The Secretary shall transmit the State reports received under subsection (h)(2) of this section and the evaluations conducted under paragraph (1) to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives.


PART C—EDUCATION OF MIGRATORY CHILDREN

§ 6391. Program purpose

It is the purpose of this part to assist States to—

(1) support high-quality and comprehensive educational programs for migratory children to help reduce the educational disruptions and other problems that result from repeated moves;
§ 6393. State allocations

(a) State allocations

(1) Fiscal year 2002

For fiscal year 2002, each State (other than the Commonwealth of Puerto Rico) is entitled to receive under this part an amount equal to—

(A) the sum of the estimated number of migratory children aged 3 through 21 who reside in the State full time and the full-time equivalent of the estimated number of migratory children aged 3 through 21 who reside in the State part time, as determined in accordance with subsection (e) of this section; multiplied by

(B) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States.

(2) Subsequent years

(A) Base amount

(i) In general

Except as provided in subsection (b) of this section and clause (ii), each State (other than the Commonwealth of Puerto Rico) that did not receive any funds for fiscal year 2002 under this part, the State shall receive, for fiscal year 2003 and succeeding fiscal years, an amount equal to—

(I) the amount that such State would have received under this part for fiscal year 2002 if its application under section 6394 of this title for the year had been approved; plus

(II) the amount allocated to the State under subparagraph (B).

(ii) Nonparticipating States

In the case of a State (other than the Commonwealth of Puerto Rico) that did not receive any funds for fiscal year 2002 under this part, the State shall receive, for fiscal year 2003 and succeeding fiscal years, an amount equal to—

(I) the amount that such State would have received under this part for fiscal year 2002 if its application under section 6394 of this title for the year had been approved; plus

(II) the amount allocated to the State under subparagraph (B).

(B) Allocation of additional amount

For fiscal year 2003 and succeeding fiscal years, the amount (if any) by which the funds appropriated to carry out this part for fiscal year 2002 shall be allocated to a State (other than the Commonwealth of Puerto Rico) that did not receive any funds for fiscal year 2002 under this part, the State shall receive, for fiscal year 2003 and succeeding fiscal years, an amount equal to—

(i) the sum of—

(I) the number of identified eligible migratory children, aged 3 through 21, residing in the State during the previous year; and

(II) the number of identified eligible migratory children, aged 3 through 21, who received services under this part in summer or intersession programs provided by the State during such year; multiplied by

(ii) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this clause may not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

(b) Allocation to Puerto Rico

(1) In general

For each fiscal year, the grant which the Commonwealth of Puerto Rico shall be eligible to receive under this part shall be the amount determined by multiplying the number of children who would be counted under subsection (a)(1)(A) of this section if such subsection applied to the Commonwealth of Puerto Rico by the product of—

(ii) 40 percent of the average per-pupil expenditure in the Commonwealth of Puerto Rico, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the Commonwealth of Puerto Rico.
(A) the percentage which the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and
(B) 32 percent of the average per-pupil expenditure in the United States.

(2) Minimum percentage
The percentage in paragraph (1)(A) shall not be less than—
(A) for fiscal year 2002, 77.5 percent;
(B) for fiscal year 2003, 80.0 percent;
(C) for fiscal year 2004, 82.5 percent; and
(D) for fiscal year 2005 and succeeding fiscal years, 85.0 percent.

(3) Limitation
If the application of paragraph (2) for any fiscal year would result in any of the 50 States or the District of Columbia receiving less under this part than it received under this part for the preceding fiscal year, then the percentage described in paragraph (1)(A) that is used for the Commonwealth of Puerto Rico for the fiscal year for which the determination is made shall be the greater of the percentage in paragraph (1)(A) for such fiscal year or the percentage used for the preceding fiscal year.

(c) Ratable reductions; reallocations

(1) In general
(A) If, after the Secretary reserves funds under section 6398(c) of this title, the amount appropriated to carry out this part for any fiscal year is insufficient to pay in full the amounts for which all States are eligible, the Secretary shall ratably reduce each such amount.
(B) If additional funds become available for making such payments for any fiscal year, the Secretary shall allocate such funds to States in amounts that the Secretary determines will best carry out the purpose of this part.

(2) Special rule
(A) The Secretary shall further reduce the amount of any grant to a State under this part for any fiscal year if the Secretary determines, based on available information on the numbers and needs of migratory children in the State and the program proposed by the State to address such needs, that such amount exceeds the amount required under section 6394 of this title.
(B) The Secretary shall reallocate such excess funds to other States whose grants under this part would otherwise be insufficient to provide an appropriate level of services to migratory children, in such amounts as the Secretary determines are appropriate.

(d) Consortium arrangements

(1) In general
In the case of a State that receives a grant of $1,000,000 or less under this section, the Secretary shall consult with the State educational agency to determine whether consortium arrangements with another State or other appropriate entity would result in delivery of services in a more effective and efficient manner.

(2) Proposals
Any State, regardless of the amount of such State’s allocation, may submit a consortium arrangement to the Secretary for approval.

(3) Approval
The Secretary shall approve a consortium arrangement under paragraph (1) or (2) if the proposal demonstrates that the arrangement will—
(A) reduce administrative costs or program function costs for State programs; and
(B) make more funds available for direct services to add substantially to the welfare or educational attainment of children to be served under this part.

(e) Determining numbers of eligible children
In order to determine the estimated number of migratory children residing in each State for purposes of this section, the Secretary shall—
(1) use such information as the Secretary finds most accurately reflects the actual number of migratory children;
(2) develop and implement a procedure for more accurately reflecting cost factors for different types of summer and intersession program designs;
(3) adjust the full-time equivalent number of migratory children who reside in each State to take into account—
(A) the special needs of those children participating in special programs provided under this part that operate during the summer and intersession periods; and
(B) the additional costs of operating such programs; and
(4) conduct an analysis of the options for adjusting the formula so as to better direct services to the child whose education has been interrupted.

(B) joint planning among local, State, and Federal educational programs serving migrant children, including language instruction educational programs under part A or B of subchapter III of this chapter;

(c) Assurances

Each such application shall also include assurances satisfactory to the Secretary, that—

(1) funds received under this part will be used only—

(A) for programs and projects, including the acquisition of equipment, in accordance with section 6396 of this title; and

(B) to coordinate such programs and projects with similar programs and projects within the State and in other States, as well as with other Federal programs that can benefit migrant children and their families;

(2) such programs and projects will be carried out in a manner consistent with the objectives of section 6314 of this title, subsections (b) and (d) of section 6315 of this title, subsections (b) and (c) of section 6321 of this title, and part I of this subchapter;

(3) in the planning and operation of programs and projects at both the State and local agency operating level, there is consultation with parent advisory councils for programs of 1 school year in duration, and that all such programs and projects are carried out—

(A) in a manner that provides for the same parental involvement as is required for programs and projects under section 6318 of this title, unless extraordinary circumstances make such provision impractical; and

(B) in a format and language understandable to the parents;

(4) in planning and carrying out such programs and projects, there has been, and will be, adequate provision for addressing the unmet education needs of preschool migratory children;

(5) the effectiveness of such programs and projects will be determined, where feasible, using the same approaches and standards that will be used to assess the performance of students, schools, and local educational agencies under part A of this subchapter;

(6) to the extent feasible, such programs and projects will provide for—

(A) advocacy and outreach activities for migratory children and their families, including informing such children and families of, or helping such children and families gain access to, other education, health, nutrition, and social services;

(B) professional development programs, including mentoring, for teachers and other program personnel;

(C) family literacy programs, including such programs that use models developed under Even Start;

(D) the integration of information technology into educational and related programs; and

(E) programs to facilitate the transition of secondary school students to postsecondary education or employment; and

(7) the State will assist the Secretary in determining the number of migratory children under paragraphs (1)(A) and (2)(B)(i) of section 6393(a) of this title, through such procedures as the Secretary may require.

(d) Priority for services

In providing services with funds received under this part, each recipient of such funds shall give priority to migratory children who are failing, or most at risk of failing, to meet the State’s challenging State academic content standards and challenging State student academic achievement standards, and whose education has been interrupted during the regular school year.

(e) Continuation of services

Notwithstanding any other provision of this part—

(1) a child who ceases to be a migratory child during a school term shall be eligible for services until the end of such term;

(2) a child who is no longer a migratory child may continue to receive services for 1 additional school year, but only if comparable services are not available through other programs; and
(3) secondary school students who were eligible for services in secondary school may continue to be served through credit accrual programs until graduation.


REFERENCES TO PARTS A AND B OF SUBCHAPTER III

Considered To Be References to Parts B and A of Subchapter III

References to parts A and B of subchapter III of this chapter are considered to be references to parts B and A, respectively, of subchapter III of this chapter in certain fiscal years. See section 6801(c) of this title.

PRIOR PROVISIONS


§ 6395. Secretarial approval; peer review

(a) Secretarial approval

The Secretary shall approve each State application that meets the requirements of this part.

(b) Peer review

The Secretary may review any such application with the assistance and advice of State officials and other individuals with relevant expertise.


PRIOR PROVISIONS


§ 6396. Comprehensive needs assessment and service-delivery plan; authorized activities

(a) Comprehensive plan

(1) In general

Each State that receives assistance under this part shall ensure that the State and its local operating agencies identify and address the special educational needs of migratory children in accordance with a comprehensive State plan that—

(A) is integrated with other programs under this chapter or other Acts, as appropriate;

(B) may be submitted as a part of a consolidated application under section 7842 of this title, if—

(i) the special needs of migratory children are specifically addressed in the comprehensive State plan;

(ii) the comprehensive State plan is developed in collaboration with parents of migratory children; and

(iii) the comprehensive State plan is not used to supplant State efforts regarding, or administrative funding for, this part;

(C) provides that migratory children will have an opportunity to meet the same challenging State academic content standards and challenging State student academic achievement standards that all children are expected to meet;

(D) specifies measurable program goals and outcomes;

(E) encompasses the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs;

(F) is the product of joint planning among such local, State, and Federal programs, including programs under part A of this subchapter, early childhood programs, and language instruction educational programs under part A or B of subchapter III of this chapter; and

(G) provides for the integration of services available under this part with services provided by such other programs.

(2) Duration of the plan

Each such comprehensive State plan shall—

(A) remain in effect for the duration of the State’s participation under this part; and

(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State’s strategies and programs under this part.

(b) Authorized activities

(1) Flexibility

In implementing the comprehensive plan described in subsection (a) of this section, each State educational agency, where applicable through its local educational agencies, shall have the flexibility to determine the activities to be provided with funds made available under this part, except that such funds first shall be used to meet the identified needs of migratory children that result from their migratory lifestyle, and to permit these children to participate effectively in school.

(2) Unaddressed needs

Funds provided under this part shall be used to address the needs of migratory children that are not addressed by services available from other Federal or non-Federal programs, except that migratory children who are eligible to receive services under part A of this subchapter may receive those services through funds provided under that part, or through funds under this part that remain after the agency addresses the needs described in paragraph (1).

(3) Construction

Nothing in this part shall be construed to prohibit a local educational agency from serving migratory children simultaneously with students with similar educational needs in the same educational settings, where appropriate.

(4) Special rule

Notwithstanding section 6314 of this title, a school that receives funds under this part shall continue to address the identified needs described in paragraph (1), and shall meet the special educational needs of migratory children before using funds under this part for schoolwide programs under section 6314 of this title.
service-delivery plans, prior to the general amendment
3589, related to comprehensive needs assessments and
3590, related to bypass of State, prior to the general

(b) Student records
§ 6397. Bypass
The Secretary may use all or part of any State’s allocation under this part to make arrangements with any public or private nonprofit agency to carry out the purpose of this part in such State if the Secretary determines that—
(1) the State is unable or unwilling to conduct educational programs for migratory children;
(2) such arrangements would result in more efficient and economic administration of such programs; or
(3) such arrangements would add substantially to the welfare or educational attainment of such children.

PRIOR PROVISIONS

§ 6398. Coordination of migrant education activities
(a) Improvement of coordination
(1) In general
The Secretary, in consultation with the States, may make grants to, or enter into contracts with, State educational agencies, local educational agencies, institutions of higher education, and other public and private nonprofit entities to improve the interstate and intrastate coordination among such agencies’ educational programs, including the establishment or improvement of programs for credit accrual and exchange, available to migratory students.

(2) Duration
Grants under this subsection may be awarded for not more than 5 years.

(b) Student records
(1) Assistance
The Secretary shall assist States in developing effective methods for the electronic transfer of student records and in determining the number of migratory children in each State.

(2) Information system
(A) In general
The Secretary, in consultation with the States, shall ensure the linkage of migrant student record systems for the purpose of electronically exchanging, among the States, health and educational information regarding all migratory students. The Secretary shall ensure such linkage occurs in a cost-effective manner, utilizing systems used by the States prior to, or developed after, January 8, 2002, and shall determine the minimum data elements that each State receiving funds under this part shall collect and maintain. Such elements may include—
(i) immunization records and other health information;
(ii) elementary and secondary academic history (including partial credit), credit accrual, and results from State assessments required under section 6311(b) of this title;
(iii) other academic information essential to ensuring that migratory children achieve to high standards; and
(iv) eligibility for services under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(B) Notice and comment
After consulting with the States under subparagraph (A), the Secretary shall publish a notice in the Federal Register seeking public comment on the proposed data elements that each State receiving funds under this part shall be required to collect for purposes of electronic transfer of migratory student information and the requirements that States shall meet for immediate electronic access to such information. Such publication shall occur not later than 120 days after January 8, 2002.

(3) No cost for certain transfers
A State educational agency or local educational agency receiving assistance under this part shall make student records available to another State educational agency or local educational agency that requests the records at no cost to the requesting agency, if the request is made in order to meet the needs of a migratory child.

(4) Report to Congress
(A) In general
Not later than April 30, 2003, the Secretary shall report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives the Secretary’s findings and recommendations regarding the maintenance and transfer of health and educational information for migratory students by the States.

(B) Required contents
The Secretary shall include in such report—
(i) a review of the progress of States in developing and linking electronic records transfer systems;
(ii) recommendations for the development and linkage of such systems; and
(iii) recommendations for measures that may be taken to ensure the continuity of services provided for migratory students.
(c) **Availability of funds**

For the purpose of carrying out this section in any fiscal year, the Secretary shall reserve not more than $10,000,000 of the amount appropriated to carry out this part for such year.

(d) **Incentive grants**

From the amounts made available to carry out this section for any fiscal year, the Secretary may reserve not more than $3,000,000 to award grants of not more than $250,000 on a competitive basis to State educational agencies that propose a consortium arrangement with another State or other appropriate entity that the Secretary determines, pursuant to criteria that the Secretary shall establish, will improve the delivery of services to migratory children whose education is interrupted.

(e) **Data collection**

The Secretary shall direct the National Center for Education Statistics to collect data on migratory children.


**REFERENCES IN TEXT**

The Individuals with Disabilities Education Act, referred to in subsec. (d)(ii)(V), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1600 of this title and Tables.


§ 6399. Definitions

As used in this part:

(1) **Local operating agency**

The term “local operating agency” means—

(A) a local educational agency to which a State educational agency makes a subgrant under this part;

(B) a public or nonprofit private agency with which a State educational agency or the Secretary makes an arrangement to carry out a project under this part; or

(C) a State educational agency, if the State educational agency operates the State’s migrant education program or projects directly.

(2) **Migratory child**

The term “migratory child” means a child who is, or whose parent or spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent or spouse, in order to obtain, temporary or seasonal employment in agricultural or fishing work—

(A) has moved from one school district to another;

(B) in a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(C) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.


Part D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk

§ 6421. Purpose and program authorization

(a) **Purpose**

It is the purpose of this part—

(1) to improve educational services for children and youth in local and State institutions for neglected or delinquent children and youth so that such children and youth have the opportunity to meet the same challenging State academic content standards and challenging State student academic achievement standards that all children in the State are expected to meet;

(2) to provide such children and youth with the services needed to make a successful transition from institutionalization to further schooling or employment; and

(3) to prevent at-risk youth from dropping out of school, and to provide dropouts, and children and youth returning from correctional facilities or institutions for neglected or delinquent children and youth, with a support system to ensure their continued education.

(b) **Program authorized**

In order to carry out the purpose of this part and from amounts appropriated under section 6302(d) of this title, the Secretary shall make grants to State educational agencies to enable such agencies to award subgrants to State agencies and local educational agencies to establish or improve programs of education for neglected, delinquent, or at-risk children and youth.


§ 6422. Payments for programs under this part

(a) **Agency subgrants**

Based on the allocation amount computed under section 6432 of this title, the Secretary shall allocate to each State educational agency an amount necessary to make subgrants to State agencies under subpart 1 of this part.

(b) **Local subgrants**

Each State shall retain, for the purpose of carrying out subpart 2 of this part, funds generated...
throughout the State under part A of this subchapter based on children and youth residing in local correctional facilities, or attending community day programs for delinquent children and youth.


PRIOR PROVISIONS


A prior section 1402 of Pub. L. 89–10 was classified to section 2822 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

SUBPART 1—STATE AGENCY PROGRAMS

§ 6431. Eligibility

A State agency is eligible for assistance under this subpart if such State agency is responsible for providing free public education for children and youth—

(1) in institutions for neglected or delinquent children and youth;

(2) attending community day programs for neglected or delinquent children and youth; or

(3) in adult correctional institutions.


PRIOR PROVISIONS


§ 6432. Allocation of funds

(a) Subgrants to State agencies

(1) In general

Each State agency described in section 6431 of this title (other than an agency in the Commonwealth of Puerto Rico) is eligible to receive a subgrant under this subpart, for each fiscal year, in an amount equal to the product of—

(A) the number of neglected or delinquent children and youth described in section 6431 of this title who—

(i) are enrolled for at least 15 hours per week in education programs in adult correctional institutions; and

(ii) are enrolled for at least 20 hours per week—

(I) in education programs in institutions for neglected or delinquent children and youth; or

(II) in community day programs for neglected or delinquent children and youth; and

(B) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this subparagraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States.

(2) Special rule

The number of neglected or delinquent children and youth determined under paragraph (1) shall—

(A) be determined by the State agency by a deadline set by the Secretary, except that no State agency shall be required to determine the number of such children and youth on a specific date set by the Secretary; and

(B) be adjusted, as the Secretary determines is appropriate, to reflect the relative length of such agency’s annual programs.

(b) Subgrants to State agencies in Puerto Rico

(1) In general

For each fiscal year, the amount of the subgrant which a State agency in the Commonwealth of Puerto Rico shall be eligible to receive under this subpart shall be the amount determined by multiplying the number of children counted under subsection (a)(1)(A) of this section for the Commonwealth of Puerto Rico by the product of—

(A) the percentage which the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

(B) 32 percent of the average per-pupil expenditure in the United States.

(2) Minimum percentage

The percentage in paragraph (1)(A) shall not be less than—

(A) for fiscal year 2002, 77.5 percent; and

(B) for fiscal year 2003, 80.0 percent; and

(C) for fiscal year 2004, 82.5 percent; and

(D) for fiscal year 2005 and succeeding fiscal years, 85.0 percent.

(3) Limitation

If the application of paragraph (2) would result in any of the 50 States or the District of Columbia receiving less under this subpart than it received under this subpart for the preceding fiscal year, then the percentage described in paragraph (1)(A) that is used for the Commonwealth of Puerto Rico for the fiscal year for which the determination is made shall be the greater of—

(A) the percentage in paragraph (1)(A) for such fiscal year; or

(B) the percentage used for the preceding fiscal year.

(c) Ratable reductions in case of insufficient appropriations

If the amount appropriated for any fiscal year for subgrants under subsections (a) and (b) of this section is insufficient to pay the full amount for which all State agencies are eligible under such subsections, the Secretary shall ratably reduce each such amount.


PRIOR PROVISIONS


§ 6433. State reallocation of funds

If a State educational agency determines that a State agency does not need the full amount of the subgrant for which such State agency is eli-
§ 6434. State plan and State agency applications

(a) State plan

(1) In general

Each State educational agency that desires to receive a grant under this subpart shall submit, for approval by the Secretary, a plan—
(A) for meeting the educational needs of neglected, delinquent, and at-risk children and youth;
(B) for assisting in the transition of children and youth from correctional facilities to locally operated programs; and
(C) that is integrated with other programs under this chapter or other Acts, as appropriate.

(2) Contents

Each such State plan shall—
(A) describe the program goals, objectives, and performance measures established by the State that will be used to assess the effectiveness of the program in improving the academic, vocational, and technical skills of children in the program;
(B) provide that, to the extent feasible, such children will have the same opportunities to achieve as such children would have if such children were in the schools of local educational agencies in the State; and
(C) contain an assurance that the State educational agency will—
(i) ensure that programs assisted under this subpart will be carried out in accordance with the State plan described in this subsection;
(ii) carry out the evaluation requirements of section 6471 of this title;
(iii) ensure that the State agencies receiving subgrants under this subpart comply with all applicable statutory and regulatory requirements; and
(iv) provide such other information as the Secretary may reasonably require.

(3) Duration of the plan

Each such State plan shall—
(A) remain in effect for the duration of the State’s participation under this part; and
(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State’s strategies and programs under this part.

(b) Secretarial approval and peer review

(1) Secretarial approval

The Secretary shall approve each State plan that meets the requirements of this subpart.

(2) Peer review

The Secretary may review any State plan with the assistance and advice of individuals with relevant expertise.

(c) State agency applications

Any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that—
(1) describes the procedures to be used, consistent with the State plan under section 6311 of this title, to assess the educational needs of the children to be served under this subpart;
(2) provide an assurance that in making services available to children and youth in adult correctional institutions, priority will be given to such children and youth who are likely to complete incarceration within a 2-year period;
(3) describes the program, including a budget for the first year of the program, with annual updates to be provided to the State educational agency;
(4) describes how the program will meet the goals and objectives of the State plan;
(5) describes how the State agency will consult with experts and provide the necessary training for appropriate staff, to ensure that the planning and operation of institution-wide projects under section 6436 of this title are of high quality;
(6) describes how the State agency will carry out the evaluation requirements of section 7941 of this title and how the results of the most recent evaluation will be used to plan and improve the program;
(7) includes data showing that the State agency has maintained the fiscal effort required of a local educational agency, in accordance with section 7901 of this title;
(8) describes how the programs will be coordinated with other appropriate State and Federal programs, such as programs under title I of Public Law 105–220 (29 U.S.C. 2801 et seq.), vocational and technical education programs, State and local dropout prevention programs, and special education programs;
(9) describes how the State agency will encourage correctional facilities receiving funds under this subpart to coordinate with local educational agencies or alternative education programs attended by incarcerated children and youth prior to their incarceration to ensure that student assessments and appropriate academic records are shared jointly between the correctional facility and the local educational agency or alternative education program;
(10) describes how appropriate professional development will be provided to teachers and other staff;
(11) designates an individual in each affected correctional facility or institution for neglected or delinquent children and youth to be responsible for issues relating to the transition of children and youth from such facility or institution to locally operated programs;
(12) describes how the State agency will endeavor to coordinate with businesses for training and mentoring for participating children and youth.
(13) provides an assurance that the State agency will assist in locating alternative programs through which students can continue their education if the students are not returning to school after leaving the correctional facility or institution for neglected or delinquent children and youth;

(14) provides assurances that the State agency will work with parents to secure parents’ assistance in improving the educational achievement of their children and youth, and preventing their children’s and youth’s further involvement in delinquent activities;

(15) provides an assurance that the State agency will work with children and youth with disabilities in order to meet an existing individualized education program and an assurance that the agency will notify the child’s or youth’s local school if the child or youth—

(A) is identified as in need of special education services while the child or youth is in the correctional facility or institution for neglected or delinquent children and youth; and

(B) intends to return to the local school;

(16) provides an assurance that the State agency will work with children and youth who dropped out of school before entering the correctional facility or institution for neglected or delinquent children and youth to encourage the children and youth to reenter school once the term of the incarceration is completed or provide the child or youth with the skills necessary to gain employment, continue the education of the child or youth, or achieve a secondary school diploma or its recognized equivalent if the child or youth does not intend to return to school;

(17) provides an assurance that teachers and other qualified staff are trained to work with children and youth with disabilities and other students with special needs taking into consideration the unique needs of such students;

(18) describes any additional services to be provided to children and youth, such as career counseling, distance learning, and assistance in securing student loans and grants; and

(19) provides an assurance that the program under this subpart will be coordinated with any programs operated under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) or other comparable programs, if applicable.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 6435. Use of funds

(a) Uses

(1) In general

A State agency shall use funds received under this subpart only for programs and projects that—

(A) are consistent with the State plan under section 6494(a) of this title; and

(B) concentrate on providing participants with the knowledge and skills needed to make a successful transition to secondary school completion, vocational or technical training, further education, or employment.

(2) Programs and projects

Such programs and projects—

(A) may include the acquisition of equipment;

(B) shall be designed to support educational services that—

(i) except for institution-wide projects under section 6436 of this title, are provided to children and youth identified by the State agency as failing, or most at-risk of failing, to meet the State’s challenging academic content standards and student academic achievement standards;

(ii) supplement and improve the quality of the educational services provided to such children and youth by the State agency; and

(iii) afford such children and youth an opportunity to meet challenging State academic achievement standards;

(C) shall be carried out in a manner consistent with section 6321 of this title and part I of this subchapter (as applied to programs and projects under this part); and

(D) may include the costs of meeting the evaluation requirements of section 7941 of this title.

(b) Supplement, not supplant

A program under this subpart that supplements the number of hours of instruction students receive from State and local sources shall be considered to comply with the supplement, not supplant requirement of section 6321 of this title (as applied to this part) without regard to the subject areas in which instruction is given during those hours.


PRIOR PROVISIONS


§ 6436. Institution-wide projects

A State agency that provides free public education for children and youth in an institution
for neglected or delinquent children and youth (other than an adult correctional institution) or attending a community-day program for such children and youth may use funds received under this subpart to serve all children in, and upgrade the entire educational effort of, that institution or program if the State agency has developed, and the State educational agency has approved, a comprehensive plan for that institution or program that—

(1) provides for a comprehensive assessment of the educational needs of all children and youth in the institution or program serving juveniles;

(2) provides for a comprehensive assessment of the educational needs of youth aged 20 and younger in adult facilities who are expected to complete incarceration within a 2-year period;

(3) describes the steps the State agency has taken, or will take, to provide all children and youth under age 21 with the opportunity to meet challenging State academic content standards and student academic achievement standards in order to improve the likelihood that the children and youth will complete secondary school, attain a secondary diploma or its recognized equivalent, or find employment after leaving the institution;

(4) describes the instructional program, pupil services, and procedures that will be used to meet the needs described in paragraph (1), including, to the extent feasible, the provision of mentors for the children and youth described in paragraph (1);

(5) specifically describes how such funds will be used;

(6) describes the measures and procedures that will be used to assess student progress;

(7) describes how the agency has planned, and will implement and evaluate, the institution-wide or program-wide project in consultation with personnel providing direct instructional services and support services in institutions or community-day programs for neglected or delinquent children and youth, and with personnel from the State educational agency; and

(8) includes an assurance that the State agency has provided for appropriate training for teachers and other instructional and administrative personnel to enable such teachers and personnel to carry out the project effectively.


PRIOR PROVISIONS

§ 6438. Transition services

(a) Transition services

Each State agency shall reserve not less than 15 percent and not more than 30 percent of the amount such agency receives under this subpart for any fiscal year to support—

(1) projects that facilitate the transition of children and youth from State-operated institutions to schools served by local educational agencies; or

(2) the successful reentry of youth offenders, who are age 20 or younger and have received a secondary school diploma or its recognized equivalent, into postsecondary education, or vocational and technical training programs, through strategies designed to expose the youth to, and prepare the youth for, postsecondary education, or vocational and technical training programs, such as—

(A) preplacement programs that allow adjudicated or incarcerated youth to audit or attend courses on college, university, or community college campuses, or through programs provided in institutional settings;

(B) worksite schools, in which institutions of higher education and private or public employers partner to create programs to help students make a successful transition to postsecondary education and employment; and

(C) essential support services to ensure the success of the youth, such as—

(i) personal, vocational and technical, and academic, counseling;

(ii) placement services designed to place the youth in a university, college, or junior college program;

(iii) information concerning, and assistance in obtaining, available student financial aid;

(iv) counseling services; and

(v) job placement services.

(b) Conduct of projects

A project supported under this section may be conducted directly by the State agency, or through a contract or other arrangement with one or more local educational agencies, other public agencies, or private nonprofit organizations.

(c) Rule of construction

Nothing in this section shall be construed to prohibit a school that receives funds under subsection (a) of this section from serving neglected and delinquent children and youth simultaneously with students with similar educational needs, in the same educational settings where appropriate.

§ 6439. Evaluation; technical assistance; annual model program

The Secretary may reserve not more than 2.5 percent of the amount made available to carry out this subpart for a fiscal year—

(1) to develop a uniform model to evaluate the effectiveness of programs assisted under this subpart; and
(2) to provide technical assistance to and support the capacity building of State agency programs assisted under this subpart.


SUBPART 2—LOCAL AGENCY PROGRAMS

§ 6451. Purpose

The purpose of this subpart is to support the operation of local educational agency programs that involve collaboration with locally operated correctional facilities—

(1) to carry out high quality education programs to prepare children and youth for secondary school completion, training, employment, or further education;
(2) to provide activities to facilitate the transition of such children and youth from the correctional program to further education or employment; and
(3) to operate programs in local schools for children and youth returning from correctional facilities, and programs which may serve at-risk children and youth.


PRIOR PROVISIONS

§ 6453. Local educational agency applications

Each local educational agency desiring assistance under this subpart shall submit an application to the State educational agency that contains such information as the State educational agency may require. Each such application shall include—

(1) a description of the program to be assisted;
(2) a description of formal agreements, regarding the program to be assisted, between—
(A) the local educational agency; and
(B) correctional facilities and alternative school programs serving children and youth involved with the juvenile justice system;
(3) as appropriate, a description of how participating schools will coordinate with facilities working with delinquent children and youth to ensure that such children and youth are participating in an education program comparable to one operating in the local school such youth would attend;
(4) a description of the program operated by participating schools for children and youth returning from correctional facilities and, as appropriate, the types of services that such schools will provide such children and youth and other at-risk children and youth;
(5) a description of the characteristics (including learning difficulties, substance abuse problems, and other special needs) of the children and youth who will be returning from correctional facilities and, as appropriate, other at-risk children and youth expected to be served by the program, and a description of how the school will coordinate existing educational programs to meet the unique educational needs of such children and youth;
(6) as appropriate, a description of how schools will coordinate with existing social,
§ 6454. Uses of funds

Funds provided to local educational agencies under this subpart may be used, as appropriate, for—

(1) programs that serve children and youth returning to local schools from correctional facilities, to assist in the transition of such children and youth to the school environment and help them remain in school in order to complete their education;

(2) dropout prevention programs which serve at-risk children and youth, including pregnant and parenting teens, children and youth who have come in contact with the juvenile justice system, children and youth at least 1 year behind their expected grade level, migrant youth, immigrant youth, students with limited English proficiency, and gang members;

(3) the coordination of health and social services for such individuals if there is a likelihood that the provision of such services, including day care, drug and alcohol counseling, and mental health services, will improve the likelihood such individuals will complete their education;

(4) special programs to meet the unique academic needs of participating children and youth, including vocational and technical education, special education, career counseling, curriculum-based youth entrepreneurship education, and assistance in securing student loans or grants for postsecondary education; and

(5) programs providing mentoring and peer mediation.


PRIOR PROVISIONS


§ 6455. Program requirements for correctional facilities receiving funds under this section

Each correctional facility entering into an agreement with a local educational agency under section 6453(2) of this title to provide services to children and youth under this subpart shall—

(1) where feasible, ensure that educational programs in the correctional facility are coordinated with the student’s home school, particularly with respect to a student with an individualized education program under part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.];

(2) if the child or youth is identified as in need of special education services while in the correctional facility, notify the local school of the child or youth of such need;

(3) where feasible, provide transition assistance to help the child or youth stay in school, including coordination of services for the family, counseling, assistance in accessing drug and alcohol abuse prevention programs, tutoring, and family counseling;
(4) provide support programs that encourage children and youth who have dropped out of school to reenter school once their term at the correctional facility has been completed, or provide such children and youth with the skills necessary to gain employment or seek a secondary school diploma or its recognized equivalent;

(5) work to ensure that the correctional facility is staffed with teachers and other qualified staff who are trained to work with children and youth with disabilities taking into consideration the unique needs of such children and youth;

(6) ensure that educational programs in the correctional facility are related to assisting students to meet high academic achievement standards;

(7) to the extent possible, use technology to assist in coordinating educational programs between the correctional facility and the community school;

(8) where feasible, involve parents in efforts to improve the educational achievement of their children and prevent the further involvement of such children in delinquent activities;

(9) coordinate funds received under this subpart with other local, State, and Federal funds available to provide services to participating children and youth, such as funds made available under title I of Public Law 105–220 [29 U.S.C. 2801 et seq.], and vocational and technical education funds;

(10) coordinate programs operated under this subpart with activities funded under the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.] and other comparable programs, if applicable; and

(11) if appropriate, work with local businesses to develop training, curriculum-based youth entrepreneurship education, and mentoring programs for children and youth.


§ 6456. Accountability

The State educational agency may—

(1) reduce or terminate funding for projects under this subpart if a local educational agency does not show progress in reducing dropout rates for male students and for female students over a 3-year period; and

(2) require correctional facilities or institutions for neglected or delinquent children and youth to demonstrate, after receiving assistance under this subpart for 3 years, that there has been an increase in the number of children and youth returning to school, obtaining a secondary school diploma or its recognized equivalent, or obtaining employment after such children and youth are released.


§ 6471. Program evaluations

(a) Scope of evaluation

Each State agency or local educational agency that conducts a program under subpart 1 or 2 of this part shall evaluate the program, disaggregating data on participation by gender, race, ethnicity, and age, not less than once every 3 years, to determine the program’s impact on the ability of participants—

(1) to maintain and improve educational achievement;

(2) to accrue school credits that meet State requirements for grade promotion and secondary school graduation;

(3) to make the transition to a regular program or other education program operated by a local educational agency;

(4) to complete secondary school (or secondary school equivalency requirements) and obtain employment after leaving the correctional facility or institution for neglected or delinquent children and youth; and

(5) as appropriate, to participate in post-secondary education and job training programs.

(b) Exception

The disaggregation required under subsection (a) of this section shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.

(c) Evaluation measures

In conducting each evaluation under subsection (a) of this section, a State agency or local educational agency shall use multiple and appropriate measures of student progress.
(d) Evaluation results

Each State agency and local educational agency shall—

(1) submit evaluation results to the State educational agency and the Secretary; and

(2) use the results of evaluations under this section to plan and improve subsequent programs for participating children and youth.


§ 6472. Definitions

In this part:

(1) Adult correctional institution

The term “adult correctional institution” means a facility in which persons (including persons under 21 years of age) are confined as a result of a conviction for a criminal offense.

(2) At-risk

The term “at-risk”, when used with respect to a child, youth, or student, means a school aged individual who is at-risk of academic failure, has a drug or alcohol problem, is pregnant or is a parent, has come into contact with the juvenile justice system in the past, is at least 1 year behind the expected grade level for the age of the individual, has limited English proficiency, is a gang member, has dropped out of school in the past, or has a high absenteeism rate at school.

(3) Community day program

The term “community day program” means a regular program of instruction provided by a State agency at a community day school operated specifically for neglected or delinquent children and youth.

(4) Institution for neglected or delinquent children and youth

The term “institution for neglected or delinquent children and youth” means—

(A) a public or private residential facility, other than a foster home, that is operated for the care of children who have been committed to the institution or voluntarily placed in the institution under applicable State law, due to abandonment, neglect, or death of their parents or guardians; or

(B) a public or private residential facility for the care of children who have been adjudicated to be delinquent or in need of supervision.


§ 6491. Evaluations

(a) National assessment of subchapter I

(1) In general

The Secretary shall conduct a national assessment of the programs assisted under this subchapter and the impact of such implementation on increasing student academic achievement (particularly in schools with high concentrations of children living in poverty), relative to the goal of all students reaching the proficient level of achievement based on State academic assessments, challenging State academic content standards, and challenging State student academic achievement standards under section 6311 of this title.

(B) The types of programs and services that have demonstrated the greatest likelihood of helping students reach the proficient and advanced levels of achievement based on State student academic achievement standards and State academic content standards.

(C) The implementation of State academic standards, assessments, and accountability systems developed under this subchapter, including—

(i) the time and cost required for the development of academic assessments for students in grades 3 through 8;

(ii) how well such State assessments meet the requirements for assessments described in this subchapter; and

(iii) the impact of such standards, assessments, and accountability systems on educational programs and instruction at the local level.

(D) Each State’s definition of adequate yearly progress, including—

(i) the impact of applying this definition to schools, local educational agencies, and the State;

(ii) the number of schools and local educational agencies not meeting this definition; and

(iii) the changes in the identification of schools in need of improvement as a result of such definition.

(E) How schools, local educational agencies, and States have—

(i) publicized and disseminated the local educational agency report cards required under section 6311(h)(2) of this title to teachers, school staff, students, parents, and the community;
(ii) used funds made available under this subchapter to provide preschool and family literacy services and the impact of these services on students' school readiness;

(iii) implemented the provisions of section 6318 of this title and afforded parents meaningful opportunities to be involved in the education of their children;

(iv) used Federal, State, and local educational agency funds and resources to support schools and provide technical assistance to improve the achievement of students in low-performing schools, including the impact of the technical assistance on such achievement; and

(v) used State educational agency and local educational agency funds and resources to help schools in which 50 percent or more of the students are from families with incomes below the poverty line meet the requirement described in section 6319 of this title of having all teachers highly qualified not later than the end of the 2005–2006 school year.

(F) The implementation of schoolwide programs and targeted assistance programs under this subchapter and the impact of such programs on improving student academic achievement, including the extent to which schools meet the requirements of such programs.

(G) The extent to which varying models of comprehensive school reform are funded and implemented under this subchapter, and the effect of the implementation of such models on improving achievement of disadvantaged students.

(H) The costs as compared to the benefits of the activities assisted under this subchapter.

(I) The extent to which actions authorized under section 6316 of this title are implemented by State educational agencies and local educational agencies to improve the academic achievement of students in low-performing schools, and the effectiveness of the implementation of such actions, including the following:

(i) The number of schools identified for school improvement and how many years the schools remain in this status.

(ii) The types of support provided by the State educational agencies and local educational agencies to schools and local educational agencies respectively identified as in need of improvement, and the impact of such support on student achievement.

(iii) The number of parents who take advantage of the public school choice provisions of this subchapter, the costs (including transportation costs) associated with implementing these provisions, the implementation of these provisions, and the impact of these provisions (including the impact of attending another school) on student achievement.

(iv) The number of parents who choose to take advantage of the supplemental educational services option, the criteria used by the States to determine the quality of providers, the kinds of services that are available and utilized, the costs associated with implementing this option, and the impact of receiving supplemental educational services on student achievement.

(J) The extent to which State and local fiscal accounting requirements under this subchapter affect the flexibility of schoolwide programs.

(K) The implementation and impact of the professional development activities assisted under this subchapter and subchapter II of this chapter on instruction, student academic achievement, and teacher qualifications.

(L) The extent to which the assistance made available under this subchapter, including funds under section 6302 of this title, is targeted to disadvantaged students, schools, and local educational agencies with the greatest need.

(M) The effectiveness of Federal administration assistance made available under this subchapter, including monitoring and technical assistance.

(N) The academic achievement of the groups of students described in section 6311(b)(2)(C)(v)(II) of this title.

(O) Such other issues as the Secretary considers appropriate.

(3) Sources of information

In conducting the assessment under this sub-section, the Secretary shall use information from a variety of sources, including the National Assessment of Educational Progress (carried out under section 9622 of this title), State evaluations, and other research studies.

(4) Coordination

In carrying out this subsection, the Secretary shall—

(A) coordinate the national assessment under this subsection with the longitudinal study described in subsection (c) of this section; and

(B) ensure that the independent review panel described in subsection (d) of this section participates in conducting the national assessment under this subsection, including planning for and reviewing the assessment.

(5) Developmentally appropriate measures

In conducting the national assessment under this subsection, the Secretary shall use developmentally appropriate measures to assess student academic achievement.

(6) Reports

(A) Interim report

Not later than 3 years after January 8, 2002, the Secretary shall transmit to the President, the Committee on Education and the Workforce of the House of Representa-

atives, and the Committee on Health, Education, Labor, and Pensions of the Senate an interim report on the national assessment conducted under this subsection.
(B) Final report

Not later than 5 years after January 8, 2002, the Secretary shall transmit to the President, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate a final report on the national assessment conducted under this subsection.

(b) Studies and data collection

(1) In general

In addition to other activities described in this section, the Secretary may, directly or through awarding grants to or entering into contracts with appropriate entities—

(A) assess the implementation and effectiveness of programs under this subchapter;

(B) collect the data necessary to comply with the Government Performance and Results Act of 1993; and

(C) provide guidance and technical assistance to State educational agencies and local educational agencies in developing and maintaining management information systems through which such agencies may develop program performance indicators to improve services and performance.

(2) Minimum information

In carrying out this subsection, the Secretary shall collect, at a minimum, trend information on the effect of each program authorized under this subchapter, which shall complement the data collected and reported under subsections (a) and (c) of this section.

(c) National longitudinal study

(1) In general

The Secretary shall conduct a longitudinal study of schools receiving assistance under part A of this subchapter.

(2) Issues to be examined

In carrying out this subsection, the Secretary shall ensure that the study referred to in paragraph (1) provides Congress and educators with each of the following:

(A) An accurate description and analysis of the short- and long-term effect of the assistance made available under this subchapter on academic achievement.

(B) Information that can be used to improve the effectiveness of the assistance made available under this subchapter in enabling students to meet challenging academic achievement standards.

(C) An analysis of educational practices or model programs that are effective in improving the achievement of disadvantaged children.

(D) An analysis of the costs as compared to the benefits of the assistance made available under this subchapter in improving the achievement of disadvantaged children.

(E) An analysis of the effects of the availability of school choice options under section 6316 of this title on the academic achievement of disadvantaged students, on schools in school improvement, and on schools from which students have transferred under such options.

(F) Such other information as the Secretary considers appropriate.

(3) Scope

In conducting the study referred to in paragraph (1), the Secretary shall ensure that the study—

(A) bases its analysis on a nationally representative sample of schools participating in programs under this subchapter;

(B) to the extent practicable, includes in its analysis students who transfer to different schools during the course of the study; and

(C) analyzes varying models or strategies for delivering school services, including—

(i) schoolwide and targeted services; and

(ii) comprehensive school reform models.

(d) Independent Review Panel

(1) In general

The Secretary shall establish an independent review panel (in this subsection referred to as the "Review Panel") to advise the Secretary on methodological and other issues that arise in carrying out subsections (a) and (c) of this section.

(2) Appointment of members

(A) In general

Subject to subparagraph (B), the Secretary shall appoint members of the Review Panel from among qualified individuals who are—

(i) specialists in statistics, evaluation, research, and assessment;

(ii) education practitioners, including teachers, principals, and local and State superintendents;

(iii) parents and members of local school boards or other organizations involved with the implementation and operation of programs under this subchapter; and

(iv) other individuals with technical expertise who will contribute to the overall rigor and quality of the program evaluation.

(B) Limitations

In appointing members of the Review Panel, the Secretary shall ensure that—

(A) in order to ensure diversity, the Review Panel includes individuals appointed under subparagraph (A)(i) who represent disciplines or programs outside the field of education; and

(i) the total number of the individuals appointed under subparagraph (A)(ii) or (A)(iv) does not exceed one-fourth of the total number of the individuals appointed under this paragraph.

(3) Functions

The Review Panel shall consult with and advise the Secretary—

(A) to ensure that the assessment conducted under subsection (a) of this section and the study conducted under subsection (c) of this section—

(i) adhere to the highest possible standards of quality with respect to research design, statistical analysis, and the dissemination of findings; and
(ii) use valid and reliable measures to document program implementation and impacts; and
(B) to ensure—
(i) that the final report described in subsection (a)(6)(B) of this section is reviewed not later than 120 days after its completion by not less than two independent experts in program evaluation (who may be from among the members of the Review Panel appointed under paragraph (2));
(ii) that such experts evaluate and comment on the degree to which the report complies with subsection (a) of this section; and
(iii) that the comments of such experts are transmitted with the report under subsection (a)(6)(B) of this section.


REFERENCES IN TEXT

PRIORITY PROVISIONS

A prior section 1502 of Pub. L. 89–10 was classified to section 2912 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§6493. Assessment evaluation
(a) In general
The Secretary shall conduct an independent study of assessments used for State accountability purposes and for making decisions about the promotion and graduation of students. Such research shall be conducted over a period not to exceed 5 years and shall address the components described in subsection (d) of this section.

(b) Contract authorized
The Secretary is authorized to award a contract, through a peer review process, to an organization or entity capable of conducting rigorous, independent research. The Assistant Secretary of Educational Research and Improvement shall appoint peer reviewers to evaluate the applications for this contract.

(c) Study
The study shall—
(1) synthesize and analyze existing research that meets standards of quality and scientific rigor; and
(2) evaluate academic assessment and accountability systems in State educational agencies, local educational agencies, and schools; and
(3) make recommendations to the Department and to the Committee on Education and the Workforce of the United States House of Representatives and the Committee on Health, Education, Labor, and Pensions of the United States Senate, based on the findings of the study.

(d) Components of the research program
The study described in subsection (a) of this section shall examine—
(1) the effect of the assessment and accountability systems described in section 1(c) on

1 See note to section 1.
students, teachers, parents, families, schools, school districts, and States, including correlations between such systems and—

(A) student academic achievement, progress to the State-defined level of proficiency, and progress toward closing achievement gaps, based on independent measures;

(B) changes in course offerings, teaching practices, course content, and instructional material;

(C) changes in turnover rates among teachers, principals, and pupil-services personnel;

(D) changes in dropout, grade-retention, and graduation rates for students; and

(E) such other effects as may be appropriate;

(2) the effect of the academic assessments on students with disabilities;

(3) the effect of the academic assessments on low, middle, and high socioeconomic status students, limited and nonlimited English proficient students, racial and ethnic minority students, and nonracial or nonethnic minority students;

(4) guidelines for assessing the validity, reliability, and consistency of those systems using nationally recognized professional and technical standards;

(5) the relationship between accountability systems and the inclusion or exclusion of students from the assessment system; and

(6) such other factors as the Secretary finds appropriate.

(e) Reporting

Not later than 3 years after the contract described in subsection (b) of this section is awarded, the organization or entity conducting the study shall submit an interim report to the Committee on Education and the Workforce of the United States House of Representatives and the Committee on Health, Education, Labor and Pensions of the United States Senate, and to the President and the States, and shall make the report widely available to the public. The organization or entity shall submit a final report to the same recipients as soon as possible after the completion of the study. Additional reports may be periodically prepared and released as necessary.

(f) Reservation of funds

The Secretary may reserve up to 15 percent of the funds authorized to be appropriated for this part to carry out the study, except such reservation of funds shall not exceed $1,500,000.


(B) Use of funds

Grants under this subsection shall be used only to provide financial assistance to teachers who participate in the programs described in subparagraph (A).

(C) Name of fellowships

Financial assistance received by teachers pursuant to this subsection shall be known as Close Up fellowships.

(2) Applications

(A) Application required

No grant under this subsection may be made except upon an application at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(B) Contents of application

Each application submitted under this paragraph shall contain assurances that—

(i) Close Up fellowships provided under this subsection shall be made only to a teacher who has worked with at least one student from such teacher’s school who participates in a program described in subsection (a)(1)(A) of this section;

(ii) every effort shall be made to ensure the participation of recent immigrant students from rural, small town, and urban areas;

(iii) in awarding the fellowships to economically disadvantaged recent immigrant students, special consideration shall be given to the participation of those students with special educational needs, including students with disabilities, students with migrant parents, and ethnic minority students;

(iv) fully describe the activities to be carried out with the proceeds of the grant made under paragraph (1); and

(v) the funds received under this subsection shall be properly disbursed.

(d) General provisions

(1) Administrative provisions

(A) Accountability

In consultation with the Secretary, the Close Up Foundation shall devise and implement procedures to measure the efficacy of the programs authorized in subsections (a), (b), and (c) of this section in attaining objectives that include the following:

(i) Providing young people with an increased understanding of the Federal Government.

(ii) Heightening a sense of civic responsibility among young people.

(iii) Enhancing the skills of educators in teaching young people about civic responsibility, the Federal Government, and attaining citizenship competencies.

(B) General rule

Payments under this section may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments.

(C) Audit rule

The Comptroller General of the United States or any of the Comptroller General’s duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to any grant under this section.

(2) Continuation of awards

Notwithstanding any other provision of this chapter, any person or entity that was awarded a grant under part G of title X before January 8, 2002, shall continue to receive funds in accordance with the terms of such award until the date on which the award period terminates under such terms.
PART F—COMPREHENSIVE SCHOOL REFORM

§ 6511. Purpose

The purpose of this part is to provide financial incentives for schools to develop comprehensive school reforms, based upon scientifically based research and effective practices that include an emphasis on basic academics and parental involvement so that all children can meet challenging State academic content and academic achievement standards.

(a) Program authorized

(1) In general

The Secretary is authorized to award grants to State educational agencies, from allotments under paragraph (2), to enable the State educational agencies to award subgrants to local educational agencies to carry out the purpose described in section 6511 of this title.

(2) Allotments

(A) Reservations

Of the amount appropriated under section 6302(f) of this title, the Secretary may reserve—

(i) not more than 1 percent for each fiscal year to provide assistance to schools supported by the Bureau of Indian Affairs and in the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands according to their respective needs for assistance under this part;

(ii) not more than 1 percent for each fiscal year to conduct national evaluation activities described in section 6517 of this title; and

(iii) not more than 3 percent of the amount appropriated in fiscal year 2002 to carry out this part, for quality initiatives described in section 6518 of this title.

(B) In general

Of the amount appropriated under section 6302(f) of this title that remains after making the reservation under subparagraph (A)

for a fiscal year, the Secretary shall allot to each State for the fiscal year an amount that bears the same ratio to the remainder for that fiscal year as the amount made available under section 6333 of this title to the State for the preceding fiscal year bears to the total amount made available under section 6333 of this title to all States for that year.

(C) Reallotment

If a State does not apply for funds under this section, the Secretary shall reallocate such funds to other States that do apply in proportion to the amount allotted to such other States under subparagraph (B).

§ 6513. State applications

(a) In general

Each State educational agency that desires to receive a grant under this part shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Contents

Each such application shall describe—

(1) the process and selection criteria by which the State educational agency, using expert review, will select local educational agencies to receive subgrants under this part;

(2) how the State educational agency will ensure that funds under this part are limited to comprehensive school reform programs that—

(A) include each of the components described in section 6516(a) of this title;

(B) have the capacity to improve the academic achievement of all students in core academic subjects within participating schools; and

(C) are supported by technical assistance providers that have a successful track record, financial stability, and the capacity to deliver high quality materials, professional development for school personnel, and on-site support during the full implementation period of the reforms;

(3) how the State educational agency will disseminate materials and information on comprehensive school reforms that are based on scientifically based research and effective practices;

(4) how the State educational agency will evaluate annually the implementation of such reforms and measure the extent to which the reforms have resulted in increased student academic achievement; and

(5) how the State educational agency will provide technical assistance to the local educational agency or consortia of local educational agencies, and to participating

So in original. No subsec. (b) has been enacted.
schools, in evaluating, developing, and implementing comprehensive school reform.


PRIOR PROVISIONS

§ 6514. State use of funds
(a) In general

Except as provided in subsection (e) of this section, a State educational agency that receives a grant under this part shall use the grant funds to award subgrants, on a competitive basis, to local educational agencies or consortia of local educational agencies in the State that receive funds under part A of this subchapter, to support comprehensive school reforms in schools that are eligible for funds under part A of this subchapter.

(b) Subgrant requirements

A subgrant to a local educational agency or consortium shall be—

(1) of sufficient size and scope to support the initial costs of comprehensive school reforms selected or designed by each school identified in the application of the local educational agency or consortium;

(2) in an amount not less than $50,000—

(A) for each participating school; or

(B) for each participating consortium of small schools (which for purposes of this subparagraph means a consortium of small schools serving a total of not more than 500 students); and

(3) renewable for two additional 1-year subgrant periods after the initial 1-year subgrant is made if the school is or the schools are making substantial progress in the implementation of reforms.

(c) Priority

A State educational agency, in awarding subgrants under this part, shall give priority to local educational agencies or consortia that—

(1) plan to use the funds in schools identified as being in need of improvement or corrective action under section 6316(c) of this title; and

(2) demonstrate a commitment to assist schools with budget allocation, professional development, and other strategies necessary to ensure the comprehensive school reforms are properly implemented and are sustained in the future.

(d) Grant consideration

In awarding subgrants under this part, the State educational agency shall take into consideration the equitable distribution of subgrants to different geographic regions within the State, including urban and rural areas, and to schools serving elementary and secondary students.

(e) Administrative costs

A State educational agency that receives a grant under this part may reserve not more than 5 percent of the grant funds for administrative, evaluation, and technical assistance expenses.

(f) Supplement

Funds made available under this part shall be used to supplement, and not supplant, any other Federal, State, or local funds that would otherwise be available to carry out the activities assisted under this part.

(g) Reporting

Each State educational agency that receives a grant under this part shall provide to the Secretary such information as the Secretary may require, including the names of local educational agencies and schools receiving assistance under this part, the amount of the assistance, a description of the comprehensive school reforms selected and used, and a copy of the State’s annual evaluation of the implementation of comprehensive school reforms supported under this part and the student achievement results.


PRIOR PROVISIONS

§ 6515. Local applications
(a) In general

Each local educational agency or consortium of local educational agencies desiring a subgrant under this part shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require.

(b) Contents

Each such application shall—

(1) identify the schools that are eligible for assistance under part A of this subchapter and plan to implement a comprehensive school reform program, including the projected costs of such a program;

(2) describe the comprehensive school reforms based on scientifically based research and effective practices that such schools will implement;

(3) describe how the local educational agency or consortium will provide technical assistance and support for the effective implementation of the comprehensive school reforms based on scientifically based research and effective practices selected by such schools; and

(4) describe how the local educational agency or consortium will evaluate the implementation of such comprehensive school reforms and measure the results achieved in improving student academic achievement.


§ 6516. Local use of funds
(a) Uses of funds

A local educational agency or consortium that receives a subgrant under this part shall provide
the subgrant funds to schools that are eligible for assistance under part A of this subchapter and served by the agency, to enable the schools to implement a comprehensive school reform program that—

(1) employs proven strategies and proven methods for student learning, teaching, and school management that are based on scientifically based research and effective practices and have been replicated successfully in schools;

(2) integrates a comprehensive design for effective school functioning, including instruction, assessment, classroom management, professional development, parental involvement, and school management, that aligns the school’s curriculum, technology, and professional development into a comprehensive school reform plan for schoolwide change designed to enable all students to meet challenging State content and student academic achievement standards and addresses needs identified through a school needs assessment;

(3) provides high quality and continuous teacher and staff professional development;

(4) includes measurable goals for student academic achievement and benchmarks for meeting such goals;

(5) is supported by teachers, principals, administrators, school personnel staff, and other professional staff;

(6) provides support for teachers, principals, administrators, and other school staff;

(7) provides for the meaningful involvement of parents and the local community in planning, implementing, and evaluating school improvement activities consistent with section 6318 of this title;

(8) uses high quality external technical support and assistance from an entity that has experience and expertise in schoolwide reform and improvement, which may include an institution of higher education;

(9) includes a plan for the annual evaluation of the implementation of school reforms and the student results achieved;

(10) identifies other resources, including Federal, State, local, and private resources, that shall be used to coordinate services that will support and sustain the comprehensive school reform effort; and

(11)(A) has been found, through scientifically based research to significantly improve the academic achievement of students participating in such program as compared to students in schools who have not participated in such program; or

(B) has been found to have strong evidence that such program will significantly improve the academic achievement of participating children.

(b) Special rule

A school that receives funds to develop a comprehensive school reform program shall not be limited to using nationally available approaches, but may develop the school’s own comprehensive school reform program for schoolwide change as described in subsection (a) of this section.

§ 6517. Evaluation and reports

(a) In general

The Secretary shall develop a plan for a national evaluation of the programs assisted under this part.

(b) Evaluation

The national evaluation shall—

(1) evaluate the implementation and results achieved by schools after 3 years of implementing comprehensive school reforms; and

(2) assess the effectiveness of comprehensive school reforms in schools with diverse characteristics.

(c) Reports

The Secretary shall submit a report describing the results of the evaluation under subsection (b) of this section for the Comprehensive School Reform Program to the Committee on Education and the Workforce, and the Committee on Appropriations of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate.


§ 6518. Quality initiatives

The Secretary, through grants or contracts, shall provide funds for—

(1) a public-private effort, in which funds are matched by private organizations, to assist States, local educational agencies, and schools, in making informed decisions regarding approving or selecting providers of comprehensive school reform, consistent with the requirements described in section 6516(a) of this title; and

(2) activities to foster the development of comprehensive school reform models and to provide effective capacity building for comprehensive school reform providers to expand their work in more schools, assure quality, and promote financial stability.


PART G—ADVANCED PLACEMENT PROGRAMS

§ 6531. Short title

This part may be cited as the “Access to High Standards Act”.


§ 6532. Purposes

The purposes of this part are—

(1) to support State and local efforts to raise academic standards through advanced placement programs, and thus further increase the number of students who participate and succeed in advanced placement programs;

(2) to encourage more of the 600,000 students who take advanced placement courses each year but do not take advanced placement exams each year, to demonstrate their achievements through taking the exams;

(3) to build on the many benefits of advanced placement programs for students, which bene-
§ 6533. Funding distribution rule

(1) From amounts appropriated under section 6302(g) of this title for a fiscal year, the Secretary shall give priority to funding activities under section 6534 of this title and shall distribute any remaining funds under section 6535 of this title.

§ 6534. Advanced placement test fee program

(a) Grants authorized

From amounts made available under section 6333 of this title for a fiscal year, the Secretary shall award grants to State educational agencies having applications approved under this section to enable the State educational agencies to reimburse low-income individuals to cover part or all of the costs of advanced placement test fees, if the low-income individuals—

(1) are enrolled in an advanced placement course; and

(2) plan to take an advanced placement test.

(b) Award basis

In determining the amount of the grant awarded to a State educational agency under this section for a fiscal year, the Secretary shall consider the number of children eligible to be counted under section 6333(c) of this title in the State in relation to the number of such children so counted in all the States.

(c) Information dissemination

A State educational agency awarded a grant under this section shall disseminate information regarding the availability of advanced placement test fee payments under this section to eligible individuals through secondary school teachers and guidance counselors.

(d) Applications

Each State educational agency desiring to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. At a minimum, each State educational agency application shall—

(1) describe the advanced placement test fees the State educational agency will pay on behalf of low-income individuals in the State from grant funds awarded under this section;

(2) provide an assurance that any grant funds awarded under this section shall be used only to pay for advanced placement test fees; and

(3) contain such information as the Secretary may require to demonstrate that the State educational agency will ensure that a student is eligible for payments authorized under this section, including documentation required under chapter 1 of subpart 2 of part A of title IV of the Higher Education Act of 1965 [20 U.S.C. 1070a–11 et seq.].

(e) Regulations

The Secretary shall prescribe such regulations as are necessary to carry out this section.

(f) Report

(1) In general

Each State educational agency awarded a grant under this section shall, with respect to each advanced placement subject, annually report to the Secretary on—

(A) the number of students in the State who are taking an advanced placement course in that subject;

(B) the number of advanced placement tests taken by students in the State who have taken an advanced placement course in that subject;

(C) the number of students in the State scoring at different levels on advanced placement tests in that subject; and

(D) demographic information regarding individuals in the State taking advanced placement courses and tests in that subject disaggregated by race, ethnicity, sex, English proficiency status, and socioeconomic status.

(2) Report to Congress

The Secretary shall annually compile the information received from each State educational agency under paragraph (1) and report to the appropriate committees of Congress regarding the information.

(g) BIA as SEA

For purposes of this section the Bureau of Indian Affairs shall be treated as a State educational agency.
§ 6535  
TITLE 20—EDUCATION


REFERENCES IN TEXT


§ 6535. Advanced placement incentive program grants

(a) Grants authorized

(1) In general

From amounts made available under section 6533 of this title for a fiscal year, the Secretary shall award grants, on a competitive basis, to eligible entities to enable those entities to carry out the authorized activities described in subsection (d) of this section.

(2) Duration and payments

(A) Duration

The Secretary shall award a grant under this section for a period of not more than 3 years.

(B) Payments

The Secretary shall make grant payments under this section on an annual basis.

(b) Application

Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(c) Priority

In awarding grants under this section, the Secretary shall give priority to an eligible entity that submits an application under subsection (b) of this section that—

(1) demonstrates a pervasive need for access to advanced placement incentive programs;

(2) provides for the involvement of business and community organizations in the activities to be assisted;

(3) assures the availability of matching funds from State, local, or other sources to pay for the cost of activities to be assisted;

(4) demonstrates a focus on developing or expanding advanced placement programs and participation in the core academic areas of English, mathematics, and science;

(5) demonstrates an intent to carry out activities that target—

(A) local educational agencies serving schools with a high concentration of low-income students; or

(B) schools with a high concentration of low-income students; and

(6) in the case of a local educational agency, assures that the local educational agency serves schools with a high concentration of low-income students; or

(7) demonstrates an intent to carry out activities to increase the availability of, and participation in, on-line advanced placement courses.

(d) Authorized activities

(1) In general

Subject to paragraph (2), an eligible entity shall use grant funds made available under this section to expand access for low-income individuals to advanced placement incentive programs that involve—

(A) teacher training;

(B) pre-advanced placement course development;

(C) coordination and articulation between grade levels to prepare students for academic achievement in advanced placement courses;

(D) books and supplies; or

(E) activities to increase the availability of, and participation in, on-line advanced placement courses; or

(F) any other activity directly related to expanding access to and participation in advanced placement incentive programs, particularly for low-income individuals.

(2) State educational agency

In the case of an eligible entity that is a State educational agency, the entity may use grant funds made available under this section to award subgrants to local educational agencies to enable the local educational agencies to carry out the activities under paragraph (1).

(e) Contracts

An eligible entity awarded a grant to provide online advanced placement courses under this part may enter into a contract with a nonprofit or for profit organization to provide the online advanced placement courses, including contracting for necessary support services.

(f) Data collection and reporting

(1) Data collection

Each eligible entity awarded a grant under this section shall, with respect to each advanced placement subject, annually report to the Secretary on—

(A) the number of students served by the eligible entity who are taking an advanced placement course in that subject;

(B) the number of advanced placement tests taken by students served by the eligible entity in that subject;

(C) the number of students served by the eligible entity scoring at different levels on advanced placement tests in that subject; and

(D) demographic information regarding individuals served by such agency who taking advanced placement courses and tests in that subject disaggregated by race, eth-
nicity, sex, English proficiency status, and socioeconomic status.

(2) Report
The Secretary shall annually compile the information received from each eligible entity under paragraph (1) and report to the appropriate committees of Congress regarding the information.


§ 6536. Supplement, not supplant
Grant funds provided under this part shall supplement, and not supplant, other non-Federal funds that are available to assist low-income individuals to pay for the cost of advanced placement test fees or to expand access to advanced placement and pre-advanced placement courses.


§ 6537. Definitions
In this part:
(1) Advanced placement test
The term “advanced placement test” means an advanced placement test administered by the College Board or approved by the Secretary.

(2) High concentration of low-income students
The term “high concentration of low-income students”, used with respect to a school, means a school that serves a student population 40 percent or more of whom are low-income individuals.

(3) Low-income individual
The term “low-income individual” means an individual who is determined by a State educational agency or local educational agency to be a child, ages 5 through 19, from a low-income family, on the basis of data used by the Secretary to determine allocations under section 6533 of this title, data on children eligible for free or reduced-price lunches under the National School Lunch Act [42 U.S.C. 1751 et seq.], data on children in families receiving assistance under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or data on children eligible to receive medical assistance under the medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], or through an alternate method that combines or extrapolates from those data.


REFERENCES IN TEXT


For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

PART H—SCHOOL DROP OUT PREVENTION

§ 6551. Short title
This part may be cited as the “Dropout Prevention Act”.


§ 6552. Purpose
The purpose of this part is to provide for school dropout prevention and reentry and to raise academic achievement levels by providing grants that—
(1) challenge all children to attain their highest academic potential; and
(2) ensure that all students have substantial and ongoing opportunities to attain their highest academic potential through schoolwide programs proven effective in school dropout prevention and reentry.


§ 6553. Authorization of appropriations
For the purpose of carrying out this part, there are authorized to be appropriated $125,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years, of which—
(1) 10 percent shall be available to carry out subpart 1 of this part for each fiscal year; and
(2) 90 percent shall be available to carry out subpart 2 of this part for each fiscal year.


SUBPART 1—COORDINATED NATIONAL STRATEGY

§ 6555. National activities
(a) In general
The Secretary is authorized—
(1) to collect systematic data on the effectiveness of the programs assisted under this part in reducing school dropout rates and increasing school reentry and secondary school graduation rates;
(2) to establish a national clearinghouse of information on effective school dropout prevention and reentry programs that shall disseminate to State educational agencies, local educational agencies, and schools—
(A) the results of research on school dropout prevention and reentry; and
(B) information on effective programs, best practices, and Federal resources to—
(i) reduce annual school dropout rates;
(ii) increase school reentry; and
(iii) increase secondary school graduation rates;
(3) to provide technical assistance to State educational agencies, local educational agencies, and schools in designing and implementing programs and securing resources to implement effective school dropout prevention and reentry programs;

(4) to establish and consult with an inter-agency working group that shall—
   (A) address inter- and intra-agency program coordination issues at the Federal level with respect to school dropout prevention and reentry, and assess the targeting of existing Federal services to students who are most at risk of dropping out of school, and the cost-effectiveness of various programs and approaches used to address school dropout prevention and reentry;
   (B) describe the ways in which State educational agencies and local educational agencies can implement effective school dropout prevention and reentry programs using funds from a variety of Federal programs, including the programs under this part; and
   (C) examine Federal programs that may have a positive impact on secondary school graduation or school reentry;

(5) to carry out a national recognition program in accordance with subsection (b) of this section that recognizes schools that have made extraordinary progress in lowering school dropout rates; and

(6) to use funds made available for this subpart to carry out the evaluation required under section 6561i(c) of this title.

(b) Recognition program

(1) Establishment

The Secretary shall—

(A) establish a national recognition program; and

(B) develop uniform national guidelines for the recognition program that shall be used to recognize eligible schools from nominations submitted by State educational agencies.

(2) Recognition

The Secretary shall recognize, under the recognition program established under paragraph (1), eligible schools.

(3) Support

The Secretary may make monetary awards to an eligible school recognized under this subsection in amounts determined appropriate by the Secretary that shall be used for dissemination activities within the eligible school district or nationally.

(4) Definition of eligible school

In this subsection, the term “eligible school” means a public middle school or secondary school, including a charter school, that has implemented comprehensive reforms that have been effective in lowering school dropout rates for all students—

(A) in that secondary school or charter school; or

(B) in the case of a middle school, in the secondary school that the middle school feeds students into.

(c) Capacity building

(1) In general

The Secretary, through a contract with one or more non-Federal entities, may conduct a capacity building and design initiative in order to increase the types of proven strategies for school dropout prevention and reentry that address the needs of an entire school population rather than a subset of students.

(2) Number and duration

(A) Number

The Secretary may award not more than five contracts under this subsection.

(B) Duration

The Secretary may award a contract under this subsection for a period of not more than 5 years.

(d) Support for existing reform networks

(1) In general

The Secretary may provide appropriate support to eligible entities to enable the eligible entities to provide training, materials, development, and staff assistance to schools assisted under this part.

(2) Definition of eligible entity

In this subsection, the term “eligible entity” means an entity that, prior to January 8, 2002—

(A) provided training, technical assistance, and materials related to school dropout prevention or reentry to 100 or more elementary schools or secondary schools; and

(B) developed and published a specific educational program or design related to school dropout prevention or reentry for use by the schools.


SUBPART 2—SCHOOL DROPOUT PREVENTION INITIATIVE

§ 6561. Definitions

In this subpart:

(1) Low-income student

The term “low-income student” means a student who is determined by a local educational agency to be from a low-income family using the measures described in section 6313(c) of this title.

(2) State

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Bureau of Indian Affairs for purposes of serving schools funded by the Bureau.

§ 6561a. Program authorized

(a) Grants to State educational agencies and local educational agencies

(1) Amount less than $75,000,000

(A) In general

If the amount appropriated under section 6553 of this title for a fiscal year equals or is less than $75,000,000, then the Secretary shall use such amount to award grants, on a competitive basis, to—

(i) State educational agencies to support activities—

(1) in schools that—

(aa) serve students in grades 6 through 12; and

(bb) have annual school dropout rates that are above the State average annual school dropout rate; or

(ii) local educational agencies that operate public schools that serve students in grades 6 through 12 and that have annual school dropout rates that are above the State average annual school dropout rate; or

(B) Use of grant funds

Grant funds awarded under this paragraph shall be used to fund effective, sustainable, and coordinated school dropout prevention and reentry programs that may include the activities described in subsection (b)(2) of this section, in—

(i) schools serving students in grades 6 through 12 that have annual school dropout rates that are above the State average annual school dropout rate; or

(ii) the middle schools that feed students into the schools described in clause (i).

(2) Amount less than $250,000,000 but more than $75,000,000

If the amount appropriated under section 6553 of this title for a fiscal year is less than $250,000,000 but more than $75,000,000, then the Secretary shall use such amount to award grants, on a competitive basis, to State educational agencies to enable the State educational agency to award subgrants under subsection (b) of this section.

(b) Subgrants to local educational agencies

(1) In general

From amounts made available to a State educational agency under paragraph (2) or (3) of subsection (a) of this section, the State educational agency shall award subgrants, on a competitive basis, to local educational agencies that operate public schools that serve students in grades 6 through 12 and that have annual school dropout rates that are above the State average annual school dropout rate, to enable those schools, or the middle schools that feed students into those schools, to implement effective, sustainable, and coordinated school dropout prevention and reentry programs that involve activities such as—

(A) professional development;

(B) obtaining curricular materials;

(C) release time for professional staff to obtain professional development;

(D) planning and research;

(E) remedial education;

(F) reduction in pupil-to-teacher ratios;

(G) efforts to meet State student academic achievement standards;

(H) counseling and mentoring for at-risk students;

(I) implementing comprehensive school reform models, such as creating smaller learning communities; and

(J) school reentry activities.

(2) Amount

Subject to paragraph (3), a subgrant under this subpart shall be awarded—

(A) in the first year that a local educational agency receives a subgrant payment under this subpart, in an amount that is not less than 30 percent of the amount the local educational agency receives a subgrant payment under this subpart in the first such year; and

(i) the size of schools operated by the local educational agency;

(ii) costs of the model or set of prevention and reentry strategies being implemented; and

(iii) local cost factors such as poverty rates;

(B) in the second year, in an amount that is not less than 75 percent of the amount the local educational agency received under this subpart in the first such year;

(C) in the third year, in an amount that is not less than 50 percent of the amount the local educational agency received under this subpart in the first such year; and

(D) in each succeeding year, in an amount that is not less than 30 percent of the amount the local educational agency received under this subpart in the first year.

(3) Duration

A subgrant under this subpart shall be awarded for a period of 3 years, and may be continued for a period of 2 additional years if the State educational agency determines, based on the annual reports described in section 6561(a) of this title, that significant
§ 6561b. Applications


§ 6561b. Applications

(a) In general

To receive—

(1) a grant under this subpart, a State educational agency or local educational agency shall submit an application and plan to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require; and

(2) a subgrant under this subpart, a local educational agency shall submit an application and plan to the State educational agency at such time, in such manner, and accompanied by such information as the State educational agency may reasonably require.

(b) Contents

(1) State educational agency and local educational agency

Each application and plan submitted under subsection (a) of this section shall—

(A) include an outline—

(i) of the State educational agency’s or local educational agency’s strategy for reducing the State educational agency or local educational agency’s annual school dropout rate;

(ii) for targeting secondary schools, and the middle schools that feed students into those secondary schools, that have the highest annual school dropout rates; and

(iii) for assessing the effectiveness of the efforts described in the plan;

(B) contain an identification of the schools in the State or operated by the local educational agency that have annual school dropout rates that are greater than the average annual school dropout rate for the State;

(C) describe the instructional strategies to be implemented, how the strategies will serve all students, and the effectiveness of the strategies;

(D) describe a budget and timeline for implementing the strategies;

(E) contain evidence of coordination with existing resources;

(F) provide an assurance that funds provided under this subpart will supplement, and not supplant, other State and local funds available for school dropout prevention and reentry programs; and

(G) describe how the activities to be assisted conform with research knowledge about school dropout prevention and reentry.

(2) Local educational agency

Each application and plan submitted under subsection (a) of this section by a local educational agency shall contain, in addition to the requirements of paragraph (1)—

(A) an assurance that the local educational agency is committed to providing ongoing operational support for such schools to address the problem of school dropouts for a period of 5 years; and

(B) an assurance that the local educational agency will support the plan, including—

(i) provision of release time for teacher training;

(ii) efforts to coordinate activities for secondary schools and the middle schools that feed students into those secondary schools; and

(iii) encouraging other schools served by the local educational agency to participate in the plan.


§ 6561c. State reservation

A State educational agency that receives a grant under paragraph (2) or (3) of section 6561a(a) of this title may reserve not more than 5 percent of the grant funds for administrative costs and State activities related to school dropout prevention and reentry activities, of which not more than 2 percent of the grant funds may be used for administrative costs.


§ 6561d. Strategies and capacity building

Each local educational agency receiving a grant or subgrant under this subpart shall implement scientifically based, sustainable, and widely replicated strategies for school dropout prevention and reentry. The strategies may include—

(1) specific strategies for targeted purposes, such as—

(A) effective early intervention programs designed to identify at-risk students;

(B) effective programs serving at-risk students, including racial and ethnic minorities and pregnant and parenting teenagers, designed to prevent such students from dropping out of school; and

(C) effective programs to identify and encourage youth who have already dropped out of school to reenter school and complete their secondary education; and

(2) approaches such as breaking larger schools down into smaller learning communities and other comprehensive reform approaches, creating alternative school programs, and developing clear linkages to career skills and employment.


§ 6561e. Selection of local educational agencies for subgrants

(a) State educational agency review and award

The State educational agency shall review applications submitted under section 6561b(a)(2) of this title and award subgrants to local educational agencies with the assistance and advice of a panel of experts on school dropout prevention and reentry.
(b) Eligibility
A local educational agency is eligible to receive a subgrant under this subpart if the local educational agency operates a public school (including a public alternative school)—

(1) that is eligible to receive assistance under part A of this subchapter; and

(2)(A) that serves students 50 percent or more of whom are low-income students; or

(B) in which a majority of the students come from feeder schools that serve students 50 percent or more of whom are low-income students.

§ 6561f. Community based organizations
A local educational agency that receives a grant or subgrant under this subpart and a State educational agency that receives a grant under section 6561a(a) of this title; or

(B) State educational agency, if the local educational agency receives a subgrant under paragraph (2) or (3) of section 6561a(a) of this title.

(2) Dropout data
The dropout data under paragraph (1) shall include annual school dropout rates for each fiscal year, starting with the 2 fiscal years before the local educational agency received funds under this subpart.

(b) State report on program activities
Each State educational agency receiving funds under this subpart shall provide to the Secretary, at such time and in such format as the Secretary may require, information on the status of the implementation of activities funded under this subpart and outcome data for students in schools assisted under this subpart.

(c) Accountability
The Secretary shall evaluate the effect of the activities assisted under this subpart on school dropout prevention compared, if feasible, to a control group using control procedures. The Secretary may use funds appropriated for subpart 1 of this part to carry out this evaluation.

§ 6561g. Technical assistance
Notwithstanding any other provision of law, each local educational agency that receives funds under this subpart shall use the funds to provide technical assistance to secondary schools served by the agency that have not made progress toward lowering annual school dropout rates after receiving assistance under this subpart for 2 fiscal years.

§ 6561h. School dropout rate calculation
For purposes of calculating an annual school dropout rate under this subpart, a school shall use the annual event school dropout rate for students leaving a school in a single year determined in accordance with the National Center for Education Statistics’ Common Core of Data.

§ 6561i. Reporting and accountability
(a) Local educational agency reports
(1) In general
To receive funds under this subpart for a fiscal year after the first fiscal year that a local educational agency receives funds under this subpart, the local educational agency shall provide, on an annual basis, a report regarding the status of the implementation of activities funded under this subpart, and the dropout data for students at schools assisted under this subpart, disaggregated by race and ethnicity, to the—

(A) Secretary, if the local educational agency receives a grant under section 6561a(a)(1) of this title; or

(B) State educational agency, if the local educational agency receives a subgrant under paragraph (2) or (3) of section 6561a(a) of this title.
§ 6572. Agreements and records

(a) Agreements

All published proposed regulations shall conform to agreements that result from negotiated rulemaking described in section 6571 of this title unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants involved in the process explaining why the Secretary decided to depart from, and not adhere to, such agreements.

(b) Records

The Secretary shall ensure that an accurate and reliable record of agreements reached during the negotiations process is maintained.

§ 6573. State administration

(a) Rulemaking

(1) In general

Each State that receives funds under this subchapter shall—

(A) ensure that any State rules, regulations, and policies relating to this subchapter conform to the purposes of this subchapter and provide any such proposed rules, regulations, and policies to the committee of practitioners created under subsection (b) of this section for review and comment;

(B) minimize such rules, regulations, and policies to which the State’s local educational agencies and schools are subject;

(C) eliminate or modify State and local fiscal accounting requirements in order to facilitate the ability of schools to consolidate funds under schoolwide programs; and

(D) identify any such rule, regulation, or policy as a State-imposed requirement.

(2) Support and facilitation

State rules, regulations, and policies under this subchapter shall support and facilitate local educational agency and school-level systemic reform designed to enable all children to meet the challenging State student academic achievement standards.

(b) Committee of practitioners

(1) In general

Each State educational agency that receives funds under this subchapter shall create a State committee of practitioners to advise the State in carrying out its responsibilities under this subchapter.

(2) Membership

Each such committee shall include—

(A) as a majority of its members, representatives from local educational agencies;

(B) administrators, including the administrators of programs described in other parts of this subchapter;

(C) teachers, including vocational educators;

(D) parents;

(E) members of local school boards;

(F) representatives of private school children; and

(G) pupil services personnel.

(3) Duties

The duties of such committee shall include a review, before publication, of any proposed or final State rule or regulation pursuant to this subchapter. In an emergency situation where such rule or regulation must be issued within a very limited time to assist local educational agencies with the operation of the program under this subchapter, the State educational agency may issue a regulation without prior consultation, but shall immediately thereafter convene the State committee of practitioners to review the emergency regulation before issuance in final form.
§ 6574. Local educational agency spending audits

(a) Audits

The Comptroller General of the United States shall conduct audits of not less than 6 local educational agencies that receive funds under part A of this subchapter in each fiscal year to determine more clearly and specifically how local educational agencies are expending such funds. Such audits—

(1) shall be conducted in 6 local educational agencies that represent the size, ethnic, economic, and geographic diversity of local educational agencies; and

(2) shall examine the extent to which funds have been expended for academic instruction in the core curriculum and activities unrelated to academic instruction in the core curriculum, such as the payment of janitorial, utility, and other maintenance services, the purchase and lease of vehicles, and the payment for travel and attendance costs at conferences.

(b) Report

Not later than 3 months after the completion of the audits under subsection (a) of this section each year, the Comptroller General of the United States shall submit a report on each audit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate.


§ 6575. Prohibition against Federal mandates, direction, or control

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


§ 6576. Rule of construction on equalized spending

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


§ 6577. State report on dropout data

Not later than 1 year after a State educational agency receives funds under this subchapter, the agency shall report to the Secretary and statewide, all school district data regarding annual school dropout rates in the State disaggregated by race and ethnicity according to procedures that conform with the National Center for Education Statistics’ Common Core of Data.


§ 6578. Regulations for sections 6311 and 6316

The Secretary shall issue regulations for sections 6311 and 6316 of this title not later than 6 months after January 8, 2002.


SUBCHAPTER II—PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS

Codification


PART A—TEACHER AND PRINCIPAL TRAINING AND RECRUITING FUND

§ 6601. Purpose

The purpose of this part is to provide grants to State educational agencies, local educational agencies, State agencies for higher education, and eligible partnerships in order to—

(1) increase student academic achievement through strategies such as improving teacher and principal quality and increasing the number of highly qualified teachers in the classroom and highly qualified principals and assistant principals in schools; and

(2) hold local educational agencies and schools accountable for improvements in student academic achievement.


Prior Provisions


§ 6602. Definitions

In this part:

(1) Arts and sciences

The term “arts and sciences” means—

(A) when referring to an organizational unit of an institution of higher education, any academic unit that offers one or more academic majors in disciplines or content areas corresponding to the academic subjects in which teachers teach; and

(B) when referring to a specific academic subject, the disciplines or content areas in which an academic major is offered by an organizational unit described in subparagraph (A).

(2) Charter school

The term “charter school” has the meaning given the term in section 7221i of this title.
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(3) High-need local educational agency

The term “high-need local educational agency” means a local educational agency—
(A)(i) that serves not fewer than 10,000 children from families with incomes below the poverty line; or
(ii) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; and
(B)(i) for which there is a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; or
(ii) for which there is a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

(4) Highly qualified paraprofessional

The term “highly qualified paraprofessional” means a paraprofessional who has not less than 2 years of—
(A) experience in a classroom; and
(B) postsecondary education or demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers.

(5) Out-of-field teacher

The term “out-of-field teacher” means a teacher who is teaching an academic subject or a grade level for which the teacher is not highly qualified.

(6) Principal

The term “principal” includes an assistant principal.


PRIOR PROVISIONS


A prior section 2103 of Pub. L. 89–10 was classified to section 6623 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Another prior section 2103 of Pub. L. 89–10 was classified to section 3003 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

SUBPART I—GRANTS TO STATES

§ 6611. Allotments to States

(a) In general

The Secretary shall make grants to States with applications approved under section 6612 of this title to pay for the Federal share of the cost of carrying out the activities specified in section 6613 of this title. Each grant shall consist of the allotment determined for a State under subsection (b) of this section.

(b) Determination of allotments

(1) Reservation of funds

(A) 1 In general

From the total amount appropriated under section 6603(a) of this title for a fiscal year, the Secretary shall reserve—
(i) one-half of 1 percent for allotments for the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be distributed among those outlying areas on the basis of their relative need, as determined by the Secretary, in accordance with the purpose of this part; and
(ii) one-half of 1 percent for the Secretary of the Interior for programs under this part in schools operated or funded by the Bureau of Indian Affairs.

(2) State allotments

(A) Hold harmless

(i) In general

Subject to subparagraph (B), from the funds appropriated under section 6603(a) of this title for any fiscal year and not reserved under paragraph (1), the Secretary shall allot to each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the total amount that such State received for fiscal year 2001 under—
(I) section 2202(b) of this Act (as in effect on the day before January 8, 2002); and
(II) section 306 of the Department of Education Appropriations Act, 2001 (as enacted into law by section 1(a)(1) of Public Law 106–554).

(ii) Ratable reduction

If the funds described in clause (i) are insufficient to pay the full amounts that all States are eligible to receive under clause (i) for any fiscal year, the Secretary shall ratably reduce those amounts for the fiscal year.

1 So in original. No subpar. (B) has been enacted.
(B) Allotment of additional funds

(i) In general

Subject to clause (ii), for any fiscal year for which the funds appropriated under section 6603(a) of this title and not reserved under paragraph (1) exceed the total amount required to make allotments under subparagraph (A), the Secretary shall allot to each of the States described in subparagraph (A) the sum of—

(I) an amount that bears the same relationship to 35 percent of the excess amount as the number of individuals age 5 through 17 in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined; and

(II) an amount that bears the same relationship to 65 percent of the excess amount as the number of individuals age 5 through 17 from families with incomes below the poverty line, in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined.

(ii) Exception

No State receiving an allotment under clause (i) may receive less than one-half of 1 percent of the total excess amount allotted under such clause for a fiscal year.

(3) Reallotment

If any State does not apply for an allotment under this subsection for any fiscal year, the Secretary shall reallocate the amount of the allotment to the remaining States in accordance with this subsection.


REFERENCES IN TEXT

Section 2202(b) of this Act (as in effect on the day before January 8, 2002), referred to in subsec. (b)(2)(A)(i)(I), is section 2202(b) of Pub. L. 89–10, as added by Pub. L. 103–353, title I, § 101, Oct. 20, 1994, 108 Stat. 3621, which was classified to section 6642(b) of this title prior to the general amendment of this subchapter by Pub. L. 107–110, title II, § 201, Jan. 8, 2002, 115 Stat. 1620.


§ 6612. State applications

(a) In general

For a State to be eligible to receive a grant under this part, the State educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Contents

Each application submitted under this section shall include the following:

(1) A description of how the activities to be carried out by the State educational agency under this subpart will be based on a review of scientifically based research and an explanation of why the activities are expected to improve student academic achievement.

(2) A description of how the State educational agency will ensure that a local educational agency receiving a subgrant to carry out subpart 2 of this part will comply with the requirements of such subpart.

(3) A description of how the State educational agency will ensure that activities assisted under this subpart are aligned with challenging State academic content and student academic achievement standards, State assessments, and State and local curricula.

(4) A description of how the State educational agency will use funds under this part to improve the quality of the State’s teachers and principals.

(5)(A) A description of how the State educational agency will coordinate professional development activities authorized under this part with professional development activities provided under other Federal, State, and local programs.

(B) A description of the comprehensive strategy that the State educational agency will use, as part of such coordination effort, to ensure that teachers are trained in the use of technology so that technology and applications of technology are effectively used in the classroom to improve teaching and learning in all curricula and academic subjects, as appropriate.

(6) A description of how the State educational agency will encourage compliance with the requirements for professional development activities described in section 7801 of this title and how the activities to be carried out under the grant will be evaluated, in a manner that is both cost-effective and easily accessible, as such strategies that involve delivery through the use of technology, peer networks, and distance learning.

(7)(A) A description of how the State educational agency will ensure compliance with the requirements for professional development activities described in section 7801 of this title and how the activities to be carried out under the grant will be evaluated, in a manner that is both cost-effective and easily accessible, as such strategies that involve delivery through the use of technology, peer networks, and distance learning.

(B) In the case of a State in which the State educational agency is not the entity responsible for teacher professional standards, certification, and licensing, an assurance that the State activities carried out under this subpart are carried out in conjunction with the entity responsible for such standards, certification, and licensing under State law.

(8) A description of how the State educational agency will ensure that the professional development (including teacher mentoring) needs of teachers will be met using funds under this subpart and subpart 2 of this part.

(9) A description of the State educational agency’s annual measurable objectives under section 6319 of this title and how

(10) A description of how the State educational agency will use funds under this part to meet the teacher and paraprofessional requirements of section 6319 of this title and how
the State educational agency will hold local educational agencies accountable for meeting the annual measurable objectives described in section 6319(a)(2) of this title.

(11) In the case of a State that has a charter school law that exempts teachers from State certification and licensing requirements, the specific portion of the State law that provides for the exemption.

(12) An assurance that the State educational agency will comply with section 7881 of this title (regarding participation by private school children and teachers).

(c) Deemed approval
An application submitted by a State educational agency pursuant to subsection (a) of this section shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the application, that the application is not in compliance with this subpart.

(d) Disapproval
The Secretary shall not finally disapprove the application, except after giving the State educational agency notice and an opportunity for a hearing.

(e) Notification
If the Secretary finds that the application is not in compliance, in whole or in part, with this subpart, the Secretary shall—

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

(2) notify the State educational agency of the finding of noncompliance and, in such notification, shall—

(A) cite the specific provisions in the application that are not in compliance; and

(B) request additional information, only as to the noncompliant provisions, needed to make the application compliant.

(f) Response
If the State educational agency responds to the Secretary's notification described in subsection (e)(2) of this section during the 45-day period beginning on the date on which the agency received the notification, and resubmits the application with the requested information described in subsection (e)(2)(B) of this section, the Secretary shall approve or disapprove such application prior to the later of—

(1) the expiration of the 45-day period beginning on the date on which the application is resubmitted; or

(2) the expiration of the 120-day period described in subsection (c) of this section.

(g) Failure to respond
If the State educational agency does not respond to the Secretary's notification described in subsection (e)(2) of this section during the 45-day period beginning on the date on which the agency received the notification, such application shall be deemed to be disapproved.


§ 6613. State use of funds

(a) In general
A State that receives a grant under section 6611 of this title shall—

(1) reserve 95 percent of the funds made available through the grant to make subgrants to local educational agencies as described in subpart 2 of this part;

(2) reserve 2.5 percent (or, for a fiscal year described in subsection (b) of this section, the percentage determined under subsection (b) of this section) of the funds to make subgrants to local partnerships as described in subsection (c) of this part; and

(3) use the remainder of the funds for State activities described in subsection (c) of this section.

(b) Special rule
For any fiscal year for which the total amount that would be reserved by all States under subsection (a)(2) of this section, if the States applied a 2.5 percentage rate, exceeds $125,000,000, the Secretary shall determine an alternative percentage that the States shall apply for that fiscal year under subsection (a)(2) of this section so that the total amount reserved by all States under subsection (a)(2) of this section equals $125,000,000.

(c) State activities
The State educational agency for a State that receives a grant under section 6611 of this title shall use the funds described in subsection (a)(3) of this section to carry out one or more of the following activities, which may be carried out through a grant or contract with a for-profit or nonprofit entity:

(1) Reforming teacher and principal certification (including recertification) or licensing requirements to ensure that—

(A)(i) teachers have the necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach; and

(ii) principals have the instructional leadership skills to help teachers teach and students learn;

(B) teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

(C) teachers have the subject matter knowledge and teaching skills, including technology literacy, and principals have the instructional leadership skills, necessary to help students meet challenging State student academic achievement standards.

(2) Carrying out programs that provide support to teachers or principals, including support for teachers and principals new to their profession, such as programs that—

(A) provide teacher mentoring, team teaching, reduced class schedules, and intensive professional development; and

(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement standards and with the requirements for professional development activities described in section 7801 of this title.
(3) Carrying out programs that establish, expand, or improve alternative routes for State certification of teachers and principals, especially in the areas of mathematics and science, for highly qualified individuals with a bachelor’s degree, master’s degree, or other professional certification, as well as mid-career professionals from other occupations, paraprofessionals, former military personnel, and recent college or university graduates with records of academic distinction. The alternative routes must demonstrate the potential to become highly effective teachers or principals.

(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified teachers, including specialists in core academic subjects, principals, and pupil services personnel, except that funds made available under this paragraph may be used for pupil services personnel only—

(A) if the State educational agency is making progress toward meeting the annual measurable objectives described in section 6319(a)(2) of this title; and

(B) in a manner consistent with mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified teachers and principals.

(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965 [20 U.S.C. 1021 et seq.].

(6) Providing professional development for teachers and principals and, in cases in which a State educational agency determines support to be appropriate, supporting the participation of pupil services personnel in the same type of professional development activities as are made available to teachers and principals.

(7) Developing systems to measure the effectiveness of specific professional development programs and strategies to document gains in student academic achievement or increases in teacher mastery of the academic subjects the teachers teach.

(8) Fulfilling the State educational agency’s responsibilities concerning proper and efficient administration of the programs carried out under this part, including provision of technical assistance to local educational agencies.

(9) Funding projects to promote reciprocity of teacher and principal certification or licensing between or among States, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this part may lead to the weakening of any State teaching certification or licensing requirement.

(10) Developing or assisting local educational agencies in the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost-effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(11) Encouraging and supporting the training of teachers and administrators to effectively integrate technology into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability.

(12) Developing, or assisting local educational agencies in developing, merit-based performance systems, and strategies that provide differential and bonus pay for teachers in high-need academic subjects such as reading, mathematics, and science and teachers in high-poverty schools and districts.

(13) Providing assistance to local educational agencies for the development and implementation of professional development programs for principals that enable the principals to be effective school leaders and prepare all students to meet challenging State academic content and student academic achievement standards, and the development and support of school leadership academies to help exceptionally talented aspiring or current principals and superintendents become outstanding managers and educational leaders.

(14) Developing, or assisting local educational agencies in developing, teacher advancement initiatives that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(15) Providing assistance to teachers to enable them to meet certification, licensing, or other requirements needed to become highly qualified by the end of the fourth year for which the State receives funds under this part (as amended by the No Child Left Behind Act of 2001).

(16) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement standards, and State assessments, to improve instructional practices and improve student academic achievement.

(17) Funding projects and carrying out programs to encourage men to become elementary school teachers.

(18) Establishing and operating a center that—

(A) serves as a statewide clearinghouse for the recruitment and placement of kindergarten, elementary school, and secondary school teachers; and

(B) establishes and carries out programs to improve teacher recruitment and retention within the State.

(d) Administrative costs

A State educational agency or State agency for higher education receiving a grant under this part may use not more than 1 percent of the grant funds for planning and administration related to carrying out activities under subsection (c) of this section and subpart 3 of this part.

(e) Coordination

A State that receives a grant to carry out this subpart and a grant under section 2021 of the Higher Education Act of 1965 shall coordinate

\(^1\) See References in Text note below.
the activities carried out under this subpart and the activities carried out under that section.

(f) Supplement, not supplant

Funds received under this subpart shall be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this subpart.


REFERENCES IN TEXT


For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.


Section 202 of the Higher Education Act of 1965, referred to in subsec. (e), which was classified to section 1022(a) of the Act, relating to partnership grants, which is classified to section 1022a of this title.

SUBPART 2—SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES

§ 6621. Allocations to local educational agencies

(a) 1 Subgrants to local educational agencies

(1) In general

The Secretary may make a grant to a State under part 1 of this part only if the State educational agency agrees to distribute the funds described in this subsection as subgrants to local educational agencies under this subpart.

(2) Hold harmless

(A) In general

From the funds reserved by a State under section 6613(a)(1) of this title, the State educational agency shall allocate to each local educational agency in the State an amount equal to the total amount that such agency received for fiscal year 2001 under—

(i) section 2203(1)(B) of this Act (as in effect on the day before January 8, 2002); and

(ii) section 306 of the Department of Education Appropriations Act, 2001 (as enacted into law by section 1(a)(1) of Public Law 106–554).

(B) Nonparticipating agencies

In the case of a local educational agency that did not receive any funds for fiscal year 2001 under one or both of the provisions referred to in clauses (i) and (ii) of subparagraph (A), the amount allocated to the agency under such subparagraph shall be the total amount that the agency would have received for fiscal year 2001 if the agency had elected to participate in all of the programs for which the agency was eligible under each of the provisions referred to in those clauses.

(C) Ratable reduction

If the funds described in subparagraph (A) are insufficient to pay the full amounts that all local educational agencies in the State are eligible to receive under subparagraph (A) for any fiscal year, the State educational agency shall ratably reduce such amounts for the fiscal year.

(3) Allocation of additional funds

For any fiscal year for which the funds reserved by a State under section 6613(a)(1) of this title exceed the total amount required to make allocations under paragraph (2), the State educational agency shall allocate to each of the eligible local educational agencies in the State the sum of—

(A) an amount that bears the same relationship to 20 percent of the excess amount as the number of individuals age 5 through 17 in the geographic area served by the agency, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in the geographic areas served by all the local educational agencies in the State, as so determined; and

(B) an amount that bears the same relationship to 80 percent of the excess amount as the number of individuals age 5 through 17 from families with incomes below the poverty line in the geographic area served by the agency, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in the geographic areas served by all the local educational agencies in the State, as so determined.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 6622. Local applications and needs assessment

(a) In general

To be eligible to receive a subgrant under this subpart, a local educational agency shall submit an application to the State educational agency

1 So in original. No subsec. (b) has been enacted.
at such time, in such manner, and containing such information as the State educational agency may reasonably require.

(b) Contents

Each application submitted under this section shall be based on the needs assessment required in subsection (c) of this section and shall include the following:

(1)(A) A description of the activities to be carried out by the local educational agency under this subpart and how these activities will be aligned with—

(i) challenging State academic content standards and student academic achievement standards, and State assessments; and

(ii) the curricula and programs tied to the standards described in clause (i).

(B) A description of how the activities will be based on a review of scientifically based research and an explanation of why the activities are expected to improve student academic achievement.

(2) A description of how the activities will have a substantial, measurable, and positive impact on student academic achievement and how the activities will be used as part of a broader strategy to eliminate the achievement gap that separates low-income and minority students from other students.

(3) An assurance that the local educational agency will target funds to schools within the jurisdiction of the local educational agency that—

(A) have the lowest proportion of highly qualified teachers;

(B) have the largest average class size; or

(C) have the largest proportion of teachers with special educational needs.

(4) A description of how the local educational agency will coordinate professional development activities authorized under this subpart with professional development activities provided through other Federal, State, and local programs.

(5) A description of the professional development activities that will be made available to teachers and principals under this subpart and how the local educational agency will ensure that the professional development (which may include teacher mentoring) needs of teachers and principals will be met using funds under this subpart.

(6) A description of how the local educational agency will integrate funds under this subpart with funds received under part D of this subchapter that are used for professional development to train teachers to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy.

(7) A description of how the local educational agency, teachers, paraprofessionals, principals, other relevant school personnel, and parents have collaborated in the planning of activities to be carried out under this subpart and in the preparation of the application.

(8) A description of the results of the needs assessment described in subsection (c) of this section.

(9) A description of how the local educational agency will provide training to enable teachers to—

(A) teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including students who are gifted and talented), and students with limited English proficiency;

(B) improve student behavior in the classroom and identify early and appropriate interventions to help students described in subparagraph (A) learn;

(C) involve parents in their child’s education; and

(D) understand and use data and assessments to improve classroom practice and student learning.

(10) A description of how the local educational agency will use funds under this subpart to meet the requirements of section 6319 of this title.

(11) An assurance that the local educational agency will comply with section 7881 of this title (regarding participation by private school children and teachers).

(c) Needs assessment

(1) In general

To be eligible to receive a subgrant under this subpart, a local educational agency shall conduct an assessment of local needs for professional development and hiring, as identified by the local educational agency and school staff.

(2) Requirements

Such needs assessment shall be conducted with the involvement of teachers, including teachers participating in programs under part A of subchapter I of this chapter, and shall take into account the activities that need to be conducted in order to give teachers the means, including subject matter knowledge and teaching skills, and to give principals the instructional leadership skills to help teachers, to provide students with the opportunity to meet challenging State and local student academic achievement standards.


PRIOR PROVISIONS


§ 6623. Local use of funds

(a) In general

A local educational agency that receives a subgrant under section 6621 of this title shall use the funds made available through the subgrant to carry out one or more of the following activities, including carrying out the activities through a grant or contract with a for-profit or nonprofit entity:

(1) Developing and implementing mechanisms to assist schools in effectively recruit-
§ 6623

(1) provide assistance in recruiting highly qualified teachers, who will be assigned teaching positions within their fields, including—
(A) providing scholarships, signing bonuses, or other financial incentives, such as differential pay, for teachers to teach—
(i) in academic subjects in which there exists a shortage of highly qualified teachers within a school or within the local educational agency; and
(ii) in schools in which there exists a shortage of highly qualified teachers;
(B) recruiting and hiring highly qualified teachers to reduce class size, particularly in the early grades; and
(C) establishing programs that—
(i) train and hire regular and special education teachers (which may include hiring special education teachers to team-teach in classrooms that contain both children with disabilities and nondisabled children);
(ii) train and hire highly qualified teachers of special needs children, as well as teaching specialists in core academic subjects who will provide increased individualized instruction to students;
(iii) recruit qualified professionals from other fields, including highly qualified paraprofessionals, and provide such professionals with alternative routes to teacher certification, including developing and implementing hiring policies that ensure comprehensive recruitment efforts as a way to expand the applicant pool, such as through identifying teachers certified through alternative routes, and using a system of intensive screening designed to hire the most qualified applicants; and
(iv) provide increased opportunities for minorities, individuals with disabilities, and other individuals underrepresented in the teaching profession.

(2) Providing professional development activities—
(A) that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, concerning—
(i) one or more of the core academic subjects that the teachers teach; and
(ii) effective instructional strategies, methods, and skills, and use of challenging State academic content standards and student academic achievement standards, and State assessments, to improve teaching practices and student academic achievement; and
(B) that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—
(i) involve collaborative groups of teachers and administrators;
(ii) provide training in how to teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including students who are gifted and talented), and students with limited English proficiency;
(iii) provide training in methods of—
(I) improving student behavior in the classroom; and
(II) identifying early and appropriate interventions to help students described in clause (ii) learn;
(iv) provide training to enable teachers and principals to involve parents in their child’s education, especially parents of limited English proficient and immigrant children; and
(v) provide training on how to understand and use data and assessments to improve classroom practice and student learning.

(3) Developing and implementing initiatives to assist in recruiting highly qualified teachers (particularly initiatives that have proven effective in retaining highly qualified teachers), and hiring highly qualified teachers, who will be assigned teaching positions within their fields, including—
(A) innovative professional development programs (which may be provided through partnerships including institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, are consistent with the requirements of section 7801 of this title, and are coordinated with activities carried out under part D of this subchapter;
(B) development and use of proven, cost-effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning;

(C) tenure reform;

(D) merit pay programs; and

(E) testing of elementary school and secondary school teachers in the academic subjects that the teachers teach.

(6) Carrying out professional development activities designed to improve the quality of principals and superintendents, including the development and support of academies to help talented aspiring or current principals and superintendents become outstanding managers and educational leaders.

(7) Hiring highly qualified teachers, including teachers who become highly qualified through State and local alternative routes to certification, and special education teachers, in order to reduce class size, particularly in the early grades.

(8) Carrying out teacher advancement initiatives that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(10) Carrying out programs and activities related to exemplary teachers.

(b) Supplement, not supplant

Funds received under this subpart shall be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this subpart.


PRIORITY PROVISIONS


SUBPART 3—SUBGRANTS TO ELIGIBLE PARTNERSHIPS

§ 6631. Definitions

In this subpart:

(1) Eligible partnership

The term “eligible partnership” means an entity that—

(A) shall include—

(i) a private or State institution of higher education and the division of the institution that prepares teachers and principals;

(ii) a school of arts and sciences; and

(iii) a high-need local educational agency; and

(B) may include another local educational agency, a public charter school, an elementary school or secondary school, an educational service agency, a nonprofit educational organization, another institution of higher education, a school of arts and sciences within such an institution, the division of such an institution that prepares teachers and principals, a nonprofit cultural organization, an entity carrying out a pre-kindergarten program, a teacher organization, a principal organization, or a business.

(2) Low-performing school

The term “low-performing school” means an elementary school or secondary school that is identified under section 6316 of this title.


§ 6632. Subgrants

(a) In general

The State agency for higher education for a State that receives a grant under section 6611 of this title, working in conjunction with the State educational agency (if such agencies are separate), shall use the funds reserved under section 6613(a)(2) of this title to make subgrants, on a competitive basis, to eligible partnerships to enable such partnerships to carry out the activities described in section 6634 of this title.

(b) Distribution

The State agency for higher education shall ensure that—

(1) such subgrants are equitably distributed by geographic area within a State; or

(2) eligible partnerships in all geographic areas within the State are served through the subgrants.

(c) Special rule

No single participant in an eligible partnership may use more than 50 percent of the funds made available to the partnership under this section.


§ 6633. Applications

To be eligible to receive a subgrant under this subpart, an eligible partnership shall submit an application to the State agency for higher education at such time, in such manner, and containing such information as the agency may require.


§ 6634. Use of funds

(a) In general

An eligible partnership that receives a subgrant under section 6632 of this title shall use the subgrant funds for—

(1) professional development activities in core academic subjects to ensure that—

(A) teachers and highly qualified para-professionals, and, if appropriate, principals have subject matter knowledge in the academic subjects that the teachers teach, including the use of computer related technology to enhance student learning; and

(B) principals have the instructional leadership skills that will help such principals

1 So in original. No par. (9) has been enacted.
work most effectively with teachers to help students master core academic subjects; and
(2) developing and providing assistance to local educational agencies and individuals who are teachers, highly qualified paraprofessionals, or principals of schools served by such agencies, for sustained, high-quality professional development activities that—
(A) ensure that the individuals are able to use challenging State academic content standards and student academic achievement standards, and State assessments, to improve instructional practices and improve student academic achievement;
(B) may include intensive programs designed to prepare such individuals who will return to a school to provide instruction related to the professional development described in subparagraph (A) to other such individuals within such school; and
(C) may include activities of partnerships between one or more local educational agencies, one or more schools served by such local educational agencies, and one or more institutions of higher education for the purpose of improving teaching and learning at low-performing schools.

(b) Coordination
An eligible partnership that receives a subgrant to carry out this subpart and a grant under section 1023 of this title shall coordinate the activities carried out under this subpart and the activities carried out under that section of this title.


REFERENCES IN TEXT

SUBPART 4—ACCOUNTABILITY

§ 6641. Technical assistance and accountability

(a) Improvement plan
After the second year of the plan described in section 6319(a)(2) of this title, if a State educational agency determines, based on the reports described in section 6319(b)(1) of this title, that the local educational agency has failed to make progress toward meeting the annual measurable objectives described in section 6319(a)(2) of this title, for 2 consecutive years, the State educational agency shall develop an improvement plan that will enable the agency to meet such annual measurable objectives and that specifically addresses issues that prevented the agency from meeting such annual measurable objectives.

(b) Technical assistance
During the development of the improvement plan described in subsection (a) of this section and throughout implementation of the plan, the State educational agency shall—
(1) provide technical assistance to the local educational agency; and
(2) provide technical assistance, if applicable, to schools served by the local educational agency that need assistance to enable the local educational agency to meet the annual measurable objectives described in section 6319(a)(2) of this title.

(c) Accountability
After the third year of the plan described in section 6319(a)(2) of this title, if the State educational agency determines, based on the reports described in section 6319(b)(1) of this title, that the local educational agency has failed to make progress toward meeting the annual measurable objectives described in section 6319(a)(2) of this title, and has failed to make adequate yearly progress as described under section 6311(b)(2)(B) of this title, for 3 consecutive years, the State educational agency shall enter into an agreement with such local educational agency on the use of that agency’s funds under this part. As part of this agreement, the State educational agency—
(1) shall develop, in conjunction with the local educational agency, teachers, and principals, professional development strategies and activities, based on scientifically based research, that the local educational agency will use to meet the annual measurable objectives described in section 6319(a)(2) of this title and require such agency to utilize such strategies and activities; and
(2)(A) except as provided in subparagraphs (B) and (C), shall prohibit the use of funds received under part A of subchapter I of this chapter to fund any paraprofessional hired after the date such determination is made; and
(B) shall allow the use of such funds to fund a paraprofessional hired after that date if the local educational agency can demonstrate that the hiring is to fill a vacancy created by the departure of another paraprofessional funded under subchapter I of this chapter and such new paraprofessional satisfies the requirements of section 6319(c) of this title; and
(C) may allow the use of such funds to fund a paraprofessional hired after that date if the local educational agency can demonstrate—
(i) that a significant influx of population has substantially increased student enrollment; or
(ii) that there is an increased need for translators or assistance with parental involvement activities.

(d) Special rule
During the development of the strategies and activities described in subsection (c)(1) of this section, the State educational agency shall, in conjunction with the local educational agency, provide from funds allocated to such local educational agency under subpart 2 of this part directly to one or more schools served by such local educational agency, to enable teachers at the schools to choose, with continuing consultation with the principal involved, professional development activities that—

1 See References in Text note below.
(1) meet the requirements for professional development activities described in section 7801 of this title; and
(2) are coordinated with other reform efforts at the schools.


PRIOR PROVISIONS


Prior sections 6642 to 6650 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


SUBPART 5—NATIONAL ACTIVITIES

§ 6651. National activities of demonstrated effectiveness

(a) National teacher recruitment campaign

The Secretary is authorized to establish and carry out a national teacher recruitment campaign, which may include activities carried out through the National Teacher Recruitment Clearinghouse, to assist high-need local educational agencies in recruiting teachers (particularly those activities that are effective in retaining new teachers) and training teachers and to conduct a national public service campaign concerning the routes to, entering the field of teaching. In carrying out the campaign, the Secretary may promote and link the activities of the campaign to the information and referral activities of the National Teacher Recruitment Clearinghouse. The Secretary shall coordinate activities under this subsection with State and regional recruitment activities.

(b) School leadership

(1) In general

The Secretary is authorized to establish and carry out a national principal recruitment program to assist high-need local educational agencies in recruiting and training principals (including assistant principals) through such activities as—
(A) providing financial incentives to aspiring new principals;
(B) providing stipends to principals who mentor new principals; and
(C) carrying out professional development programs in instructional leadership and management;
and
(D) providing incentives that are appropriate for teachers or individuals from other fields who want to become principals and that are effective in retaining new principals.

(2) Grants

If the Secretary uses sums made available under section 6603(b) of this title to carry out paragraph (1), the Secretary shall carry out such paragraph by making grants, on a competitive basis, to—
(A) high-need local educational agencies;
(B) consortia of high-need local educational agencies; and
(C) partnerships of high-need local educational agencies, nonprofit organizations, and institutions of higher education.

(c) Advanced certification or advanced credentialing

(1) In general

The Secretary is authorized to support activities to encourage and support teachers seeking advanced certification or advanced credentialing through high quality professional teacher enhancement programs designed to improve teaching and learning.

(2) Implementation

In carrying out paragraph (1), the Secretary shall make grants to eligible entities to—
(A) develop teacher standards that include measures tied to increased student academic achievement; and
(B) promote outreach, teacher recruitment, teacher subsidy, or teacher support programs, related to teacher certification or credentialing by the National Board for Professional Teaching Standards, the National Council on Teacher Quality, or other nationally recognized certification or credentialing organizations.

(3) Eligible entities

In this subsection, the term "eligible entity" includes—
(A) a State educational agency;
(B) a local educational agency; and
(C) the National Board for Professional Teaching Standards, in partnership with a high-need local educational agency or a State educational agency;
(D) the National Council on Teacher Quality, in partnership with a high-need local educational agency or a State educational agency; or

(E) another recognized entity, including another recognized certification or credentialing organization, in partnership with a high-need local educational agency or a State educational agency.

(d) Special education teacher training

The Secretary is authorized to award a grant to the University of Northern Colorado to enable such university to provide, to other institutions of higher education, assistance in training special education teachers.

(e) Early childhood educator professional development

(1) Purpose

The purpose of this subsection is to enhance the school readiness of young children, particularly disadvantaged young children, and to prevent young children from encountering difficulties once the children enter school, by improving the knowledge and skills of early childhood educators who work in communities that have high concentrations of children living in poverty.

(2) Program authorized

(A) Grants to partnerships

The Secretary is authorized to carry out the purpose of this subsection by awarding grants, on a competitive basis, to partnerships consisting of—

(i) one or more institutions of higher education that provide professional development for early childhood educators who work with children from low-income families in high-need communities; or

(ii) one or more public or private entities (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), Head Start agencies, or private organizations; and

(iii) to the extent feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse.

(B) Duration and number of grants

(i) Duration

The Secretary shall award grants under this subsection for periods of not more than 4 years.

(ii) Number

No partnership may receive more than one grant under this subsection.

(3) Applications

(A) Applications required

Any partnership that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(B) Contents

Each such application shall include—

(i) a description of the high-need community to be served by the project proposed to be carried out through the grant, including such demographic and socio-economic information as the Secretary may request;

(ii) information on the quality of the early childhood educator professional development program currently conducted (as of the date of the submission of the application) by the institution of higher education or another provider in the partnership;

(iii) the results of a needs assessment that the entities in the partnership have undertaken to determine the most critical professional development needs of the early childhood educators to be served by the partnership and in the broader community, and a description of how the proposed project will address those needs;

(iv) a description of how the proposed project will be carried out, including a description of—

(I) how individuals will be selected to participate;

(II) the types of professional development activities, based on scientifically based research, that will be carried out;

(III) how research on effective professional development and on adult learning will be used to design and deliver project activities;

(IV) how the project will be coordinated with and build on, and will not supplant or duplicate, early childhood education professional development activities in the high-need community;

(V) how the project will train early childhood educators to provide developmentally appropriate school-readiness services that are based on the best available research on early childhood pedagogy and child development and learning domains;

(VI) how the project will train early childhood educators to meet the diverse educational needs of children in the community, including children who have limited English proficiency, children with disabilities, or children with other special needs; and

(VII) how the project will train early childhood educators in identifying and preventing behavioral problems in children or working with children identified as or suspected to be victims of abuse;

(v) a description of—

(I) the specific objectives that the partnership will seek to attain through...
the project, and the methods that the partnership will use to measure progress toward attainment of those objectives; and

(II) how the objectives and the measurement methods align with the achievement indicators established by the Secretary under paragraph (6)(A);

(vi) a description of the partnership’s plan for continuing the activities carried out under the project after Federal funding ceases;

(vii) an assurance that, where applicable, the project will provide appropriate professional development programs to volunteers working directly with young children, as well as to paid staff; and

(viii) an assurance that, in developing the application and in carrying out the project, the partnership has consulted with, and will consult with, relevant agencies, early childhood educator organizations, and early childhood providers that are not members of the partnership.

(4) Selection of grant recipients

(A) Criteria

The Secretary shall select partnerships to receive grants under this subsection on the basis of the degree to which the communities proposed to be served require assistance and the quality of the applications submitted under paragraph (3).

(B) Geographic distribution

In selecting partnerships to receive grants under this subsection, the Secretary shall ensure that communities in different regions of the Nation, as well as both urban and rural communities, are served.

(5) Uses of funds

(A) In general

Each partnership receiving a grant under this subsection shall use the grant funds to carry out activities that will improve the knowledge and skills of early childhood educators who are working in early childhood programs that are located in high-need communities and serve concentrations of children from low-income families.

(B) Allowable activities

Such activities may include—

(i) professional development for early childhood educators, particularly to familiarize those educators with the application of recent research on child, language, and literacy development and on early childhood pedagogy;

(ii) professional development for early childhood educators in working with parents, so that the educators and parents can work together to provide and support developmentally appropriate school-readiness services that are based on scientifically based research on early childhood pedagogy and child development and learning domains;

(iii) professional development for early childhood educators to work with children who have limited English proficiency, children with disabilities, and children with other special needs;

(iv) professional development to train early childhood educators in identifying and preventing behavioral problems in children or working with children identified as or suspected to be victims of abuse;

(v) activities that assist and support early childhood educators during their first 3 years in the field;

(vi) development and implementation of early childhood educator professional development programs that make use of distance learning and other technologies;

(vii) professional development activities related to the selection and use of screening and diagnostic assessments to improve teaching and learning; and

(viii) data collection, evaluation, and reporting needed to meet the requirements of paragraph (6) relating to accountability.

(6) Accountability

(A) Achievement indicators

On the date on which the Secretary first issues a notice soliciting applications for grants under this subsection, the Secretary shall announce achievement indicators for this subsection, which shall be designed—

(i) to measure the quality and accessibility of the professional development provided;

(ii) to measure the impact of that professional development on the early childhood education provided by the individuals who receive the professional development; and

(iii) to provide such other measures of program impact as the Secretary determines to be appropriate.

(B) Annual reports; termination

(i) Annual reports

Each partnership receiving a grant under this subsection shall report annually to the Secretary on the partnership’s progress toward attaining the achievement indicators.

(ii) Termination

The Secretary may terminate a grant under this subsection at any time if the Secretary determines that the partnership receiving the grant is not making satisfactory progress toward attaining the achievement indicators.

(7) Cost-sharing

(A) In general

Each partnership carrying out a project through a grant awarded under this subsection shall provide, from sources other than the program carried out under this subsection, which may include Federal sources—

(i) at least 50 percent of the total cost of the project for the grant period; and

(ii) at least 20 percent of the project cost for each year.

(B) Acceptable contributions

A partnership may meet the requirements of subparagraph (A) by providing contribu-
tions in cash or in kind, fairly evaluated, including plant, equipment, and services.

(C) Waivers
The Secretary may waive or modify the requirements of subparagraph (A) for partnerships in cases of demonstrated financial hardship.

(8) Federal coordination
The Secretary and the Secretary of Health and Human Services shall coordinate activities carried out through programs under this subsection with activities carried out through other early childhood programs administered by the Secretary or the Secretary of Health and Human Services.

(9) Definitions
In this subsection:
(A) Early childhood educator
The term “early childhood educator” means a person providing, or employed by a provider of, nonresidential child care services (including center-based, family-based, and in-home child care services) that is legally operating under State law, and that complies with applicable State and local requirements for the provision of child care services to children at any age from birth through the age at which a child may start kindergarten in that State.

(B) High-need community
(i) In general
The term “high-need community” means—
(I) a political subdivision of a State, or a portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or

(ii) Determination
In determining which communities are described in clause (i), the Secretary shall use such data as the Secretary determines are most accurate and appropriate.

(C) Low-income family
The term “low-income family” means a family with an income below the poverty line for the most recent fiscal year for which satisfactory data are available.

(f) Teacher mobility
(1) Establishment
The Secretary is authorized to establish a panel to be known as the National Panel on Teacher Mobility (referred to in this subsection as the “panel”).

(2) Membership
The panel shall be composed of 12 members appointed by the Secretary. The Secretary shall appoint the members from among practitioners and experts with experience relating to teacher mobility, such as teachers, members of teacher certification or licensing bodies, faculty of institutions of higher education that prepare teachers, and State policymakers with such experience.

(3) Period of appointment; vacancies
Members shall be appointed for the life of the panel. Any vacancy in the panel shall not affect the powers of the panel, but shall be filled in the same manner as the original appointment.

(4) Duties
(A) Study
(i) In general
The panel shall study strategies for increasing mobility and employment opportunities for highly qualified teachers, especially for States with teacher shortages and States with school districts or schools that are difficult to staff.

(ii) Data and analysis
As part of the study, the panel shall evaluate the desirability and feasibility of State initiatives that support teacher mobility by collecting data and conducting effective analysis concerning—
(I) teacher supply and demand;

(ii) the development of recruitment and hiring strategies that support teachers; and

(iii) increasing reciprocity of certification and licensing across States.

(B) Report
Not later than 1 year after the date on which all members of the panel have been appointed, the panel shall submit to the Secretary and to the appropriate committees of Congress a report containing the results of the study.

(5) Powers
(A) Hearings
The panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the panel considers advisable to carry out the objectives of this subsection.

(B) Information from Federal agencies
The panel may secure directly from any Federal department or agency such information as the panel considers necessary to carry out the provisions of this subsection. Upon request of a majority of the members of the panel, the head of such department or agency shall furnish such information to the panel.

(C) Postal services
The panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(6) Personnel
(A) Travel expenses
The members of the panel shall not receive compensation for the performance of services for the panel, but shall be allowed travel...
expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the panel. Notwithstanding section 1342 of title 31, the Secretary may accept the voluntary and uncompensated services of members of the panel.

(B) Detail of Government employees

Any Federal Government employee may be detailed to the panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(7) Permanent committee

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the panel.


REFERENCES IN TEXT


Section 14 of the Federal Advisory Committee Act, referred to in subsec. (f)(7), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS


PART B—MATHEMATICS AND SCIENCE PARTNERSHIPS

§6661. Purpose; definitions

(a) Purpose

The purpose of this part is to improve the academic achievement of students in the areas of mathematics and science by encouraging State educational agencies, institutions of higher education, local educational agencies, elementary schools, and secondary schools to participate in programs that—

(1) improve and upgrade the status and stature of mathematics and science teaching by encouraging institutions of higher education to assume greater responsibility for improving mathematics and science teacher education through the establishment of a comprehensive, integrated system of recruiting, training, and advising mathematics and science teachers;

(2) focus on the education of mathematics and science teachers as a career-long process that continuously stimulates teachers' intellectual growth and upgrades teachers' knowledge and skills;

(3) bring mathematics and science teachers in elementary schools and secondary schools together with scientists, mathematicians, and engineers to increase the subject matter knowledge of mathematics and science teachers and improve such teachers' teaching skills through the use of sophisticated laboratory equipment and work space, computing facilities, libraries, and other resources that institutions of higher education are better able to provide than the elementary schools and secondary schools;

(4) develop more rigorous mathematics and science curricula that are aligned with challenging State and local academic content standards and with the standards expected for postsecondary study in engineering, mathematics, and science; and

(5) improve and expand training of mathematics and science teachers, including training such teachers in the effective integration of technology into curricula and instruction.

(b) Definitions

In this part:

(1) Eligible partnership

The term “eligible partnership” means a partnership that—

(A) shall include—

(i) if grants are awarded under section 6662(a)(1) of this title, a State educational agency;

(ii) an engineering, mathematics, or science department of an institution of higher education; and

(iii) a high-need local educational agency; and

(B) may include—

(i) another engineering, mathematics, science, or teacher training department of an institution of higher education;

(ii) additional local educational agencies, public charter schools, public or private elementary schools or secondary schools, or a consortium of such schools;

(iii) a business; or

(iv) a nonprofit or for-profit organization of demonstrated effectiveness in improving the quality of mathematics and science teachers.

(2) Summer workshop or institute

The term “summer workshop or institute” means a workshop or institute, conducted during the summer, that—

(A) is conducted for a period of not less than 2 weeks;

(B) includes, as a component, a program that provides direct interaction between students and faculty; and

(C) provides for followup training during the academic year that is conducted in the classroom for a period of not less than three consecutive or nonconsecutive days, except that—

(i) if the workshop or institute is conducted during a 2-week period, the followup training shall be conducted for a period of not less than 4 days; and

(ii) if the followup training is for teachers in rural school districts, the followup

PRIOR PROVISIONS


A prior section 2201 of Pub. L. 89–10 was classified to section 6641 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Another prior section 2201 of Pub. L. 89–10 was classified to section 8011 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

Prior sections 6661a to 6661i were added in the general amendment of this subchapter by Pub. L. 107–110.


§ 6662. Grants for mathematics and science partnerships

(a) Grants authorized

(1) Grants to partnerships

For any fiscal year for which the funds appropriated under section 6663 of this title are less than $100,000,000, the Secretary is authorized to award grants, on a competitive basis, to eligible partnerships to carry out the authorized activities described in subsection (c) of this section.

(2) Grants to State educational agencies

(A) In general

For any fiscal year for which the funds appropriated under section 6663 of this title equal or exceed $100,000,000—

(i) if an eligible partnership in the State was previously awarded a grant under paragraph (1), and the grant period has not ended, the Secretary shall reserve funds in a sufficient amount to make payments to the partnership in accordance with the terms of the grant; and

(ii) the Secretary is authorized to award grants to State educational agencies to enable such agencies to award subgrants, on a competitive basis, to eligible partnerships to carry out the authorized activities described in subsection (c) of this section.

(B) Allotment

The Secretary shall allot the amount made available under this part for a fiscal year and not reserved under subparagraph (A)(i) among the State educational agencies in proportion to the number of children, aged 5 to 17, who are from families with incomes below the poverty line and reside in a State for the most recent fiscal year for which satisfactory data are available, as compared to the number of such children who reside in all such States for such year.

(C) Minimum allotment

The amount of any State educational agency’s allotment under subparagraph (B) for any fiscal year may not be less than one-half of 1 percent of the amount made available under this part for such year.

(3) Duration

The Secretary shall award grants under this part for a period of 3 years.

(4) Supplement, not supplant

Funds received under this part shall be used to supplement, and not supplant, funds that would otherwise be used for activities authorized under this part.

(b) Application requirements

(1) In general

Each eligible partnership desiring a grant or subgrant under this part shall submit an application—

(A) in the case of grants awarded pursuant to subsection (a)(1) of this section, to the Secretary, at such time, in such manner, and accompanied by such information as the Secretary may require; or

(B) in the case of subgrants awarded pursuant to subsection (a)(2) of this section, to the State educational agency, at such time, in such manner, and accompanied by such information as the State educational agency may require.

(2) Contents

Each application submitted pursuant to paragraph (1) shall include—

(A) the results of a comprehensive assessment of the teacher quality and professional development needs of any schools, local edu-
cational agencies, and State educational agencies that comprise the eligible partnership with respect to the teaching and learning of mathematics and science;

(B) a description of how the activities to be carried out by the eligible partnership will be aligned with challenging State academic content and student academic achievement standards in mathematics and science and with other educational reform activities that promote student academic achievement in mathematics and science;

(C) a description of how the activities to be carried out by the eligible partnership will be based on a review of scientifically based research, and an explanation of how the activities are expected to improve student academic achievement and strengthen the quality of mathematics and science instruction;

(D) a description of—

(i) how the eligible partnership will carry out the authorized activities described in subsection (c) of this section; and

(ii) the eligible partnership’s evaluation and accountability plan described in subsection (e) of this section; and

(E) a description of how the eligible partnership will continue the activities funded under this part after the original grant or subgrant period has expired.

(e) Authorized activities

An eligible partnership shall use funds provided under this part for one or more of the following activities related to elementary schools or secondary schools:

1. Creating opportunities for enhanced and ongoing professional development of mathematics and science teachers that improves the subject matter knowledge of such teachers;

2. Promoting strong teaching skills for mathematics and science teachers and teacher educators, including integrating reliable scientifically based research teaching methods and technology-based teaching methods into the curriculum;

3. Establishing and operating mathematics and science summer workshops or institutes, including followup training, for elementary school and secondary school mathematics and science teachers that—

(A) shall—

(i) directly relate to the curriculum and academic areas in which the teacher provides instruction, and focus only secondarily on pedagogy;

(ii) enhance the ability of the teacher to understand and use the challenging State academic content standards for mathematics and science and to select appropriate curricula; and

(iii) train teachers to use curricula that are—

(I) based on scientific research;

(II) aligned with challenging State academic content standards; and

(III) object-centered, experiment-oriented, and concept- and content-based; and

(B) may include—

(i) programs that provide teachers and prospective teachers with opportunities to work under the guidance of experienced teachers and college faculty;

(ii) instruction in the use of data and assessments to inform and instruct classroom practice; and

(iii) professional development activities, including supplemental and followup activities, such as curriculum alignment, distance learning, and activities that train teachers to utilize technology in the classroom.

4. Recruiting mathematics, engineering, and science majors to teaching through the use of—

(A) signing and performance incentives that are linked to activities proven effective in retaining teachers, for individuals with demonstrated professional experience in mathematics, engineering, or science;

(B) stipends provided to mathematics and science teachers for certification through alternative routes;

(C) scholarships for teachers to pursue advanced course work in mathematics, engineering, or science; and

(D) other programs that the State educational agency determines to be effective in recruiting and retaining individuals with strong mathematics, engineering, or science backgrounds.

5. Developing or redesigning more rigorous mathematics and science curricula that are aligned with challenging State and local academic content standards and with the standards expected for postsecondary study in mathematics and science.

6. Establishing distance learning programs for mathematics and science teachers using curricula that are innovative, content-based, and based on scientifically based research that is current as of the date of the program involved.

7. Designing programs to prepare a mathematics or science teacher at a school to provide professional development to other mathematics or science teachers at the school and to assist beginning and other teachers at the school, including (if applicable) a mechanism to integrate the teacher’s experiences from a summer workshop or institute into the provision of professional development and assistance.

8. Establishing and operating programs to bring mathematics and science teachers into contact with working scientists, mathematicians, and engineers, to expand such teachers’ subject matter knowledge of and research in science and mathematics.

9. Designing programs to identify and develop exemplary mathematics and science teachers in the kindergarten through grade 8 classrooms.

10. Training mathematics and science teachers and developing programs to encourage young women and other underrepresented individuals in mathematics and science careers (including engineering and technology)
to pursue postsecondary degrees in majors leading to such careers.

(d) Coordination and consultation

(1) Partnership grants

An eligible partnership receiving a grant under section 1023 of this title shall coordinate the use of such funds with any related activities carried out by such partnership with funds made available under this part.

(2) National Science Foundation

In carrying out the activities authorized by this part, the Secretary shall consult and coordinate with the Director of the National Science Foundation, particularly with respect to the appropriate roles for the Department and the Foundation in the conduct of summer workshops, institutes, or partnerships to improve mathematics and science teaching in elementary schools and secondary schools.

(e) Evaluation and accountability plan

(1) In general

Each eligible partnership receiving a grant or subgrant under this part shall develop an evaluation and accountability plan for activities assisted under this part that includes rigorous objectives that measure the impact of activities funded under this part.

(2) Contents

The plan developed pursuant to paragraph (1)—

(A) shall include measurable objectives to increase the number of mathematics and science teachers who participate in content-based professional development activities;

(B) shall include measurable objectives for improved student academic achievement on State mathematics and science assessments or, where applicable, an International Mathematics and Science Study assessment; and

(C) may include objectives and measures for—

(i) increased participation by students in advanced courses in mathematics and science;

(ii) increased percentages of elementary school teachers with academic majors or minors, or group majors or minors, in mathematics, engineering, or the sciences; and

(iii) increased percentages of secondary school classes in mathematics and science taught by teachers with academic majors in mathematics, engineering, and science.

(f) Report

Each eligible partnership receiving a grant or subgrant under this part shall report annually to the Secretary regarding the eligible partnership’s progress in meeting the objectives described in the accountability plan of the partnership under subsection (e) of this section.


PRIOR PROVISIONS

A prior section 2202 of Pub. L. 89–10 was classified to section 6623 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Another prior section 2202 of Pub. L. 89–10 was classified to section 3012 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 6663. Authorization of appropriations

There are authorized to be appropriated to carry out this part $450,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.


PRIOR PROVISIONS

A prior section 2203 of Pub. L. 89–10 was classified to section 6643 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Another prior section 2203 of Pub. L. 89–10 was classified to section 3013 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

PART C—INNOVATION FOR TEACHER QUALITY

SUBPART 1—TRANSITIONS TO TEACHING

DIVISION A—TROOPS-TO-TEACHERS PROGRAM

§ 6671. Definitions

In this division:

(1) Armed Forces

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

(2) Member of the Armed Forces

The term “member of the Armed Forces” includes a former member of the Armed Forces.

(3) Program

The term “Program” means the Troops-to-Teachers Program authorized by this division.

(4) Reserve component

The term “reserve component” means—

(A) the Army National Guard of the United States;

(B) the Army Reserve;

(C) the Navy Reserve;

(D) the Marine Corps Reserve;

(E) the Air National Guard of the United States;

(F) the Air Force Reserve; and

(G) the Coast Guard Reserve.

(5) Secretary concerned

The term “Secretary concerned” means—

(A) the Secretary of the Army, with respect to matters concerning a reserve component of the Army;

(B) the Secretary of the Navy, with respect to matters concerning reserve components named in subparagraphs (C) and (D) of paragraph (4);
(C) the Secretary of the Air Force, with respect to matters concerning a reserve component of the Air Force; and 
(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard Reserve.


PRIOR PROVISIONS


AMENDMENTS


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of Title 10, Armed Forces.

§ 6672. Authorization of Troops-to-Teachers Program

(a) Purpose

The purpose of this section is to authorize a mechanism for the funding and administration of the Troops-To-Teachers Program, which was originally established by the Troops-To-Teachers Program Act of 1999 (title XVII of the National Defense Authorization Act for Fiscal Year 2000) (20 U.S.C. 9301 et seq.).

(b) Program authorized

The Secretary may carry out a program (to be known as the “Troops-to-Teachers Program”)—

(1) to assist eligible members of the Armed Forces described in section 6673 of this title to obtain certification or licensing as elementary school teachers, secondary school teachers, or vocational or technical teachers, and to become highly qualified teachers; and

(2) to facilitate the employment of such members—

(A) by local educational agencies or public charter schools that the Secretary identifies as—

(i) receiving grants under part A of subchapter I of this chapter as a result of having within their jurisdictions concentrations of children from low-income families; or

(ii) experiencing a shortage of highly qualified teachers, in particular a shortage of science, mathematics, special education, or vocational or technical teachers; and

(B) in elementary schools or secondary schools, or as vocational or technical teachers.

(c) Administration of Program

The Secretary shall enter into a memorandum of agreement with the Secretary of Defense under which the Secretary of Defense, acting through the Defense Activity for Non-Traditional Education Support of the Department of Defense, will perform the actual administration of the Program, other than section 6676 of this title. Using funds appropriated to the Secretary to carry out this division, the Secretary shall transfer to the Secretary of Defense such amounts as may be necessary to administer the Program pursuant to the memorandum of agreement.

(d) Information regarding Program

The Secretary shall provide to the Secretary of Defense information regarding the Program and applications to participate in the Program, for distribution as part of preseparation counseling provided under section 1142 of title 10 to members of the Armed Forces described in section 6673 of this title.

(e) Placement assistance and referral services

The Secretary may, with the agreement of the Secretary of Defense, provide placement assistance and referral services to members of the Armed Forces who meet the criteria described in section 6673 of this title, including meeting education qualification requirements under subsection 1 of this title. Such members shall not be eligible for financial assistance under subsections (c) and (d) of section 6674 of this title.


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 6673. Recruitment and selection of program participants

(a) Eligible members

The following members of the Armed Forces are eligible for selection to participate in the Program:

(1) Any member who—

(A) on or after October 1, 1999, becomes entitled to retired or retainer pay in the manner provided in title 10 or title 14;

(B) has an approved date of retirement that is within 1 year after the date on which the member submits an application to participate in the Program; or

(C) has been transferred to the Retired Reserve.

1 So in original. Probably should be “section”. 

(2) Any member who—

(A) on or after October 1, 1999, becomes entitled to retired or retainer pay in the manner provided in title 10 or title 14;
§ 6673

TITLE 20—EDUCATION

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(2) Any member who, on or after January 8, 2002—

(A)(i) is separated or released from active duty after 6 or more years of continuous active duty immediately before the separation or release; or

(ii) has completed a total of at least 10 years of active duty service, 10 years of service computed under section 12732 of title 10, or 10 years of any combination of such service; and

(B) executes a reserve commitment agreement for a period of not less than 3 years under subsection (e)(2) of this section.

(3) Any member who, on or after January 8, 2002, is retired or separated for physical disability under chapter 61 of title 10.

(4) Any member who—

(A) during the period beginning on October 1, 1980, and ending on September 30, 1999, was involuntarily discharged or released from active duty for purposes of a reduction of force after 6 or more years of continuous active duty immediately before the discharge or release; or

(B) applied for the teacher placement program administered under section 1151 of title 10 before the repeal of that section, and satisfied the eligibility criteria specified in subsection (c) of such section 1151.

(b) Submission of applications

(1) Form and submission

Selection of eligible members of the Armed Forces to participate in the Program shall be made on the basis of applications submitted to the Secretary within the time periods specified in paragraph (2). An application shall be in such form and contain such information as the Secretary may require.

(2) Time for submission

An application shall be considered to be submitted on a timely basis under paragraph (1) if—

(A) in the case of a member described in paragraph (1)(A), (2), or (3) of subsection (a) of this section, the application is submitted not later than 4 years after the date on which the member is retired or separated or released from active duty, whichever applies to the member; or

(B) in the case of a member described in subsection (a)(4) of this section, the application is submitted not later than September 30, 2003.

(c) Selection criteria

(1) Establishment

Subject to paragraphs (2) and (3), the Secretary shall prescribe the criteria to be used to select eligible members of the Armed Forces to participate in the Program.

(2) Educational background

(A) Elementary or secondary school teacher

If a member of the Armed Forces described in paragraph (1), (2), or (3) of subsection (a) of this section is applying for assistance for placement as an elementary school or secondary school teacher, the Secretary shall require the member to have received a baccalaureate or advanced degree from an accredited institution of higher education.

(B) Vocational or technical teacher

If a member of the Armed Forces described in paragraph (1), (2), or (3) of subsection (a) of this section is applying for assistance for placement as a vocational or technical teacher, the Secretary shall require the member—

1. received the equivalent of 1 year of college from an accredited institution of higher education and have 6 or more years of military experience in a vocational or technical field; or

2. to otherwise meet the certification or licensing requirements for a vocational or technical teacher in the State in which the member seeks assistance for placement under the Program.

(3) Honorable service

A member of the Armed Forces is eligible to participate in the Program only if the member’s last period of service in the Armed Forces was honorable, as characterized by the Secretary concerned (as defined in section 101(a)(9) of title 10). A member selected to participate in the Program before the retirement of the member or the separation or release of the member from active duty may continue to participate in the Program after the retirement, separation, or release only if the member’s last period of service is characterized as honorable by the Secretary concerned (as so defined).

(d) Selection priorities

In selecting eligible members of the Armed Forces to receive assistance under the Program, the Secretary shall give priority to members who have educational or military experience in science, mathematics, special education, or vocational or technical subjects and agree to seek employment as science, mathematics, or special education teachers in elementary schools or secondary schools or in other schools under the jurisdiction of a local educational agency.

(e) Other conditions on selection

(1) Selection subject to funding

The Secretary may not select an eligible member of the Armed Forces to participate in the Program under this section and receive financial assistance under section 6674 of this title unless the Secretary has sufficient appropriations for the Program available at the time of the selection to satisfy the obligations to be incurred by the United States under section 6674 of this title with respect to the member.

(2) Reserve commitment agreement

The Secretary may not select an eligible member of the Armed Forces described in subsection (a)(2)(A) of this section to participate in the Program under this section and receive financial assistance under section 6674 of this title unless—

1So in original. Probably should be “(i) to have”.

(A) the Secretary notifies the Secretary concerned and the member that the Secretary has reserved a full stipend or bonus under section 6674 of this title for the member; and

(B) the member executes a written agreement with the Secretary concerned to serve as a member of the Selected Reserve of a reserve component of the Armed Forces for a period of not less than 3 years (in addition to any other reserve commitment the member may have).


REMARKS


§ 6674. Participation agreement and financial assistance

(a) Participation agreement

(1) In general

An eligible member of the Armed Forces selected to participate in the Program under section 6673 of this title and receive financial assistance under this section shall be required to enter into an agreement with the Secretary in which the member agrees—

(A) within such time as the Secretary may require, to obtain certification or licensing as an elementary school teacher, secondary school teacher, or vocational or technical teacher, and to become a highly qualified teacher; and

(B) to accept an offer of full-time employment as an elementary school teacher, secondary school teacher, or vocational or technical teacher for not less than 3 school years with a high-need local educational agency or public charter school, as such terms are defined in section 6601 of this title, to begin the school year after obtaining that certification or licensing.

(2) Waiver

The Secretary may waive the 3-year commitment described in paragraph (1)(B) for a participant if the Secretary determines such waiver to be appropriate. If the Secretary provides the waiver, the participant shall not be considered to be in violation of the agreement and shall not be required to provide reimbursement under subsection (f) of this section, for failure to meet the 3-year commitment.

(b) Violation of participation agreement; exceptions

A participant in the Program shall not be considered to be in violation of the participation agreement entered into under subsection (a) of this section during any period in which the participant—

(1) is pursuing a full-time course of study related to the field of teaching at an institution of higher education;

(2) is serving on active duty as a member of the Armed Forces;

(3) is temporarily totally disabled for a period of time not to exceed 3 years as established by sworn affidavit of a qualified physician;

(4) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

(5) is a highly qualified teacher who is seeking and unable to find full-time employment as a teacher in an elementary school or secondary school or as a vocational or technical teacher for a single period not to exceed 27 months; or

(6) satisfies the provisions of additional reimbursement exceptions that may be prescribed by the Secretary.

(c) Stipend for participants

(1) Stipend authorized

Subject to paragraph (2), the Secretary may pay to a participant in the Program selected under section 6673 of this title a stipend in an amount of not more than $5,000.

(2) Limitation

The total number of stipends that may be paid under paragraph (1) in any fiscal year may not exceed 5,000.

(d) Bonus for participants

(1) Bonus authorized

Subject to paragraph (2), the Secretary may, in lieu of paying a stipend under subsection (c) of this section, pay a bonus of $10,000 to a participant in the Program selected under section 6673 of this title who agrees in the participation agreement under subsection (a) of this section to become a highly qualified teacher and to accept full-time employment as an elementary school teacher, secondary school teacher, or vocational or technical teacher for not less than 3 school years in a high-need school.

(2) Limitation

The total number of bonuses that may be paid under paragraph (1) in any fiscal year may not exceed 3,000.

(3) High-need school defined

In this subsection, the term “high-need school” means a public elementary school, public secondary school, or public charter school that meets one or more of the following criteria:

(A) Low-income children

At least 50 percent of the students enrolled in the school were from low-income families (as described in section 6672(b)(2)(A)(1) of this title).

(B) Children with disabilities

The school has a large percentage of students who qualify for assistance under part

1 So in original. Probably should be section “6601”. 
B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.].

(e) Treatment of stipend and bonus
A stipend or bonus paid under this section to a participant in the Program shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq. and 42 U.S.C. 2751 et seq.].

(f) Reimbursement under certain circumstances
(1) Reimbursement required
A participant in the Program who is paid a stipend or bonus under this section shall be required to repay the stipend or bonus under the following circumstances:

(A) Failure to obtain qualifications or employment
The participant fails to obtain teacher certification or licensing, to become a highly qualified teacher, or to obtain employment as an elementary school teacher, secondary school teacher, or vocational or technical teacher as required by the participation agreement under subsection (a) of this section.

(B) Termination of employment
The participant voluntarily leaves, or is terminated for cause, from employment as an elementary school teacher, secondary school teacher, or vocational or technical teacher during the 3 years of required service in violation of the participation agreement.

(C) Failure to complete service under reserve commitment agreement
The participant executed a written agreement with the Secretary concerned under section 6673(e)(2) of this title to serve as a member of a reserve component of the Armed Forces for a period of 3 years and fails to complete the required term of service.

(2) Amount of reimbursement
A participant required to reimburse the Secretary for a stipend or bonus paid to the participant under this section shall pay an amount that bears the same ratio to the amount of the stipend or bonus as the unserved portion of required service bears to the 3 years of required service. Any amount owed by the participant shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of 90 days or less and shall accrue from the day on which the participant is first notified of the amount due.

(3) Treatment of obligation
The obligation to reimburse the Secretary under this subsection is, for all purposes, a debt owing the United States. A discharge in bankruptcy under title 11 shall not release a participant from the obligation to reimburse the Secretary under this subsection.

(4) Exceptions to reimbursement requirement
A participant shall be excused from reimbursement under this subsection if the participant becomes permanently totally disabled as established by sworn affidavit of a qualified physician. The Secretary may also waive the reimbursement in cases of extreme hardship to the participant, as determined by the Secretary.

(g) Relationship to educational assistance under Montgomery GI Bill
The receipt by a participant in the Program of a stipend or bonus under this section shall not reduce or otherwise affect the entitlement of the participant to any benefits under chapter 30 of title 38 or chapter 1606 of title 10.


REFERENCES IN TEXT
The Individuals with Disabilities Education Act, referred to in subsec. (d)(3)(B), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.


PRIOR PROVISIONS

§ 6675. Participation by States
(a) Discharge of State activities through consortia of States
The Secretary may permit States participating in the Program to carry out activities authorized for such States under the Program through one or more consortia of such States.

(b) Assistance to States
(1) Grants authorized
Subject to paragraph (2), the Secretary may make grants to States participating in the Program, or to consortia of such States, in order to permit such States or consortia of States to operate offices for purposes of recruiting eligible members of the Armed Forces for participation in the Program and facilitating the employment of participants in the Program as elementary school teachers, secondary school teachers, and vocational or technical teachers.

(2) Limitation
The total amount of grants made under paragraph (1) in any fiscal year may not exceed $5,000,000.


PRIOR PROVISIONS
§ 6676. Support of innovative preretirement teacher certification programs

(a) Purpose
The purpose of this section is to provide funding to develop, implement, and demonstrate teacher certification programs.

(b) Development, implementation and demonstration
The Secretary may enter into a memorandum of agreement with a State educational agency, an institution of higher education, or a consortium of State educational agencies or institutions of higher education, to develop, implement, and demonstrate teacher certification programs for members of the Armed Forces described in section 6673(a)(1)(B) of this title for the purpose of assisting such members to consider and prepare for a career as a highly qualified elementary school teacher, secondary school teacher, or vocational or technical teacher upon retirement from the Armed Forces.

(c) Program elements
A teacher certification program under subsection (b) of this section shall—
(1) provide recognition of military experience and training as related to certification or licensing requirements;
(2) provide courses of instruction that may be conducted on or near a military installation;
(3) incorporate alternative approaches to achieve teacher certification, such as innovative methods to gaining field-based teaching experiences, and assessment of background and experience as related to skills, knowledge, and abilities required of elementary school teachers, secondary school teachers, or vocational or technical teachers;
(4) provide for courses to be delivered via distance education methods; and
(5) address any additional requirements or specifications established by the Secretary.

(d) Application procedures
(1) In general
A State educational agency or institution of higher education (or a consortium of State educational agencies or institutions of higher education) that desires to enter into a memorandum under subsection (b) of this section shall prepare and submit to the Secretary a proposal, at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the State educational agency, institution, or consortium is operating a program leading to State approved teacher certification.

(2) Preference
The Secretary shall give preference to State educational agencies, institutions, and consortium that submit proposals that provide for cost sharing with respect to the program involved.

(e) Continuation of programs
Upon successful completion of the demonstration phase of teacher certification programs funded under this section, the continued operation of the teacher certification programs shall not be the responsibility of the Secretary. A State educational agency, institution, or consortium that desires to continue a program that is funded under this section after such funding is terminated shall use amounts derived from tuition charges to continue such program.

(f) Funding limitation
The total amount obligated by the Secretary under this section for any fiscal year may not exceed $10,000,000.


PRIOR PROVISIONS

§ 6677. Reporting requirements

(a) Report required
Not later than March 31, 2006, the Secretary (in consultation with the Secretary of Defense and the Secretary of Homeland Security) and the Comptroller General of the United States shall submit to Congress a report on the effectiveness of the Program in the recruitment and retention of qualified personnel by local educational agencies and public charter schools.

(b) Elements of report
The report submitted under subsection (a) of this section shall include information on the following:
(1) The number of participants in the Program;
(2) The schools in which the participants are employed;
(3) The grade levels at which the participants teach;
(4) The academic subjects taught by the participants;
(5) The rates of retention of the participants by the local educational agencies and public charter schools employing the participants;
(6) Such other matters as the Secretary or the Comptroller General of the United States, as the case may be, considers to be appropriate.


AMENDMENTS

EFFECTIVE DATE OF 2002 AMENDMENT
Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1794(g) of Pub. L. 107–296, set out as a note under section 101 of Title 10, Armed Forces.

Division B—Transition to Teaching Program

§ 6681. Purposes
The purposes of this division are—
(1) to establish a program to recruit and retain highly qualified mid-career professionals (including highly qualified paraprofessionals), and recent graduates of an institution of higher education, as teachers in high-need schools, including recruiting teachers through alternative routes to certification; and
(2) to encourage the development and expansion of alternative routes to certification under State-approved programs that enable individuals to be eligible for teacher certification within a reduced period of time, relying on the experience, expertise, and academic qualifications of an individual, or other factors in lieu of traditional course work in the field of education.


§ 6682. Definitions
In this division:

(1) Eligible participant
The term “eligible participant” means—
(A) an individual with substantial, demonstrable career experience, including a highly qualified paraprofessional; or
(B) an individual who is a graduate of an institution of higher education who—
(i) has graduated not more than 3 years before applying to an eligible entity to teach under this division; and
(ii) in the case of an individual wishing to teach in a secondary school, has completed an academic major (or courses totaling an equivalent number of credit hours) in the academic subject that the individual will teach.

(2) High-need local educational agency
The term “high-need local educational agency” has the meaning given the term in section 6602 of this title.

(3) High-need school
The term “high-need school” means a school that—
(A) is located in an area in which the percentage of students from families with incomes below the poverty line is 30 percent or more; or
(B)(i) is located in an area with a high percentage of out-of-field teachers, as defined in section 6602 of this title;
(ii) is within the top quartile of elementary schools and secondary schools statewide, as ranked by the number of unfulfilled, available teacher positions at the schools;
(iii) is located in an area in which there is a high teacher turnover rate; or
(iv) is located in an area in which there is a high percentage of teachers who are not certified or licensed.


§ 6683. Grant program

(a) In general
The Secretary may establish a program to make grants on a competitive basis to eligible entities to develop State and local teacher corps or other programs to establish, expand, or enhance teacher recruitment and retention efforts.

(b) Eligible entity
To be eligible to receive a grant under this section, an entity shall be—
(1) a State educational agency;
(2) a high-need local educational agency;
(3) a for-profit or nonprofit organization that has a proven record of effectively recruiting and retaining highly qualified teachers, in a partnership with a high-need local educational agency or with a State educational agency;
(4) an institution of higher education, in a partnership with a high-need local educational agency or with a State educational agency;
(5) a regional consortium of State educational agencies; or
(6) a consortium of high-need local educational agencies.

(c) Priority
In making such a grant, the Secretary shall give priority to a partnership or consortium that includes a high-need State educational agency or local educational agency.

(d) Application

(1) In general
To be eligible to receive a grant under this section, an entity described in subsection (b) of this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Contents
The application shall describe—
(A) one or more target recruitment groups on which the applicant will focus its recruitment efforts;
(B) the characteristics of each such target group that—
(i) show the knowledge and experience of the group’s members, and
(ii) demonstrate that the members are eligible to achieve the objectives of this section;
(C) describe how the applicant will use funds received under this section to develop a teacher corps or other program to recruit and retain highly qualified midcareer professionals (which may include highly qualified paraprofessionals), recent college graduates, and recent graduate school graduates, as highly qualified teachers in high-need schools operated by high-need local educational agencies;
(D) explain how the program carried out under the grant will meet the relevant State laws (including regulations) related to teacher certification or licensing and facilitate the certification or licensing of such teachers;
(E) describe how the grant will increase the number of highly qualified teachers, in high-need schools operated by high-need local educational agencies (in urban or rural school districts), and in high-need academic subjects, in the jurisdiction served by the applicant; and
(F) describe how the applicant will collaborate, as needed, with other institutions, agencies, or organizations to recruit (particularly through activities that have proven effective in retaining highly qualified teachers), train, place, support, and provide teacher induction programs to program participants under this division, including providing evidence of the commitment of the institutions, agencies, or organizations to the applicant’s programs.

(e) Duration of grants
The Secretary may make grants under this section for periods of 5 years. At the end of the 5-year period for such a grant, the grant recipient may apply for an additional grant under this section.

(f) Equitable distribution
To the extent practicable, the Secretary shall ensure an equitable geographic distribution of grants under this section among the regions of the United States.

(g) Uses of funds
(1) In general
An entity that receives a grant under this section shall use the funds made available through the grant to develop a teacher corps or other program in order to establish, expand, or enhance a teacher recruitment and retention program for highly qualified mid-career professionals (including highly qualified paraprofessionals), and recent graduates of an institution of higher education, who are eligible participants, including activities that provide alternative routes to teacher certification.

(2) Authorized activities
The entity shall use the funds to carry out a program that includes two or more of the following activities:

(A) Providing scholarships, stipends, bonuses, and other financial incentives, that are linked to participation in activities that have proven effective in retaining teachers in high-need schools operated by high-need local educational agencies, to all eligible participants, in an amount not to exceed $5,000 per participant.

(B) Carrying out pre- and post-placement induction or support activities that have proven effective in recruiting and retaining teachers, such as—

(i) teacher mentoring;

(ii) providing internships;

(iii) providing high-quality, preservice coursework; and

(iv) providing high-quality, sustained inservice professional development.

(C) Carrying out placement and ongoing activities to ensure that teachers are placed in fields in which the teachers are highly qualified to teach and are placed in high-need schools.

(D) Making payments to pay for costs associated with accepting teachers recruited under this section from among eligible participants or provide financial incentives to prospective teachers who are eligible participants.

(E) Collaborating with institutions of higher education in developing and implementing programs to facilitate teacher recruitment (including teacher credentialing) and teacher retention programs.

(F) Carrying out other programs, projects, and activities that are designed and have proven to be effective in recruiting and retaining teachers, and that the Secretary determines to be appropriate.

(G) Developing long-term recruitment and retention strategies including developing—

(i) a statewide or regionwide clearinghouse for the recruitment and placement of teachers;

(ii) administrative structures to develop and implement programs to provide alternative routes to certification;

(iii) reciprocity agreements between or among States for the certification or licensing of teachers; or

(iv) other long-term teacher recruitment and retention strategies.

(3) Effective programs
The entity shall use the funds only for programs that have proven to be effective in both recruiting and retaining teachers.

(h) Requirements
(1) Targeting
An entity that receives a grant under this section to carry out a program shall ensure that participants in the program recruited with funds made available under this section are placed in high-need schools operated by high-need local educational agencies. In placing the participants in the schools, the entity shall give priority to the schools that are located in areas with the highest percentages of students from families with incomes below the poverty line.

(2) Supplement, not supplant
Funds made available under this section shall be used to supplement, and not supplant, State and local public funds expended for teacher recruitment and retention programs, including programs to recruit the teachers through alternative routes to certification.

(3) Partnerships and consortia of local educational agencies
In the case of a partnership established by a local educational agency to carry out a program under this division, or a consortium of such agencies established to carry out a program under this division, the local educational agency or consortium shall not be eligible to receive funds through a State program under this division.

(i) Period of service
A program participant in a program under this division who receives training through the program shall serve a high-need school operated by a high-need local educational agency for at least 3 years.

(j) Repayment
The Secretary shall establish such requirements as the Secretary determines to be appropriate to ensure that program participants who
receive a stipend or other financial incentive under subsection (g)(2)(A) of this section, but fail to complete their service obligation under subsection (i) of this section, repay all or a portion of such stipend or other incentive.

(k) Administrative funds

No entity that receives a grant under this section shall use more than 5 percent of the funds made available through the grant for the administration of a program under this division carried out under the grant.


§ 6684. Evaluation and accountability for recruiting and retaining teachers

(a) Evaluation

Each entity that receives a grant under this division shall conduct—

(1) an interim evaluation of the program funded under the grant at the end of the third year of the grant period; and

(2) a final evaluation of the program at the end of the fifth year of the grant period.

(b) Contents

In conducting the evaluation, the entity shall describe the extent to which local educational agencies that received funds through the grant have met the goals relating to teacher recruitment and retention described in the application.

(c) Reports

The entity shall prepare and submit to the Secretary and to Congress interim and final reports containing the results of the interim and final evaluations, respectively.

(d) Revocation

If the Secretary determines that the recipient of a grant under this division has not made substantial progress in meeting such goals and the objectives of the grant by the end of the third year of the grant period, the Secretary—

(1) shall revoke the payment made for the fourth year of the grant period; and

(2) shall not make a payment for the fifth year of the grant period.


Division C—General Provisions

§ 6691. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subpart $150,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Reservation

From the funds appropriated to carry out this subpart for fiscal year 2002, the Secretary shall reserve not more than $30,000,000 to carry out division A of this subpart.


SUBPART 2—NATIONAL WRITING PROJECT

§ 6701. Purposes

The purposes of this subpart are—

(1) to support and promote the expansion of the National Writing Project network of sites so that teachers in every region of the United States will have access to a National Writing Project program;

(2) to ensure the consistent high quality of the sites through ongoing review, evaluation, and technical assistance;

(3) to support and promote the establishment of programs to disseminate effective practices and research findings about the teaching of writing; and

(4) to coordinate activities assisted under this subpart with activities assisted under this chapter.


Prior Provisions


§ 6702. National Writing Project

(a) Authorization

The Secretary is authorized to award a grant to the National Writing Project, a nonprofit educational organization that has as its primary purpose the improvement of the quality of student writing and learning (hereafter in this section referred to as the “grantee”) to improve the teaching of writing and the use of writing as a part of the learning process in our Nation’s classrooms.

(b) Requirements of grant

The grant shall provide that—

(1) the grantee will enter into contracts with institutions of higher education or other nonprofit educational providers (hereafter in this section referred to as “contractors”) under which the contractors will agree to establish, operate, and provide the non-Federal share of the cost of teacher training programs in effective approaches and processes for the teaching of writing;

(2) funds made available by the Secretary to the grantee pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating teacher training programs as provided in paragraph (1); and

(3) the grantee will meet such other conditions and standards as the Secretary determines to be necessary to assure compliance with the provisions of this section and will provide such technical assistance as may be necessary to carry out the provisions of this section.

(c) Teacher training programs

The teacher training programs authorized in subsection (a) of this section shall—

(1) be conducted during the school year and during the summer months;

(2) train teachers who teach grades kindergarten through college;

(3) select teachers to become members of a National Writing Project teacher network.
whose members will conduct writing workshops for other teachers in the area served by each National Writing Project site; and
(4) encourage teachers from all disciplines to participate in such teacher training programs.

(d) Federal share
(1) In general
Except as provided in paragraph (2) or (3) and for purposes of subsection (a) of this section, the term ‘Federal share’ means, with respect to the costs of teacher training programs authorized in subsection (a) of this section, 50 percent of such costs to the contractor.
(2) Waiver
The Secretary may waive the provisions of paragraph (1) on a case-by-case basis if the National Advisory Board described in subsection (e) of this section determines, on the basis of financial need, that such waiver is necessary.
(3) Maximum
The Federal share of the costs of teacher training programs conducted pursuant to subsection (a) of this section may not exceed $100,000 for any one contractor, or $200,000 for a statewide program administered by any one contractor in at least five sites throughout the State.

(e) National Advisory Board
(1) Establishment
The National Writing Project shall establish and operate a National Advisory Board.
(2) Composition
The National Advisory Board established pursuant to paragraph (1) shall consist of—
(A) national educational leaders; (B) leaders in the field of writing; and (C) such other individuals as the National Writing Project determines necessary.
(3) Duties
The National Advisory Board established pursuant to paragraph (1) shall—
(A) advise the National Writing Project on national issues related to student writing and the teaching of writing; (B) review the activities and programs of the National Writing Project; and (C) support the continued development of the National Writing Project.

(f) Evaluation
(1) In general
The Secretary shall conduct an independent evaluation by grant or contract of the teacher training programs administered pursuant to this subpart. Such evaluation shall specify the amount of funds expended by the National Writing Project and each contractor receiving assistance under this section for administrative costs. The results of such evaluation shall be made available to the appropriate committees of Congress.
(2) Funding limitation
The Secretary shall reserve not more than $150,000 from the total amount appropriated pursuant to the authority of subsection (b) of this section for fiscal year 2002 and each of the 5 succeeding fiscal years to conduct the evaluation described in paragraph (1).

(g) Application review
(1) Review Board
The National Writing Project shall establish and operate a National Review Board that shall consist of—
(A) leaders in the field of research in writing; and (B) such other individuals as the National Writing Project deems necessary.
(2) Duties
The National Review Board shall—
(A) review all applications for assistance under this subsection; and (B) recommend applications for assistance under this subsection for funding by the National Writing Project.

(h) Authorization of appropriations
There are authorized to be appropriated to carry out this subpart $15,000,000 as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.


PRIOR PROVISIONS

TERMINATION OF ADVISORY BOARDS
Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBPART 3—CIVIC EDUCATION
§ 6711. Short title
This subpart may be cited as the “Education for Democracy Act”.


§ 6712. Purpose
It is the purpose of this subpart—
(1) to improve the quality of civics and government education by educating students about the history and principles of the Constitution of the United States, including the Bill of Rights; (2) to foster civic competence and responsibility; and (3) to improve the quality of civic education and economic education through cooperative civic education and economic education exchange programs with emerging democracies.
§ 6713. General authority

(a) Authority

The Secretary is authorized to award grants to, or enter into contracts with—

(1) the Center for Civic Education, to carry out civic education activities under sections 6714 and 6715 of this title;

(2) the National Council on Economic Education, to carry out economic education activities under section 6715 of this title; and

(3) organizations experienced in the development of curricula and programs in civics and government education and economic education for students in elementary schools and secondary schools in countries other than the United States, to carry out civic education activities under section 6715 of this title.

(b) Distribution for cooperative civic education and economic education exchange programs

(1) Limitation

Not more than 40 percent of the amount appropriated under section 6716 of this title for a fiscal year shall be used to carry out section 6715 of this title.

(2) Distribution

Of the amount used to carry out section 6715 of this title for a fiscal year (consistent with paragraph (1)), the Secretary shall use—

(A) 37.5 percent for a grant or contract for the Center for Civic Education;

(B) 37.5 percent for a grant or contract for the National Council on Economic Education; and

(C) 25 percent for not less than 1, but not more than 3, grants or contracts for organizations described in subsection (a)(3) of this section.

§ 6714. We the People program

(a) The Citizen and the Constitution

(1) Educational activities

The Center for Civic Education—

(A) shall use funds made available under grants or contracts under section 6713(a)(1) of this title—

(i) to continue and expand the educational activities of the program entitled the “We the People. . . The Citizen and the Constitution” program administered by such center;

(ii) to carry out activities to enhance student attainment of challenging academic content standards in civics and government;

(iii) to provide a course of instruction on the basic principles of the Nation’s constitutional democracy and the history of the Constitution of the United States, including the Bill of Rights;

(iv) to provide, at the request of a participating school, school and community simulated congressional hearings following the course of instruction described in clause (iii); and

(v) to provide an annual national competition of simulated congressional hearings for secondary school students who wish to participate in such a program; and

(B) may use funds made available under grants or contracts under section 6713(a)(1) of this title—

(i) to provide advanced, sustained, and ongoing training of teachers about the Constitution of the United States and the political system of the United States;

(ii) to provide materials and methods of instruction, including teacher training, that utilize the latest advancements in educational technology; and

(iii) to provide civic education materials and services to address specific problems such as the prevention of school violence and the abuse of drugs and alcohol.

(2) Availability of program

The education program authorized under this subsection shall be made available to public and private elementary schools and secondary schools, including Bureau funded schools, in the 435 congressional districts, and in the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Project Citizen

(1) Educational activities

The Center for Civic Education—
(A) shall use funds made available under grants or contracts under section 6713(a)(1) of this title—
   (i) to continue and expand the educational activities of the program entitled the "We the People... Project Citizen" program administered by the Center;
   (ii) to carry out activities to enhance student attainment of challenging academic content standards in civics and government;
   (iii) to provide a course of instruction at the middle school level on the roles of State and local governments in the Federal system established by the Constitution of the United States; and
   (iv) to provide an annual national showcase or competition; and

(B) may use funds made available under grants or contracts under section 6713(a)(1) of this title—
   (i) to provide optional school and community simulated State legislative hearings;
   (ii) to provide advanced, sustained, and ongoing training of teachers on the roles of State and local governments in the Federal system established by the Constitution of the United States;
   (iii) to provide materials and methods of instruction, including teacher training, that utilize the latest advancements in educational technology; and
   (iv) to provide civic education materials and services to address specific problems such as the prevention of school violence and the abuse of drugs and alcohol.

(2) Availability of program

The education program authorized under this subsection shall be made available to public and private middle schools, including Bureau funded schools, in the 50 States of the United States; the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands.

(c) Bureau-funded school defined

In this section, the term "Bureau-funded school" has the meaning given such term in section 2026 of title 25.1


REFERENCES IN TEXT


§ 6715. Cooperative civic education and economic education exchange programs

(a) Cooperative education exchange programs

The Center for Civic Education, the National Council on Economic Education, and organizations described in section 6713(a)(3) of this title shall use funds made available under grants or contracts under section 6713 of this title to carry out cooperative education exchange programs in accordance with this section.

(b) Purpose

The purpose of the cooperative education exchange programs carried out under this section shall be—
   (1) to make available to educators from eligible countries exemplary curriculum and teacher training programs in civics and government education, and economics education, developed in the United States;
   (2) to assist eligible countries in the adaptation, implementation, and institutionalization of such programs;
   (3) to create and implement civics and government education, and economic education, programs for students that draw upon the experiences of the participating eligible countries;
   (4) to provide a means for the exchange of ideas and experiences in civics and government education, and economic education, among political, educational, governmental, and private sector leaders of participating eligible countries; and
   (5) to provide support for—
      (A) independent research and evaluation to determine the effects of educational programs on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy; and
      (B) effective participation in, and the preservation and improvement of, an efficient market economy.

(c) Activities

In carrying out the cooperative education exchange programs assisted under this section, the Center for Civic Education, the National Council on Economic Education, and organizations described in section 6713(a)(3) of this title shall—
   (1) provide to the participants from eligible countries—
      (A) seminars on the basic principles of United States constitutional democracy and economic system, including seminars on the major governmental and economic institutions and systems in the United States, and visits to such institutions;
      (B) visits to school systems, institutions of higher education, and nonprofit organizations conducting exemplary programs in civics and government education, and economic education, in the United States;
      (C) translations and adaptations with respect to United States civics and government education, and economic education, curricular programs for students and teachers, and in the case of training programs for teachers, translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas; and
      (D) independent research and evaluation assistance—
         (i) to determine the effects of the cooperative education exchange programs on students' development of the knowledge,
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skills, and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) to identify effective participation in, and the preservation and improvement of, an efficient market economy;

(2) provide to the participants from the United States—

(A) seminars on the histories, economies, and systems of government of eligible countries;

(B) visits to school systems, institutions of higher education, and organizations conducting exemplary programs in civics and government education, and economic education, located in eligible countries;

(C) assistance from educators and scholars in eligible countries in the development of curricular materials on the history, government, and economy of such countries that are useful in United States classrooms;

(D) opportunities to provide onsite demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(E) independent research and evaluation assistance to determine—

(i) the effects of the cooperative education exchange programs assisted under this section on students’ development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) effective participation in, and improvement of, an efficient market economy; and

(3) assist participants from eligible countries and the United States to participate in international conferences on civics and government education, and economic education, for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers.

d) Participants

The primary participants in the cooperative education exchange programs assisted under this section shall be educational leaders in the areas of civics and government education, and economic education, including teachers, curriculum and teacher training specialists, scholars in relevant disciplines, and educational policymakers, and government and private sector leaders from the United States and eligible countries.

e) Consultation

The Secretary may award a grant to, or enter into a contract with, the entities described in section 6713 of this title to carry out programs assisted under this section only if the Secretary of State concurs with the Secretary that such grant, or contract, respectively, is consistent with the foreign policy of the United States.

(f) Avoidance of duplication

With the concurrence of the Secretary of State, the Secretary shall ensure that—

(1) the activities carried out under the programs assisted under this section are not duplicative of other activities conducted in eligible countries; and

(2) any institutions in eligible countries, with which the Center for Civic Education, the National Council on Economic Education, or organizations described in section 6713(a)(3) of this title may work in conducting such activities, are creditable.

g) Eligible country defined

In this section, the term “eligible country” means a Central European country, an Eastern European country, Lithuania, Latvia, Estonia, the independent states of the former Soviet Union as defined in section 5801 of title 22, the Republic of Ireland, the province of Northern Ireland in the United Kingdom, and any developing country (as such term is defined in section 4559a(d) of this title) if the Secretary, with the concurrence of the Secretary of State, determines that such developing country has a democratic form of government.


REFERENCES IN TEXT

Section 4559a(d) of this title, referred to in subsec. (g), was in the original “section 209(d) of the Education for the Deaf Act”, and was translated as reading “section 209(d) of the Education of the Deaf Act of 1986”, to reflect the probable intent of Congress.

§ 6716. Authorization of appropriations

There are authorized to be appropriated to carry out this subpart $30,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.


SUBPART 4—TEACHING OF TRADITIONAL AMERICAN HISTORY

§ 6721. Establishment of program

(a) In general

The Secretary may establish and implement a program to be known as the “Teaching American History Grant Program”, under which the Secretary shall award grants on a competitive basis to local educational agencies—

(1) to carry out activities to promote the teaching of traditional American history in elementary schools and secondary schools as a separate academic subject (not as a component of social studies); and

(2) for the development, implementation, and strengthening of programs to teach traditional American history as a separate academic subject within elementary school and secondary school curricula, including the implementation of activities—

(A) to improve the quality of instruction; and

(B) to provide professional development and teacher education activities with respect to American history.

(b) Required partnership

A local educational agency that receives a grant under subsection (a) of this section shall

1 See References in Text note below.
carry out activities under the grant in partnership with one or more of the following:
(1) An institution of higher education.
(2) A nonprofit history or humanities organization.
(3) A library or museum.

(c) Application
To be eligible to receive an grant under this section, a local educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.


§ 6722. Authorization of appropriations

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.


SUBPART 5—TEACHER LIABILITY PROTECTION

§ 6731. Short title

This subpart may be cited as the “Paul D. Coverdell Teacher Protection Act of 2001”.


§ 6732. Purpose

The purpose of this subpart is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment.


§ 6733. Definitions

For purposes of this subpart:

(1) Economic loss

The term “economic loss” means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) Harm

The term “harm” includes physical, nonphysical, economic, and noneconomic losses.

(3) Noneconomic loss

The term “noneconomic loss” means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society or companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, or any other nonpecuniary loss of any kind or nature.

(4) School

The term “school” means a public or private kindergarten, a public or private elementary school or secondary school, or a home school.

(5) State

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) Teacher

The term “teacher” means—
(A) a teacher, instructor, principal, or administrator;
(B) another educational professional who works in a school;
(C) a professional or nonprofessional employee who—
(i) works in a school; and
(ii) in the employee’s job, maintains discipline or ensures safety; or
(D) an individual member of a school board (as distinct from the board).


§ 6734. Applicability

This subpart shall only apply to States that receive funds under this chapter, and shall apply to such a State as a condition of receiving such funds.


§ 6735. Preemption and election of State nonapplicability

(a) Preemption

This subpart preempts the laws of any State to the extent that such laws are inconsistent with this subpart, except that this subpart shall not preemt any State law that provides additional protection from liability relating to teachers.

(b) Election of State regarding nonapplicability

This subpart shall not apply to any civil action in a State court against a teacher with respect to claims arising within that State if such State enacts a statute in accordance with State requirements for enacting legislation—
(1) citing the authority of this subsection;
(2) declaring the election of such State that this subpart shall not apply, as of a date certain, to such civil action in the State; and
(3) containing no other provisions.


§ 6736. Limitation on liability for teachers

(a) Liability protection for teachers

Except as provided in subsection (b) of this section, no teacher in a school shall be liable for

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1 So in original. Probably should be “a”. 
harm caused by an act or omission of the teacher on behalf of the school if—
1.(1) the teacher was acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity;
2.(2) the acts or practice involved in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher’s responsibilities;
3.(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and
4.(4) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and
5.(5) the harm was not caused by the teacher operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—
(A) possess an operator’s license; or
(B) maintain insurance.
(b) Exceptions to teacher liability protection
If the laws of a State limit teacher liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:
1.(1) A State law that requires a school or governmental entity to adhere to risk management procedures, including mandatory training of teachers;
2.(2) A State law that makes the school or governmental entity liable for the acts or omissions of its teachers to the same extent as an employer is liable for the acts or omissions of its employees;
3.(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.
(c) Limitation on punitive damages based on the actions of teachers
1.(1) General rule
Punitive damages may not be awarded against a teacher in an action brought for harm based on the act or omission of a teacher acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an act or omission of such teacher that constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.
2.(2) Construction
Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.
(d) Exceptions to limitations on liability
1.(1) In general
The limitations on the liability of a teacher under this subpart shall not apply to any misconduct that—
(A) constitutes a crime of violence (as that term is defined in section 16 of title 18) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;
(B) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;
(C) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or
(D) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.
2.(2) Hiring
The limitations on the liability of a teacher under this subpart shall not apply to misconduct during background investigations, or during other actions, involved in the hiring of a teacher.
(e) Rules of construction
1.(1) Concerning responsibility of teachers to schools and governmental entities
Nothing in this section shall be construed to affect any civil action brought by any school or any governmental entity against any teacher of such school.
2.(2) Concerning corporal punishment
Nothing in this subpart shall be construed to affect any State or local law (including a rule or regulation) or policy pertaining to the use of corporal punishment.
§ 6737. Allocation of responsibility for non-economic loss
1.(a) General rule
In any civil action against a teacher, based on an act or omission of a teacher acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity, the liability of the teacher for non-economic loss shall be determined in accordance with subsection (b) of this section.
2.(b) Amount of liability
1.(1) In general
Each defendant who is a teacher shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable.

1 So in original. Probably should be “(3) A State”.
(B) Separate judgment
The court shall render a separate judgment against each defendant in an amount determined pursuant to subparagraph (A).

(2) Percentage of responsibility
For purposes of determining the amount of noneconomic loss allocated to a defendant who is a teacher under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant’s harm, whether or not such person is a party to the action.

(c) Rule of construction
Nothing in this section shall be construed to preempt or supersede any Federal or State law that further limits the application of joint liability in a civil action described in subsection (a) of this section, beyond the limitations established in this section.


§ 6738. Effective date

(a) In general
This subpart shall take effect 90 days after January 8, 2002.

(b) Application
This subpart applies to any claim for harm caused by an act or omission of a teacher if that claim is filed on or after the effective date of the No Child Left Behind Act of 2001 without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before such effective date.


REFERENCES IN TEXT
For the effective date of the No Child Left Behind Act of 2001, referred to in subsec. (b), see section 5 of Pub. L. 107–110, set out as an Effective Date of 2002 Amendment note under section 6301 of this title.

PART D—ENHANCING EDUCATION THROUGH TECHNOLOGY

§ 6751. Short title
This part may be cited as the “Enhancing Education Through Technology Act of 2001”.


PRIOR PROVISIONS
A prior section 2401 of Pub. L. 89–10 was classified to section 6701 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 6752. Purposes and goals

(a) Purposes
The purposes of this part are the following:

(1) To provide assistance to States and localities for the implementation and support of a comprehensive system that effectively uses technology in elementary schools and secondary schools to improve student academic achievement.

(2) To encourage the establishment or expansion of initiatives, including initiatives involving public-private partnerships, designed to increase access to technology, particularly in schools served by high-need local educational agencies.

(3) To assist States and localities in the acquisition, development, interconnection, implementation, improvement, and maintenance of an effective educational technology infrastructure in a manner that expands access to technology for students (particularly for disadvantaged students) and teachers.

(4) To promote initiatives that provide school teachers, principals, and administrators with the capacity to integrate technology effectively into curricula and instruction that are aligned with challenging State academic content and student academic achievement standards, through such means as high-quality professional development programs.

(5) To enhance the ongoing professional development of teachers, principals, and administrators by providing constant access to training and updated research in teaching and learning through electronic means.

(6) To support the development and utilization of electronic networks and other innovative methods, such as distance learning, of delivering specialized or rigorous academic courses and curricula for students in areas that would not otherwise have access to such courses and curricula, particularly in geographically isolated regions.

(7) To support the rigorous evaluation of programs funded under this part, particularly regarding the impact of such programs on student academic achievement, and ensure that timely information on the results of such evaluations is widely accessible through electronic means.

(8) To support local efforts using technology to promote parent and family involvement in education and communication among students, parents, teachers, principals, and administrators.

(b) Goals

(1) Primary goal
The primary goal of this part is to improve student academic achievement through the use of technology in elementary schools and secondary schools.

(2) Additional goals
The additional goals of this part are the following:

(A) To assist every student in crossing the digital divide by ensuring that every student is technologically literate by the time the student finishes the eighth grade, regardless of the student’s race, ethnicity, gender, family income, geographic location, or disability.

(B) To encourage the effective integration of technology resources and systems with teacher training and curriculum development to establish research-based instruc-
tional methods that can be widely implemented as best practices by State educational agencies and local educational agencies.
§ 6753 Definitions

In this part:

(1) Eligible local entity
The term “eligible local entity” means—
(A) a high-need local educational agency; or
(B) an eligible local partnership.

(2) Eligible local partnership
The term “eligible local partnership” means a partnership that—
(A) shall include at least one high-need local educational agency and at least one—
(i) local educational agency that can demonstrate that teachers in schools served by the agency are effectively integrating technology and proven teaching practices into instruction, based on a review of relevant research, and that the integration results in improvement in—
(I) classroom instruction in the core academic subjects; and
(II) the preparation of students to meet challenging State academic content and student academic achievement standards;
(ii) institution of higher education that is in full compliance with the reporting requirements of section 1027(1) of this title and that has not been identified by its State as low-performing under section 1028 of this title;
(iii) for-profit business or organization that develops, designs, manufactures, or produces technology products or services, or has substantial expertise in the application of technology in instruction; or
(iv) public or private nonprofit organization with demonstrated experience in the application of educational technology to instruction; and
(B) may include other local educational agencies, educational service agencies, libraries, or other educational entities appropriate to provide local programs.

(3) High-need local educational agency
The term “high-need local educational agency” means a local educational agency that—
(A) is among the local educational agencies in a State with the highest numbers or percentages of children from families with incomes below the poverty line; and
(B) (i) operates one or more schools identified under section 6316 of this title; or
(ii) has a substantial need for assistance in acquiring and using technology.


§ 6754 Authorization of appropriations

(a) In general
There are authorized to be appropriated to carry out subparts 1 and 2 of this part, $1,000,000,000 for fiscal year 2002, and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Allocation of funds between State and local and national initiatives

The amount of funds made available under subsection (a) of this section for a fiscal year shall be allocated so that—
(1) not less than 98 percent is made available to carry out subpart 1 of this part; and
(2) not more than 2 percent is made available to carry out subpart 2 of this part.

(c) Allocation of funds for study

Of the total amount of funds allocated under subsection (b)(2) of this section for fiscal years 2002 through 2007, not more than $15,000,000 may be used to carry out section 6771(a) of this title.

(d) Limitation

Of the amount of funds made available to a recipient of funds under this part for a fiscal year, not more than 5 percent may be used by the recipient for administrative costs or technical assistance, of which not more than 60 percent may be used by the recipient for administrative costs.


SUBPART 1—STATE AND LOCAL TECHNOLOGY GRANTS

§ 6761 Allotment and reallocation

(a) Reservations and allotment

From the amount made available to carry out this subpart under section 6754(b)(1) of this title for a fiscal year—
(1) the Secretary shall reserve—
(A) three-fourths of 1 percent for the Secretary of the Interior for programs under this subpart for schools operated or funded by the Bureau of Indian Affairs;
(B) one-half of 1 percent to provide assistance under this subpart to the outlying areas; and
(C) such sums as may be necessary for continuation awards on grants awarded under section 3136 prior to January 8, 2002; and
(2) from the remainder of such amount and subject to subsection (b) of this section, the Secretary shall make grants by allotting to each eligible State educational agency under this subpart an amount that bears the same relationship to such remainder for such year as the amount received under part A of sub-
chapter I of this chapter for such year by such State educational agency bears to the amount received under such part for such year by all State educational agencies.

(b) Minimum allotment

The amount of any State educational agency’s allotment under subsection (a)(2) of this section for any fiscal year may not be less than one-half of 1 percent of the amount made available for allotments to States under this part for such year.

(c) Reallotment of unused funds

If any State educational agency does not apply for an allotment under this subpart for a fiscal year, or does not use its entire allotment under this subpart for that fiscal year, the Secretary shall reallocate the amount of the State educational agency’s allotment, or the unused portion of the allotment, to the remaining State educational agencies that use their entire allotments under this subpart in accordance with this section.

(d) State educational agency defined

In this section, the term “State educational agency” does not include an agency of an outlying area or the Bureau of Indian Affairs.

REFERENCES IN TEXT


§ 6762. Use of allotment by State

(a) In general

Of the amount provided to a State educational agency (from the agency’s allotment under section 6761(a)(2) of this title) for a fiscal year—

(1) the State educational agency may use not more than 5 percent to carry out activities under section 6765 of this title; and

(2) the State educational agency shall distribute the remainder as follows:

(A) From 50 percent of the remainder, the State educational agency shall award subgrants by allocating to each eligible local educational agency that has submitted an application to the State educational agency under section 6764 of this title, for the activities described in section 6766 of this title, an amount that bears the same relationship to 50 percent of the remainder for such year as the amount received under part A of subchapter I of this chapter for such year by such local educational agency bears to the amount received under such part for such year by all local educational agencies within the State.

(B) From 50 percent of the remainder and subject to subsection (b) of this section, the State educational agency shall award subgrants, through a State-determined competitive process, to eligible local entities that have submitted applications to the State educational agency under section 6764 of this title, for the activities described in section 6766 of this title.

(b) Sufficient amounts

(1) Special rule

In awarding a subgrant under subsection (a)(2)(B) of this section, the State educational agency shall—

(A) determine the local educational agencies that—

(i) received allocations under subsection (a)(2)(A) of this section that are not of sufficient size to be effective, consistent with the purposes of this part; and

(ii) are eligible local entities;

(B) give priority to applications submitted by eligible local educational agencies described in subparagraph (A); and

(C) determine the minimum amount for awards under subsection (a)(2)(B) of this section to ensure that subgrants awarded under that subsection are of sufficient size to be effective.

(2) Sufficiency

In awarding subgrants under subsection (a)(2)(B) of this section, each State educational agency shall ensure that each subgrant is of sufficient size and duration, and that the program funded by the subgrant is of sufficient scope and quality, to carry out the purposes of this part effectively.

(3) Distribution

In awarding subgrants under subsection (a)(2)(B) of this section, each State educational agency shall ensure an equitable distribution of assistance under this subpart among urban and rural areas of the State, according to the demonstrated need of those local educational agencies serving the areas.

(c) Fiscal agent

If an eligible local partnership receives a subgrant under subsection (a)(2)(B) of this section, a local educational agency in the partnership shall serve as the fiscal agent for the partnership.

(d) Technical assistance

Each State educational agency receiving a grant under section 6761(a) of this title shall—

(1) identify the local educational agencies served by the State educational agency that—

(A) have the highest numbers or percentages of children from families with incomes below the poverty line; and

(B) demonstrate to such State educational agency the greatest need for technical assistance in developing an application under section 6764 of this title; and

(2) offer the technical assistance described in paragraph (1)(B) to those local educational agencies.

§ 6763. State applications

(a) In general

To be eligible to receive a grant under this subpart, a State educational agency shall sub-
mit to the Secretary, at such time and in such manner as the Secretary may specify, an application containing a new or updated statewide, long-range strategic educational technology plan (which shall address the educational technology needs of local educational agencies) and such other information as the Secretary may reasonably require.

(b) Contents

Each State application submitted under subsection (a) of this section shall include each of the following:

(1) An outline of the State educational agency’s long-term strategies for improving student academic achievement, including technology literacy, through the effective use of technology in classrooms throughout the State, including through improving the capacity of teachers to integrate technology effectively into curricula and instruction.

(2) A description of the State educational agency’s goals for using advanced technology to improve student academic achievement, and how those goals are aligned with challenging State academic content and student academic achievement standards.

(3) A description of how the State educational agency will take steps to ensure that all students and teachers in the State, particularly students and teachers in districts served by high-need local educational agencies, have increased access to technology.

(4) A description of the process and accountability measures that the State educational agency will use to evaluate the extent to which activities funded under this subpart are effective in integrating technology into curricula and instruction.

(5) A description of how the State educational agency will encourage the development and utilization of innovative strategies for the delivery of specialized or rigorous academic courses and curricula through the use of technology, including distance learning technologies, particularly for those areas of the State that would not otherwise have access to such courses and curricula due to geographical isolation or insufficient resources.

(6) An assurance that financial assistance provided under this subpart will supplement, and not supplant, State and local funds.

(7) A description of how the plan incorporates teacher education, professional development, and curriculum development, and how the State educational agency will work to ensure that teachers and principals in a State receiving funds under this part are technologically literate.

(8) A description of—

(A) how the State educational agency will provide technical assistance to applicants under section 6764 of this title, especially to those applicants serving the highest numbers or percentages of children in poverty or with the greatest need for technical assistance; and

(B) the capacity of the State educational agency to provide such assistance.

(9) A description of technology resources and systems that the State will provide for the purpose of establishing best practices that can be widely replicated by State educational agencies and local educational agencies in the State and in other States.

(10) A description of the State’s long-term strategies for financing technology to ensure that all students, teachers, and classrooms have access to technology.

(11) A description of the State’s strategies for using technology to increase parental involvement.

(12) A description of how the State educational agency will ensure that each subgrant awarded under section 6762(a)(2)(B) of this title is of sufficient size and duration, and that the program funded by the subgrant is of sufficient scope and quality, to carry out the purposes of this part effectively.

(13) A description of how the State educational agency will ensure ongoing integration of technology into school curricula and instructional strategies in all schools in the State, so that technology will be fully integrated into the curricula and instruction of the schools by December 31, 2006.

(14) A description of how the local educational agencies in the State will provide incentives to teachers who are technologically literate and teaching in rural or urban areas, to encourage such teachers to remain in those areas.

(15) A description of how public and private entities will participate in the implementation and support of the plan.

(c) Deemed approval

An application submitted by a State educational agency pursuant to subsection (a) of this section shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the application, that the application is not in compliance with this part.

(d) Disapproval

The Secretary shall not finally disapprove the application, except after giving the State educational agency notice and an opportunity for a hearing.

(e) Notification

If the Secretary finds that the application is not in compliance, in whole or in part, with this part, the Secretary shall—

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

(2) notify the State educational agency of the finding of noncompliance and, in such notification, shall—

(A) cite the specific provisions in the application that are not in compliance; and

(B) request additional information, only as to the noncompliant provisions, needed to make the application compliant.

(f) Response

If the State educational agency responds to the Secretary’s notification described in subsection (e)(2) of this section during the 45-day period beginning on the date on which the agen-
cy received the notification, and resubmits the application with the requested information described in subsection (e)(2)(B) of this section, the Secretary shall approve or disapprove such application prior to the later of—

(1) the expiration of the 45-day period beginning on the date on which the application is resubmitted; or

(2) the expiration of the 120-day period described in subsection (c) of this section.

(g) Failure to respond

If the State educational agency does not respond to the Secretary’s notification described in subsection (e)(2) of this section during the 45-day period beginning on the date on which the agency received the notification, such application shall be deemed to be disapproved.


§ 6764. Local applications

(a) In general

To be eligible to receive a subgrant from a State educational agency under this subpart, a local educational agency or eligible local entity shall submit to the State educational agency an application containing a new or updated local plan that is consistent with the objectives of the statewide educational technology plan described in section 6763(a) of this title, and such other information as the State educational agency may reasonably require, at such time and in such manner as the State educational agency may require.

(b) Contents

The application shall include each of the following:

(1) A description of how the applicant will use Federal funds under this subpart to improve the student academic achievement, including technology literacy, of all students attending schools served by the local educational agency and to improve the capacity of all teachers teaching in schools served by the local educational agency to integrate technology effectively into curricula and instruction.

(2) A description of the applicant’s specific goals for using advanced technology to improve student academic achievement, aligned with challenging State academic content and student academic achievement standards.

(3) A description of the steps the applicant will take to ensure that all students and teachers in schools served by the local educational agency involved have increased access to educational technology, including how the agency would use funds under this subpart (such as combining the funds with funds from other sources), to help ensure that—

(A) students in high-poverty and high-needs schools, or schools identified under section 6316 of this title, have access to technology; and

(B) teachers are prepared to integrate technology effectively into curricula and instruction.

(4) A description of how the applicant will—

(A) identify and promote curricula and teaching strategies that integrate technology effectively into curricula and instruction, based on a review of relevant research, leading to improvements in student academic achievement, as measured by challenging State academic content and student academic achievement standards; and

(B) provide ongoing, sustained professional development for teachers, principals, administrators, and school library media personnel serving the local educational agency, to further the effective use of technology in the classroom or library media center, including, if applicable, a list of the entities that will be partners with the local educational agency involved in providing the ongoing, sustained professional development.

(5) A description of the type and costs of technologies to be acquired under this subpart, including services, software, and digital curricula, and including specific provisions for interoperability among components of such technologies.

(6) A description of how the applicant will coordinate activities carried out with funds provided under this subpart with technology-related activities carried out with funds available from other Federal, State, and local sources.

(7) A description of how the applicant will integrate technology (including software and other electronically delivered learning materials) into curricula and instruction, and a timeline for such integration.

(8) A description of how the applicant will encourage the development and utilization of innovative strategies for the delivery of specialized or rigorous academic courses and curricula through the use of technology, including distance learning technologies, particularly for those areas that would not otherwise have access to such courses and curricula due to geographical isolation or insufficient resources.

(9) A description of how the applicant will ensure the effective use of technology to promote parental involvement and increase communication with parents, including a description of how parents will be informed of the technology being applied in their child’s education so that the parents are able to reinforce at home the instruction their child receives at school.

(10) A description of how programs will be developed, where applicable, in collaboration with adult literacy service providers, to maximize the use of technology.

(11) A description of the process and accountability measures that the applicant will use to evaluate the extent to which activities funded under this subpart are effective in integrating technology into curricula and instruction, increasing the ability of teachers to teach, and enabling students to meet challenging State academic content and student academic achievement standards.

(12) A description of the supporting resources (such as services, software, other electronically delivered learning materials, and print resources) that will be acquired to en-
(c) Combined applications

A local educational agency that is an eligible local entity and submits an application to the State educational agency under this section for funds awarded under section 6762(a)(2)(A) of this title may combine the agency’s application for funds awarded under that section with an application for funds awarded under section 6762(a)(2)(B) of this title.

(d) Special rule

(1) Consortium applications

(A) In general

For any fiscal year, a local educational agency applying for financial assistance described in section 6762(a)(2)(A) of this title may apply as part of a consortium that includes other local educational agencies, institutions of higher education, educational service agencies, libraries, or other educational entities appropriate to provide local programs.

(B) Fiscal agent

If a local educational agency applies for and receives financial assistance described in section 6762(a)(2)(A) of this title as part of a consortium, the local educational agency shall serve as the fiscal agent for the consortium.

(2) State educational agency assistance

At the request of a local educational agency, a State educational agency may assist the local educational agency in the formation of a consortium described in paragraph (1) to provide services for the teachers and students served by the local educational agency.

§ 6765. State activities

From funds made available under section 6762(a)(1) of this title, a State educational agency shall carry out activities to carry out the purposes of this part, which may include the following activities:

(1) Developing, or assisting applicants or recipients of funds under this subpart in the development and utilization of, innovative strategies for the delivery of specialized or rigorous academic courses and curricula through the use of technology, including distance learning technologies, and providing other technical assistance to such applicants or recipients throughout the State, with priority given to high-need local educational agencies.

(2) Establishing or supporting public-private initiatives (such as interest-free or reduced-cost loans) for the acquisition of educational technology for high-need local educational agencies and students attending schools served by such agencies.

(3) Assisting recipients of funds under this subpart in providing sustained and intensive, high-quality professional development based on a review of relevant research in the integration of advanced technologies, including emerging technologies, into curricula and instruction and in using those technologies to create new learning environments, including training in the use of technology to—

(A) access data and resources to develop curricula and instructional materials;

(B) enable teachers—

(i) to use the Internet and other technology to communicate with parents, other teachers, principals, and administrators; and

(ii) to retrieve Internet-based learning resources; and

(C) lead to improvements in classroom instruction in the core academic subjects, that effectively prepare students to meet challenging State academic content standards and student academic achievement standards.

(4) Assisting recipients of funds under this subpart in providing all students (including students with disabilities and students with limited English proficiency) and teachers with access to educational technology.

(5) Developing performance measurement systems to determine the effectiveness of educational technology programs funded under this subpart, particularly in determining the extent to which activities funded under this subpart are effective in integrating technology into curricula and instruction, increasing the ability of teachers to teach, and enabling students to meet challenging State academic content and student academic achievement standards.

(6) Collaborating with other State educational agencies on distance learning, including making specialized or rigorous academic courses and curricula available to students in areas that would not otherwise have access to such courses and curricula.

§ 6766. Local activities

(a) Professional development

(1) In general

A recipient of funds made available under section 6762(a)(2) of this title shall use not less than 25 percent of such funds to provide ongoing, sustained, and intensive, high-quality professional development. The recipient shall provide professional development in the integration of advanced technologies, including emerging technologies, into curricula and instruction and in using those technologies to create new learning environments, such as professional development in the use of technology—

(A) to access data and resources to develop curricula and instructional materials;

(B) to enable teachers—

(i) to use the Internet and other technology to communicate with parents, other teachers, principals, and administrators; and

(ii) to retrieve Internet-based learning resources; and

(C) to lead to improvements in classroom instruction in the core academic subjects,
that effectively prepare students to meet challenging State academic content standards, including increasing student technology literacy, and student academic achievement standards.

(2) Waivers

Paragraph (1) shall not apply to a recipient of funds made available under section 6762(a)(2) of this title that demonstrates, to the satisfaction of the State educational agency involved, that the recipient already provides ongoing, sustained, and intensive, high-quality professional development that is based on a review of relevant research, to all teachers in core academic subjects in the integration of advanced technologies, including emerging technologies, into curricula and instruction.

(b) Other activities

In addition to the activities described in subsection (a) of this section, a recipient of funds made available by a State educational agency under section 6762(a)(2) of this title shall use such funds to carry out other activities consistent with this subpart, which may include the following:

(1) Establishing or expanding initiatives, particularly initiatives involving public-private partnerships, designed to increase access to technology for students and teachers, with special emphasis on the access of high-need schools to technology.

(2) Adapting or expanding existing and new applications of technology to enable teachers to increase student academic achievement, including technology literacy.

(A) through the use of teaching practices that are based on a review of relevant research and are designed to prepare students to meet challenging State academic content and student academic achievement standards; and

(B) by the development and utilization of innovative distance learning strategies to deliver specialized or rigorous academic courses and curricula to areas that would not otherwise have access to such courses and curricula.

(3) Acquiring proven and effective courses and curricula that include integrated technology and are designed to help students meet challenging State academic content and student academic achievement standards.

(4) Utilizing technology to develop or expand efforts to connect schools and teachers with parents and students to promote meaningful parental involvement, to foster increased communication about curricula, assignments, and assessments between students, parents, and teachers, and to assist parents to understand the technology being applied in their child’s education, so that parents are able to reinforce at home the instruction their child receives at school.

(5) Preparing one or more teachers in elementary schools and secondary schools as technology leaders who are provided with the means to serve as experts and train other teachers in the effective use of technology, and providing bonus payments to the technology leaders.

(6) Acquiring, adapting, expanding, implementing, repairing, and maintaining existing and new applications of technology, to support the school reform effort and to improve student academic achievement, including technology literacy.

(7) Acquiring connectivity linkages, resources, and services (including the acquisition of hardware and software and other electronically delivered learning materials) for use by teachers, students, academic counselors, and school library media personnel in the classroom, in academic and college counseling centers, or in school library media centers, in order to improve student academic achievement.

(8) Using technology to collect, manage, and analyze data to inform and enhance teaching and school improvement efforts.

(9) Implementing performance measurement systems to determine the effectiveness of education technology programs funded under this subpart, particularly in determining the extent to which activities funded under this subpart are effective in integrating technology into curricula and instruction, increasing the ability of teachers to teach, and enabling students to meet challenging State academic content and student academic achievement standards.

(10) Developing, enhancing, or implementing information technology courses.


SUBPART 2—NATIONAL TECHNOLOGY ACTIVITIES

§ 6771. National activities

(a) Study

Using funds made available under section 6754(b)(2) of this title, the Secretary—

(1) shall conduct an independent, long-term study, utilizing scientifically based research methods and control groups or control conditions—

(A) on the conditions and practices under which educational technology is effective in increasing student academic achievement; and

(B) on the conditions and practices that increase the ability of teachers to integrate technology effectively into curricula and instruction, that enhance the learning environment and opportunities, and that increase student academic achievement, including technology literacy;

(2) shall establish an independent review panel to advise the Secretary on methodological and other issues that arise in conducting the long-term study;

(3) shall consult with other interested Federal departments or agencies, State and local educational practitioners and policymakers (including teachers, principals, and superintendents), and experts in technology, regarding the study; and

(4) shall submit to Congress interim reports, when appropriate, and a final report, to be
submit not later than April 1, 2006, on the findings of the study.

(b) Dissemination

Using funds made available under section 6754(b)(2) of this title, the Secretary shall make widely available, including through dissemination on the Internet and to all State educational agencies and other recipients of funds under this part, findings identified through activities carried out under this section regarding the conditions and practices under which educational technology is effective in increasing student academic achievement.

(c) Technical assistance

Using funds made available under section 6754(b)(2) of this title, the Secretary may provide technical assistance (directly or through the competitive award of grants or contracts) to State educational agencies, local educational agencies, and other recipients of funds, particularly in rural areas, under this part, in order to assist such State educational agencies, local educational agencies, and other recipients to achieve the purposes of this part.


§ 6772. National education technology plan

(a) In general

Based on the Nation’s progress and an assessment by the Secretary of the continuing and future needs of the Nation’s schools in effectively using technology to provide all students the opportunity to meet challenging State academic standards, the Secretary shall update and publish, in a form readily accessible to the public, a national long-range technology plan, by not later than 12 months after January 8, 2002.

(b) Contents

The plan referred to in subsection (a) of this section shall include each of the following:

(1) A description of the manner in which the Secretary will promote—

(A) higher student academic achievement through the integration of advanced technologies, including emerging technologies, into curricula and instruction;

(B) increased access to technology for teaching and learning for schools with a high number or percentage of children from families with incomes below the poverty line; and

(C) the use of technology to assist in the implementation of State systemic reform strategies.

(2) A description of joint activities of the Department of Education and other Federal departments or agencies that will promote the use of technology in education.


SUBPART 3—READY-TO-LEARN TELEVISION

§ 6775. Ready-to-Learn Television

(a) Program authorized

(1) In general

The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, eligible entities described in paragraph (3) to enable such entities—

(A) to develop, produce, and distribute educational and instructional video programming for preschool and elementary school children and their parents in order to facilitate student academic achievement;

(B) to facilitate the development, directly or through contracts with producers of children and family educational television programming, of educational programming for preschool and elementary school children, and the accompanying support materials and services that promote the effective use of such programming;

(C) to facilitate the development of programming and digital content containing Ready-to-Learn-based children’s programming and resources for parents and caregivers that is specially designed for nationwide distribution over public television stations’ digital broadcasting channels and the Internet;

(D) to contract with entities (such as public telecommunications entities) so that programs developed under this section are disseminated and distributed to the widest possible audience appropriate to be served by the programming, and through the use of the most appropriate distribution technologies; and

(E) to develop and disseminate education and training materials, including interactive programs and programs adaptable to distance learning technologies, that are designed—

(i) to promote school readiness; and

(ii) to promote the effective use of materials developed under subparagraphs (B) and (C) among parents, teachers, Head Start providers, Even Start providers, providers of family literacy services, child care providers, early childhood development personnel, elementary school teachers, public libraries, and after-school program personnel caring for preschool and elementary school children.

(2) Availability

In awarding grants, contracts, or cooperative agreements under this section, the Secretary shall ensure that eligible entities make programming widely available, with support materials as appropriate, to young children, parents, child care workers, Head Start providers, Even Start providers, and providers of family literacy services to increase the effective use of such programming.

(3) Eligible entities

To be eligible to receive a grant, contract, or cooperative agreements under this section, an entity shall be a public telecommunications entity that is able to demonstrate each of the following:
(A) A capacity for the development and national distribution of educational and instructional television programming of high quality that is accessible by a large majority of disadvantaged preschool and elementary school children.

(B) A capacity to contract with the producers of children's television programming for the purpose of developing educational television programming of high quality.

(C) A capacity, consistent with the entity's mission and nonprofit nature, to negotiate such contracts in a manner that returns to the entity an appropriate share of any ancillary income from sales of any program-related products.

(D) A capacity to localize programming and materials to meet specific State and local needs and to provide educational outreach at the local level.

(4) Coordination of activities

An entity receiving a grant, contract, or cooperative agreement under this section shall consult with the Secretary and the Secretary of Health and Human Services:

(A) to maximize the utilization of quality educational programming by preschool and elementary school children, and make such programming widely available to federally funded programs serving such populations; and

(B) to coordinate activities with Federal programs that have major training components for early childhood development, including programs under the Head Start Act (42 U.S.C. 9831 et seq.) and Even Start, and State training activities funded under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9658 et seq.), regarding the availability and utilization of materials developed under paragraph (1)(E) to enhance parent and child care provider skills in early childhood development and education.

(b) Applications

To be eligible to receive a grant, contract, or cooperative agreement under this section, an entity shall submit to the Secretary an annual report at such time, in such manner, and containing such information as the Secretary may reasonably require.

(c) Reports and evaluations

(1) Annual report to the Secretary

An entity receiving a grant, contract, or cooperative agreement under this section shall prepare and submit to the Secretary an annual report that contains such information as the Secretary may require. At a minimum, the report shall describe the program activities undertaken with funds received under the grant, contract, or cooperative agreement, including each of the following:

(A) The programming that has been developed, directly or indirectly, by the eligible entity, and the target population of the programs developed.

(B) The support and training materials that have been developed to accompany the programming, and the method by which the materials are distributed to consumers and users of the programming.

(C) The means by which programming developed under this section has been distributed, including the distance learning technologies that have been utilized to make programming available, and the geographic distribution achieved through such technologies.

(D) The initiatives undertaken by the entity to develop public-private partnerships to secure non-Federal support for the development, distribution, and broadcast of educational and instructional programming.

(2) Report to Congress

The Secretary shall prepare and submit to the relevant committees of Congress a biennial report that includes the following:

(A) A summary of the activities assisted under subsection (a) of this section.

(B) A description of the education and training materials made available under subsection (a)(1)(E) of this section, the manner in which outreach has been conducted to inform parents and child care providers of the availability of such materials, and the manner in which such materials have been distributed in accordance with such subsection.

(d) Administrative costs

An entity that receives a grant, contract, or cooperative agreement under this section may use up to 5 percent of the amount received under the grant, contract, or agreement for the normal and customary expenses of administering the grant, contract, or agreement.

(e) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2002, and for each of the 5 succeeding fiscal years.

(2) Funding rule

Not less than 60 percent of the amount appropriated under paragraph (1) for each fiscal year shall be used to carry out activities under subparagraphs (B) through (D) of subsection (a)(1) of this section.


References in Text


§ 6777. Internet safety

(a) In general

No funds made available under this part to a local educational agency for an elementary school or secondary school that does not receive services at discount rates under section 254(h)(6) of title 47 may be used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, for such school unless the school, school board, local educational agency, or other authority with responsibility for administration of such school both—

(1)(A) has in place a policy of Internet safety for minors that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(i) obscene;
(ii) child pornography; or
(iii) harmful to minors; and

(B) is enforcing the operation of such technology protection measure during any use of such computers by minors; and

(2)(A) has in place a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(i) obscene; or
(ii) child pornography; and

(B) is enforcing the operation of such technology protection measure during any use of such computers.

(b) Timing and applicability of implementation

(1) In general

The local educational agency with responsibility for a school covered by subsection (a) of this section shall certify the compliance of such school with the requirements of subsection (a) of this section as part of the application process for the next program funding year under this chapter following December 21, 2000, and for each subsequent program funding year thereafter.

(2) Process

(A) Schools with Internet safety policies and technology protection measures in place

A local educational agency with responsibility for a school covered by subsection (a) of this section that has in place an Internet safety policy meeting the requirements of subsection (a) of this section shall certify its compliance with subsection (a) of this section during each annual program application cycle under this chapter.

(B) Schools without Internet safety policies and technology protection measures in place

(i) Certification

A local educational agency with responsibility for a school covered by subsection (a) of this section that does not have in place an Internet safety policy meeting the requirements of subsection (a) of this section—

(I) for the first program year after December 21, 2000, in which the local educational agency is applying for funds for such school under this chapter, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy that meets such requirements; and

(II) for the second program year after December 21, 2000, in which the local educational agency is applying for funds for such school under this chapter, shall certify that such school is in compliance with such requirements.

(ii) Ineligibility

Any school covered by subsection (a) of this section for which the local educational agency concerned is unable to certify compliance with such requirements in such second program year shall be ineligible for all funding under this part for such second program year and all subsequent program years until such time as such school comes into compliance with such requirements.

(C) Waivers

Any school subject to a certification under subparagraph (B)(ii)(II) for which the local educational agency concerned cannot make the certification otherwise required by that subparagraph may seek a waiver of that subparagraph if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by that subparagraph. The local educational agency concerned shall notify the Secretary of the applicability of that subparagraph to the school. Such notice shall certify that the school will be brought into compliance with the requirements in subsection (a) of this section before the start of the third program year after December 21, 2000, in which the school is applying for funds under this part.

(c) Disabling during certain use

An administrator, supervisor, or person authorized by the responsible authority under subsection (a) of this section may disable the technology protection measure concerned to enable access for bona fide research or other lawful purposes.

(d) Noncompliance

(1) Use of General Education Provisions Act remedies

Whenever the Secretary has reason to believe that any recipient of funds under this part is failing to comply substantially with the requirements of this section, the Secretary may—

(A) withhold further payments to the recipient under this part;

(B) issue a complaint to compel compliance of the recipient through a cease and desist order; or
(C) enter into a compliance agreement with a recipient to bring it into compliance with such requirements, in the same manner as the Secretary is authorized to take such actions under sections 455, 456, and 457, respectively, of the General Education Provisions Act [20 U.S.C. 1234d, 1234e, 1234f].

(2) Recovery of funds prohibited

The actions authorized by paragraph (1) are the exclusive remedies available with respect to the failure of a school to comply substantially with a provision of this section, and the Secretary shall not seek a recovery of funds from the recipient for such failure.

(3) Recommencement of payments

Whenever the Secretary determines (whether by certification or other appropriate evidence) that a recipient of funds who is subject to the withholding of payments under paragraph (1)(A) has cured the failure providing the basis for the withholding of payments, the Secretary shall cease the withholding of payments to the recipient under that paragraph.

(e) Definitions

In this subpart:

(1) Computer

The term “computer” includes any hardware, software, or other technology attached or connected to, installed in, or otherwise used in connection with a computer.

(2) Access to Internet

A computer shall be considered to have access to the Internet if such computer is equipped with a modem or is connected to a computer network that has access to the Internet.

(3) Acquisition or operation

An elementary school or secondary school shall be considered to have received funds under this part for the acquisition or operation of any computer if such funds are used in any manner, directly or indirectly—

(A) to purchase, lease, or otherwise acquire or obtain the use of such computer; or

(B) to obtain services, supplies, software, or other actions or materials to support, or in connection with, the operation of such computer.

(4) Minor

The term “minor” means an individual who has not attained the age of 17.

(5) Child pornography

The term “child pornography” has the meaning given that term in section 2256 of title 18.

(6) Harmful to minors

The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that—

(A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(7) Obscene

The term “obscene” has the meaning applicable to that term under section 1460 of title 18.

(8) Sexual act and sexual contact

The terms “sexual act” and “sexual contact” have the meanings given those terms in section 2246 of title 18.

(f) Severability

If any provision of this section is held invalid, the remainder of this section shall not be affected thereby.


SUBCHAPTER III—LANGUAGE INSTRUCTION FOR LIMITED ENGLISH PROFICIENT AND IMMIGRANT STUDENTS

Codification


§ 6801. Authorizations of appropriations; condition on effectiveness of parts

(a) Authorizations of appropriations

(1) In general

Subject to subsection (b) of this section, there are authorized to be appropriated to carry out this subchapter, except for subpart 4 of part B, $750,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(2) Emergency immigrant education program

There are authorized to be appropriated to carry out subpart 4 of part B of this subchapter (when such part is in effect) such sums as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.

(b) Conditions on effectiveness of parts A and B

(1) Part A

Part A of this subchapter shall be in effect for any fiscal year for which the amount appropriated under paragraphs (1) and (2) of this section equals or exceeds $650,000,000.

(2) Part B

Part B of this subchapter shall be in effect only for a fiscal year for which part A of this subchapter is not in effect.

1So in original. Probably should be followed by “the”.

(2) Emergency immigrant education program

There are authorized to be appropriated to carry out subpart 4 of part B of this subchapter (when such part is in effect) such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Conditions on effectiveness of parts A and B

(1) Part A

Part A of this subchapter shall be in effect for any fiscal year for which the amount appropriated under paragraphs (1) and (2) of this section equals or exceeds $650,000,000.

(2) Part B

Part B of this subchapter shall be in effect only for a fiscal year for which part A of this subchapter is not in effect.

1So in original. Probably should be followed by “the”.

(2) Emergency immigrant education program

There are authorized to be appropriated to carry out subpart 4 of part B of this subchapter (when such part is in effect) such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Conditions on effectiveness of parts A and B

(1) Part A

Part A of this subchapter shall be in effect for any fiscal year for which the amount appropriated under paragraphs (1) and (2) of this section equals or exceeds $650,000,000.

(2) Part B

Part B of this subchapter shall be in effect only for a fiscal year for which part A of this subchapter is not in effect.

1So in original. Probably should be followed by “the”.

(2) Emergency immigrant education program

There are authorized to be appropriated to carry out subpart 4 of part B of this subchapter (when such part is in effect) such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Conditions on effectiveness of parts A and B

(1) Part A

Part A of this subchapter shall be in effect for any fiscal year for which the amount appropriated under paragraphs (1) and (2) of this section equals or exceeds $650,000,000.

(2) Part B

Part B of this subchapter shall be in effect only for a fiscal year for which part A of this subchapter is not in effect.

1So in original. Probably should be followed by “the”.

(2) Emergency immigrant education program

There are authorized to be appropriated to carry out subpart 4 of part B of this subchapter (when such part is in effect) such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Conditions on effectiveness of parts A and B

(1) Part A

Part A of this subchapter shall be in effect for any fiscal year for which the amount appropriated under paragraphs (1) and (2) of this section equals or exceeds $650,000,000.

(2) Part B

Part B of this subchapter shall be in effect only for a fiscal year for which part A of this subchapter is not in effect.

1So in original. Probably should be followed by “the”.

(2) Emergency immigrant education program

There are authorized to be appropriated to carry out subpart 4 of part B of this subchapter (when such part is in effect) such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Conditions on effectiveness of parts A and B

(1) Part A

Part A of this subchapter shall be in effect for any fiscal year for which the amount appropriated under paragraphs (1) and (2) of this section equals or exceeds $650,000,000.

(2) Part B

Part B of this subchapter shall be in effect only for a fiscal year for which part A of this subchapter is not in effect.
(c) References
In any fiscal year for which part A of this subchapter is in effect, references in Federal law (other than this subchapter) to part B of this subchapter shall be considered to be references to part A of this subchapter. In any fiscal year for which part B of this subchapter is in effect, references in Federal law (other than this subchapter) to part A of this subchapter shall be considered to be references to part B of this subchapter.


PRIORITY PROVISIONS

A prior section 3001 of Pub. L. 89–10 was classified to section 3021 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

PART A—ENGLISH LANGUAGE ACQUISITION, LANGUAGE ENHANCEMENT, AND ACADEMIC ACHIEVEMENT ACT

§ 6811. Short title
This part may be cited as the "English Language Acquisition, Language Enhancement, and Academic Achievement Act".


PRIORITY PROVISIONS

A prior section 3101 of Pub. L. 89–10 was classified to section 6801 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 6812. Purposes
The purposes of this part are—
(1) to help ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;
(2) to assist all limited English proficient children, including immigrant children and youth, to achieve at high levels in the core academic subjects so that those children can meet the same challenging State academic content and student academic achievement standards as all children are expected to meet, consistent with section 6311(b)(1) of this title;
(3) to develop high-quality language instructional programs designed to help limited English proficient children, including immigrant children and youth, to enter all-English instruction settings;
(4) to assist State educational agencies and local educational agencies to develop and enhance their capacity to provide high-quality instructional programs designed to prepare limited English proficient children, including immigrant children and youth, to enter all-English instruction settings;
(5) to assist State educational agencies, local educational agencies, and schools to build their capacity to establish, implement, and sustain language educational programs and programs of English language development for limited English proficient children;
(6) to promote parental and community participation in language instruction educational programs for the parents and communities of limited English proficient children;
(7) to streamline language instruction educational programs into a program carried out through formula grants to State educational agencies and local educational agencies to help limited English proficient children, including immigrant children and youth, develop proficiency in English, while meeting State academic content and student academic achievement standards;
(8) to hold State educational agencies, local educational agencies, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children by requiring—
(A) demonstrated improvements in the English proficiency of limited English proficient children each fiscal year; and
(B) adequate yearly progress for limited English proficient children, including immigrant children and youth, as described in section 6311(b)(2)(B) of this title; and
(9) to provide State educational agencies and local educational agencies with the flexibility to implement language instruction educational programs, based on scientifically based research on teaching limited English proficient children, that the agencies believe to be the most effective for teaching English.


PRIORITY PROVISIONS

Prior sections 6813 to 6815 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


§ 6821. Formula grants to States

(a) In general
In the case of each State educational agency having a plan approved by the Secretary for a fiscal year under section 6823 of this title, the Secretary shall make a grant for the year to the agency for the purposes specified in subsection (b) of this section. The grant shall consist of the allotment determined for the State educational agency under subsection (c) of this section.

(b) Use of funds

(1) Subgrants to eligible entities
The Secretary may make a grant under subsection (a) of this section only if the State educational agency involved agrees to expend at least 95 percent of the State educational agency’s allotment under subsection (c) of this section for a fiscal year—

(A) to award subgrants, from allocations under section 6824 of this title, to eligible entities to carry out the activities described in section 6825 of this title (other than subsection (c)); and

(B) to award subgrants under section 6824(d)(1) of this title to eligible entities that are described in that section to carry out the activities described in section 6825(e) of this title.

(2) State activities
Subject to paragraph (3), each State educational agency receiving a grant under subsection (a) of this section may reserve not more than 5 percent of the agency’s allotment under subsection (c) of this section to carry out one or more of the following activities:

(A) Professional development activities, and other activities, that assist personnel in meeting State and local certification and licensing requirements for teaching limited English proficient children.

(B) Planning, evaluation, administration, and interagency coordination related to the subgrants referred to in paragraph (1).

(C) Providing technical assistance and other forms of assistance to eligible entities that are receiving subgrants from a State educational agency under this subpart, including assistance in—

(i) identifying and implementing language instruction educational programs and curricula that are based on scientifically based research on teaching limited English proficient children;

(ii) helping limited English proficient children meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;

(iii) identifying or developing, and implementing, measures of English proficiency; and

(iv) promoting parental and community participation in programs that serve limited English proficient children.

(D) Providing recognition, which may include providing financial awards, to subgrantees that have exceeded their annual measurable achievement objectives pursuant to section 6842 of this title.

(3) Administrative expenses
From the amount reserved under paragraph (2), a State educational agency may use not more than 60 percent of such amount or $175,000, whichever is greater, for the planning and administrative costs of carrying out paragraphs (1) and (2).

(c) Reservations and allotments

(1) Reservations

From the amount appropriated under section 6801(a) of this title for each fiscal year, the Secretary shall reserve—

(A) 0.5 percent or $5,000,000 of such amount, whichever is greater, for payments to eligible entities that are defined under section 6822(a) of this title for activities, approved by the Secretary, consistent with this subpart:

(B) 0.5 percent of such amount for payments to outlying areas, to be allotted in accordance with their respective needs for assistance under this subpart, as determined by the Secretary, for activities, approved by the Secretary, consistent with this subpart:

(C) 6.5 percent of such amount for national activities under sections 6861 and 7013 of this title, except that not more than 0.5 percent of such amount shall be reserved for evaluation activities conducted by the Secretary and not more than $2,000,000 of such amount may be reserved for the National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs described in section 7013 of this title; and

(D) such sums as may be necessary to make continuation awards under paragraph (2).

(2) Continuation awards

(A) In general
Before making allotments to State educational agencies under paragraph (3) for any fiscal year, the Secretary shall use the sums reserved under paragraph (1)(D) to make continuation awards to recipients who received grants or fellowships for the fiscal year preceding any fiscal year described in section 6801(b)(1)(A) of this title under—

(i) subparts 1 and 3 of part A of title VII (as in effect on the day before January 8, 2002); or

(ii) subparts 1 and 3 of part B of this subchapter.

(B) Use of funds

The Secretary shall make the awards in order to allow such recipients to receive awards for the complete period of their grants or fellowships under the appropriate subparts.

(3) State allotments

(A) In general
Except as provided in subparagraph (B), from the amount appropriated under section 6801(a) of this title for each fiscal year that remains after making the reservations under
paragraph (1), the Secretary shall allot to each State educational agency having a plan approved under section 6823(c) of this title—

(i) an amount that bears the same relationship to 80 percent of the remainder as the number of limited English proficient children in the State bears to the number of such children in all States; and

(ii) an amount that bears the same relationship to 20 percent of the remainder as the number of immigrant children and youth in the State bears to the number of such children and youth in all States.

(B) Minimum allotments

No State educational agency shall receive an allotment under this paragraph that is less than $500,000.

(C) Reallotment

If any State educational agency described in subparagraph (A) does not submit a plan to the Secretary for a fiscal year, or submits a plan (or any amendment to a plan) that the Secretary, after reasonable notice and opportunity for a hearing, determines does not satisfy the requirements of this subpart, the Secretary—

(i) shall endeavor to make the State’s allotment available on a competitive basis to specially qualified agencies within the State to satisfy the requirements of section 6825 of this title (and any additional requirements that the Secretary may impose), consistent with the purposes of such section, and to carry out required and authorized activities under such section; and

(ii) shall reallocate any portion of such allotment remaining after the application of clause (i) to the remaining State educational agencies in accordance with subparagraph (A).

(D) Special rule for Puerto Rico

The total amount allotted to Puerto Rico for any fiscal year under subparagraph (A) shall not exceed 0.5 percent of the total amount allotted to all States for that fiscal year.

(4) Use of data for determinations

(A) In general

In making State allotments under paragraph (3), for the purpose of determining the number of limited English proficient children in a State and in all States, and the number of immigrant children and youth in a State and in all States, for each fiscal year, the Secretary shall use data that will yield the most accurate, up-to-date numbers of such children and youth.

(B) Special rule

(i) First 2 years

In making determinations under subparagraph (A) for the 2 fiscal years following January 8, 2002, the Secretary shall determine the number of limited English proficient children in a State and in all States, and the number of immigrant children and youth in a State and in all States, using data available from the Bureau of Census or submitted by the States to the Secretary.

(ii) Subsequent years

For subsequent fiscal years, the Secretary shall determine the number of limited English proficient children in a State and in all States, and the number of immigrant children and youth in a State and in all States, using the more accurate of—

(I) the data available from the American Community Survey available from the Department of Commerce; or

(II) the number of children being assessed for English proficiency in a State as required under section 6311(b)(7) of this title.


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 3111 of Pub. L. 89–10 was classified to section 6811 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§6822. Native American and Alaska Native children in school

(a) Eligible entities

For the purpose of carrying out programs under this part for individuals served by elementary schools, secondary schools, and postsecondary schools operated predominately for Native American children (including Alaska Native children), the following shall be considered to be an eligible entity:

(1) An Indian tribe.

(2) A tribally sanctioned educational authority.

(3) A Native Hawaiian or Native American Pacific Islander native language educational organization.

(4) An elementary school or secondary school that is operated or funded by the Bureau of Indian Affairs, or a consortium of such schools.

(5) An elementary school or secondary school operated under a contract with or grant from the Bureau of Indian Affairs, in consortium with another such school or a tribal or community organization.

(6) An elementary school or secondary school operated by the Bureau of Indian Affairs and an institution of higher education, in consortium with an elementary school or secondary school operated under a contract with or grant from the Bureau of Indian Affairs or a tribal or community organization.

(b) Submission of applications for assistance

Notwithstanding any other provision of this part, an entity that is considered to be an eli-
able entity under subsection (a) of this section, and that desires to receive Federal financial assistance under this subpart, shall submit an application to the Secretary.

(c) Special rule
An eligible entity described in subsection (a) of this section that receives Federal financial assistance pursuant to this section shall not be eligible to receive a subgrant under section 6824 of this title.


PRIOR PROVISIONS
A prior section 3112 of Pub. L. 89–10 was classified to section 6812 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§6823. State and specially qualified agency plans

(a) Plan required
Each State educational agency and specially qualified agency desiring a grant under this subpart shall submit a plan to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(b) Contents
Each plan submitted under subsection (a) of this section shall—

(1) describe the process that the agency will use in making subgrants to eligible entities under section 6824(d)(1) of this title;

(2) describe how the agency will establish standards and objectives for raising the level of English proficiency that are derived from the four recognized domains of speaking, listening, reading, and writing, and that are aligned with achievement of the challenging State academic content and student academic achievement standards described in section 6311(b)(1) of this title;

(3) contain an assurance that—

(A) in the case of a State educational agency, the agency consulted with local educational agencies, education-related community groups and nonprofit organizations, parents, teachers, school administrators, and researchers, in developing the annual measurable achievement objectives described in section 6842 of this title;

(B) in the case of a specially qualified agency, the agency consulted with education-related community groups and nonprofit organizations, parents, teachers, and researchers, in developing the annual measurable achievement objectives described in section 6842 of this title;

(C) the agency will ensure that eligible entities receiving a subgrant under this subpart comply with the requirement in section 6311(b)(7) of this title to annually assess in English children who have been in the United States for 3 or more consecutive years;

(D) the agency will ensure that eligible entities receiving a subgrant under this subpart annually assess the English proficiency of all limited English proficient children participating in a program funded under this subpart, consistent with section 6311(b)(7) of this title;

(E) in awarding subgrants under section 6824 of this title, the agency will address the needs of school systems of all sizes and in all geographic areas, including school systems with rural and urban schools;

(F) subgrants to eligible entities under section 6824(d)(1) of this title will be of sufficient size and scope to allow such entities to carry out high-quality language instruction educational programs for limited English proficient children; and

(G) the agency will require an eligible entity receiving a subgrant under this subpart to use the subgrant in ways that will build such recipient’s capacity to continue to offer high-quality language instruction educational programs that assist limited English proficient children in meeting challenging State academic content and student academic achievement standards once assistance under this subpart is no longer available;

(4) describe how the agency will coordinate its programs and activities under this subpart with its other programs and activities under this chapter and other Acts, as appropriate;

(5) describe how the agency will hold local educational agencies, eligible entities, elementary schools, and secondary schools accountable for—

(A) meeting all annual measurable achievement objectives described in section 6842 of this title;

(B) making adequate yearly progress for limited English proficient children, as described in section 6311(b)(2)(B) of this title; and

(C) achieving the purposes of this part; and

(6) describe how eligible entities in the State will be given the flexibility to teach limited English proficient children—

(A) using a language instruction curriculum that is tied to scientifically based research on teaching limited English proficient children and that has been demonstrated to be effective; and

(B) in the manner the eligible entities determine to be the most effective.

(c) Approval
The Secretary, after using a peer review process, shall approve a plan submitted under subsection (a) of this section if the plan meets the requirements of this section.

(d) Duration of plan

(1) In general
Each plan submitted by a State educational agency or specially qualified agency and approved under subsection (c) of this section shall—

(A) remain in effect for the duration of the agency’s participation under this part; and

(B) be periodically reviewed and revised by the agency, as necessary, to reflect changes to the agency’s strategies and programs carried out under this part.

(2) Additional information
(A) Amendments
If the State educational agency or specially qualified agency amends the plan, the
§ 6824. Within-State allocations

(a) In general

After making the reservation required under subsection (d)(1) of this section, each State educational agency receiving a grant under section 6821(c)(3) of this title shall award subgrants for a fiscal year by allocating to each eligible entity in the State having a plan approved under section 6826 of this title an amount that bears the same relationship to the amount received under the grant and remaining after making such reservation as the population of limited English proficient children in schools served by the eligible entity bears to the population of limited English proficient children in schools served by all eligible entities in the State.

(b) Limitation

A State educational agency shall not award a subgrant from an allocation made under subsection (a) of this section if the amount of such subgrant would be less than $10,000.

(c) Reallocation

Whenever a State educational agency determines that an amount from an allocation made to an eligible entity under subsection (a) of this section for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with such subsection, to other eligible entities in the State that the agency determines will use the amount to carry out that purpose.

(d) Required reservation

A State educational agency receiving a grant under this subpart for a fiscal year—

(1) shall reserve not more than 15 percent of the agency's allotment under section 6821(c)(3) of this title to award subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the 2 preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled, during the fiscal year preceding the fiscal year for which the subgrant is made, in public and nonpublic elementary schools and secondary schools in the geographic areas under the jurisdiction of, or served by, such entities; and

(2) in awarding subgrants under paragraph (1)—

(A) shall equally consider eligible entities that satisfy the requirement of such paragraph but have limited or no experience in serving immigrant children and youth; and

(B) shall consider the quality of each local plan under section 6826 of this title and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part.

(prior provisions)

A prior section 3113 of Pub. L. 89–10 was classified to section 6813 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 6825. Subgrants to eligible entities

(a) Purposes of subgrants

A State educational agency may make a subgrant to an eligible entity from funds received by the agency under this subpart only if the entity agrees to expend the funds to improve the education of limited English proficient children, by assisting the children to learn English and meet challenging State academic content standards, objectives, and assessment.

(b) Limitation

The terms contained in any subgrant under paragraph (a) of this section shall be superseded by any terms contained in the grant agreement that is entered into between the agency and the entity for the purpose for which the allocation was made.

(c) Program activities

(a) Purposes

The purposes of this part shall be to—

(1) support the education of limited English proficient children and youth, and such children and youth, in—

(A) developing and implementing new language instruction educational programs and academic content instruction programs for such children, and such children and youth, including programs of early childhood education, elementary school programs, and secondary school programs.

(B) carrying out highly focused, innovative, locally designed activities to expand or enhance existing language instruction educational programs and academic content instruction programs for such children, and such children and youth.

(2) implementing, within an individual school, schoolwide programs for restructuring, reforming, and upgrading all relevant programs, activities, and operations relating to language instruction educational programs and academic content instruction for such children, and such children and youth.

(3) implementing, within the entire jurisdiction of a local educational agency, agencywide programs for restructuring, reforming, and upgrading all relevant programs, activities, and operations relating to language instruction educational programs and academic content instruction for such children, and such children and youth.
(b) Administrative expenses

Each eligible entity receiving funds under section 6824(a) of this title for a fiscal year may use not more than 2 percent of such funds for the cost of administering this subpart.

(c) Required subgrantee activities

An eligible entity receiving funds under section 6824(a) of this title shall use the funds—

(1) to increase the English proficiency of limited English proficient children by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing—

(A) English proficiency; and

(B) student academic achievement in the core academic subjects; and

(2) to provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel, that is—

(A) designed to improve the instruction and assessment of limited English proficient children;

(B) designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instruction strategies for limited English proficient children;

(C) based on scientifically based research demonstrating the effectiveness of the professional development in increasing children’s English proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and

(D) of sufficient intensity and duration (which shall not include activities such as one-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers’ performance in the classroom, except that this subparagraph shall not apply to an activity that is one component of a long-term, comprehensive professional development plan established by a teacher and the teacher’s supervisor based on an assessment of the needs of the teacher, the supervisor, the students of the teacher, and any local educational agency employing the teacher.

(d) Authorized subgrantee activities

Subject to subsection (c) of this section, an eligible entity receiving funds under section 6824(a) of this title may use the funds to achieve one of the purposes described in subsection (a) of this section by undertaking one or more of the following activities:

1. Upgrading program objectives and effective instruction strategies.

2. Improving the instruction program for limited English proficient children by identifying, acquiring, and upgrading curricula, instructional materials, educational software, and assessment procedures.

3. Providing—

(A) tutorials and academic or vocational education for limited English proficient children; and

4. Developing and implementing elementary school or secondary school language instruction educational programs that are coordinated with other relevant programs and services.

5. Improving the English proficiency and academic achievement of limited English proficient children.

6. Providing community participation programs, family literacy services, and parent outreach and training activities to limited English proficient children and their families—

(A) to improve the English language skills of limited English proficient children; and

(B) to assist parents in helping their children to improve their academic achievement and becoming active participants in the education of their children.

7. Improving the instruction of limited English proficient children by providing for—

(A) the acquisition or development of educational technology or instructional materials;

(B) access to, and participation in, electronic networks for materials, training, and communication; and

(C) incorporation of the resources described in subparagraphs (A) and (B) into curricula and programs, such as those funded under this subpart.

8. Carrying out other activities that are consistent with the purposes of this section.

(e) Activities by agencies experiencing substantial increases in immigrant children and youth

1. In general

An eligible entity receiving funds under section 6824(d)(1) of this title shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth, which may include—

(A) family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children;

(B) support for personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth;

(C) provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;

(D) identification and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with funds;

(E) basic instruction services that are directly attributable to the presence in the school district involved of immigrant children and youth, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services;

(F) other instruction services that are designed to assist immigrant children and youth to achieve in elementary schools and
secondary schools in the United States, such as programs of introduction to the educational system and civics education; and
(G) activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents of immigrant children and youth by offering comprehensive community services.

(2) Duration of subgrants
The duration of a subgrant made by a State educational agency under section 6824(d)(1) of this title shall be determined by the agency in its discretion.

(f) Selection of method of instruction
(1) In general
To receive a subgrant from a State educational agency under this subpart, an eligible entity shall select one or more methods or forms of instruction to be used in the programs and activities undertaken by the entity to assist limited English proficient children to attain English proficiency and meet challenging State academic content and student academic achievement standards.

(2) Consistency
Such selection shall be consistent with sections 6845 through 6847 of this title.

(g) Supplement, not supplant
Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for limited English proficient children and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.


PRIOR PROVISIONS
A prior section 3115 of Pub. L. 89–10 was classified to section 6815 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 6826. Local plans
(a) Plan required
Each eligible entity desiring a subgrant from the State educational agency under section 6824 of this title shall submit a plan to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require.

(b) Contents
Each plan submitted under subsection (a) of this section shall—
(1) describe the programs and activities proposed to be developed, implemented, and administered under the subgrant;
(2) describe how the eligible entity will use the subgrant funds to meet all annual measurable achievement objectives described in section 6842 of this title;
(3) describe how the eligible entity will hold elementary schools and secondary schools receiving funds under this subpart accountable for—
(A) meeting the annual measurable achievement objectives described in section 6842 of this title;
(B) making adequate yearly progress for limited English proficient children, as described in section 6311(b)(2)(B) of this title; and
(C) annually measuring the English proficiency of limited English proficient children, so that such children served by the programs carried out under this part develop proficiency in English while meeting State academic content and student academic achievement standards as required by section 6311(b)(1) of this title;
(4) describe how the eligible entity will promote parental and community participation in programs for limited English proficient children;
(5) contain an assurance that the eligible entity consulted with teachers, researchers, school administrators, and parents, and, if appropriate, with education-related community groups and nonprofit organizations, and institutions of higher education, in developing such plan; and
(6) describe how language instruction educational programs carried out under the subgrant will ensure that limited English proficient children being served by the programs develop English proficiency.

(c) Teacher English fluency
Each eligible entity receiving a subgrant under section 6824 of this title shall include in its plan a certification that all teachers in any language instruction educational program for limited English proficient children that is, or will be, funded under this part are fluent in English and any other language used for instruction, including having written and oral communications skills.

(d) Other requirements for approval
Each local plan shall also contain assurances that—
(1) each local educational agency that is included in the eligible entity is complying with section 7012 of this title prior to, and throughout, each school year;
(2) the eligible entity annually will assess the English proficiency of all children with limited English proficiency participating in programs funded under this part;
(3) the eligible entity has based its proposed plan on scientifically based research on teaching limited English proficient children;
(4) the eligible entity will ensure that the programs will enable children to speak, read, write, and comprehend the English language and meet challenging State academic content and student academic achievement standards; and
(5) the eligible entity is not in violation of any State law, including State constitutional law, regarding the education of limited English proficient children, consistent with sections 6846 and 6847 of this title.

§ 6841. Evaluations

(a) In general

Each eligible entity that receives a subgrant from a State educational agency under subpart 1 of this part shall provide such agency, at the conclusion of every second fiscal year during which the subgrant is received, with an evaluation, in a form prescribed by the agency, that includes—

(1) a description of the programs and activities conducted by the entity with funds received under subpart 1 of this part during the two immediately preceding fiscal years;

(2) a description of the progress made by children in learning the English language and meeting challenging State academic content and student academic achievement standards;

(3) the number and percentage of children in the programs and activities attaining English proficiency by the end of each school year, as determined by a valid and reliable assessment of English proficiency; and

(4) a description of the progress made by children in meeting challenging State academic content and student academic achievement standards for each of the 2 years after such children are no longer receiving services under this part.

(b) Use of evaluation

An evaluation provided by an eligible entity under subsection (a) of this section shall be used by the entity and the State educational agency—

(1) for improvement of programs and activities;

(2) to determine the effectiveness of programs and activities in assisting children who are limited English proficient to attain English proficiency (as measured consistent with subsection (d) of this section) and meet challenging State academic content and student academic achievement standards; and

(3) in determining whether or not to continue funding for specific programs or activities.

(c) Evaluation components

An evaluation provided by an eligible entity under subsection (a) of this section shall—

(1) provide an evaluation of children enrolled in a program or activity conducted by the entity using funds under subpart 1 of this part (including the percentage of children who—

(A) are making progress in attaining English proficiency, including the percentage of children who have achieved English proficiency;

(B) have transitioned into classrooms not tailored to limited English proficient children, and have a sufficient level of English proficiency to permit them to achieve in English and transition into classrooms not tailored to limited English proficient children;

(C) are meeting the same challenging State academic content and student academic achievement standards as all children are expected to meet; and

(D) are not receiving waivers for the reading or language arts assessments under section 6311(b)(3)(C) of this title; and

(2) include such other information as the State educational agency may require.

(d) Evaluation measures

A State shall approve evaluation measures for use under subsection (c) of this section that are designed to assess—

(1) the progress of children in attaining English proficiency, including a child’s level of comprehension, speaking, listening, reading, and writing skills in English;

(2) student attainment of challenging State academic achievement standards on assessments described in section 6311(b)(3) of this title; and

(3) progress in meeting the annual measurable achievement objectives described in section 6842 of this title.

(e) Special rule for specially qualified agencies

Each specially qualified agency receiving a grant under this part shall provide the evaluations described in subsection (a) of this section to the Secretary subject to the same requirements as apply to eligible entities providing such evaluations to State educational agencies under such subsection.


PRIOR PROVISIONS


§ 6842. Achievement objectives and accountability

(a) Achievement objectives

(1) In general

Each State educational agency or specially qualified agency receiving a grant under subpart 1 of this part shall develop annual measurable achievement objectives for limited English proficient children served under this part that relate to such children’s development and attainment of English proficiency while meeting challenging State academic content and student academic achievement
standards as required by section 6311(b)(1) of this title.

(2) Development of objectives

Such annual measurable achievement objectives shall be developed in a manner that—

(A) reflects the amount of time an individual child has been enrolled in a language instruction educational program; and

(B) uses consistent methods and measurements to reflect the increases described in subparagraphs (A)(i), (A)(ii), and (B) of paragraph (3).

(3) Contents

Such annual measurable achievement objectives—

(A) shall include—

(i) at a minimum, annual increases in the number or percentage of children making progress in learning English;

(ii) at a minimum, annual increases in the number or percentage of children attaining English proficiency by the end of each school year, as determined by a valid and reliable assessment of English proficiency consistent with section 6311(b)(7) of this title; and

(iii) making adequate yearly progress for limited English proficient children as described in section 6311(b)(2)(B) of this title; and

(B) at the discretion of the agency, may include the number or percentage of children not receiving waivers for reading or language arts assessments under section 6311(b)(3)(C) of this title, but this achievement objective shall not be applied to an eligible entity that, in a given school year—

(i) has experienced a large increase in the number of immigrant children or migrant children and youth;

(ii) enrolls a statistically significant number of immigrant children and youth from countries where such children and youth had little or no access to formal education; or

(iii) has a statistically significant number of immigrant children and youth who have fled from war or natural disaster.

(b) Accountability

(1) For States

Each State educational agency receiving a grant under subpart 1 of this part shall hold eligible entities receiving a subgrant under such subpart accountable for meeting the annual measurable achievement objectives under subsection (a) of this section, including making adequate yearly progress for limited English proficient children.

(2) Improvement plan

If a State educational agency determines, based on the annual measurable achievement objectives described in subsection (a) of this section, that an eligible entity has failed to make progress toward meeting such objectives for 2 consecutive years, the agency shall require the entity to develop an improvement plan that will ensure that the entity meets such objectives. The improvement plan shall specifically address the factors that prevented the entity from achieving such objectives.

(3) Technical assistance

During the development of the improvement plan described in paragraph (2), and throughout its implementation, the State educational agency shall—

(A) provide technical assistance to the eligible entity;

(B) provide technical assistance, if applicable, to schools served by such entity under subpart 1 of this part that need assistance to enable the schools to meet the annual measurable achievement objectives described in subsection (a) of this section;

(C) develop, in consultation with the entity, professional development strategies and activities, based on scientifically based research, that the agency will use to meet such objectives;

(D) require such entity to utilize such strategies and activities; and

(E) develop, in consultation with the entity, a plan to incorporate strategies and methodologies, based on scientifically based research, to improve the specific program or method of instruction provided to limited English proficient children.

(4) Accountability

If a State educational agency determines that an eligible entity has failed to meet the annual measurable achievement objectives described in subsection (a) of this section for 4 consecutive years, the agency shall—

(A) require such entity to modify the entity’s curriculum, program, and method of instruction; or

(B)(i) make a determination whether the entity shall continue to receive funds related to the entity’s failure to meet such objectives; and

(ii) require such entity to replace educational personnel relevant to the entity’s failure to meet such objectives.

(c) Special rule for specially qualified agencies

The Secretary shall hold specially qualified agencies receiving a grant under this subpart accountable for meeting the annual measurable achievement objectives described in subsection (a) of this section in the same manner as State educational agencies hold eligible entities accountable under subsection (b) of this section.


Prior Provisions


A prior section 3122 of Pub. L. 89–10 was classified to section 6832 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 6843. Reporting requirements

(a) States

Based upon the evaluations provided to a State educational agency under section 6841 of...
§ 6844. Coordination with related programs

In order to maximize Federal efforts aimed at serving the educational needs of children of limited English proficiency, the Secretary shall coordinate and ensure close cooperation with other entities carrying out programs serving language-minority and limited English proficient children that are administered by the Department and other agencies.


PRIOR PROVISIONS


§ 6845. Rules of construction

Nothing in this part shall be construed—

(1) to prohibit a local educational agency from serving limited English proficient children simultaneously with children with similar educational needs, in the same educational settings where appropriate;

(2) to require a State or a local educational agency to establish, continue, or eliminate any particular type of instructional program for limited English proficient children; or

(3) to limit the preservation or use of Native American languages.


PRIOR PROVISIONS


§ 6846. Legal authority under State law

Nothing in this part shall be construed to negate or supersede State law, or the legal authority under State law of any State agency, State entity, or State public official, over programs that are under the jurisdiction of the State agency, entity, or official.


PRIOR PROVISIONS


§ 6847. Civil rights

Nothing in this part shall be construed in a manner inconsistent with any Federal law guaranteeing a civil right.


PRIOR PROVISIONS

§ 6848. Programs for Native Americans and Puerto Rico

Notwithstanding any other provision of this part, programs authorized under this part that serve Native American (including Native American Pacific Islander) children and children in the Commonwealth of Puerto Rico may include programs of instruction, teacher training, curriculum development, evaluation, and assessment designed for Native American children learning and studying Native American languages and children of limited Spanish proficiency, except that an outcome of programs serving such children shall be increased English proficiency among such children.


§ 6849. Prohibition

In carrying out this part, the Secretary shall neither mandate nor preclude the use of a particular curricular or pedagogical approach to educating limited English proficient children.


SUBPART 3—NATIONAL ACTIVITIES

§ 6861. National professional development project

The Secretary shall use funds made available under section 6821(c)(1)(C) of this title to award grants on a competitive basis, for a period of not more than 5 years, to institutions of higher education (in consortia with State educational agencies or local educational agencies) to provide for professional development activities that will improve classroom instruction for limited English proficient children and assist educational personnel working with such children to meet high professional standards, including standards for certification and licensure as teachers who work in language instruction educational programs or serve limited English proficient children. Grants awarded under this subsection may be used—

(1) for preservice professional development programs that will assist local schools and institutions of higher education to upgrade the qualifications and skills of educational personnel who are not certified or licensed, especially educational paraprofessionals;

(2) for the development of curricula appropriate to the needs of the consortia participants involved; and

(3) in conjunction with other Federal need-based student financial assistance programs, for financial assistance, and costs related to tuition, fees, and books for enrolling in courses required to complete the degree involved, to meet certification or licensing requirements for teachers who work in language instruction educational programs or serve limited English proficient children.


A prior section 3131 of Pub. L. 89–10 was classified to section 6841 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

SUBPART 4—DEFINITIONS

§ 6871. Eligible entity

In this part, the term “eligible entity” means—

(1) one or more local educational agencies; or

(2) one or more local educational agencies, in collaboration with an institution of higher education, community-based organization, or State educational agency.


A prior section 3141 of Pub. L. 89–10 was classified to section 6861 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

PART B—IMPROVING LANGUAGE INSTRUCTION EDUCATIONAL PROGRAMS

§ 6891. Short title

This part may be cited as the “Improving Language Instruction Educational Programs For Academic Achievement Act”.


§ 6892. Purpose

The purpose of this part is to help ensure that limited English proficient children master English and meet the same rigorous standards for academic achievement as all children are expected to meet, including meeting challenging State academic content and student academic achievement standards by—

(1) promoting systemic improvement and reform of, and developing accountability systems for, educational programs serving limited English proficient children;

(2) developing language skills and multicultural understanding;

(3) developing the English proficiency of limited English proficient children and, to the extent possible, the native language skills of such children;

(4) providing similar assistance to Native Americans with certain modifications relative to the unique status of Native American languages under Federal law;
(5) developing data collection and dissemination, research, materials, and technical assistance that are focused on school improvement for limited English proficient children; and

(6) developing programs that strengthen and improve the professional training of educational personnel who work with limited English proficient children.


§ 6893. Native American children in school

(a) Eligible entities

For the purpose of carrying out programs under this part for individuals served by elementary schools, secondary schools, and postsecondary schools operated predominately for Native American (including Alaska Native) children and youth, an Indian tribe, a tribally sanctioned educational authority, a Native Hawaiian or Native American Pacific Islander native language education organization, or an elementary school or secondary school that is operated or funded by the Bureau of Indian Affairs shall be considered to be a local educational agency.

(b) Application

Notwithstanding any other provision of this part, each tribe, authority, organization, or school described in subsection (a) of this section shall submit any application for assistance under this part directly to the Secretary along with timely comments on the need for the program proposed in the application.


§ 6894. Residents of the territories and freely associated states

For the purpose of carrying out programs under this part in the outlying areas, the term “local educational agency” includes public institutions or agencies whose mission is the preservation and maintenance of native languages.


§ 6895. Program development and enhancement

SUBPART 1—PROGRAM DEVELOPMENT AND ENHANCEMENT

§ 6911. Financial assistance for language instruction educational programs

The purpose of this subpart is to assist local educational agencies, institutions of higher education, and community-based organizations, through the grants authorized under sections 6912 and 6913 of this title—

(1) to develop and enhance their capacity to provide high-quality instruction through language instruction educational programs or special alternative instruction programs to limited English proficient children; and

(2) to help such children—

(A) develop English proficiency and, to the extent possible, proficiency in their native language; and

(B) meet the same challenging State academic content and student academic achievement standards as all children are expected to meet under section 6311(b)(1) of this title.


§ 6912. Program enhancement activities

(a) Program authorized

(1) Authority

(A) In general

The Secretary is authorized to award grants to eligible entities having applications approved under section 6914 of this title to enable such entities to provide innovative, locally designed, high-quality instruction to limited English proficient children, by expanding, developing, or strengthening language instruction educational programs or special alternative instruction programs.

(B) Period

Each grant awarded under this section shall be awarded for a period of 3 years.

(2) Authorized activities

(A) Mandatory activities

Grants awarded under this section shall be used for—

(i) developing, implementing, expanding, or enhancing comprehensive preschool,
elementary, or secondary education programs for limited English proficient children, that are—
(I) aligned with State and local academic content and student academic achievement standards, and local school reform efforts; and
(II) coordinated with related academic services for children;
(ii) providing high-quality professional development to classroom teachers, administrators, and other school or community-based organization personnel to improve the instruction and assessment of limited English proficient children; and
(iii) implementing family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children;
(iv) improving the instruction programs for limited English proficient children by identifying, acquiring, and applying effective curricula, instruction materials (including materials provided through technology), and assessments that are all aligned with State and local standards;
(v) providing intensified instruction, including tutorials and academic, or vocational and technical, training, for limited English proficient children;
(vi) adapting best practice models for meeting the needs of limited English proficient children;
(vii) assisting limited English proficient children with disabilities;
(viii) implementing applied learning activities such as service learning to enhance and support comprehensive elementary and secondary language instruction educational programs;
(ix) acquiring or developing education technology or instruction materials for limited English proficient children, including materials in languages other than English;
(x) participating in electronic networks for materials, training, and communication, and incorporating information derived from such participation in curricula and programs; and
(xi) carrying out such other activities related to the purpose of this part as the Secretary may approve.

(b) Priority
In awarding grants under this section, the Secretary may give priority to an entity that—
(1) serves a school district—
(A) that has a total district enrollment that is less than 10,000 students; or
(B) with a large percentage or number of limited English proficient children; and
(2) has limited or no experience in serving limited English proficient children.

(c) Eligible entity
In this section, the term “eligible entity” means—
(1) one or more local educational agencies;
(2) one or more local educational agencies in collaboration with an institution of higher education, community-based organization, or State educational agency; or
(3) a community-based organization or an institution of higher education that has an application approved by the local educational agency to participate in programs carried out under this subpart by enhancing early childhood education or family education programs or conducting instruction programs that supplement the educational services provided by a local educational agency.

§ 6913. Comprehensive school and systemwide improvement activities

(a) Program authorized

(1) Authority
The Secretary is authorized to award grants to eligible entities having applications approved under section 6914 of this title to enable such entities to develop and implement language instruction educational programs, and improve, reform, or upgrade programs or operations that serve significant percentages or numbers of limited English proficient children.

(2) Mandatory activities
Grants awarded under this section shall be used for—
(A) improving instruction programs for limited English proficient children by acquiring and upgrading curricula and related instruction materials;
(B) aligning the activities carried out under this section with State and local school reform efforts;
(C) providing training, aligned with State and local standards, to school personnel and participating community-based organization personnel to improve the instruction and assessment of limited English proficient children;
(D) developing and implementing plans, coordinated with plans for programs carried out under title II of the Higher Education Act of 1965 [20 U.S.C. 1021 et seq.] (where applicable), and subchapter II of this chapter (where applicable), to recruit teachers trained to serve limited English proficient children;
(E) implementing culturally and linguistically appropriate family education programs, or parent outreach and training activities, that are designed to assist parents
of limited English proficient children to become active participants in the education of their children;

(F) coordinating the activities carried out under this section with other programs, such as programs carried out under this subchapter;

(G) providing services to meet the full range of the educational needs of limited English proficient children;

(H) annually assessing the English proficiency of all limited English proficient children served by the activities carried out under this section; and

(I) developing or improving accountability systems to monitor the academic progress of limited English proficient children.

(3) Permissible activities

Grants awarded under this section may be used for—

(A) implementing programs to upgrade reading and other academic skills of limited English proficient children;

(B) developing and using educational technology to improve learning, assessments, and accountability to meet the needs of limited English proficient children;

(C) implementing scientifically based research programs to meet the needs of limited English proficient children;

(D) providing tutorials and academic, or vocational and technical, training for limited English proficient children;

(E) developing and implementing State and local academic content and student academic achievement standards for learning English as a second language, as well as for learning other languages;

(F) developing and implementing programs for limited English proficient children to meet the needs of changing populations of such children;

(G) implementing policies to ensure that limited English proficient children have access to other education programs (other than programs designed to address limited English proficiency);

(H) assisting limited English proficient children with disabilities;

(I) developing and implementing programs to help children become proficient in English and other languages;

(J) acquiring or developing education technology or instruction materials for limited English proficient children, including materials in languages other than English;

(K) participating in electronic networks for materials, training, and communication and incorporating information derived from such participation in curricula and programs; and

(L) carrying out such other activities related to the purpose of this part as the Secretary may approve.

(4) Special rule

(A) Planning

A recipient of a grant under this section, before carrying out activities under this section, shall plan, train personnel, develop curricula, and acquire or develop materials, but shall not use funds made available under this section for planning purposes for more than 45 days.

(B) Commencement of activities

The recipient shall commence carrying out activities under this section not later than the later of—

(i) the beginning of the first school year that begins after the grant is received; or

(ii) 30 days after the date of receipt of the grant.

(b) Availability of appropriations

(1) Reservation of funds for continued payments

(A) Covered grant

In this paragraph, the term “covered grant” means a grant—

(i) that was awarded under sections 7112, 7113, 7114, or 7115 (as such sections were in effect on the day before January 8, 2002); and

(ii) for which the grant period has not ended.

(B) Reservation

For any fiscal year that is part of the grant period of a covered grant, the Secretary shall reserve funds for the payments described in subparagraph (C) from the amount appropriated for the fiscal year under section 6801(a) of this title and made available for carrying out this section.

(C) Payments

The Secretary shall continue to make grant payments to each entity that received a covered grant, in accordance with the terms of that grant, for the duration of the grant period of the grant, to carry out activities in accordance with the appropriate section described in subparagraph (A)(i).

(2) Availability

Of the amount appropriated for a fiscal year under section 6801(a) of this title that is made available to carry out this section, and that remains after the Secretary reserves funds for payments under paragraph (1)—

(A) not less than one-third of the remainder shall be used to award grants to eligible entities for activities carried out within an entire school district; and

(B) not less than two-thirds of the remainder shall be used to award grants to eligible entities for activities carried out within individual schools.

(c) Priority

In awarding grants under this section, the Secretary shall give priority to an applicant that—

(1) experiences a significant increase in the number or percentage of limited English proficient children enrolled in the applicant's programs and has limited or no experience in serving limited English proficient children;

(2) is a local educational agency that serves a school district that has a total district enrollment that is less than 10,000 students;

(3) demonstrates that the applicant has a proven track record of success in helping lim-
§ 6914. Applications

(a) In general

(1) Secretary

To receive a grant under this subpart, an eligible entity described in section 6912 or 6913 of this title shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may require.

(2) State educational agency

The eligible entity, with the exception of schools funded by the Bureau of Indian Affairs, shall submit a copy of the application submitted by the entity under this section to the State educational agency.

(b) State review and comments

(1) Deadline

The State educational agency, not later than 45 days after receipt of an application under this section, shall review the application and submit the written comments of the agency regarding the application to the Secretary.

(2) Comments

(A) Submission of comments

Regarding applications submitted under this subpart, the State educational agency shall—

(i) submit to the Secretary written comments regarding all such applications; and

(ii) submit to each eligible entity the comments that pertain to such entity.

(B) Subject

For purposes of this subpart, such comments shall address—

(i) how the activities to be carried out under the grant will further the academic achievement and English proficiency of limited English proficient children served under the grant; and

(ii) how the grant application is consistent with the State plan required under section 6311 of this title.

(c) Eligible entity comments

An eligible entity may submit to the Secretary comments that address the comments submitted by the State educational agency.

(d) Comment consideration

In making grants under this subpart, the Secretary shall take into consideration comments made by State educational agencies.

(e) Waiver

Notwithstanding subsection (b) of this section, the Secretary is authorized to waive the review requirement specified in subsection (b) of this section if a State educational agency can demonstrate that such review requirement may impede such agency’s ability to fulfill the requirements of participation in the program authorized in section 6304 of this title, particularly such agency's ability to carry out data collection efforts and such agency’s ability to provide technical assistance to local educational agencies not receiving funds under this subpart.

(f) Required documentation

Such application shall include documentation that—

(1) the applicant has the qualified personnel required to develop, administer, and implement the program proposed in the application; and

(2) the leadership personnel of each school participating in the program have been in—

(A) A description of the need for the program in the school.

(B) the leadership personnel of each school

(ii) information on the characteristics of the children, including—

(aa) reading or language arts (in English and in the native language, if applicable); and

(bb) mathematics;

(IV) a comparison of that data for the children with that data for the English proficient peers of the children; and

(V) the previous schooling experiences of the children.
(iii) the professional development needs of the instruction personnel who will provide services for the limited English proficient children under the proposed program; and
(iv) how the services provided through the grant will supplement the basic services provided to limited English proficient children.

(B) A description of the program to be implemented and how such program’s design—
(i) relates to the linguistic and academic needs of the limited English proficient children to be served;
(ii) will ensure that the services provided through the program will supplement the basic services the applicant provides to limited English proficient children;
(iii) will ensure that the program is coordinated with other programs under this chapter and other Acts;
(iv) involves the parents of the limited English proficient children to be served;
(v) ensures accountability in achieving high academic standards; and
(vi) promotes coordination of services for the limited English proficient children to be served and their families.

(C) A description, if appropriate, of the applicant’s collaborative activities with institutions of higher education, community-based organizations, local educational agencies or State educational agencies, private schools, nonprofit organizations, or businesses in carrying out the proposed program.

(D) An assurance that the applicant will not reduce the level of State and local funds that, in the absence of such Federal funds, would be expended for special alternative instruction programs if the applicant receives an award under this subpart.

(E) An assurance that the applicant will employ teachers in the proposed program who, individually or in combination, are proficient in—
(i) English, with respect to written, as well as oral, communication skills; and
(ii) the native language of the majority of the children who the teachers teach, if instruction in the program is in the native language as well as English.

(F) A budget for the grant funds.

(2) Additional information

Each application for a grant under section 6913 of this title shall—

(A) describe—

(i) current services (as of the date of submission of the application) the applicant provides to limited English proficient children;
(ii) the native language of the majority of the children who the teachers teach, if instruction in the program is in the native language as well as English;

(B) limited English proficient children with disabilities will be identified and served through the program in accordance with the requirements of the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.];

(C) in a manner consistent with the number of such children enrolled in such schools in the area to be served, whose educational needs are of the type and whose language, and grade levels are of a similar type to the needs, language, and grade levels that the program is intended to address, provided for the participation of such children on a basis comparable to the basis on which public school children participate;

(D) a requirement that—

(i) the program funded with the grant will be integrated with the overall educational program of the children served through the proposed program; and
(ii) the application has been developed in consultation with parents and other representatives of the children to be served in such program.

(b) Approval of applications

An application for a grant under this subpart may be approved only if the Secretary determines that—

(1) the program proposed in the application will use qualified personnel, including personnel who are proficient in the language or languages used for instruction;

(2) in designing the program, the eligible entity has, after consultation with appropriate private school officials—

(A) taken into account the needs of children in nonprofit private elementary schools and secondary schools; and

(B) in a manner consistent with the number of such children enrolled in such schools in the area to be served, whose educational needs are of the type and whose language, and grade levels are of a similar type to the needs, language, and grade levels that the program is intended to address, provided for the participation of such children on a basis comparable to the basis on which public school children participate;

(3)(A) student evaluation and assessment procedures in the program are valid and reliable for limited English proficient children; and

(B) limited English proficient children with disabilities will be identified and served through the program in accordance with the requirements of the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.];

(4) Federal funds made available for the program will be used to supplement the State and local funds that, in the absence of such Federal funds, would be expended for special programs for children of limited English proficient individuals, and in no case to supplant such State and local funds, except that nothing in this paragraph shall be construed to preclude a local educational agency from using funds made available under this subpart—

(A) for activities carried out under an order of a Federal or State court respecting services to be provided to such children; or

(B) to carry out a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] with respect to services to be provided to such children;
(5)(A) the assistance provided through the grant will contribute toward building the capacity of the eligible entity to provide a program on a regular basis, similar to the proposed program, that will be of sufficient size, scope, and quality to promise significant improvement in the education of limited English proficient children; and

(B) the eligible entity will have the resources and commitment to continue the program of sufficient size, scope, and quality when assistance under this subpart is reduced or no longer available; and

(6) the eligible entity will use State and national dissemination sources for program design and dissemination of results and products.

(i) Consideration

In determining whether to approve an application under this subpart, the Secretary shall give consideration to—

(1) the degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate local educational agency and State educational agency, or businesses; and

(2) whether the application provides for training for personnel participating in, or preparing to participate in, a program that will assist such personnel in meeting State and local certification requirements.


REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (h)(3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.


The Public Health and Welfare. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

§6915. Capacity building

Each recipient of a grant under this subpart shall use the grant in ways that will build such recipient’s capacity to continue to offer high-quality language instruction educational programs and special alternative instruction programs to limited English proficient children after Federal assistance is reduced or eliminated.


§6916. Programs for Native Americans and Puerto Rico

Notwithstanding any other provision of this part, programs authorized under this subpart that serve Native American (including Native American Pacific Islander) children and children in the Commonwealth of Puerto Rico may include programs of instruction, teacher training, curriculum development, evaluation, and assessment designed for Native American children learning and studying Native American languages and children of limited Spanish proficiency, except that an outcome of programs serving such children shall be increased English proficiency among such children.


§6917. Evaluations

(a) Evaluation

Each recipient of funds under this subpart for a program shall annually conduct an evaluation of the program and submit to the Secretary a report concerning the evaluation, in the form prescribed by the Secretary.

(b) Use of evaluation

Such evaluation shall be used by the grant recipient—

(1) for program improvement;

(2) to further define the program’s goals and objectives; and

(3) to determine program effectiveness.

(c) Evaluation report components

In preparing the evaluation reports, the recipient shall—

(1) use the data provided in the application submitted by the recipient under section 6914 of this title as baseline data against which to report academic achievement and gains in English proficiency for children in the program;

(2) disaggregate the results of the evaluation by gender, native languages spoken by children, socioeconomic status, and whether the children have disabilities;

(3) include data on the progress of the recipient in achieving the objectives of the program, including data demonstrating the extent to which children served by the program are meeting the challenging State academic content and student academic achievement standards, and including data comparing limited English proficient children with English proficient children with regard to school retention and academic achievement concerning—

(A) reading and language arts;

(B) English proficiency;

(C) mathematics; and

(D) the native language of the children, if the program develops native language proficiency;

(4) include information on the extent that professional development activities carried out through the program have resulted in improved classroom practices and improved student academic achievement;

(5) describe how the activities carried out through the program are coordinated and integrated with the other Federal, State, or local programs serving limited English proficient children; and

(6) include such other information as the Secretary may require.


1 So in original. Probably should be “(5) include”.
§ 6931. Authority

(a) In general

The Secretary is authorized to conduct data collection, dissemination, research, and ongoing program evaluation activities in accordance with the provisions of this subpart for the purpose of improving language instruction educational programs and special alternative instruction programs for limited English proficient children.

(b) Competitive awards

Research and program evaluation activities carried out under this subpart shall be supported through competitive grants, contracts, and cooperative agreements awarded to institutions of higher education, nonprofit organizations, State educational agencies, and local educational agencies.

(c) Administration

The Secretary shall conduct data collection, dissemination, and ongoing program evaluation activities authorized by this subpart through the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.


Information Regarding Bilingual Education


(1) a national assessment of the educational needs of children and other persons with limited English proficiency and of the extent to which such needs are being met from Federal, State, and local efforts;

(2) a plan, including cost estimates, to be carried out during the 5-year period beginning on such date [sic], for extending programs of bilingual education and bilingual vocational and adult education programs to all such preschool and elementary school children and other persons of limited English proficiency, including a phased plan for the training of the necessary teachers and other education personnel necessary for such purpose;

(3) a statement of the activities intended to be carried out during the succeeding period, including an estimate of the cost of such activities; and

(4)(A) an assessment of the number of teachers and other educational personnel needed to carry out programs of bilingual education under such title [sic] and those carried out under other programs for persons of limited English proficiency;

(B) a statement describing the activities carried out thereunder designed to prepare teachers and other educational personnel for such programs; and

(C) the number of other educational personnel who are needed to carry out programs of bilingual education in the States.”
out this section for field-initiated research conducted by recipients of grants under subpart 1 of this part or this subpart who have received such grants within the previous 5 years. Such research may provide for longitudinal studies of limited English proficient children or teachers who serve such children, monitoring the education of such children from entry into language instruction educational programs through secondary school completion.

(2) Applications

An applicant for assistance under this subsection may submit an application for such assistance to the Secretary at the same time as the applicant submits another application under subpart 1 of this part or this subpart. The Secretary shall complete a review of such applications on a timely basis to allow the activities carried out under research and program grants to be coordinated when recipients are awarded two or more of such grants.

(d) Consultation

The Secretary shall consult with agencies, organizations, and individuals that are engaged in research and practice on the education of limited English proficient children, language instruction educational programs, or related research, to identify areas of study and activities to be funded under this section.

(e) Data collection

The Secretary shall provide for the collection of data on limited English proficient children as part of the data systems operated by the Department.

Section 6934(e) of this title; and

AMENDMENTS


RESEARCH RELATING TO BILINGUAL EDUCATION

Pub. L. 100–297, title VI, § 6211, Apr. 28, 1988, 102 Stat. 429, provided that:

“(a) RESEARCH AND DEVELOPMENT.—The Secretary shall, through competitive contracts under this section, provide financial assistance for research and development proposals submitted by institutions of higher education, private for-profit and nonprofit organizations, State and local educational agencies, and individuals.

“(b) AUTHORIZED ACTIVITIES.—Research activities authorized to be assisted under this section shall include—

“(1) studies to determine and evaluate effective models for bilingual education programs;
“(2) studies which examine the process by which individuals acquire a second language and master the subject matter skills required for grade-promotion and graduation, and which identify effective methods for teaching English and subject matter skills within the context of a bilingual education program or special alternative instructional program to students who have language proficiencies other than English;
“(3) longitudinal studies to measure the effect of title VII of the Elementary and Secondary Education Act of 1965 [former 20 U.S.C. 3281 et seq.] on students enrolled in programs under such title (including a longitudinal study of the impact of bilingual education programs on limited-English proficient students using a nationally representative sample of the programs funded under such title and which provides information including data on grade retention, academic performance, and dropout rates);
“(4) studies to determine effective and reliable methods for identifying students who are entitled to services under such title and for determining when their English language proficiency is sufficiently well developed to permit them to derive optimal benefits from an all-English instructional program;
“(5) the operation of a clearinghouse which shall collect, analyze, and disseminate information about bilingual education and related programs (and coordinate its activities with the National Diffusion Network);
“(6) studies to determine effective methods of teaching English to adults who have language proficiencies other than English;
“(7) studies to determine and evaluate effective methods of instruction for bilingual programs, taking into account language and cultural differences among students;
“(8) studies to determine effective approaches to preservice and inservice training for teachers, taking into account the language and cultural differences of their students;
“(9) the effect of such title on the capacity of local educational agencies to operate bilingual programs following the termination of assistance under this [such] title; and
“(10) studies to determine effective and reliable methods for identifying gifted and talented students who have language proficiencies other than English.

“(c) CONSULTATION AND DELEGATION OF AUTHORITY.—In carrying out the responsibilities of this section, the Secretary shall consult with and make available to the Committee on Education and Labor, and the Senate, and the Committee on Education and Labor [now Committee on Education and Labor] of the House of Representatives.

“(d) PUBLICATION OF PROPOSALS.—(1) The Secretary shall publish and disseminate all requests for proposals in research and development assisted under such title.

“(e) LIMITATION OF AUTHORITY.—Nothing in this section shall be construed as authorizing the Secretary to conduct or support studies or analyses of the content of educational textbooks.”

§ 6933. Academic excellence awards

(a) Authority

The Secretary may make grants to State educational agencies to assist the agencies in recognizing local educational agencies and other public and nonprofit entities whose programs have—

(1) demonstrated significant progress in assisting limited English proficient children to learn English according to age appropriate and developmentally appropriate standards; and

(2) demonstrated significant progress in assisting limited English proficient children to meet, according to age appropriate and developmentally appropriate standards, the same challenging State academic content and student academic achievement standards as all children are expected to meet.

(b) Applications

A State educational agency desiring a grant under this section shall include an application for such grant in the application submitted by the agency under section 6894(e) of this title.
§ 6934. State grant program

(a) State grant program

The Secretary is authorized to make an award to a State educational agency that demonstrates, to the satisfaction of the Secretary, that such agency, through such agency’s programs and other Federal education programs, effectively provides for the education of limited English proficient children within the State.

(b) Payments

The amount paid to a State educational agency under subsection (a) of this section shall not exceed 5 percent of the total amount awarded to local educational agencies and entities within the State under subpart 1 of this part for the previous fiscal year, except that in no case shall the amount paid by the Secretary to any State educational agency under this subsection for any fiscal year be less than $100,000.

(c) Use of funds

(1) In general

A State educational agency shall use funds awarded under this section—
(A) to assist local educational agencies in the State with activities that—
(i) consist of program design, capacity building, assessment of student academic achievement, program evaluation, and development of data collection and accountability systems for limited English proficient children; and
(ii) are aligned with State reform efforts; and
(B) to collect data on the State’s limited English proficient populations and document the services available to all such populations.

(2) Training

The State educational agency may also use funds provided under this section for the training of State educational agency personnel in educational issues affecting limited English proficient children.

(3) Special rule

Recipients of funds under this section shall not restrict the provision of services under this section to federally funded programs.

(d) State consultation

A State educational agency receiving funds under this section shall consult with recipients of grants under this subpart and other individuals or organizations involved in the development or operation of programs serving limited English proficient children to ensure that such funds are used in a manner consistent with the requirements of this subpart.

(e) Applications

A State educational agency desiring to receive funds under this section shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require.

(f) Supplement, not supplant

Federal funds made available under this section for any fiscal year shall be used by the State educational agency to supplement and, to the extent practical, to increase the State funds that, in the absence of such Federal funds, would be made available for the purposes described in this section, and in no case to supplant such State funds.

(g) Report to the Secretary

A State educational agency receiving an award under this section shall provide for the annual submission of a summary report to the Secretary describing such State’s use of the funds made available through the award.

§ 6935. Instruction materials development

(a) In general

The Secretary may make grants for the development, publication, and dissemination of high-quality instruction materials—
(1) in Native American languages (including Native Hawaiian languages and the language of Native American Pacific Islanders), and the language of natives of the outlying areas, for which instruction materials are not readily available; and
(2) in other low-incidence languages in the United States for which instruction materials are not readily available.

(b) Priority

In making the grants, the Secretary shall give priority to applicants for the grants who propose—
(1) to develop instruction materials in languages indigenous to the United States or the outlying areas; and
(2) to develop and evaluate materials, in collaboration with entities carrying out activities assisted under subpart 1 of this part and this subpart, that are consistent with challenging State academic content and student academic achievement standards.

SUBPART 3—PROFESSIONAL DEVELOPMENT

§ 6951. Professional development grants

(a) Purpose

The purpose of this section is to provide assistance to prepare educators to improve educational services for limited English proficient children by—
(1) supporting professional development programs and activities to prepare teachers, pupil service personnel, administrators, and other educational personnel working in language instruction educational programs to provide effective services to limited English proficient children;
(2) incorporating curricula and resources concerning appropriate and effective instruction and assessment methodologies specific to limited English proficient children into pre-service and in-service professional development programs;
(3) upgrading the qualifications and skills of non-certified educational personnel, including
paraprofessionals, to enable such personnel to meet high professional standards for educating limited English proficient children; 
(4) improving the quality of professional development programs in schools or departments of education at institutions of higher education, for educational personnel serving, or preparing to serve, limited English proficient children; and 
(5) supporting the recruitment and training of prospective educational personnel to serve limited English proficient children by providing fellowships for undergraduate, graduate, doctoral, and post-doctoral study related to the instruction of such children.

(b) Authorization

(1) In general

The Secretary is authorized to award grants under this section to—
(A) State educational agencies; 
(B) local educational agencies; 
(C) institutions of higher education; or 
(D) consortia of one or more local educational agencies, State educational agencies, institutions of higher education, for-profit organizations, or nonprofit organizations.

(2) Duration

Each grant awarded under this section shall be awarded for a period of not more than 4 years.

(c) Authorized activities

Grants awarded under this section shall be used to conduct high-quality professional development programs and effective activities to improve the quality of instruction and services provided to limited English proficient children, including—
(1) implementing preservice and inservice professional development programs for teachers who serve limited English proficient children, administrators, and other educational personnel who are preparing to provide educational services for limited English proficient children, including professional development programs that assist limited English proficient children to attain English proficiency; 
(2) implementing school-based collaborative efforts among teachers to improve instruction in core academic subjects, especially reading, for limited English proficient children; 
(3) developing and implementing programs to assist beginning teachers who serve limited English proficient children with transitioning to the teaching profession, including programs that provide mentoring and team teaching with trained and experienced teachers; 
(4) implementing programs that support effective teacher use of education technologies to improve instruction and assessment; 
(5) developing curricular materials and assessments for teachers that are appropriate to the needs of limited English proficient children, and that are aligned with challenging State academic content and student academic achievement standards, including materials and assessments that ensure limited English proficient children attain English proficiency; 
(6) integrating and coordinating activities with entities carrying out other programs consistent with the purpose of this section and supported under this chapter, or other Acts as appropriate; 
(7) developing and implementing career ladder programs to upgrade the qualifications and skills of non-certified educational personnel working in, or preparing to work in, language instruction educational programs to enable such personnel to meet high professional standards, including standards for certification and licensure as teachers; 
(8) developing and implementing activities to help recruit and train secondary school students as teachers who serve limited English proficient children; 
(9) providing fellowships and assistance for costs related to enrollment in a course of study at an institution of higher education that addresses the instruction of limited English proficient children in such areas as teacher training, program administration, research, evaluation, and curriculum development, and for the support of dissertation research related to such study, except that any person receiving such a fellowship or assistance shall agree to—
(A) work in an activity related to improving the educational services for limited English proficient children authorized under this subpart, inclusive as a teacher that serves limited English proficient children, for a period of time equivalent to the period of time during which such person receives assistance under this paragraph; or 
(B) repay such assistance; and 
(10) carrying out such other activities as are consistent with the purpose of this section.

(d) Application

(1) In general

Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may require.

(2) Contents

Each application shall—
(A) describe the programs and activities proposed to be developed, implemented, and administered under the award; 
(B) describe how the applicant has consulted with, and assessed the needs of, public and private schools serving limited English proficient children to determine such schools' need for, and the design of, the program for which funds are sought; and 
(C) describe how the programs and activities to be carried out under the award will be used to ensure that limited English proficient children meet challenging State academic content and student academic achievement standards and attain English proficiency.

(3) Special rule

An eligible entity that proposes to conduct a master's-level or doctoral-level program with funds received under this section shall include in the entity's application an assurance that such program will include a training prac-
ticum in a local elementary school or secondary school program serving limited English proficient children.

(4) Outreach and technical assistance

The Secretary shall provide for outreach and technical assistance to institutions of higher education eligible for assistance under title III of the Higher Education Act of 1965 [20 U.S.C. 1051 et seq.], and institutions of higher education that are operated or funded by the Bureau of Indian Affairs, to facilitate the participation of such institutions in programs and activities under this section.

(5) Distribution rule

In making awards under this section, the Secretary shall ensure adequate representation of Hispanic-serving institutions that demonstrate competence and experience in carrying out the programs and activities authorized under this section and that are otherwise qualified.

(e) Priorities in awarding grants

(1) Grants to agencies

In awarding grants to State educational agencies and local educational agencies under this section, the Secretary shall give priority to agencies that propose programs and activities designed to implement professional development programs for teachers and educational personnel who are providing or preparing to provide educational services for limited English proficient children, including services provided through language instruction educational programs, that ensure such children attain English proficiency and meet challenging State academic content and student academic achievement standards.

(2) Grants to institutions of higher education

In awarding grants to institutions of higher education under this section, the Secretary shall give priority to institutions that propose programs and activities designed to recruit and upgrade the qualifications and skills of certified and non-certified educational personnel by offering degree programs that prepare beginning teachers to serve limited English proficient children.

(f) Program evaluations

Each recipient of an award under this section for a program or activity shall annually conduct an independent evaluation of the program or activity and submit to the Secretary a report containing such evaluation. Such report shall include information on—

(1) the program or activity conducted by the recipient to provide high-quality professional development to participants in such program or activity;
(2) the number of participants served through the program or activity, the number of participants who completed the requirements of the program or activity, and the number of participants who took positions in an instruction setting with limited English proficient children;
(3) the effectiveness of the program or activity in imparting the professional skills necessary for participants to achieve the objectives of the program or activity; and
(4) the teaching effectiveness of graduates of the program or activity or other participants who have completed the program or activity.


REFERENCES IN TEXT


PRIOR PROVISIONS


SUBPART 4—EMERGENCY IMMIGRANT EDUCATION PROGRAM

§ 6961. Purpose

The purpose of this subpart is to assist eligible local educational agencies that experience unexpectedly large increases in their student population due to immigration—

(1) to provide high-quality instruction to immigrant children and youth; and
(2) to help such children and youth—

(A) with their transition into American society; and

(B) meet the same challenging State academic content and student academic achievement standards as all children are expected to meet.


§ 6962. State administrative costs

For any fiscal year, a State educational agency may reserve not more than 1.5 percent (2 percent if the State educational agency distributes funds received under this subpart to local educational agencies on a competitive basis) of the amount allotted to such agency under section 6964 of this title to pay the costs of performing such agency’s administrative functions under this subpart.


§ 6963. Withholding

Whenever the Secretary, after providing reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to comply with a requirement of any...
provision of this subpart, the Secretary shall notify that agency that further payments will not be made to the agency under this subpart or, in the discretion of the Secretary, that the State educational agency shall not make further payments under this subpart to specified local educational agencies whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under this subpart, or payments by the State educational agency under this subpart shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.


§ 6964. State allotments

(a) Payments

The Secretary shall, in accordance with the provisions of this section, make payments to State educational agencies for each of the fiscal years 2002 through 2008 for the purpose set forth in section 6961 of this title.

(b) Allotments

(1) In general

Except as provided in subsections (c) and (d) of this section, of the amount appropriated for each fiscal year for this subpart, each State participating in the program assisted under this subpart shall receive an allotment equal to the proportion of the number of immigrant children and youth who are enrolled in public elementary schools or secondary schools under the jurisdiction of each local educational agency described in paragraph (2), and in nonpublic elementary schools or secondary schools within the district served by each such local educational agency within such State, relative to the total number of immigrant children and youth so enrolled in all the States participating in the program assisted under this subpart.

(2) Eligible local educational agencies

A local educational agency referred to in paragraph (1) is a local educational agency for which the sum of the number of immigrant children and youth who are enrolled in public elementary schools or secondary schools under the jurisdiction of such agency, and in nonpublic elementary schools or secondary schools within the district served by such agency, during the fiscal year for which the payments are to be made under this subpart, is equal to at least—

(A) 500; or

(B) 3 percent of the total number of children enrolled in such public or nonpublic schools during such fiscal year,

whichever is less.

(c) Determinations of number of children and youth

(1) In general

Determinations by the Secretary under this section for any period with respect to the number of immigrant children and youth shall be made on the basis of data or estimates provided to the Secretary by each State educational agency in accordance with criteria established by the Secretary, unless the Secretary determines, after notice and opportunity for a hearing to the affected State educational agency, that such data or estimates are clearly erroneous.

(2) Special rule

No such determination with respect to the number of immigrant children and youth shall operate because of an underestimate or overestimate to deprive any State educational agency of the allotment under this section that such State would otherwise have received had such determination been made on the basis of accurate data.

(d) Reallotment

(1) In general

Whenever the Secretary determines that any amount of a payment made to a State under this subpart for a fiscal year will not be used by such State for carrying out the purpose for which the payment was made, the Secretary shall make such amount available for carrying out such purpose to one or more other States to the extent the Secretary determines that such other States will be able to use such additional amount for carrying out such purpose.

(2) Fiscal year

Any amount made available to a State from any appropriation for a fiscal year in accordance with paragraph (1) shall, for purposes of this subpart, be regarded as part of such State’s payment (as determined under subsection (b) of this section) for such year, but shall remain available until the end of the succeeding fiscal year.

(e) Reservation of funds

(1) In general

Notwithstanding any other provision of this subpart, if the amount appropriated to carry out this subpart exceeds $39,800,000 for a fiscal year, a State educational agency may reserve not more than 20 percent of such agency’s payment under this subpart for such year to award grants, on a competitive basis, to local educational agencies within the State as follows:

(A) Agencies with immigrant children and youth

At least ½ of the funds reserved under this paragraph shall be made available to eligible local educational agencies (as described in subsection (b)(2) of this section) within the State with the highest numbers and percentages of immigrant children and youth.

(B) Agencies with a sudden influx of children and youth

Funds reserved under this paragraph and not made available under subparagraph (A) may be distributed to local educational agencies within the State that are experiencing a sudden influx of immigrant children and youth and that are otherwise not eligible for assistance under this subpart.
(2) Use of grant funds

Each local educational agency receiving a grant under paragraph (1) shall use such grant funds to carry out the activities described in section 6967 of this title.

(3) Information

Local educational agencies receiving funds under paragraph (1) with the highest number of immigrant children and youth may make information available on serving immigrant children and youth to local educational agencies in the State with sparse numbers of such children and youth.


§ 6965. State applications

(a) Submission

No State educational agency shall receive any payment under this subpart for any fiscal year unless such agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that the educational programs, services, and activities for which payments under this subpart are made will be administered by or under the supervision of the agency;

(2) provide assurances that payments under this subpart will be used for purposes set forth in sections 6961 and 6967 of this title, including a description of how local educational agencies receiving funds under this subpart will use such funds to meet such purposes and will coordinate with entities carrying out other programs and activities assisted under this chapter, and other Acts as appropriate;

(3) provide an assurance that local educational agencies receiving funds under this subpart will coordinate the use of such funds with entities carrying out programs and activities assisted under part A of subchapter I of this chapter;

(4) provide assurances that such payments, with the exception of payments reserved under section 6964(e) of this title, will be distributed among local educational agencies within that State on the basis of the number of immigrant children and youth counted with respect to each such local educational agency under section 6964(b)(1) of this title;

(5) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this subpart without first affording the local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

(6) provide for making such reports as the Secretary may reasonably require to perform the Secretary’s functions under this subpart;

(7) provide assurances—

(A) that to the extent consistent with the number of immigrant children and youth enrolled in the nonpublic elementary schools or secondary schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of such children and youth secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children and youth;

(B) that the control of funds provided under this subpart for any materials or equipment, or property repaired, remodeled, or constructed with those funds shall be in a public agency for the uses and purpose provided in this subpart, and a public agency shall administer such funds and property; and

(C) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency, or corporation who or which, in the provision of such services, is independent of such nonpublic elementary school or secondary school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds;

(8) provide that funds reserved under section 6964(e) of this title be awarded on a competitive basis based on merit and need in accordance with such section; and

(9) provide an assurance that the State educational agency and local educational agencies in the State receiving funds under this subpart will comply with the requirements of section 6320(b) of this title.

(b) Application review

(1) In general

The Secretary shall review all applications submitted pursuant to this section by State educational agencies.

(2) Approval

The Secretary shall approve any application submitted by a State educational agency that meets the requirements of this section.

(3) Disapproval

The Secretary shall disapprove any application submitted by a State educational agency that does not meet the requirements of this section, but shall not finally disapprove an application except after providing reasonable notice, technical assistance, and an opportunity for a hearing to the State educational agency.


§ 6966. Administrative provisions

(a) Notification of amount

The Secretary, not later than June 1 of each year, shall notify each State educational agency that has an application approved under section 6965 of this title of the amount of such agency’s allotment under section 6964 of this title for the succeeding year.

(b) Services to immigrant children and youth enrolled in nonpublic schools

If by reason of any provision of law a local educational agency is prohibited from providing...
educational services for immigrant children and youth enrolled in nonpublic elementary schools and secondary schools, as required by section 6956(a)(7) of this title, or if the Secretary determines that a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of such children and youth enrolled in such schools, the Secretary may waive such requirement and shall arrange for the provision of services, subject to the requirements of this subpart, to such children and youth. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with the provisions of subchapter I of this chapter.


§ 6967. Uses of funds

(a) Use of funds

Funds awarded under this subpart shall be used to pay for enhanced instructional opportunities for immigrant children and youth, which may include—

(1) family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children;

(2) support of personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth;

(3) tutorials, mentoring, and academic or career counseling for immigrant children and youth;

(4) identification and acquisition of curricular materials, educational software, and technologies;

(5) the provision of basic instruction services that are directly attributable to the presence in the school district of immigrant children and youth, including payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services; and

(6) such other activities, related to the purpose of this subpart, as the Secretary may authorize.

(b) Consortia

A local educational agency that receives a grant under this subpart may collaborate or form a consortium with one or more local educational agencies, institutions of higher education, and nonprofit organizations to carry out a program described in an application approved under this subpart.

(c) Subgrants

A local educational agency that receives a grant under this subpart may, with the approval of the Secretary, make a subgrant to, or enter into a contract with, an institution of higher education, a nonprofit organization, or a consortium of such institutions or organizations to carry out a program described in an application approved under this subpart, including a program to serve out-of-school youth.

(d) Construction

Nothing in this subpart shall be construed to prohibit a local educational agency from serving immigrant children and youth simultaneously with children and youth with similar educational needs, in the same educational settings where appropriate.


§ 6968. Reports

(a) Biennial report

Each State educational agency receiving funds under this subpart shall submit, once every 2 years, a report to the Secretary concerning the expenditure of funds by local educational agencies under this subpart. Each local educational agency receiving funds under this subpart shall submit to the State educational agency such information as may be necessary for such report.

(b) Report to Congress

The Secretary shall submit, once every 2 years, a report to the appropriate committees of Congress concerning programs assisted under this subpart.


PRIOR PROVISIONS


SUBPART 5—ADMINISTRATION

§ 6981. Release time

The Secretary shall allow entities carrying out professional development programs funded under this part to use funds provided under this part for professional release time to enable individuals to participate in programs assisted under this part.


§ 6982. Notification

A State educational agency, and when applicable, the State board for postsecondary edu-
coordination, shall be notified within 3 working days after the date an award under this part is made to an eligible entity within the State.


§ 6983. Coordination and reporting requirements

(a) Coordination with related programs

In order to maximize Federal efforts aimed at serving the educational needs of children and youth of limited English proficiency, the Secretary shall coordinate and ensure close cooperation with other programs serving language-minority and limited English proficient children that are administered by the Department and other agencies. The Secretary shall consult with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Agriculture, the Attorney General, and the heads of other relevant agencies to identify and eliminate barriers to appropriate coordination of programs that affect language-minority and limited English proficient children and their families. The Secretary shall provide for continuing consultation and collaboration, between the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students and relevant programs operated by the Department, including programs under this part and other programs under this chapter, in planning, contracts, providing joint technical assistance, providing joint field monitoring activities and in other relevant activities to ensure effective program coordination to provide high-quality educational opportunities to all language-minority and limited English proficient children.

(b) Data

The Secretary shall, to the extent feasible, ensure that all data collected by the Department shall include the collection and reporting of data on limited English proficient children.

(c) Publication of proposals

The Secretary shall publish and disseminate all requests for proposals for programs funded under this part.

(d) Report

The Director shall prepare and, not later than February 1 of every other year, shall submit to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate a report—

(1) on programs and activities carried out to serve limited English proficient children under this part, and the effectiveness of such programs and activities in improving the academic achievement and English proficiency of children who are limited English proficient;

(2) containing a critical synthesis of data reported by States under section 6934 of this title, when applicable;

(3) containing an estimate of the number of certified or licensed teachers working in language instruction educational programs and educating limited English proficient children, and an estimate of the number of such teachers that will be needed for the succeeding 5 fiscal years;

(4) containing the major findings of scientifically based research carried out under this part; and

(5) containing other information gathered from the reports submitted to the Secretary under this subchapter when applicable.


PRIOR PROVISIONS


Another prior section 7001 and prior sections 7002 to 7005 were repealed by Pub. L. 104–208, div. A, title I, §101(e) [title VII, §708(e)], Sept. 30, 1996, 110 Stat. 3009–233, 3009-312.


PART C—GENERAL PROVISIONS

§ 7011. Definitions

Except as otherwise provided, in this subchapter:

(1) Child

The term “child” means any individual aged 3 through 21.

(2) Community-based organization

The term “community-based organization” means a private nonprofit organization of demonstrated effectiveness, Indian tribe, or tribally sanctioned educational authority, that is representative of a community or significant segments of a community and that provides educational or related services to individuals in the community. Such term includes a Native Hawaiian or Native American Pacific Islander native language educational organization.

(3) Community college

The term “community college” means an institution of higher education as defined in section 1001 of this title that provides not less than a 2-year program that is acceptable for full credit toward a bachelor’s degree, including institutions receiving assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801 et seq.].

(4) Director

The term “Director” means the Director of the Office of English Language Acquisition, Language Enhancement, and Academic
§ 7011  TITLE 20—EDUCATION

Achievement for Limited English Proficient Students established under section 3420 of this title.

(5) Family education program

The term “family education program” means a language instruction educational program or special alternative instruction program that—

(A) is designed—

(i) to help limited English proficient adults and out-of-school youths achieve English proficiency; and

(ii) to provide instruction on how parents and family members can facilitate the educational achievement of their children;

(B) when feasible, uses instructional programs based on models developed under the Even Start Family Literacy Programs, which promote adult literacy and train parents to support the educational growth of their children, the Parents as Teachers Program, and the Home Instruction Program for Preschool Youngsters; and

(C) gives preference to participation by parents and immediate family members of children attending school.

(6) Immigrant children and youth

The term “immigrant children and youth” means individuals who—

(A) are aged 3 through 21;

(B) were not born in any State; and

(C) have not been attending one or more schools in any one or more States for more than 3 full academic years.

(7) Indian tribe

The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Native village or Regional Corporation or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) Language instruction educational program

The term “language instruction educational program” means an instruction course—

(A) in which a limited English proficient child is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards, as required by section 6311(b)(1) of this title; and

(B) that may make instructional use of both English and a child’s native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.

(9) Native American and Native American language

The terms “Native American” and “Native American language” shall have the meanings given such terms in section 2902 of title 25.

(10) Native Hawaiian or Native American Pacific Islander native language educational organization

The term “Native Hawaiian or Native American Pacific Islander native language educational organization” means a nonprofit organization with—

(A) a majority of its governing board and employees consisting of fluent speakers of the traditional Native American languages used in the organization’s educational programs; and

(B) not less than 5 years successful experience in providing educational services in traditional Native American languages.

(11) Native language

The term “native language”, when used with reference to an individual of limited English proficiency, means—

(A) the language normally used by such individual; or

(B) in the case of a child or youth, the language normally used by the parents of the child or youth.

(12) Paraprofessional

The term “paraprofessional” means an individual who is employed in a preschool, elementary school, or secondary school under the supervision of a certified or licensed teacher, including individuals employed in language instruction educational programs, special education, and migrant education.

(13) Specially qualified agency

The term “specially qualified agency” means an eligible entity, as defined in section 6871 of this title, in a State whose State educational agency—

(A) does not participate in a program under subpart 1 of part A of this subchapter for a fiscal year; or

(B) submits a plan (or any amendment to a plan) that the Secretary, after reasonable notice and opportunity for a hearing, determines does not satisfy the requirements of such subpart.

(14) State

The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(15) Tribally sanctioned educational authority

The term “tribally sanctioned educational authority” means—

(A) any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe; and

(B) any nonprofit institution or organization that is—

(i) chartered by the governing body of an Indian tribe to operate a school described in section 6822(a) of this title or otherwise to oversee the delivery of educational services to members of the tribe; and

(ii) approved by the Secretary for the purpose of carrying out programs under subpart 1 of part A of this subchapter for individuals served by a school described in section 6822(a) of this title.
§ 7012. Parental notification

(a) In general

Each eligible entity using funds provided under this subchapter to provide a language instruction educational program shall, not later than 30 days after the beginning of the school year, inform a parent or the parents of a limited English proficient child identified for participation in, or participating in, such program of—

(1) the reasons for the identification of their child as limited English proficient and in need of placement in a language instruction educational program;

(2) the child’s level of English proficiency, how such level was assessed, and the status of the child’s academic achievement;

(3) the method of instruction used in the program in which their child is, or will be, participating, and the methods of instruction used in other available programs, including how such programs differ in content, instruction goals, and use of English and a native language in instruction;

(4) how the program in which their child is, or will be participating will meet the educational strengths and needs of the child;

(5) how such program will specifically help their child learn English, and meet age appropriate academic achievement standards for grade promotion and graduation;

(6) the specific exit requirements for such program, the expected rate of transition from such program into classrooms that are not tailored for limited English proficient children, and the expected rate of graduation from secondary school for such program if funds under this subchapter are used for children in secondary schools;

(7) the case of a child with a disability, how such program meets the objectives of the individualized education program of the child; and

(8) information pertaining to parental rights that includes written guidance—

(A) detailing—

(i) the right that parents have to have their child immediately removed from such program upon their request; and

(ii) the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available; and

(B) assisting parents in selecting among various programs and methods of instruction, if more than one program or method is offered by the eligible entity.

(b) Separate notification

In addition to providing the information required to be provided under subsection (a) of this section, each eligible entity that is using funds provided under this subchapter to provide a language instruction educational program, and that has failed to make progress on the annual measurable achievement objectives described in section 6942 of this title for which part A of this subchapter is in effect, shall separately inform a parent or the parents of a child identified for participation in such program, or participating in such program, of such failure not later than 30 days after such failure occurs.

(c) Receipt of information

The information required to be provided under subsections (a) and (b) of this section to a parent shall be provided in an understandable and uniform format and, to the extent practicable, in a language that the parent can understand.

(d) Special rule applicable during school year

For a child who has not been identified for participation in a language instruction educational program prior to the beginning of the school year, the eligible entity shall carry out subsections (a) through (c) of this section with respect to the parents of the child within 2 weeks of the child being placed in such a program.

(e) Parental participation

(1) In general

Each eligible entity using funds provided under this subchapter to provide a language instruction educational program shall implement an effective means of outreach to parents of limited English proficient children to inform such parents of how they can—

(A) be involved in the education of their children; and

(B) be active participants in assisting their children—

(i) to learn English;

(ii) to achieve at high levels in core academic subjects; and

(iii) to meet the same challenging State academic content and student academic achievement standards as all children are expected to meet.

(2) Receipt of recommendations

The outreach described in paragraph (1) shall include holding, and sending notice of opportunities for, regular meetings for the
§ 7013

The Secretary shall establish and support the operation of a National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, which shall collect, analyze, synthesize, and disseminate information about language instruction educational programs for limited English proficient children, and related programs. The National Clearinghouse shall—

(1) be administered as an adjunct clearinghouse of the Educational Resources Information Center Clearinghouses system supported by the Institute of Education Sciences;

(2) coordinate activities with Federal data and information clearinghouses and entities operating Federal dissemination networks and systems;

(3) develop a system for improving the operation and effectiveness of federally funded language instruction educational programs;

(4) collect and disseminate information on—

(A) educational research and processes related to the education of limited English proficient children; and

(B) accountability systems that monitor the academic progress of limited English proficient children in language instruction educational programs, including information on academic content and English proficiency assessments for language instruction educational programs; and

(5) publish, on an annual basis, a list of grant recipients under this subchapter.


PART A—SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES

§ 7101. Short title

This part may be cited as the “Safe and Drug-Free Schools and Communities Act”.


§ 7102. Purpose

The purpose of this part is to support programs that prevent violence in and around schools; that prevent the illegal use of alcohol, tobacco, and drugs; that involve parents and communities; and that are coordinated with related Federal, State, school, and community efforts and resources to foster a safe and drug-free learning environment that supports student academic achievement, through the provision of Federal assistance to—

(1) States for grants to local educational agencies and consortia of such agencies to establish, operate, and improve local programs of school drug and violence prevention and early intervention;
§ 7103. Authorization of appropriations

There are authorized to be appropriated—

(1) $650,000,000 for fiscal year 2002, and such sums as may be necessary for each of the 5 succeeding fiscal years, for State grants under subpart 1 of this part; and

(2) such sums for fiscal year 2002, and for each of the 5 succeeding fiscal years, for national programs under subpart 2 of this part.

§ 7111. Subpart 1—State grants

§ 7111. Reservations and allotments

(a) Reservations

(1) In general

From the amount made available under section 7103(1) of this title to carry out this subpart for each fiscal year, the Secretary—

(A) shall reserve 1 percent or $4,750,000 (whichever is greater) of such amount for grants to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with the Secretary’s determination of their respective needs and to carry out programs described in this subpart;

(B) shall reserve 1 percent or $4,750,000 (whichever is greater) of such amount for the Secretary of the Interior to carry out programs described in this subpart for Indian youth; and

(C) shall reserve 0.2 percent of such amount for Native Hawaiians to be used under section 7117 of this title to carry out programs described in this subpart.

(b) State allotments

(1) In general

Except as provided in paragraph (2), the Secretary shall, for each fiscal year, allot among the States—

(A) one-half of the remainder not reserved under subsection (a) of this section according to the ratio between the school-aged population of each State and the school-aged population of all the States; and

(B) one-half of such remainder according to the ratio between the amount each State received under section 6334 of this title for the preceding year and the sum of such amounts received by all the States.

(2) Minimum

For any fiscal year, no State shall be allotted under this subsection an amount that is less than the greater of—

(A) one-half of 1 percent of the total amount allotted to all the States under this subpart; or

(B) the amount such State received for fiscal year 2001 under section 4111 as such section was in effect the day preceding January 8, 2002.¹

¹ See References in Text note below.
(3) Reallotment

(A) Reallotment for failure to apply

If any State does not apply for an allotment under this subpart for a fiscal year, the Secretary shall reallocate the amount of the State’s allotment to the remaining States in accordance with this section.

(B) Reallotment of unused funds

The Secretary may reallocate any amount of any allotment to a State if the Secretary determines that the State will be unable to use such amount within 2 years of such allotment. Such reallocations shall be made on the same basis as allotments are made under paragraph (1).

(4) Definition

In this section the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Limitation

Amounts appropriated under section 7103(c) of this title for a fiscal year may not be increased above the amounts appropriated under such section for the previous fiscal year unless the amounts appropriated under section 7103(c) of this title for the fiscal year involved are at least 10 percent greater that the amounts appropriated under such section 7103(c) of this title for the previous fiscal year.


REFERENCES IN TEXT

Section 3 of the No Child Left Behind Act of 2001, referred to in subsec. (a)(2)(B), is section 3 of Pub. L. 107–110, Jan. 8, 2002, 115 Stat. 1426, which is not classified to the Code. The reference probably should be to section 4 of the Act, which is set out as a note under section 6301 of this title, and which contains transition provisions.


PRIOR PROVISIONS


§7112. Reservation of State funds for safe and drug-free schools

(a) State reservation for the chief executive officer of a State

(1) In general

The chief executive officer of a State may reserve not more than 20 percent of the total amount allocated to a State under section 7111(b) of this title for each fiscal year to award competitive grants and contracts to local educational agencies, community-based organizations (including community anti-drug coalitions) other public entities and private organizations, and consortia thereof. Such grants and contracts shall be used to carry out the comprehensive State plan described in section 7113(a) of this title through programs or activities that complement and support activities of local educational agencies described in section 7115(b) of this title. Such officer shall award grants based on—

(A) the quality of the program or activity proposed; and

(B) how the program or activity meets the principles of effectiveness described in section 7115(a) of this title.

(2) Priority

In making such grants and contracts under this section, a chief executive officer shall give priority to programs and activities that prevent illegal drug use and violence for—

(A) children and youth who are not normally served by State educational agencies or local educational agencies; or

(B) populations that need special services or additional resources (such as youth in juvenile detention facilities, runaway or homeless children and youth, pregnant and parenting teenagers, and school dropouts).

(3) Special consideration

In awarding funds under paragraph (1), a chief executive officer shall give special consideration to grantees that pursue a comprehensive approach to drug and violence prevention that includes providing and incorporating mental health services related to drug and violence prevention in their program.

(4) Peer review

Grants or contracts awarded under this section shall be subject to a peer review process.

(5) Use of funds

Grants and contracts under this section shall be used to implement drug and violence prevention activities, including—

(A) activities that complement and support local educational agency activities under section 7115 of this title, including developing and implementing activities to prevent and reduce violence associated with prejudice and intolerance;

(B) dissemination of information about drug and violence prevention; and

(C) development and implementation of community-wide drug and violence prevention planning and organizing.

(6) Administrative costs

The chief executive officer of a State may use not more than 3 percent of the amount described in paragraph (1) for the administrative costs incurred in carrying out the duties of such officer under this section.

(b) In State distribution

(1) In general

A State educational agency shall distribute not less than 93 percent of the amount made available to the State under section 7111(b) of this title, less the amount reserved under subsection (a) of this section, to its local educational agencies.
(2) State administration costs
   (A) In general
   A State educational agency may use not more than 3 percent of the amount made available to the State under section 7111(b) of this title for each fiscal year less the amount reserved under subsection (a) of this section, for State educational agency administrative costs, including the implementation of the uniform management information and reporting system as provided for under subsection (c)(3) of this section.

(B) Additional amounts for the uniform management information system
   In the case of fiscal year 2002, a State educational agency may, in addition to amounts provided for in subparagraph (A), use 1 percent of the amount made available to the State educational agency under section 7111(b) of this title for each fiscal year less the amount reserved under subsection (a) of this section, for implementation of the uniform management information and reporting system as provided for under subsection (c)(3) of this section.

(c) State activities
   (1) In general
   A State educational agency may use not more than 5 percent of the amount made available to the State under section 7111(b) of this title for each fiscal year less the amount reserved under subsection (a) of this section, for activities described in this subsection.

   (2) Activities
   A State educational agency shall use the amounts described in paragraph (1), either directly, or through grants and contracts, to plan, develop, and implement capacity building, technical assistance and training, evaluation, program improvement services, and coordination activities for local educational agencies, community-based organizations, and other public and private entities. Such uses—
   (A) shall meet the principles of effectiveness described in section 7115(a) of this title;
   (B) shall complement and support local uses of funds under section 7115(b) of this title;
   (C) shall be in accordance with the purposes of this part; and
   (D) may include, among others activities—
      (i) identification, development, evaluation, and dissemination of drug and violence prevention strategies, programs, activities, and other information;
      (ii) training, technical assistance, and demonstration projects to address violence that is associated with prejudice and intolerance; and
      (iii) financial assistance to enhance drug and violence prevention resources available in areas that serve large numbers of low-income children, are sparsely populated, or have other special needs.

   (3) Uniform management information and reporting system
   (A) Information and statistics
   A State shall establish a uniform management information and reporting system.

   (B) Uses of funds
   A State may use funds described in subparagraphs (A) and (B) of subsection (b)(2) of this section, either directly or through grants and contracts, to implement the uniform management information and reporting system described in subparagraph (A), for the collection of information on—
      (i) truancy rates;
      (ii) the frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions in elementary schools and secondary schools in the State;
      (iii) the types of curricula, programs, and services provided by the chief executive officer, the State educational agency, local educational agencies, and other recipients of funds under this subpart; and
      (iv) the incidence and prevalence, age of onset, perception of health risk, and perception of social disapproval of drug use and violence by youth in schools and communities.

   (C) Compilation of statistics
   In compiling the statistics required for the uniform management information and reporting system, the offenses described in subparagraph (B)(ii) shall be defined pursuant to the State’s criminal code, but shall not identify victims of crimes or persons accused of crimes. The collected data shall include incident reports by school officials, anonymous student surveys, and anonymous teacher surveys.

   (D) Reporting
   The information described under subparagraph (B) shall be reported to the public and the data referenced in clauses (i) and (ii) of such subparagraph shall be reported to the State on a school-by-school basis.

   (E) Limitation
   Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices with respect to crimes committed on school property or school security.
§ 7113

Title 20—Education

§ 7113 - Communities through programs and activities that complement and support activities of local educational agencies under section 7115(b) of this title, that comply with the principles of effectiveness under section 7115(a) of this title, and that otherwise are in accordance with the purpose of this part;

(2) describes how activities funded under this subpart will foster a safe and drug-free learning environment that supports academic achievement;

(3) provides an assurance that the application was developed in consultation and coordination with appropriate State officials and others, including the chief executive officer, the chief State school officer, the head of the State alcohol and drug abuse agency, the heads of the State health and mental health agencies, the head of the State criminal justice planning agency, the head of the State child welfare agency, the head of the State board of education, or their designees, and representatives of parents, students, and community-based organizations;

(4) describes how the State educational agency will coordinate such agency's activities under this subpart with the chief executive officer's drug and violence prevention programs under this subpart and with the prevention efforts of other State agencies and other programs, as appropriate, in accordance with the provisions in section 7846 of this title;

(5) provides an assurance that funds reserved under section 7112(a) of this title will not duplicate the efforts of the State educational agency and local educational agencies with regard to the provision of school-based drug and violence prevention activities and that those funds will be used to serve populations not normally served by the State educational agencies and local educational agencies and populations that need special services, such as school dropouts, suspended and expelled students, youth in detention centers, runaway or homeless children and youth, and pregnant and parenting youth;

(6) provides an assurance that the State will cooperate with, and assist, the Secretary in conducting data collection as required by section 7132 of this title;

(7) provides an assurance that the local educational agencies in the State will comply with the provisions of section 7881 of this title pertaining to the participation of private school children and teachers in the programs and activities under this subpart;

(8) provides an assurance that funds under this subpart will be used to increase the level of State, local, and other non-Federal funds that would, in the absence of funds under this subpart, be made available for programs and activities authorized under this subpart, and in no case supplant such State, local, and other non-Federal funds;

(9) contains the results of a needs assessment conducted by the State for drug and violence prevention programs, which shall be based on ongoing State evaluation activities, including data on—

(A) the incidence and prevalence of illegal drug use and violence among youth in schools and communities, including the age of onset, the perception of health risks, and the perception of social disapproval among such youth;

(B) the prevalence of risk factors, including high or increasing rates of reported cases of child abuse or domestic violence;

(C) the prevalence of protective factors, buffers, or assets; and

(D) other variables in the school and community identified through scientifically based research;

(10) provides a statement of the State’s performance measures for drug and violence prevention programs and activities to be funded under this subpart that will be focused on student behavior and attitudes, derived from the needs assessment described in paragraph (9), and be developed in consultation between the State and local officials, and that consist of—

(A) performance indicators for drug and violence prevention programs and activities; and

(B) levels of performance for each performance indicator;

(11) describes the procedures the State will use for assessing and publicly reporting progress toward meeting the performance measures described in paragraph (10);

(12) provides an assurance that the State application will be available for public review after submission of the application;

(13) describes the special outreach activities that will be carried out by the State educational agency and the chief executive officer of the State to maximize the participation of community-based organizations of demonstrated effectiveness that provide services such as mentoring programs in low-income communities;

(14) describes how funds will be used by the State educational agency and the chief executive officer of the State to support, develop, and implement community-wide comprehensive drug and violence prevention planning and organizing activities;

(15) describes how input from parents will be sought regarding the use of funds by the State educational agency and the chief executive officer of the State;

(16) describes how the State educational agency will review applications from local educational agencies, including how the agency will receive input from parents in such review;

(17) describes how the State educational agency will monitor the implementation of activities under this subpart, and provide technical assistance for local educational agencies, community-based organizations, other public entities, and private organizations;

(18) describes how the chief executive officer of the State will award funds under section 7112(a) of this title and implement a plan for monitoring the performance of, and providing technical assistance to, recipients of such funds; and

(19) includes any other information the Secretary may require.
(b) Interim application

(1) Authority

Notwithstanding any other provision of this section, a State may submit for fiscal year 2002 a 1-year interim application and plan for the use of funds under this subpart that is consistent with the requirements of this section and contains such information as the Secretary may specify in regulations.

(2) Purpose

The purpose of such interim application and plan shall be to afford the State the opportunity to fully develop and review such State’s application and comprehensive plan otherwise required by this section.

(3) Exception

A State may not receive a grant under this subpart for a fiscal year after fiscal year 2002 unless the Secretary has approved such State’s application and comprehensive plan as described in subsection (a) of this section.

(c) Approval process

(1) Deemed approval

An application submitted by a State pursuant to this section shall undergo peer review by the Secretary and shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the application, that the application is not in compliance with this subpart.

(2) Disapproval

The Secretary shall not finally disapprove the application, except after giving the State educational agency and the chief executive officer of the State notice and an opportunity for a hearing.

(3) Notification

If the Secretary finds that the application is not in compliance, in whole or in part, with this subpart, the Secretary shall—

(A) give the State educational agency and the chief executive officer of the State notice and an opportunity for a hearing; and

(B) notify the State educational agency and the chief executive officer of the State of the finding of noncompliance, and in such notification, shall—

(i) cite the specific provisions in the application that are not in compliance; and

(ii) request additional information, only as to the noncompliant provisions, needed to make the application compliant.

(4) Response

If the State educational agency and the chief executive officer of the State respond to the Secretary’s notification described in paragraph (3)(B) during the 45-day period beginning on the date on which the agency received the notification, such application shall be deemed to be disapproved.

If the Secretary finds that the application is not in compliance, in whole or in part, with the requested information described in subsection (a) of this section, that the application is not in compliance with this subpart.

The Secretary shall not finally disapprove the application, except after giving the State educational agency and the chief executive officer of the State notice and an opportunity for a hearing; and

In any fiscal year, a local educational agency, may retain for obligation in the succeeding fiscal year—

(i) an amount equal to not more than 25 percent of the allocation it received under part A of subchapter I of this chapter for the preceding fiscal year.

(2) Administrative costs

The Secretary shall not disapprove the application, except after giving the State educational agency any funds from such allocation that remain unobligated; and

(ii) the State educational agency shall reallocate any such amount to local educational agencies that have submitted plans for using such amount for programs or activities on a timely basis.

(B) Carryover

In any fiscal year, a local educational agency, may retain for obligation in the succeeding fiscal year—

(i) an amount equal to not more than 25 percent of the allocation it received under this subpart for such fiscal year; or

(ii) upon a demonstration of good cause by such agency and approval by the State...
(c) Development

(1) Consultation

(A) In general

A local educational agency shall develop its application through timely and meaningful consultation with State and local government representatives, representatives of schools to be served (including private schools), teachers and other staff, parents, students, community-based organizations, and others with relevant and demonstrated expertise in drug and violence prevention activities (such as medical, mental health, and law enforcement professionals).

(B) Continued consultation

On an ongoing basis, the local educational agency shall consult with such representatives and organizations in order to seek advice regarding how best to coordinate such agency’s activities under this subpart with other related strategies, programs, and activities being conducted in the community.

(2) Design and development

To ensure timely and meaningful consultation under paragraph (1), a local educational agency at the initial stages of design and development of a program or activity shall consult, in accordance with this subsection, with appropriate entities and persons on issues regarding the design and development of the program or activity, including efforts to meet the principles of effectiveness described in section 7115(a) of this title.

(d) Contents of applications

An application submitted by a local educational agency under this section shall contain—

(1) an assurance that the activities or programs to be funded comply with the principles of effectiveness described in section 7115(a) of this title and foster a safe and drug-free learning environment that supports academic achievement;

(2) a detailed explanation of the local educational agency’s comprehensive plan for drug and violence prevention, including a description of—

(A) how the plan will be coordinated with programs under this chapter, and other Federal, State, and local programs for drug and violence prevention, in accordance with section 7646 of this title;

(B) the local educational agency’s performance measures for drug and violence prevention programs and activities, that shall consist of—

(i) performance indicators for drug and violence prevention programs and activities including—

(I) specific reductions in the prevalence of identified risk factors; and

(II) specific increases in the prevalence of protective factors, buffers, or assets if any have been identified; and

(ii) levels of performance for each performance indicator;

(C) how such agency will assess and publicly report progress toward attaining its performance measures;

(D) the drug and violence prevention activity or program to be funded, including how the activity or program will meet the principles of effectiveness described in section 7115(a) of this title, and the means of evaluating such activity or program; and

(E) how the services will be targeted to schools and students with the greatest need;

(3) a description for how the results of the evaluations of the effectiveness of the program will be used to refine, improve, and strengthen the program;

(4) an assurance that funds under this subpart will be used to increase the level of State, local, and other non-Federal funds that would, in the absence of funds under this subpart, be made available for programs and activities authorized under this subpart, and in no case supplant such State, local, and other non-Federal funds;

(5) a description of the mechanisms used to provide effective notice to the community of an intention to submit an application under this subpart;

(6) an assurance that drug and violence prevention programs supported under this subpart convey a clear and consistent message that acts of violence and the illegal use of drugs are wrong and harmful;

(7) an assurance that the applicant has, or the schools to be served have, a plan for keeping schools safe and drug-free that includes—

(A) appropriate and effective school discipline policies that prohibit disorderly conduct, the illegal possession of weapons, and the illegal use, possession, distribution, and sale of tobacco, alcohol, and other drugs by students;

(B) security procedures at school and while students are on the way to and from school;

(C) prevention activities that are designed to create and maintain safe, disciplined, and drug-free environments;

(D) a crisis management plan for responding to violent or traumatic incidents on school grounds; and

(E) a code of conduct policy for all students that clearly states the responsibilities...
of students, teachers, and administrators in maintaining a classroom environment that—
(i) allows a teacher to communicate effectively with all students in the class;
(ii) allows all students in the class to learn;
(iii) has consequences that are fair, and developmentally appropriate;
(iv) considers the student and the circumstances of the situation; and
(v) is enforced accordingly;
(8) an assurance that the application and any waiver request under section 7115(a)(3) of this title will be available for public review after submission of the application; and
(9) such other assurances, goals, and objectives identified through scientifically based research that the State may reasonably require in accordance with the purpose of this part.

(e) Review of application

(1) In general
In reviewing local applications under this section, a State educational agency shall use a peer review process or other methods of assuring the quality of such applications.

(2) Considerations
In determining whether to approve the application of a local educational agency under this section, a State educational agency shall consider the quality of application and the extent to which the application meets the principles of effectiveness described in section 7115(a) of this title.

(f) Approval process

(1) Deemed approval
An application submitted by a local educational agency pursuant to this section shall be deemed to be approved by the State educational agency unless the State educational agency makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the State educational agency received the application, that the application is not in compliance with this part.

(2) Disapproval
The State educational agency shall not finally disapprove the application, except after giving the local educational agency notice and opportunity for a hearing.

(3) Notification
If the State educational agency finds that the application is not in compliance, in whole or in part, with this subpart, the State educational agency shall—
(A) give the local educational agency notice and an opportunity for a hearing; and
(B) notify the local educational agency of the finding of noncompliance, and in such notification, shall—
(i) cite the specific provisions in the application that are not in compliance; and
(ii) request additional information, only as to the noncompliant provisions, needed to make the application compliant.

(4) Response
If the local educational agency responds to the State educational agency's notification described in paragraph (3) during the 45-day period beginning on the date on which the agency received the notification, and resubmits the application with the requested information described in paragraph (3), the State educational agency shall approve or disapprove such application prior to the later of—
(A) the expiration of the 45-day period beginning on the date on which the application is resubmitted; or
(B) the expiration of the 120-day period described in paragraph (1).

(5) Failure to respond
If the local educational agency does not respond to the State educational agency's notification described in paragraph (3) during the 45-day period beginning on the date on which the agency received the notification, such application shall be deemed to be disapproved.

§ 7115. Authorized activities

(a) Principles of effectiveness

(1) In general
For a program or activity developed pursuant to this subpart to meet the principles of effectiveness, such program or activity shall—
(A) be based on an assessment of objective data regarding the incidence of violence and illegal drug use in the elementary schools and secondary schools and communities to be served, including an objective analysis of the current conditions and consequences regarding violence and illegal drug use, including delinquency and serious discipline problems, among students who attend such schools (including private school students who participate in the drug and violence prevention program) that is based on ongoing local assessment or evaluation activities;
(B) be based on an established set of performance measures aimed at ensuring that the elementary schools and secondary schools and communities to be served by the program have a safe, orderly, and drug-free learning environment;
(C) be based on scientifically based research that provides evidence that the program to be used will reduce violence and illegal drug use;
(D) be based on an analysis of the data reasonably available at the time, of the prevalence of risk factors, including high or increasing rates of reported cases of child abuse and domestic violence; protective factors, buffers, assets; or other variables in schools and communities in the State identified through scientifically based research; and
(E) include meaningful and ongoing consultation with and input from parents in the
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development of the application and administration of the program or activity.

(2) Periodic evaluation

(A) Requirement

The program or activity shall undergo a periodic evaluation to assess its progress toward reducing violence and illegal drug use in schools to be served based on performance measures described in section 7114(d)(2)(B) of this title.

(B) Use of results

The results shall be used to refine, improve, and strengthen the program, and to refine the performance measures, and shall also be made available to the public upon request, with public notice of such availability provided.

(3) Waiver

A local educational agency may apply to the State for a waiver of the requirement of subsection (a)(1)(C) of this section to allow innovative activities or programs that demonstrate substantial likelihood of success.

(b) Local educational agency activities

(1) Program requirements

A local educational agency shall use funds made available under section 7114 of this title to develop, implement, and evaluate comprehensive programs and activities, which are coordinated with other school and community-based services and programs, that shall—

(A) foster a safe and drug-free learning environment that supports academic achievement;

(B) be consistent with the principles of effectiveness described in subsection (a)(1) of this section;

(C) be designed to—

(i) prevent or reduce violence; the use, possession and distribution of illegal drugs; and delinquency; and

(ii) create a well disciplined environment conducive to learning, which includes consultation between teachers, principals, and other school personnel to identify early warning signs of drug use and violence and to provide behavioral interventions as part of classroom management efforts; and

(D) include activities to—

(i) promote the involvement of parents in the activity or program;

(ii) promote coordination with community groups and coalitions, and government agencies; and

(iii) distribute information about the local educational agency’s needs, goals, and programs under this subpart.

(2) Authorized activities

Each local educational agency, or consortium of such agencies, that receives a subgrant under this subpart may use such funds to carry out activities that comply with the principles of effectiveness described in subsection (a) of this section, such as the following:

(A) Age appropriate and developmentally based activities that—

(i) address the consequences of violence and the illegal use of drugs, as appropriate;

(ii) promote a sense of individual responsibility;

(iii) teach students that most people do not illegally use drugs;

(iv) teach students to recognize social and peer pressure to use drugs illegally and the skills for resisting illegal drug use;

(v) teach students about the dangers of emerging drugs;

(vi) engage students in the learning process; and

(vii) incorporate activities in secondary schools that reinforce prevention activities implemented in elementary schools.

(B) Activities that involve families, community sectors (which may include appropriately trained seniors), and a variety of drug and violence prevention providers in setting clear expectations against violence and illegal use of drugs and appropriate consequences for violence and illegal use of drugs;

(C) Dissemination of drug and violence prevention information to schools and the community.

(D) Professional development and training for, and involvement of, school personnel, pupil services personnel, parents, and interested community members in prevention, education, early identification and intervention, mentoring, or rehabilitation referral, as related to drug and violence prevention.

(E) Drug and violence prevention activities that may include the following:

(i) Community-wide planning and organizing activities to reduce violence and illegal drug use, which may include gang activity prevention.

(ii) Acquiring and installing metal detectors, electronic locks, surveillance cameras, or other related equipment and technologies.

(iii) Reporting criminal offenses committed on school property.

(iv) Developing and implementing comprehensive school security plans or obtaining technical assistance concerning such plans, which may include obtaining a security assessment or assistance from the School Security and Technology Resource Center at the Sandia National Laboratory located in Albuquerque, New Mexico.

(v) Supporting safe zones of passage activities that ensure that students travel safely to and from school, which may include bicycle and pedestrian safety programs.

(vi) The hiring and mandatory training, based on scientific research, of school security personnel (including school resource officers) who interact with students in support of youth drug and violence prevention activities under this part that are implemented in the school.

(vii) Expanded and improved school-based mental health services related to illegal drug use and violence, including early identification of violence and illegal drug use, assessment, and direct or group
counseling services provided to students, parents, families, and school personnel by qualified school-based mental health service providers.

(viii) Conflict resolution programs, including peer mediation programs that educate and train peer mediators and a designated faculty supervisor, and youth anti-crime and anti-drug councils and activities.

(ix) Alternative education programs or services for violent or drug abusing students that reduce the need for suspension or expulsion or that serve students who have been suspended or expelled from the regular educational settings, including programs or services to assist students to make continued progress toward meeting the State academic achievement standards and to reenter the regular education setting.

(x) Counseling, mentoring, referral services, and other student assistance practices and programs, including assistance provided by qualified school-based mental health services providers and the training of teachers by school-based mental health services providers in appropriate identification and intervention techniques for students at risk of violent behavior and illegal use of drugs.

(xi) Programs that encourage students to seek advice from, and to confide in, a trusted adult regarding concerns about violence and illegal drug use.

(xii) Drug and violence prevention activities designed to reduce truancy.

(xiii) Age-appropriate, developmentally-based violence prevention and education programs that address victimization associated with prejudice and intolerance, and that include activities designed to help students develop a sense of individual responsibility and respect for the rights of others, and to resolve conflicts without violence.

(xiv) Consistent with the fourth amendment to the Constitution of the United States, the testing of a student for illegal drug use or the inspecting of a student’s locker for weapons or illegal drugs or drug paraphernalia, including at the request of or with the consent of a parent or legal guardian of the student, if the local educational agency elects to so test or inspect.

(xv) Emergency intervention services following traumatic crisis events, such as a shooting, major accident, or a drug-related incident that have disrupted the learning environment.

(xvi) Establishing or implementing a system for transferring suspension and expulsion records, consistent with section 1232g of this title, by a local educational agency to any public or private elementary school or secondary school.

(xvii) Developing and implementing character education programs, as a component of drug and violence prevention programs, that take into account the views of parents of the students for whom the program is intended and such students, such as a program described in subpart 3 of part D of subchapter V of this chapter.

(xviii) Establishing and maintaining a school safety hotline.

(xix) Community service, including community service performed by expelled students, and service-learning projects.

(xx) Conducting a nationwide background check of each local educational agency employee, regardless of when hired, and prospective employees for the purpose of determining whether the employee or prospective employee has been convicted of a crime that bears upon the employee’s fitness—

(I) to be responsible for the safety or well-being of children;

(II) to serve in the particular capacity in which the employee or prospective employee is or will be employed; or

(III) to otherwise be employed by the local educational agency.

(xxi) Programs to train school personnel to identify warning signs of youth suicide and to create an action plan to help youth at risk of suicide.

(xxii) Programs that respond to the needs of students who are faced with domestic violence or child abuse.

(F) The evaluation of any of the activities authorized under this subsection and the collection of objective data used to assess program needs, program implementation, or program success in achieving program goals and objectives.

(c) Limitation

(1) In general

Except as provided in paragraph (2), not more than 40 percent of the funds available to a local educational agency under this subpart may be used to carry out the activities described in clauses (ii) through (vi) of subsection (b)(2)(E) of this section, of which not more than 50 percent of such amount may be used to carry out the activities described in clauses (ii) through (v) of such subsection.

(2) Exception

A local educational agency may use funds under this subpart for activities described in clauses (ii) through (v) of subsection (b)(2)(E) of this section only if funding for these activities is not received from other Federal agencies.

(d) Rule of construction

Nothing in this section shall be construed to prohibit the use of funds under this subpart by any local educational agency or school for the establishment or implementation of a school uniform policy if such policy is part of the overall comprehensive drug and violence prevention plan of the State involved and is supported by the State’s needs assessment and other scientifically based research information.

§ 7116. Reporting

(a) State report

(1) In general

By December 1, 2003, and every 2 years thereafter, the chief executive officer of the State, in cooperation with the State educational agency, shall submit to the Secretary a report—

(A) on the implementation and outcomes of State programs under section 7112(a)(1) of this title and section 7112(c) of this title and local educational agency programs under section 7115(b) of this title, as well as an assessment of their effectiveness;

(B) on the State’s progress toward attaining its performance measures for drug and violence prevention under section 7115(a)(10) of this title; and

(C) on the State’s efforts to inform parents of, and include parents in, violence and drug prevention efforts.

(2) Special rule

The report required by this subsection shall be—

(A) in the form specified by the Secretary;

(B) based on the State’s ongoing evaluation activities, and shall include data on the incidence and prevalence, age of onset, perception of health risk, and perception of social disapproval of drug use and violence by youth in schools and communities; and

(C) made readily available to the public.

(b) Local educational agency report

(1) In general

Each local educational agency receiving funds under this subpart shall submit to the State educational agency such information that the State requires to complete the State report required by subsection (a) of this section, including a description of how parents were informed of, and participated in, violence and drug prevention efforts.

(2) Availability

Information under paragraph (1) shall be made readily available to the public.

(3) Provision of documentation

Not later than January 1 of each year that a State is required to report under subsection (a) of this section, the Secretary shall provide to the State educational agency all of the necessary documentation required for compliance with this section.

§ 7117. Programs for Native Hawaiians

(a) General authority

From the funds made available pursuant to section 7111(a)(1)(C) of this title to carry out this section, the Secretary shall make grants to or enter into cooperative agreements or contracts with organizations primarily serving and representing Native Hawaiians for the benefit of Native Hawaiians to plan, conduct, and administer programs, or portions thereof, that are authorized by and consistent with the provisions of this subpart.

(b) Definition of Native Hawaiian

For the purposes of this section, the term “Native Hawaiian” means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

§ 7131. Federal activities

(a) Program authorized

From funds made available pursuant to section 7103(2) of this title, the Secretary, in consultation with the Secretary of Health and Human Services, the Director of the Office of National Drug Control Policy, and the Attorney General, shall carry out programs to prevent the illegal use of drugs and violence among, and promote safety and discipline for, students. The Secretary shall carry out such programs directly, or through grants, contracts, or cooperative agreements with public and private entities and individuals, or through agreements with other Federal agencies, and shall coordinate such programs with other appropriate Federal activities. Such programs may include—

(1) the development and demonstration of innovative strategies for the training of school personnel, parents, and members of the community for drug and violence prevention activities based on State and local needs;

(2) the development, demonstration, scientifically based evaluation, and dissemination of innovative and high quality drug and violence prevention programs and activities, based on State and local needs, which may include—

(A) alternative education models, either established within a school or separate and apart from an existing school, that are designed to promote drug and violence preven-
tion, reduce disruptive behavior, reduce the need for repeat suspensions and expulsions, enable students to meet challenging State academic standards, and enable students to return to the regular classroom as soon as possible;

(B) community service and service-learning projects, designed to rebuild safe and healthy neighborhoods and increase students' sense of individual responsibility;

(C) video-based projects developed by noncommercial telecommunication entities that provide young people with models for conflict resolution and responsible decision-making; and

(D) child abuse education and prevention programs for elementary and secondary students;

(3) the provision of information on drug abuse education and prevention to the Secretary of Health and Human Services for dissemination;

(4) the provision of information on violence prevention and education and school safety to the Department of Justice for dissemination;

(5) technical assistance to chief executive officers, State agencies, local educational agencies, and other recipients of funding under this part to build capacity to develop and implement high-quality, effective drug and violence prevention programs consistent with the principles of effectiveness in section 7115(a) of this title;

(6) assistance to school systems that have particularly severe drug and violence problems, including hiring drug prevention and school safety coordinators, or assistance to support appropriate response efforts to crisis situations;

(7) the development of education and training programs, curricula, instructional materials, and professional training and development for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities most directly affected by hate crimes;

(8) activities in communities designated as empowerment zones or enterprise communities that will connect schools to community-wide efforts to reduce drug and violence problems; and

(9) other activities in accordance with the purpose of this part, based on State and local needs.

(b) Peer review

The Secretary shall use a peer review process in reviewing applications for funds under this section.


PRIOR PROVISIONS


§ 7132. Impact evaluation

(a) Biennial evaluation

The Secretary, in consultation with the Safe and Drug-Free Schools and Communities Advisory Committee described in section 7134 of this title, shall conduct an independent biennial evaluation of the impact of programs assisted under this subpart and of other recent and new initiatives to combat violence and illegal drug use in schools. The evaluation shall report on whether community and local educational agency programs funded under this subpart—

(1) comply with the principles of effectiveness described in section 7115(a) of this title;

(2) have appreciably reduced the level of illegal drug, alcohol, and tobacco use, and school violence and the illegal presence of weapons at schools; and

(3) have conducted effective parent involvement and training programs.

(b) Data collection

The National Center for Education Statistics shall collect data, that is subject to independent review, to determine the incidence and prevalence of illegal drug use and violence in elementary schools and secondary schools in the States. The collected data shall include incident reports by schools officials, anonymous student surveys, and anonymous teacher surveys.

(c) Biennial report

Not later than January 1, 2003, and every 2 years thereafter, the Secretary shall submit to the President and Congress a report on the findings of the evaluation conducted under subsection (a) of this section together with the data collected under subsection (b) of this section and data available from other sources on the incidence and prevalence, age of onset, perception of health risk, and perception of social disapproval of drug use and violence in elementary schools and secondary schools in the States. The Secretary shall include data submitted by the States pursuant to subsection 7116(a) of this title.


PRIOR PROVISIONS


§ 7133. Hate crime prevention

(a) Grant authorization

From funds made available to carry out this subpart under section 7103(2) of this title the Secretary may make grants to local educational agencies and community-based organizations for the purpose of providing assistance to localities most directly affected by hate crimes.

(b) Use of funds

(1) Program development

Grants under this section may be used to improve elementary and secondary educational efforts, including—

(A) development of education and training programs designed to prevent and to reduce the incidence of crimes and conflicts motivated by hate;
(B) development of curricula for the purpose of improving conflict or dispute resolution skills of students, teachers, and administrators;
(C) development and acquisition of equipment and instructional materials to meet the needs of, or otherwise be part of, hate crime or conflict programs; and
(D) professional training and development for teachers and administrators on the causes, effects, and resolutions of hate crimes or hate-based conflicts.

(2) Application
In order to be eligible to receive a grant under this section for any fiscal year, a local educational agency, or a local educational agency in conjunction with a community-based organization, shall submit an application to the Secretary in such form and containing such information as the Secretary may reasonably require.

(3) Requirements
Each application under paragraph (2) shall include—
(A) a request for funds for the purpose described in this section;
(B) a description of the schools and communities to be served by the grants; and
(C) assurances that Federal funds received under this section shall be used to supplement, and not supplant, non-Federal funds.

(4) Comprehensive plan
Each application shall include a comprehensive plan that contains—
(A) a description of the hate crime or conflict problems within the schools or the community targeted for assistance;
(B) a description of the program to be developed or augmented by such Federal and matching funds;
(C) assurances that such program or activity shall be administered by or under the supervision of the applicant;
(D) procedures for the proper and efficient administration of such program; and
(E) fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this section.

(c) Award of grants
(1) Selection of recipients
The Secretary shall consider the incidence of crimes and conflicts motivated by bias in the targeted schools and communities in awarding grants under this section.

(2) Geographic distribution
The Secretary shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

(3) Dissemination of information
The Secretary shall attempt, to the extent practicable, to make available information regarding successful hate crime prevention programs, including programs established or expanded with grants under this section.

(d) Reports
The Secretary shall submit to Congress a report every 2 years that shall contain a detailed statement regarding grants and awards, activities of grant recipients, and an evaluation of programs established under this section.


Prior Provisions

§ 7134. Safe and Drug-Free Schools and Communities Advisory Committee

(a) Establishment
(1) In general
There is hereby established an advisory committee to be known as the “Safe and Drug Free Schools and Communities Advisory Committee” (referred to in this section as the “Advisory Committee”) to—
(A) consult with the Secretary under subsection (b) of this section;
(B) coordinate Federal school- and community-based substance abuse and violence prevention programs and reduce duplicative research or services;
(C) develop core data sets and evaluation protocols for safe and drug-free school- and community-based programs;
(D) provide technical assistance and training for safe and drug-free school- and community-based programs;
(E) develop research for the diffusion of scientifically based research to safe and drug-free school- and community-based programs; and
(F) review other regulations and standards developed under this subchapter.

(2) Composition
The Advisory Committee shall be composed of representatives from—
(A) the Department of Education;
(B) the Centers for Disease Control and Prevention;
(C) the National Institute on Drug Abuse;
(D) the National Institute on Alcoholism and Alcohol Abuse;
(E) the Center for Substance Abuse Prevention;
(F) the Center for Mental Health Services;
(G) the Office of Juvenile Justice and Delinquency Prevention;
(H) the Office of National Drug Control Policy;
(I) State and local governments, including education agencies; and
(J) researchers and expert practitioners.

(3) Consultation
In carrying out its duties under this section, the Advisory Committee shall annually consult with interested State and local coordinators of school- and community-based substance abuse and violence prevention programs and other interested groups.

(b) Programs
(1) In general
From amounts made available under section 7103(2) of this title to carry out this subpart,
the Secretary, in consultation with the Advisory Committee, shall carry out scientifically based research programs to strengthen the accountability and effectiveness of the State, chief executive officer's, and national programs under this part.

(2) Grants, contracts or cooperative agreements

The Secretary shall carry out paragraph (1) directly or through grants, contracts, or cooperative agreements with public and private entities and individuals or through agreements with other Federal agencies.

(3) Coordination

The Secretary shall coordinate programs under this section with other appropriate Federal activities.

(4) Activities

Activities that may be carried out under programs funded under this section may include—

(A) the provision of technical assistance and training, in collaboration with other Federal agencies utilizing their expertise and national and regional training systems, for Governors, State educational agencies and local educational agencies to support high quality, effective programs that—

(i) provide a thorough assessment of the substance abuse and violence problem;

(ii) utilize objective data and the knowledge of a wide range of community members;

(iii) develop measurable goals and objectives; and

(iv) implement scientifically based research activities that have been shown to be effective and that meet identified needs;

(B) the provision of technical assistance and training to foster program accountability;

(C) the diffusion and dissemination of best practices and programs;

(D) the development of core data sets and evaluation tools;

(E) program evaluations;

(F) the provision of information on drug abuse education and prevention to the Secretary of Health and Human Services for dissemination by the clearinghouse for alcohol and drug abuse information established under section 290aa(d)(16) of title 42; and

(G) other activities that meet unmet needs related to the purpose of this part and that are undertaken in consultation with the Advisory Committee.

(4) Reallotment

From the amount described in subsection (a) of this section, the Secretary shall allocate among the States—

(1) one-half according to the ratio between the school-aged population of each State and the school-aged population of all the States; and

(2) one-half according to the ratio between the amount each State received under section 6334 of this title for the preceding year and the sum of such amounts received by all the States.

(c) Minimum

For any fiscal year, no State shall be allotted under this section an amount that is less than one-half of 1 percent of the total amount allotted to all the States under this section.

(d) Reallotment

The Secretary may reallocate any amount of any allotment to a State if the Secretary determines that the State will be unable to use such amount within 2 years of such allotment. Such reallocations shall be made on the same basis as allotments are made under subsection (b) of this section.

(e) Definition

In this section, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.
§ 7137. School Security Technology and Resource Center

(a) Center

From funds made available to carry out this subpart under section 7103(2) of this title, the Secretary of Education and the Attorney General may jointly establish a National Center for School and Youth Safety (in this section referred to as the “Center”). The Secretary of Education and the Attorney General shall jointly appoint a Director of the Center to oversee the operation of the Center. The Secretary to Energy may enter into an agreement for the establishment at the Sandia National Laboratories, in partnership with the National Law Enforcement and Corrections Technology Center—Southeast and the National Center for Rural Law Enforcement in Little Rock, Arkansas, of a center to be known as the “School Security Technology and Resource Center” (hereafter in this section “the Center”).

(b) Administration

The Center established under subsection (a) of this section shall be administered by the Attorney General.

(c) Functions

The center established under subsection (a) of this section shall be a resource to local educational agencies for school security assessments, security technology development, evaluation and implementation, and technical assistance relating to improving school security. The Center will also conduct and publish school violence research, coalesce data from victim communities, and monitor and report on schools that implement school security strategies.

§ 7138. National Center for School and Youth Safety

(a) Establishment

From funds made available to carry out this subpart under section 7103(2) of this title, the Secretary of Education and the Attorney General may jointly establish a National Center for School and Youth Safety (in this section referred to as the “Center”). The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section. The Secretary of Education and the Attorney General may establish the Center at an existing facility, if the facility has a history of performing two or more of the duties described in subsection (b) of this section.

(b) Duties

The Center shall carry out emergency response, anonymous student hotline, consultation, and information and outreach activities with respect to elementary and secondary school safety, including the following:

(1) Emergency response

The staff of the Center, and such temporary contract employees as the Director of the Center shall determine necessary, shall offer emergency assistance to local communities to respond to school safety crises. Such assistance shall include counseling for victims and the community, assistance to law enforcement to address short-term security concerns, and advice on how to enhance school safety, prevent future incidents, and respond to future incidents.

(2) Anonymous student hotline

The Center shall establish a toll-free telephone number for students to report criminal activity, threats of criminal activity, and other high-risk behaviors such as substance abuse, gang or cult affiliation, depression, or other warning signs of potentially violent behavior. The Center shall relay the reports, without attribution, to local law enforcement or appropriate school hotlines. The Director of the Center shall work with the Attorney General to establish guidelines for Center staff to work with law enforcement around the Nation to relay information reported through the hotline.

(3) Consultation

The Center shall establish a toll-free number for the public to contact staff of the Center for consultation regarding school safety. The Director of the Center shall hire administrative staff and individuals with expertise in enhancing school safety, including individuals with backgrounds in counseling and psychology, education, law enforcement and criminal justice, and community development to assist in the consultation.

(4) Information and outreach

The Center shall compile information about the best practices in school violence prevention, intervention, and crisis management, and shall serve as a clearinghouse for model school safety program information. The staff of the Center shall work to ensure local governments, school officials, parents, students, and law enforcement officials and agencies are aware of the resources, grants, and expertise available to enhance school safety and prevent school crime. The staff of the Center shall give special attention to providing outreach to rural and impoverished communities.

§ 7139. Grants to reduce alcohol abuse

(a) In general

The Secretary, in consultation with the Administrator of the Substance Abuse and Mental Health Services Administration, may award grants from funds made available to carry out this subpart under section 7103(2) of this title, on a competitive basis, to local educational agencies to enable such agencies to develop and implement innovative and effective programs to reduce alcohol abuse in secondary schools.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, a local educational agency shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities to be carried out under the grant;
§ 7140. Mentoring programs

(2) an assurance that such activities will include one or more of the proven strategies for reducing underage alcohol abuse as determined by the Substance Abuse and Mental Health Services Administration;

(3) an explanation of how activities to be carried out under the grant that are not described in paragraph (2) will be effective in reducing underage alcohol abuse, including references to the past effectiveness of such activities;

(4) an assurance that the applicant will submit to the Secretary an annual report concerning the effectiveness of the programs and activities funded under the grant; and

(5) such other information as the Secretary determines appropriate.

(c) Streamlining of process for low-income and rural LEAs

The Secretary, in consultation with the Administrator of the Substance Abuse and Mental Health Services Administration, shall develop procedures to make the application process for grants under this section more user-friendly, particularly for low-income and rural local educational agencies.

(d) Reservations

(1) SAMHSA

The Secretary may reserve 20 percent of any amount used to carry out this section to enable the Administrator of the Substance Abuse and Mental Health Services Administration to provide alcohol abuse resources and start-up assistance to local educational agencies receiving grants under this section.

(2) Low-income and rural areas

The Secretary may reserve 25 percent of any amount used to carry out this section to award grants to low-income and rural local educational agencies.


§ 7140. Mentoring programs

(a) Purpose; definitions

(1) Purpose

The purpose of this section is to make assistance available to promote mentoring programs for children with greatest need—

(A) to assist such children in receiving support and guidance from a mentor;

(B) to improve the academic achievement of such children;

(C) to improve interpersonal relationships between such children and their peers, teachers, other adults, and family members;

(D) to reduce the dropout rate of such children; and

(E) to reduce juvenile delinquency and involvement in gangs by such children.

(2) Definitions

In this part:

(A) Child with greatest need

The term “child with greatest need” means a child who is at risk of educational failure, dropping out of school, or involvement in criminal or delinquent activities, or who lacks strong positive role models.

(B) Eligible entity

The term “eligible entity” means—

(i) a local educational agency;

(ii) a nonprofit, community-based organization; or

(iii) a partnership between a local educational agency and a nonprofit, community-based organization.

(C) Mentor

The term “mentor” means a responsible adult, a postsecondary school student, or a secondary school student who works with a child—

(i) to provide a positive role model for the child;

(ii) to establish a supportive relationship with the child; and

(iii) to provide the child with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of the child to become a responsible adult.

(D) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Grant program

(1) In general

The Secretary may award grants from funds made available to carry out this subpart under section 7103(2) of this title to eligible entities to assist such entities in establishing and supporting mentoring programs and activities for children with greatest need that—

(A) are designed to link such children (particularly children living in rural areas, high-crime areas, or troubled home environments, or children experiencing educational failure) with mentors who—

(i) have received training and support in mentoring;

(ii) have been screened using appropriate reference checks, child and domestic abuse record checks, and criminal background checks; and

(iii) are interested in working with children with greatest need; and

(B) are intended to achieve one or more of the following goals with respect to children with greatest need:

(i) Provide general guidance.

(ii) Promote personal and social responsibility.

(iii) Increase participation in, and enhance the ability to benefit from, elementary and secondary education.

(iv) Discourage illegal use of drugs and alcohol, violence, use of dangerous weapons, promiscuous behavior, and other criminal, harmful, or potentially harmful activity.

(v) Encourage participation in community service and community activities.
(vi) Encourage setting goals and planning for the future, including encouragement of graduation from secondary school and planning for postsecondary education or training;
(vii) Discourage involvement in gangs.

(2) Use of funds
(A) In general
Each eligible entity awarded a grant under this subsection shall use the grant funds for activities that establish or implement a mentoring program, that may include—
(i) hiring of mentoring coordinators and support staff;
(ii) providing for the professional development of mentoring coordinators and support staff;
(iii) recruitment, screening, and training of mentors;
(iv) reimbursement to schools, if appropriate, for the use of school materials or supplies in carrying out the mentoring program;
(v) dissemination of outreach materials;
(vi) evaluation of the mentoring program using scientifically based methods; and
(vii) such other activities as the Secretary may reasonably prescribe by rule.

(B) Prohibited uses
Notwithstanding subparagraph (A), an eligible entity awarded a grant under this section may not use the grant funds—
(i) to directly compensate mentors;
(ii) to obtain educational or other materials or equipment that would otherwise be used in the ordinary course of the eligible entity’s operations;
(iii) to support litigation of any kind; or
(iv) for any other purpose reasonably prohibited by the Secretary by rule.

(3) Availability of funds
Funds made available through a grant under this section shall be available for obligation for a period not to exceed 3 years.

(4) Application
Each eligible entity seeking a grant under this section shall submit to the Secretary an application that includes—
(A) a description of the plan for the mentoring program the eligible entity proposes to carry out with such grant;
(B) information on the children expected to be served by the mentoring program for which such grant is sought;
(C) a description of the mechanism the eligible entity will use to match children with mentors based on the needs of the children;
(D) an assurance that no mentor will be assigned to mentor so many children that the assignment will undermine the mentor’s ability to be an effective mentor or the mentor’s ability to establish a close relationship (a one-to-one relationship, where practicable) with each mentored child;
(E) an assurance that the mentoring program will provide children with a variety of experiences and support, including—

(i) emotional support;
(ii) academic assistance; and
(iii) exposure to experiences that the children might not otherwise encounter on their own;
(F) an assurance that the mentoring program will be monitored to ensure that each child assigned a mentor benefits from that assignment and that the child will be assigned a new mentor if the relationship between the original mentor and the child is not beneficial to the child;
(G) information regarding how mentors and children will be recruited to the mentoring program;
(H) information regarding how prospective mentors will be screened;
(I) information on the training that will be provided to mentors; and
(J) information on the system that the eligible entity will use to manage and monitor information relating to the mentoring program’s—
(i) reference checks;
(ii) child and domestic abuse record checks; and
(iii) criminal background checks; and
(iv) procedure for matching children with mentors.

(5) Selection
(A) Competitive basis
In accordance with this subsection, the Secretary shall award grants to eligible entities on a competitive basis.

(B) Priority
In awarding grants under subparagraph (A), the Secretary shall give priority to each eligible entity that—
(i) serves children with greatest need living in rural areas, high-crime areas, or troubled home environments, or who attend schools with violence problems;
(ii) provides high quality background screening of mentors, training of mentors, and technical assistance in carrying out mentoring programs; or
(iii) proposes a school-based mentoring program.

(C) Other considerations
In awarding grants under subparagraph (A), the Secretary shall also consider—
(i) the degree to which the location of the mentoring program proposed by each eligible entity contributes to a fair distribution of mentoring programs with respect to urban and rural locations;
(ii) the quality of the mentoring program proposed by each eligible entity, including—
(I) the resources, if any, the eligible entity will dedicate to providing children with opportunities for job training or postsecondary education;
(II) the degree to which parents, teachers, community-based organizations, and the local community have participated, or will participate, in the design and implementation of the proposed mentoring program;
(III) the degree to which the eligible entity can ensure that mentors will develop longstanding relationships with the children they mentor;

(IV) the degree to which the mentoring program will serve children with greatest need in the 4th through 8th grades; and

(V) the degree to which the mentoring program will continue to serve children from the 9th grade through graduation from secondary school, as needed; and

(iii) the capability of each eligible entity to effectively implement its mentoring program.

(D) Grant to each State

Notwithstanding any other provision of this subsection, in awarding grants under subparagraph (A), the Secretary shall select not less than one grant recipient from each State for which there is an eligible entity that submits an application of sufficient quality pursuant to paragraph (4).

(6) Model screening guidelines

(A) In general

Based on model screening guidelines developed by the Office of Juvenile Programs of the Department of Justice, the Secretary shall develop and distribute to each eligible entity awarded a grant under this section specific model guidelines for the screening of mentors who seek to participate in mentoring programs assisted under this section.

(B) Background checks

The guidelines developed under this subsection shall include, at a minimum, a requirement that potential mentors be subject to reference checks, child and domestic abuse record checks, and criminal background checks.


PRIOR PROVISIONS

Prior sections 7141 to 7144 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


SUBPART 3—GUN POSSESSION

§7151. Gun-free requirements

(a) Short title

This subpart may be cited as the “Gun-Free Schools Act”.

(b) Requirements

(1) In general

Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.

(2) Construction

Nothing in this subpart shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student’s regular school setting from providing educational services to such student in an alternative setting.

(3) Definition

For the purpose of this section, the term “firearm” has the same meaning given such term in section 921(a) of title 18.

(c) Special rule

The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(d) Report to State

Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under any subchapter of this chapter shall provide to the State, in the application requesting such assistance—

(1) an assurance that such local educational agency is in compliance with the State law required by subsection (b) of this section; and

(2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b) of this section, including—

(A) the name of the school concerned;

(B) the number of students expelled from such school; and

(C) the type of firearms concerned.

(e) Reporting

Each State shall report the information described in subsection (d) of this section to the Secretary on an annual basis.

(f) Definition

For the purpose of subsection (d) of this section, the term “school” means any setting that is under the control and supervision of the local educational agency for the purpose of student activities approved and authorized by the local educational agency.

(g) Exception

Nothing in this section shall apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local edu-
(h) Policy regarding criminal justice system referral

(1) In general
No funds shall be made available under any subchapter of this chapter to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

(2) Definition
For the purpose of this subsection, the term "school" has the same meaning given to such term by section 921(a) of title 18.

(6) Protective factor, buffer, or asset
The terms "protective factor", "buffer", and "asset" mean any one of a number of the community, school, family, or peer-individual domains that are known, through prospective, longitudinal research efforts, or which are grounded in a well-established theoretical model of prevention, and have been shown to prevent alcohol, tobacco, or illegal drug use, as well as violent behavior, by youth in the community, and which promote positive youth development.

(7) Risk factor
The term "risk factor" means any one of a number of characteristics of the community, school, family, or peer-individual domains that are known, through prospective, longitudinal research efforts, to be predictive of alcohol, tobacco, and illegal drug use, as well as violent behavior, by youth in the school and community.

(8) School-aged population
The term "school-aged population" means the population aged five through 17, as determined by the Secretary on the basis of the most recent satisfactory data available from the Department of Commerce.

(9) School based mental health services provider
The term "school based mental health services provider" includes a State certified school counselor, school psychologist, school social worker, or other State licensed or certified mental health professional qualified under State law to provide such services to children and adolescents.

(10) School personnel
The term "school personnel" includes teachers, principals, administrators, counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis.

(11) School resource officer
The term "school resource officer" means a career law enforcement officer, with sworn authority, deployed in community oriented policing, and assigned by the employing police department to a local educational agency to work in collaboration with schools and community based organizations to—

(A) educate students in crime and illegal drug use prevention and safety;

(B) develop or expand community justice initiatives for students; and

(C) train students in conflict resolution, restorative justice, and crime and illegal drug use awareness.

(4) Hate crime
The term "hate crime" means a crime as described in section 112(b) of the Hate Crime Statistics Act of 1990.

(5) Nonprofit
The term "nonprofit", as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.
§ 7162. Message and materials

(a) “Wrong and harmful” message

Drug and violence prevention programs supported under this part shall convey a clear and consistent message that the illegal use of drugs and acts of violence are wrong and harmful.

(b) Curriculum

The Secretary shall not prescribe the use of specific curricula for programs supported under this part.

§ 7163. Parental consent

Upon receipt of written notification from the parents or legal guardians of a student, the local educational agency shall withdraw such student from any program or activity funded under this part. The local educational agency shall make reasonable efforts to inform parents or legal guardians of the content of such programs or activities funded under this part, other than classroom instruction.

§ 7164. Prohibited uses of funds

No funds under this part may be used for—

(1) construction (except for minor remodeling needed to accomplish the purposes of this part); or

(2) medical services, drug treatment or rehabilitation, except for pupil services or referral to treatment for students who are victims of, or witnesses to, crime or who illegally use drugs.

§ 7165. Transfer of school disciplinary records

(a) Nonapplication of provisions

This section shall not apply to any disciplinary records with respect to a suspension or expulsion that are transferred from a private, parochial or other nonpublic school, person, institution, or other entity, that provides education below the college level.

(b) Disciplinary records

In accordance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), not later than 2 years after January 8, 2002, each State receiving Federal funds under this chapter shall provide an assurance to the Secretary that the State has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.
§ 7172. Allotments to States

(a) Reservation
From the funds appropriated under section 7176 of this title for any fiscal year, the Secretary shall reserve—

(1) such amount as may be necessary to make continuation awards to grant recipients under covered programs (under the terms of those grants);

(2) not more than 1 percent for national activities, which the Secretary may carry out directly or through grants and contracts, such as providing technical assistance to eligible entities carrying out programs under this part or conducting a national evaluation; and

(3) not more than 1 percent for payments to the outlying areas and the Bureau of Indian Affairs, to be allotted in accordance with their respective needs for assistance under this part, as determined by the Secretary, to enable the outlying areas and the Bureau to carry out the purpose of this part.

(b) State allotments

(1) Determination
From the funds appropriated under section 7176 of this title for any fiscal year and remaining after the Secretary makes reservations under subsection (a) of this section, the Secretary shall allot to each State for the fiscal year an amount that bears the same relationship to the remainder as the amount the State received under subpart 2 of part A of subchapter I of this chapter for the preceding fiscal year bears to the amount all States received under that subpart for the preceding fiscal year, except that no State shall receive less than an amount equal to one-half of 1 percent of the total amount made available to all States under this subsection.

(2) Reallotment of unused funds
If a State does not receive an allotment under this part for a fiscal year, the Secretary shall reallocate the amount of the State’s allotment to the remaining States in accordance with this section.

(c) State use of funds

(1) In general
Each State that receives an allotment under this part shall reserve not less than 95 percent of the amount allotted to such State under subsection (b) of this section, for each fiscal year, for awards to eligible entities under section 7174 of this title.

(2) State administration
A State educational agency may use not more than 2 percent of the amount made available to the State under subsection (b) of this section for—

(A) the administrative costs of carrying out its responsibilities under this part;

(B) establishing and implementing a peer review process for grant applications described in section 7174(b) of this title (including consultation with the Governor and other State agencies responsible for administering youth development programs and adult learning activities); and

(C) supervising the awarding of funds to eligible entities (in consultation with the Governor and other State agencies responsible for administering youth development programs and adult learning activities).

(3) State activities
A State educational agency may use not more than 3 percent of the amount made available to the State under subsection (b) of this section for the following activities:

(A) Monitoring and evaluation of programs and activities assisted under this part.

(B) Providing capacity building, training, and technical assistance under this part.

(C) Comprehensive evaluation (directly, or through a grant or contract) of the effectiveness of programs and activities assisted under this part.

(D) Providing training and technical assistance to eligible entities who are applicants for or recipients of awards under this part.

§ 7173. State application

(a) In general
In order to receive an allotment under section 7172 of this title for any fiscal year, a State shall submit to the Secretary, at such time as the Secretary may require, an application that—

(1) designates the State educational agency as the agency responsible for the administration and supervision of programs assisted under this part;

(2) describes how the State educational agency will use funds received under this part, including funds reserved for State-level activities;

(3) contains an assurance that the State educational agency will make awards under this part only to eligible entities that propose to serve—

(A) students who primarily attend—

1 Subparagraph designation editorially supplied.
(1) schools eligible for schoolwide programs under section 6314 of this title; or
(2) schools that serve a high percentage of students from low-income families; and
(B) the families of students described in subparagraph (A);
(4) describes the procedures and criteria the State educational agency will use for reviewing applications and awarding funds to eligible entities on a competitive basis, which shall include procedures and criteria that take into consideration the likelihood that a proposed community learning center will help participating students meet local content and student academic achievement standards;
(5) describes how the State educational agency will ensure that awards made under this part are—
(A) of sufficient size and scope to support high-quality, effective programs that are consistent with the purpose of this part; and
(B) in amounts that are consistent with section 7174(h) of this title;
(6) describes the steps the State educational agency will take to ensure that programs implement effective strategies, including providing ongoing technical assistance and training, evaluation, and dissemination of promising practices;
(7) describes how programs under this part will be coordinated with programs under this chapter, and other programs as appropriate;
(8) contains an assurance that the State educational agency—
(A) will make awards for programs for a period of not less than 3 years and not more than 5 years; and
(B) will require each eligible entity seeking such an award to submit a plan describing how the community learning center to be funded through the award will continue after funding under this part ends;
(9) contains an assurance that funds appropriated to carry out this part will be used to supplement, and not supplant, other Federal, State, and local public funds expended to provide programs and activities authorized under this part and other similar programs;
(10) contains an assurance that the State educational agency will require eligible entities to describe in their applications under section 7174(b) of this title how the transportation needs of participating students will be addressed;
(11) provides an assurance that the application was developed in consultation and coordination with appropriate State officials, including the chief State school officer, and other State agencies administering before and after school (or summer school) programs, the heads of the State health and mental health agencies or their designees, and representatives of teachers, parents, students, the business community, and community-based organizations;
(12) describes the results of the State’s needs and resources assessment for before and after school activities, which shall be based on the results of on-going State evaluation activities; and
(13) describes how the State educational agency will evaluate the effectiveness of programs and activities carried out under this part, which shall include, at a minimum—
(A) a description of the performance indicators and performance measures that will be used to evaluate programs and activities; and
(B) public dissemination of the evaluations of programs and activities carried out under this part; and
(14) provides for timely public notice of intent to file an application and an assurance that the application will be available for public review after submission.

(b) Deemed approval

An application submitted by a State educational agency pursuant to subsection (a) of this section shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the application, that the application is not in compliance with this part.

(c) Disapproval

The Secretary shall not finally disapprove the application, except after giving the State educational agency notice and opportunity for a hearing.

(d) Notification

If the Secretary finds that the application is not in compliance, in whole or in part, with this part, the Secretary shall—
(1) give the State educational agency notice and an opportunity for a hearing; and
(2) notify the State educational agency of the finding of noncompliance, and, in such notification, shall—
(A) cite the specific provisions in the application that are not in compliance; and
(B) request additional information, only as to the noncompliant provisions, needed to make the application compliant.

(e) Response

If the State educational agency responds to the Secretary’s notification described in subsection (d)(2) of this section during the 45-day period beginning on the date on which the agency received the notification, and resubmits the application with the requested information described in subsection (d)(2)(B) of this section, the Secretary shall approve or disapprove such application prior to the later of—
(1) the expiration of the 45-day period beginning on the date on which the application is resubmitted; or
(2) the expiration of the 120-day period described in subsection (b) of this section.

(f) Failure to respond

If the State educational agency does not respond to the Secretary’s notification described in subsection (d)(2) of this section during the 45-day period beginning on the date on which the agency received the notification, such application shall be deemed to be disapproved. 

§ 7174. Local competitive grant program

(a) In general

A State that receives funds under this part for a fiscal year shall provide the amount made available under section 7172(c)(1) of this title to eligible entities for community learning centers in accordance with this part.

(b) Application

(1) In general

To be eligible to receive an award under this part, an eligible entity shall submit an application to the State educational agency at such time, in such manner, and including such information as the State educational agency may reasonably require.

(2) Contents

Each application submitted under paragraph (1) shall include—

(A) a description of the before and after school or summer recess activities to be funded, including—

(i) an assurance that the program will take place in a safe and easily accessible facility;

(ii) a description of how students participating in the program carried out by the community learning center will travel safely to and from the center and home; and

(iii) a description of how the eligible entity will disseminate information about the community learning center (including its location) to the community in a manner that is understandable and accessible;

(B) a description of how the activity is expected to improve student academic achievement;

(C) an identification of Federal, State, and local programs that will be combined or coordinated with the proposed program to make the most effective use of public resources;

(D) an assurance that the proposed program was developed, and will be carried out, in active collaboration with the schools the students attend;

(E) a description of how the activities will meet the principles of effectiveness described in section 7175(b) of this title;

(F) an assurance that the program will primarily target students who attend schools eligible for schoolwide programs under section 6314 of this title and the families of such students;

(G) an assurance that funds under this part will be used to increase the level of State, local, and other non-Federal funds that would, in the absence of funds under this part, be made available for programs and activities authorized under this part, and in no case supplant Federal, State, local, or non-Federal funds;

(H) a description of the partnership between a local educational agency, a community-based organization, and another public entity or private entity, if appropriate;

(I) an evaluation of the community needs and available resources for the community learning center and a description of how the program proposed to be carried out in the center will address those needs (including the needs of working families);

(J) a demonstration that the eligible entity has experience, or promise of success, in providing educational and related activities that will complement and enhance the academic performance, achievement, and positive youth development of the students;

(K) a description of a preliminary plan for how the community learning center will continue after funding under this part ends;

(L) an assurance that the community will be given notice of an intent to submit an application and that the application and any waiver request will be available for public review after submission of the application;

(M) if the eligible entity plans to use senior volunteers in activities carried out through the community learning center, a description of how the eligible entity will encourage and use appropriately qualified seniors to serve as the volunteers; and

(N) such other information and assurances as the State educational agency may reasonably require.

(c) Approval of certain applications

The State educational agency may approve an application under this part for a program to be located in a facility other than an elementary school or secondary school only if the program will be at least as available and accessible to the students to be served as if the program were located in an elementary school or secondary school.

(d) Permissive local match

(1) In general

A State educational agency may require an eligible entity to match funds awarded under this part, except that such match may not exceed the amount of the grant award and may not be derived from other Federal or State funds.

(2) Sliding scale

The amount of a match under paragraph (1) shall be established based on a sliding fee scale that takes into account—

(A) the relative poverty of the population to be targeted by the eligible entity; and

(B) the ability of the eligible entity to obtain such matching funds.

(3) In-kind contributions

Each State educational agency that requires an eligible entity to match funds under this part subsection shall permit the eligible entity to provide all or any portion of such match in the form of in-kind contributions.

(4) Consideration

Notwithstanding this subsection, a State educational agency shall not consider an eligible entity’s ability to match funds when determining which eligible entities will receive awards under this part.

(e) Peer review

In reviewing local applications under this section, a State educational agency shall use a peer
review periods) that advance student academic
dermal enrichment learning programs, including
ning providing additional assistance to students
to improve their academic achievement;
(2) mathematics and science education ac-
tivities;
(3) arts and music education activities;
(4) entrepreneurial education programs;
(5) tutoring services (including those pro-
vided by senior citizen volunteers) and men-
toring programs;
(6) programs that provide after school activi-
ties for limited English proficient students
that emphasize language skills and academic
achievement;
(7) recreational activities;
(8) telecommunications and technology edu-
cation programs;
(9) expanded library service hours;
(10) programs that promote parental involve-
ment and family literacy;
(11) programs that provide assistance to stu-
dents who have been truant, suspended, or ex-
pelled to allow the students to improve their
academic achievement; and
(12) drug and violence prevention programs,
counseling programs, and character education
programs.
(b) Principles of effectiveness
(1) In general
For a program or activity developed pursuant
to this part to meet the principles of effect-
iveness, such program or activity shall—
(A) be based upon an assessment of objective
data regarding the need for before and
after school programs (including during
summer recess periods) and activities in the
schools and communities;
(B) be based upon an established set of per-
formance measures aimed at ensuring the
availability of high quality academic enrich-
ment opportunities; and
(C) if appropriate, be based upon scientific-
ally based research that provides evidence
that the program or activity will help stu-
dents meet the State and local student aca-
demic achievement standards.
(2) Periodic evaluation
(A) In general
The program or activity shall undergo a per-
iodic evaluation to assess its progress to-
ward achieving its goal of providing high
quality opportunities for academic enrich-
ment.
(B) Use of results
The results of evaluations under subpara-
graph (A) shall be—
(i) used to refine, improve, and strength-
en the program or activity, and to refine
the performance measures; and
(ii) made available to the public upon re-
quest, with public notice of such availabil-
ity provided.
§ 7176. Authorization of appropriations
There are authorized to be appropriated—
(1) $1,250,000,000 for fiscal year 2002;
(2) $1,500,000,000 for fiscal year 2003;
(3) $1,750,000,000 for fiscal year 2004;
(4) $2,000,000,000 for fiscal year 2005;
(5) $2,250,000,000 for fiscal year 2006; and
(6) $2,500,000,000 for fiscal year 2007.
§ 7175. Local activities
(a) Authorized activities
Each eligible entity that receives an award
under this part may use the award funds to
carry out a broad array of before and after
school activities (including during summer re-
cess periods) that advance student academic
achievement, including—
(1) remedial education activities and aca-
demic enrichment learning programs, includ-
ing providing additional assistance to students
to allow the students to improve their aca-
demic achievement;
(2) mathematics and science education ac-
tivities;
(3) arts and music education activities;
(4) entrepreneurial education programs;
(5) tutoring services (including those pro-
vided by senior citizen volunteers) and men-
toring programs;
(6) programs that provide after school activi-
ties for limited English proficient students
that emphasize language skills and academic
achievement;
(7) recreational activities;
(8) telecommunications and technology edu-
cation programs;
(9) expanded library service hours;
(10) programs that promote parental involve-
ment and family literacy;
(11) programs that provide assistance to stu-
dents who have been truant, suspended, or ex-
pelled to allow the students to improve their
academic achievement; and
(12) drug and violence prevention programs,
counseling programs, and character education
programs.
(b) Principles of effectiveness
(1) In general
For a program or activity developed pursuant
to this part to meet the principles of effect-
iveness, such program or activity shall—
(A) be based upon an assessment of objective
data regarding the need for before and
after school programs (including during
summer recess periods) and activities in the
schools and communities;
(B) be based upon an established set of per-
formance measures aimed at ensuring the
availability of high quality academic enrich-
ment opportunities; and
(C) if appropriate, be based upon scientific-
ally based research that provides evidence
that the program or activity will help stu-
dents meet the State and local student aca-
demic achievement standards.
(2) Periodic evaluation
(A) In general
The program or activity shall undergo a per-
iodic evaluation to assess its progress to-
ward achieving its goal of providing high
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(4) $2,000,000,000 for fiscal year 2005;
(5) $2,250,000,000 for fiscal year 2006; and
(6) $2,500,000,000 for fiscal year 2007.
(Pub. L. 89–10, title IV, §4204, as added Pub. L.
§ 7175. Local activities
(a) Authorized activities
Each eligible entity that receives an award
under this part may use the award funds to
carry out a broad array of before and after
school activities (including during summer re-
cess periods) that advance student academic
achievement, including—
(1) remedial education activities and aca-
demic enrichment learning programs, includ-
ing providing additional assistance to students
to allow the students to improve their aca-
demic achievement;
(2) mathematics and science education ac-
tivities;
(3) arts and music education activities;
(4) entrepreneurial education programs;
(5) tutoring services (including those pro-
vided by senior citizen volunteers) and men-
toring programs;
(6) programs that provide after school activi-
ties for limited English proficient students
that emphasize language skills and academic
achievement;
(7) recreational activities;
(8) telecommunications and technology edu-
cation programs;
(9) expanded library service hours;
(10) programs that promote parental involve-
ment and family literacy;
(11) programs that provide assistance to stu-
dents who have been truant, suspended, or ex-
pelled to allow the students to improve their
academic achievement; and
(12) drug and violence prevention programs,
counseling programs, and character education
programs.
(b) Principles of effectiveness
(1) In general
For a program or activity developed pursuant
to this part to meet the principles of effect-
iveness, such program or activity shall—
(A) be based upon an assessment of objective
data regarding the need for before and
after school programs (including during
summer recess periods) and activities in the
schools and communities;
(B) be based upon an established set of per-
formance measures aimed at ensuring the
availability of high quality academic enrich-
ment opportunities; and
(C) if appropriate, be based upon scientific-
ally based research that provides evidence
that the program or activity will help stu-
dents meet the State and local student aca-
demic achievement standards.
(2) Periodic evaluation
(A) In general
The program or activity shall undergo a per-
iodic evaluation to assess its progress to-
ward achieving its goal of providing high
quality opportunities for academic enrich-
ment.
(B) Use of results
The results of evaluations under subpara-
graph (A) shall be—
(i) used to refine, improve, and strength-
en the program or activity, and to refine
the performance measures; and
(ii) made available to the public upon re-
quest, with public notice of such availabil-
ity provided.
(Pub. L. 89–10, title IV, §4205, as added Pub. L.
§ 7176. Authorization of appropriations
There are authorized to be appropriated—
(1) $1,250,000,000 for fiscal year 2002;
(2) $1,500,000,000 for fiscal year 2003;
(3) $1,750,000,000 for fiscal year 2004;
(4) $2,000,000,000 for fiscal year 2005;
(5) $2,250,000,000 for fiscal year 2006; and
(6) $2,500,000,000 for fiscal year 2007.
(Pub. L. 89–10, title IV, §4206, as added Pub. L.
PART C—ENVIRONMENTAL TOBACCO SMOKE
CONDIFICATION
Similar provisions relating to environmental tobacco
smoke are contained in part B (§6081 et seq.) of sub-
chapter X of chapter 68 of this title.
§ 7181. Short title

This part may be cited as the “Pro-Children Act of 2001”.


PRIOR PROVISIONS


§ 7182. Definitions

As used in this part:

(1) Children

The term “children” means individuals who have not attained the age of 18.

(2) Children’s services

The term “children’s services” means the provision on a routine or regular basis of health, day care, education, or library services—

(A) that are funded, after January 8, 2002, directly by the Federal Government or through State or local governments, by Federal grant, loan, loan guarantee, or contract programs—

(i) administered by either the Secretary of Health and Human Services or the Secretary of Education (other than services provided and funded solely under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]; or

(ii) administered by the Secretary of Agriculture in the case of a clinic (as defined in part 246.2 of title 7, Code of Federal Regulations (or any corresponding similar regulation or ruling)) under section 17(b)(6) of the Child Nutrition Act of 1966 [42 U.S.C. 1786(b)(6)]; or

(B) that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds, as determined by the appropriate head of a Federal agency in any enforcement action carried out under this part,

except that nothing in clause (ii) of subparagraph (A) is intended to include facilities (other than clinics) where coupons are redeemed under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(3) Indoor facility

The term “indoor facility” means a building that is enclosed.

(4) Person

The term “person” means any State or local subdivision of a State, agency of such State or subdivision, corporation, or partnership that owns or operates or otherwise controls and provides children’s services or any individual who owns or operates or otherwise controls and provides such services.

(5) Secretary

The term “Secretary” means the Secretary of Health and Human Services.


§ 7183. Nonsmoking policy for children’s services

(a) Prohibition

After January 8, 2002, no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) Additional prohibition

(1) In general

After January 8, 2002, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted for, and utilized by, such person for the provision of regular or routine health care or day care or early childhood development (Head Start) services.

(2) Exception

Paragraph (1) shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

(c) Federal agencies

(1) Kindergarten, elementary, or secondary education or library services

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular health care or day care or early childhood development (Head Start) services to children.

(2) Health or day care or early childhood development services

(A) In general

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility (or portion of such facility) operated by such agency, directly or by contract, to provide routine or regular health care or day care or early childhood development services to children.

(B) Exception

Subparagraph (A) shall not apply to—

(i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(ii) any private residence.
(3) Application of provisions

The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

(d) Notice

The prohibitions in subsections (a) through (c) of this section shall be published in a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children’s services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after January 8, 2002, whichever occurs first.

(e) Civil penalties

(1) In general

Any failure to comply with a prohibition in this section shall be considered to be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty assessed under this section, the total amount shall not exceed 50 percent of the amount of Federal funds received under any subchapter of this chapter by such person for the fiscal year in which the continuing violation occurred. For the purpose of the prohibition in subsection (c) of this section, the term “person”, as used in this paragraph, shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

(2) Administrative proceeding

A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued under paragraph (1), by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice of the assessment or order to such person by certified mail with return receipt and provide information in the notice of an opportunity to request in writing, not later than 30 days after the date of receipt of such notice, such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple form that may be used to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing, which shall be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary’s designee) and such person may consult to arrange a suitable date and location where appropriate.

(3) Circumstances affecting penalty or order

In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the violator’s culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) such other matters as justice may require.

(4) Modification

The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or the agencies or instrumentalities of the United States owe to the person against whom the penalty is assessed.

(5) Petition for review

Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy of the petition to the Secretary or the Secretary’s designee. The petition shall be filed within 30 days after the Secretary’s assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) Failure to comply

If a person fails to pay an assessment of a civil penalty or comply with an order, after the assessment or order, or both, are final under this section, or after a court has entered a final judgment under paragraph (5) in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at prevailing rates from the day the assessment or order, or both, are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.


1Opening parenthesis editorially supplied.
§ 7201. Purposes, State and local responsibility

(a) Purposes

The purposes of this part are the following:

1. To support local education reform efforts that are consistent with and support statewide education reform efforts.

2. To provide funding to enable State educational agencies and local educational agencies to implement promising educational reform programs and school improvement programs based on scientifically based research.

3. To provide a continuing source of innovation and educational improvement, including support programs to provide library services and instructional and media materials.

4. To meet the educational needs of all students, including at-risk youth.

5. To develop and implement education programs to improve school, student, and teacher performance, including professional development activities and class size reduction programs.

(b) State and local responsibility

The State educational agency shall bear the basic responsibility for the administration of funds made available under this part, but it is the intent of Congress that the responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under this part be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because local educational agencies and individuals have the most direct contact with students and are most likely to be able to design programs to meet the educational needs of students in their own school districts.
§ 7211a. Allocation to local educational agencies

(a) Distribution rule

(1) Allocation of base amounts

From the amount made available to a State educational agency under this part for a fiscal year, the State educational agency shall distribute, to local educational agencies within the State, an amount that is not less than 85 percent of the amount made available to the State educational agency under this part for fiscal year 2002, according to the relative enrollments of such local educational agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per-pupil allocations to local educational agencies that have the greatest numbers or percentages of children whose education imposes a higher-than-average cost per child, such as—

(A) children living in areas with high concentrations of economically disadvantaged families;

(B) children from economically disadvantaged families; and

(C) children living in sparsely populated areas.

(2) Allocation of increased amounts

From the amount made available to a State educational agency under this part for a fiscal year that exceeds the amount made available to the agency under this part for fiscal year 2002, the State educational agency shall distribute, to local educational agencies within the State, on the same basis as the State educational agency distributes amounts under paragraph (1).

(b) Limitations and requirements

Not more than 15 percent of funds made available under section 7211 of this title for State programs under this part for any fiscal year may be used for State administration under section 7213 of this title.

(c) Calculation of enrollments

(1) In general

The calculation of relative enrollments under subsection (a)(1) of this section shall be on the basis of the total of—

(A) the number of children enrolled in public schools; and

(B) the number of children enrolled in private nonprofit schools that participated in programs assisted under this part, for the fiscal year preceding the fiscal year for which the determination is made.

(2) Rule of construction

Nothing in this subsection shall diminish the responsibility of each local educational agency to contact, on an annual basis, appro-
of the additional funds described in subparagraph (A) to the provision of services to specific students or categories of students.


PRIOR PROVISIONS

A prior section 5112 of Pub. L. 89–10 was classified to section 7212 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Another prior section 5112 of Pub. L. 89–10 was classified to section 5112 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.


SUBPART 2—STATE PROGRAMS

§ 7213. State uses of funds

A State educational agency may use funds made available for State use under section 7211a(b) of this title only for one or more of the following:

(1) State administration of programs under this part, including—
   (A) allocating funds to local educational agencies;
   (B) planning, supervising, and processing State educational agency funds; and
   (C) monitoring and evaluating programs under this part.

(2) Support for the planning, design, and initial implementation of charter schools as described in part B of this subchapter.

(3) Statewide education reform, school improvement programs and technical assistance and direct grants to local educational agencies, which assist such agencies under section 7215 of this title.

(4) Support for the design and implementation of high-quality yearly student assessments.

(5) Support for implementation of challenging State and local academic achievement standards.

(6) Support for arrangements that provide for independent analysis to measure and report on school district achievement.


PRIOR PROVISIONS


A prior section 5121 of Pub. L. 89–10 was classified to section 3191 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 7213a. State applications

(a) Application requirements

Any State that desires to receive assistance under this part shall submit to the Secretary an application that includes each of the following:

(1) Designation of the State educational agency as the State agency responsible for administration and supervision of programs assisted under this part.

(2) Provision for an annual statewide summary of how assistance under this part is contributing toward improving student academic achievement or improving the quality of education for students.

(3) Information setting forth the allocation of funds required to implement section 7217a of this title.

(4) A provision that the State educational agency will keep such records, and provide such information to the Secretary, as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this section).

(5) An assurance that, apart from providing technical and advisory assistance and monitoring compliance with this part, the State educational agency has not exercised, and will not exercise, any influence in the decision-making processes of local educational agencies as to the expenditure made pursuant to an application submitted under section 7215b of this title.

(6) An assurance that there is compliance with the specific requirements of this part.

(7) Provision for timely public notice and public dissemination of the information provided under paragraph (2).

(b) Statewide summary

The statewide summary referred to in subsection (a)(2) of this section shall be submitted annually to the Secretary and shall be derived from the evaluation information submitted by local educational agencies to the State educational agency under section 7215b(b)(8) of this title. The State educational agency shall determine the format and content of such summary and may include in the summary statistical measures, such as the number of students served by each type of innovative assistance program described in section 7215 of this title and the number of teachers trained.

(c) Period of application

An application submitted by the State educational agency under subsection (a) of this sec-
tion shall be for a period not to exceed 3 years. The agency may amend the application annually, as may be necessary to reflect changes, without filing a new application.

(d) Audit rule
A local educational agency that receives less than an average of $10,000 under this part for any 3 consecutive fiscal years shall not be audited more frequently than once every 5 years.


PRIOR PROVISIONS
A prior section 5122 of Pub. L. 89–10 was classified to section 3192 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

SUBPART 3—LOCAL INNOVATIVE EDUCATION PROGRAMS

§ 7215. Local uses of funds

(a) Innovative assistance programs
Funds made available to local educational agencies under section 7211a of this title shall be used for innovative assistance programs, which may include any of the following:

(1) Programs to recruit, train, and hire highly qualified teachers to reduce class size, especially in the early grades, and professional development activities carried out in accordance with subchapter II of this chapter, that give teachers, principals, and administrators the knowledge and skills to provide students with the opportunity to meet challenging State or local academic content standards and student academic achievement standards.

(2) Technology activities related to the implementation of school-based reform efforts, including professional development to assist teachers and other school personnel (including school library media personnel) regarding how to use technology effectively in the classrooms and the school library media centers involved.

(3) Programs for the development or acquisition and use of instructional and educational materials, including library services and materials (including media materials), academic assessments, reference materials, computer software and hardware for instructional use, and other curricular materials that are tied to high academic standards, that will be used to improve student academic achievement, and that are part of an overall education reform program.

(4) Promising education reform projects, including magnet schools.

(5) Programs to improve the academic achievement of educationally disadvantaged elementary school and secondary school students, including activities to prevent students from dropping out of school.

(6) Programs to improve the literacy skills of adults, especially the parents of children served by the local educational agency, including adult education and family literacy programs.

(7) Programs to provide for the educational needs of gifted and talented children.

(8) The planning, design, and initial implementation of charter schools as described in part B of this subchapter.

(9) School improvement programs or activities under sections 6316 and 6317 of this title.

(10) Community service programs that use qualified school personnel to train and mobilize young people to measurably strengthen their communities through nonviolence, responsibility, compassion, respect, and moral courage.

(11) Activities to promote consumer, economic, and personal finance education, such as disseminating information on and encouraging use of the best practices for teaching the basic principles of economics and promoting the concept of achieving financial literacy through the teaching of personal financial management skills (including the basic principles involved with earning, spending, saving, and investing).

(12) Activities to promote, implement, or expand public school choice.

(13) Programs to hire and support school nurses.

(14) Expansion and improvement of school-based mental health services, including early identification of drug use and violence, assessment, and direct individual or group counseling services provided to students, parents, and school personnel by qualified school-based mental health services personnel.

(15) Alternative educational programs for those students who have been expelled or suspended from their regular educational setting, including programs to assist students to reenter the regular educational setting upon return from treatment or alternative educational programs.

(16) Programs to establish or enhance prekindergarten programs for children.

(17) Academic intervention programs that are operated jointly with community-based organizations and that support academic enrichment, and counseling programs conducted during the school day (including during extended school day or extended school year programs), for students most at risk of not meeting challenging State academic achievement standards or not completing secondary school.

(18) Programs for cardiopulmonary resuscitation (CPR) training in schools.

(19) Programs to establish smaller learning communities.

(20) Activities that encourage and expand improvements throughout the area served by the local educational agency that are designed to advance student academic achievement.

(21) Initiatives to generate, maintain, and strengthen parental and community involvement.

(22) Programs and activities that expand learning opportunities through best-practice models designed to improve classroom learning and teaching.

(23) Programs to provide same-gender schools and classrooms (consistent with applicable law).

(24) Service learning activities.

(25) School safety programs, including programs to implement the policy described in section 9507, and which may include payment

\( ^1 \) So in original. Pub. L. 89–10 does not contain a section 9507.
of reasonable transportation costs and tuition costs for such students.

(26) Programs that employ research-based cognitive and perceptual development approaches and rely on a diagnostic-prescriptive model to improve students’ learning of academic content at the preschool, elementary, and secondary levels.

(27) Supplemental educational services, as defined in section 6316(e) of this title.

(b) Requirements

The innovative assistance programs described in subsection (a) of this section shall be—

(1) tied to promoting challenging academic achievement standards;

(2) used to improve student academic achievement; and

(3) part of an overall education reform strategy.

(c) Guidelines

Not later than 120 days after January 8, 2002, the Secretary shall issue guidelines for local educational agencies seeking funding for programs described in subsection (a)(23) of this section.


PRIOR PROVISIONS


§ 7215a. Administrative authority

In order to conduct the programs authorized by this part, each State educational agency or local educational agency may use funds made available under this part to make grants to, and to enter into contracts with, local educational agencies, institutions of higher education, libraries, museums, and other public and private nonprofit agencies, organizations, and institutions.


PRIOR PROVISIONS

A prior section 5132 of Pub. L. 89–10 was classified to section 3212 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 7215b. Local applications

(a) Submission of application

A local educational agency may receive an allocation of funds under this part for any year for which the agency submits an application under this section that the State educational agency certifies under subsection (b) of this section.

(b) Certification and contents of application

The State educational agency shall certify each application submitted under subsection (a) of this section that includes each of the following:

(1) A description of locally identified needs relative to the purposes of this part and to the innovative assistance programs described in section 7215 of this title.

(2) A statement that sets forth the planned allocation of funds, based on the needs identified in subparagraph (A), among innovative assistance programs described in section 7215 of this title, a description of the programs that the local educational agency intends to support, and a description of the reasons for the selection of such programs.

(3) Information setting forth the allocation of such funds required to implement section 7217a of this title.

(4) A description of how assistance under this part will contribute to improving student academic achievement or improving the quality of education for students.

(5) An assurance that the local educational agency will comply with this part, including the provisions of section 7217a of this title concerning the participation of children enrolled in private nonprofit schools.

(6) An assurance that the local educational agency will keep such records, and provide such information to the State educational agency, as may be reasonably required for fiscal audit and program evaluation (consistent with the responsibilities of the State educational agency under this part).

(7) Provision, in the allocation of funds for the assistance authorized by this part and in the planning, design, and implementation of such innovative assistance programs, for systematic consultation with parents of children attending elementary schools and secondary schools in the area served by the local educational agency, with teachers and administrative personnel in such schools, and with such other groups involved in the implementation of this part (such as librarians, school counselors, and other pupil services personnel) as may be considered appropriate by the local educational agency.

(8) An assurance that—

(A) programs carried out under this part will be evaluated annually;

(B) the evaluation will be made in a manner to determine the effectiveness of the programs for the subsequent year;

(C) the evaluation will describe how assistance under this part affected student academic achievement and will include, at a minimum, information and data on the use of funds, the types of services furnished, and the students served under this part; and

(D) the evaluation will be submitted to the State educational agency at the time and in the manner requested by the State educational agency.

(9) If the local educational agency seeks funds under section 7215(a)(23) of this title, a description of how the agency will comply with the guidelines issued by the Secretary regarding same-gender schools and classrooms under section 7215(c) of this title.

(c) Period of application

An application submitted by a local educational agency under subsection (a) of this section may seek allocations under this part for a period not to exceed 3 fiscal years. The agency may amend the application annually, as may be necessary to reflect changes, without the filing of a new application.
§ 7217. Maintenance of effort

(a) In general

Except as provided in subsection (b) of this section, a State educational agency is entitled to receive its full allotment of funds under this part for any fiscal year only if the Secretary determines that either the combined fiscal effort per student or the aggregate expenditures within the State, with respect to the provision of free public education for the fiscal year preceding the fiscal year for which the determination is made, was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

(b) Reduction of funds

The Secretary shall reduce the amount of the allotment of funds under this part in any fiscal year in the exact proportion by which the State educational agency fails to meet the requirements of subsection (a) of this section by falling below 90 percent of the fiscal effort per student or aggregate expenditures (using the measure most favorable to the State educational agency), and no such lesser amount shall be used for computing the effort or expenditures required under paragraph (1) for subsequent years.

(c) Waiver

The Secretary may waive, for 1 fiscal year only, the requirements of this section, if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State educational agency.

(d) Local educational agency discretion

(1) In general

Subject to the limitations and requirements of this section, a local educational agency shall have complete discretion in determining how funds made available to carry out this subpart will be divided among programs described in section 7215 of this title.

(2) Limitation

In exercising the discretion described in paragraph (1), a local educational agency shall ensure that expenditures under this subpart carry out the purposes of this part and are used to meet the educational needs within the schools served by the local educational agency.

§ 7217a. Participation of children enrolled in private schools

(a) Participation on equitable basis

(1) In general

To the extent consistent with the number of children in the school district of a local educational agency that is eligible to receive funds under this part, or that serves the area in which a program assisted under this part is located, who are enrolled in private nonprofit elementary schools and secondary schools, or, with respect to instructional or personnel training programs funded by the State educational agency from funds made available for State educational agency use, the local educational agency, after consultation with appropriate private school officials—

(A) shall provide, as may be necessary, for the benefit of such children in such schools—

(i) secular, neutral, and nonideological services, materials, and equipment, including the participation of the teachers of such children (and other educational personnel serving such children) in training programs; and

(ii) the repair, minor remodeling, or construction of public facilities (consistent with subsection (c) of this section); or

(B) if such services, materials, and equipment are not feasible or necessary in one or more such private schools, as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this part.

(2) Other provisions for services

If no program is carried out under paragraph (1) in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in the district are provided with services and materials to the same extent as would have occurred if the local educational agency had received funds under this part.

(3) Application of requirements

The requirements of this section relating to the participation of children, teachers, and other personnel serving such children shall apply to programs carried out under this part by a State educational agency or local educational agency, whether directly or through grants to, or contracts with, other public or private agencies, institutions, or organizations.

(b) Equal expenditures

(1) In general

Expenditures for programs under subsection (a) of this section shall be equal (consistent with the number of children to be served) to expenditures for programs under this part for children enrolled in the public schools of the local educational agency.

(2) Concentrated programs

Taking into account the needs of the individual children and other factors that relate...
to the expenditures referred to in paragraph (1), and when funds available to a local educational agency under this part are used to concentrate programs on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs.

(c) Administrative requirements

(1) Funds and property

The control of funds provided under this part, and title to materials, equipment, and property repaired, remodeled, or constructed with such funds, shall be in a public agency for the uses and purposes provided in this part, and a public agency shall administer such funds and property.

(2) Provision of services

Services provided under this part shall be provided by employees of a public agency or through contract by such a public agency with a person, association, agency, or corporation that, in the provision of such services, is independent of the private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such a public agency. The funds provided under this part shall not be commingled with State or local funds.

(d) Waiver

(1) State prohibition

If a State educational agency or local educational agency is prohibited, by reason of any provision of law, from providing for the participation in programs of children enrolled in private elementary schools and secondary schools as required by subsections (a) through (c) of this section, the Secretary shall waive such requirements for the agency involved and shall arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section.

(2) Failure to comply

If the Secretary determines that a State educational agency or a local educational agency has substantially failed, or is unwilling, to provide for the participation on an equitable basis of children enrolled in private elementary schools and secondary schools as required by subsections (a) through (c) of this section, the Secretary may waive such requirements and shall arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section.

(e) Withholding of allotment or allocation

Pending final resolution of any investigation or complaint that could result in a waiver under subsection (d)(1) or (d)(2) of this section, the Secretary may withhold from the allotment or allocation of the affected State educational agency or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of services to be provided by the Secretary under such subsection.

(f) Duration of determination

Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency or local educational agency to meet the requirements of subsections (a) through (c) of this section.

(g) Payment from State allotment

When the Secretary arranges for services under subsection (d) of this section, the Secretary shall, after consultation with the appropriate public school and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State educational agency under this part.

(h) Review of determination

(1) Written objections

The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary’s designee to show cause why that action should not be taken.

(2) Court action

If a State educational agency or local educational agency is dissatisfied with the Secretary’s final action after a proceeding under paragraph (1), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28.

(3) Remand to Secretary

The findings of fact by the Secretary with respect to a proceeding under paragraph (1), if supported by substantial evidence, shall be conclusive. The court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may make new or modified findings of fact and may modify the Secretary’s previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive, if supported by substantial evidence.

(4) Court review

Upon the filing of a petition under paragraph (2), the court shall have jurisdiction to affirm the action of the Secretary or to set such action aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court upon certiorari or certification, as provided in section 1254 of title 28.

(i) Prior determination

Any bypass determination by the Secretary under title VI (as such title was in effect on the
day preceding January 8, 2002) shall, to the extent consistent with the purposes of this part, apply to programs under this part.


REPRESENTATIONS IN TEXT

Title VI (as such title was in effect on the day preceding January 8, 2002), referred to in subsec. (i), means title VI of Pub. L. 89–10, as added by Pub. L. 103–382, title I, § 101, Oct. 30, 1994, 108 Stat. 3707, as amended, which was classified generally to subchapter VI of this chapter prior to the general amendment of subchapter VI by Pub. L. 107–110, title VI, § 601, Jan. 8, 2002, 115 Stat. 1873.

Prior Provisions

A prior section 5142 of Pub. L. 89–10 was classified to section 3222 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 7217b. Federal administration

(a) Technical assistance

The Secretary, upon request, shall provide technical assistance to State educational agencies and local educational agencies under this part.

(b) Rulemaking

The Secretary shall issue regulations under this part only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements and assurances required by this part.

(c) Availability of appropriations

Notwithstanding any other provision of law, unless expressly in limitation of this subsection, funds appropriated in any fiscal year to carry out programs under this part shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the subsequent fiscal year.


Prior Provisions

A prior section 5143 of Pub. L. 89–10 was classified to section 3223 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 7217c. Supplement, not supplant

Funds made available under this part shall be used to supplement, and not supplant, any other Federal, State, or local education funds.


Prior Provisions

A prior section 5144 of Pub. L. 89–10 was classified to section 3224 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 7217d. Definitions

In this part:

(1) Local educational agency

The term “local educational agency” means a local educational agency or a consortium of such agencies.

(2) Public school

The term “public school” means a public elementary school or a public secondary school.

(3) School-age population

The term “school-age population” means the population aged 5 through 17.

(4) State

The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.


Prior Provisions

A prior section 5145 of Pub. L. 89–10 was classified to section 3224a of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 7217e. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

(1) $450,000,000 for fiscal year 2002;

(2) $475,000,000 for fiscal year 2003;

(3) $500,000,000 for fiscal year 2004;

(4) $525,000,000 for fiscal year 2005;

(5) $550,000,000 for fiscal year 2006; and

(6) $600,000,000 for fiscal year 2007.


Prior Provisions

A prior section 5146 of Pub. L. 89–10 was classified to section 3224b of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

PART B—PUBLIC CHARTER SCHOOLS

SUBPART 1—CHARTER SCHOOL PROGRAMS

§ 7221. Purpose

It is the purpose of this subpart to increase national understanding of the charter schools model by—

(1) providing financial assistance for the planning, program design, and initial implementation of charter schools;

(2) evaluating the effects of such schools, including the effects on students, student academic achievement, staff, and parents;

(3) expanding the number of high-quality charter schools available to students across the Nation; and

(4) encouraging the States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools.


Prior Provisions

A prior section 5201 of Pub. L. 89–10 was classified to section 7231 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7221a. Program authorized

(a) In general

The Secretary may award grants to State educational agencies having applications approved pursuant to section 7221b of this title to enable such agencies to conduct a charter school grant program in accordance with this subpart.
§ 7221b

(b) Special rule

If a State educational agency elects not to participate in the program authorized by this subpart or does not have an application approved under section 7221b of this title, the Secretary may award a grant to an eligible applicant that serves such State and has an application approved pursuant to section 7221b(c) of this title.

(c) Program periods

(1) Grants to States

Grants awarded to State educational agencies under this subpart shall be for a period of not more than 3 years.

(2) Grants to eligible applicants

Grants awarded by the Secretary to eligible applicants or subgrants awarded by State educational agencies to eligible applicants under this subpart shall be for a period of not more than 3 years, of which the eligible applicant may use—

(A) not more than 18 months for planning and program design;

(B) not more than 2 years for the initial implementation of a charter school; and

(C) not more than 2 years to carry out dissemination activities described in section 7221c(f)(6)(B) of this title.

(d) Limitation

A charter school may not receive—

(1) more than one grant for activities described in subparagraphs (A) and (B) of subsection (c)(2) of this section; or

(2) more than one grant for activities under subparagraph (C) of subsection (c)(2) of this section.

(e) Priority treatment

(1) In general

In awarding grants under this subpart for fiscal year 2002 or any succeeding fiscal year from any funds appropriated under section 7221 of this title (other than funds reserved to carry out section 7221(d) of this title), the Secretary shall give priority to States to the extent that the States meet the criteria described in paragraph (2) and one or more of the criteria described in subparagraph (A), (B), or (C) of paragraph (3).

(2) Review and evaluation priority criteria

The criteria referred to in paragraph (1) are that the State provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under State law or the school's charter.

(3) Priority criteria

The criteria referred to in paragraph (1) are the following:

(A) The State has demonstrated progress, in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which a State educational agency or eligible applicant applies for a grant under this subpart.

(B) The State—

(i) provides for one authorized public chartering agency that is not a local educational agency, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to such State law; or

(ii) in the case of a State in which local educational agencies are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(C) The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

(f) Amount criteria

In determining the amount of a grant to be awarded under this subpart to a State educational agency, the Secretary shall take into consideration the number of charter schools that are operating, or are approved to open, in the State.


Prior Provisions

A prior section 5202 of Pub. L. 89–10 was classified to section 7232 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7221b. Applications

(a) Applications from State agencies

Each State educational agency desiring a grant from the Secretary under this subpart shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require.

(b) Contents of a State educational agency application

Each application submitted pursuant to subsection (a) of this section shall—

(1) describe the objectives of the State educational agency's charter school grant program and a description of how such objectives will be fulfilled, including steps taken by the State educational agency to inform teachers, parents, and communities of the State educational agency's charter school grant program; and

(2) describe how the State educational agency will—

(A) will inform each charter school in the State regarding—

(i) Federal funds that the charter school is eligible to receive; and

(ii) Federal programs in which the charter school may participate;

(B) will ensure that each charter school in the State receives the charter school's com-
mensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the charter school; and

(C) will disseminate best or promising practices of charter schools to each local educational agency in the State; and

(3) contain assurances that the State educational agency will require each eligible applicant desiring to receive a subgrant to submit an application to the State educational agency containing—

(A) a description of the educational program to be implemented by the proposed charter school, including—

(i) how the program will enable all students to meet challenging State student academic achievement standards;

(ii) the grade levels or ages of children to be served; and

(iii) the curriculum and instructional practices to be used;

(B) a description of how the charter school will be managed;

(C) a description of—

(i) the objectives of the charter school; and

(ii) the methods by which the charter school will determine its progress toward achieving those objectives;

(D) a description of the administrative relationship between the charter school and the authorized public chartering agency;

(E) a description of how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;

(F) a description of how the authorized public chartering agency will provide for continued operation of the school once the Federal grant has expired, if such agency determines that the school has met the objectives described in subparagraph (C)(i);

(G) a request and justification for waivers of any Federal statutory or regulatory provisions that the eligible applicant believes are necessary for the successful operation of the charter school, and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school;

(H) a description of how the subgrant funds or grant funds, as appropriate, will be used, including a description of how such funds will be used in conjunction with other Federal programs administered by the Secretary;

(I) a description of how students in the community will be—

(i) informed about the charter school; and

(ii) given an equal opportunity to attend the charter school;

(J) an assurance that the eligible applicant will annually provide the Secretary and the State educational agency in evaluating the program assisted under this subpart;

(L) a description of how a charter school that is considered a local educational agency under State law, or a local educational agency in which a charter school is located, will comply with sections 1413(a)(5) and 1413(e)(1)(B) of this title;

(M) if the eligible applicant desires to use subgrant funds for dissemination activities under section 7221(a)(2)(C) of this title, a description of those activities and how those activities will involve charter schools and other public schools, local educational agencies, developers, and potential developers; and

(N) such other information and assurances as the Secretary and the State educational agency may require.

(c) Eligible applicant application

Each eligible applicant desiring a grant pursuant to section 7221(b) of this title shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(d) Contents of eligible applicant application

Each application submitted pursuant to subsection (c) of this section shall contain—

(1) the information and assurances described in subparagraphs (A) through (N) of subsection (b)(3) of this section, except that for purposes of this subsection subparagraphs (J), (K), and (N) of such subsection shall be applied by striking “and the State educational agency” each place such term appears;

(2) assurances that the State educational agency—

(A) will grant, or will obtain, waivers of State statutory or regulatory requirements; and

(B) will assist each subgrantee in the State in receiving a waiver under section 7221(e) of this title; and

(3) assurances that the eligible applicant has provided its authorized public chartering authority timely notice, and a copy, of the application, except that the State educational agency (or the Secretary, in the case of an application submitted to the Secretary) may waive the requirement of this paragraph in the case of an application for a precharter planning grant or subgrant if the authorized public chartering authority to which a charter school proposal will be submitted has not been determined at the time the grant or subgrant application is submitted.


PRIOR PROVISIONS

A prior section 5203 of Pub. L. 89–10 was classified to section 7233 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7221c. Administration

(a) Selection criteria for State educational agencies

The Secretary shall award grants to State educational agencies under this subpart on the
basis of the quality of the applications submitted under section 7221(b) of this title, after taking into consideration such factors as—

(1) the contribution that the charter schools grant program will make to assisting educationally disadvantaged and other students in meeting State academic content standards and State student academic achievement standards;

(2) the degree of flexibility afforded by the State educational agency to charter schools under the State's charter schools law;

(3) the ambitiousness of the objectives for the charter school grant program;

(4) the quality of the strategy for assessing achievement of those objectives;

(5) the likelihood that the charter school grant program will meet those objectives and improve educational results for students;

(6) the number of high-quality charter schools created under this subpart in the State; and

(7) in the case of State educational agencies that propose to use grant funds to support dissemination activities under subsection (f)(6)(B) of this section, the quality of those activities and the likelihood that those activities will improve student academic achievement.

(b) Selection criteria for eligible applicants

The Secretary shall award grants to eligible applicants under this subpart on the basis of the quality of the applications submitted under section 7221(b)(c) of this title, after taking into consideration such factors as—

(1) the quality of the proposed curriculum and instructional practices;

(2) the degree of flexibility afforded by the State educational agency and, if applicable, the local educational agency to the charter school;

(3) the extent of community support for the application;

(4) the ambitiousness of the objectives for the charter school;

(5) the quality of the strategy for assessing achievement of those objectives;

(6) the likelihood that the charter school will meet those objectives and improve educational results for students; and

(7) in the case of an eligible applicant that proposes to use grant funds to support dissemination activities under subsection (f)(6)(B) of this section, the quality of those activities and the likelihood that those activities will improve student achievement.

(c) Peer review

The Secretary, and each State educational agency receiving a grant under this subpart, shall use a peer review process to review applications for assistance under this subpart.

(d) Diversity of projects

The Secretary and each State educational agency receiving a grant under this subpart, shall award grants and subgrants under this subpart in a manner that, to the extent possible, ensures that such grants and subgrants—

(1) are distributed throughout different areas of the Nation and each State, including urban and rural areas; and

(2) will assist charter schools representing a variety of educational approaches, such as approaches designed to reduce school size.

(e) Waivers

The Secretary may waive any statutory or regulatory requirement over which the Secretary exercises administrative authority except any such requirement relating to the elements of a charter school described in section 7221i(1) of this title, if—

(1) the waiver is requested in an approved application under this subpart; and

(2) the Secretary determines that granting such a waiver will promote the purpose of this subpart.

(f) Use of funds

(1) State educational agencies

Each State educational agency receiving a grant under this subpart shall use such grant funds to award subgrants to one or more eligible applicants in the State to enable such applicant to plan and implement a charter school in accordance with this subpart, except that the State educational agency may reserve not more than 10 percent of the grant funds to support dissemination activities described in paragraph (6).

(2) Eligible applicants

Each eligible applicant receiving funds from the Secretary or a State educational agency shall use such funds to plan and implement a charter school, or to disseminate information about the charter school and successful practices in the charter school, in accordance with this subpart.

(3) Allowable activities

An eligible applicant receiving a grant or subgrant under this subpart may use the grant or subgrant funds only for—

(A) post-award planning and design of the educational program, which may include—

(i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and

(ii) professional development of teachers and other staff who will work in the charter school; and

(B) initial implementation of the charter school, which may include—

(i) informing the community about the school;

(ii) acquiring necessary equipment and educational materials and supplies;

(iii) acquiring or developing curriculum materials; and

(iv) other initial operational costs that cannot be met from State or local sources.

(4) Administrative expenses

(A) State educational agency administrative expenses

Each State educational agency receiving a grant pursuant to this subpart may reserve not more than 5 percent of such grant funds for administrative expenses associated with the charter school grant program assisted under this subpart.
(B) Local administrative expenses

A local educational agency may not deduct funds for administrative fees or expenses from a subgrant awarded to an eligible applicant, unless the eligible applicant enters voluntarily into a mutually agreed upon arrangement for administrative services with the relevant local educational agency. Absent such approval, the local educational agency shall distribute all such subgrant funds to the eligible applicant without delay.

(5) Revolving loan funds

Each State educational agency receiving a grant pursuant to this subpart may reserve not more than 10 percent of the grant funds for the establishment of a revolving loan fund. Such fund may be used to make loans to eligible applicants that have received a subgrant pursuant to this subpart, whether or not the charter school and the assisting charter school have entered voluntarily into a mutually agreed arrangement for administrative services, with the relevant local educational agency. Absent such approval, the local educational agency shall distribute all such subgrant funds to the eligible applicant without delay.

(6) Dissemination

(A) In general

A charter school may apply for funds under this subpart, whether or not the charter school has applied for or received funds under this subpart for planning, program design, or implementation, to carry out the activities described in subparagraph (B) if the charter school has been in operation for at least 3 consecutive years and has demonstrated overall success, including—

(i) substantial progress in improving student academic achievement;

(ii) high levels of parent satisfaction; and

(iii) the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

(B) Activities

A charter school described in subparagraph (A) may use funds reserved under paragraph (1) to assist other schools in adapting the charter school’s program (or certain aspects of the charter school’s program), or to disseminate information about the charter school, through such activities as—

(i) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school’s developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(ii) developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(iii) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(iv) conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools.

(g) Tribally controlled schools

Each State that receives a grant under this subpart and designates a tribally controlled school as a charter school shall not consider payments to a school under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.] in determining—

(1) the eligibility of the school to receive any other Federal, State, or local aid; or

(2) the amount of such aid.


REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsec. (g), is part B (§5201–5212) of title V of Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 5204 of Pub. L. 89–10 was classified to section 7234 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7221d. National activities

(a) In general

The Secretary shall reserve for each fiscal year the greater of 5 percent or $5,000,000 of the amount appropriated to carry out this subpart, except that in no fiscal year shall the total amount so reserved exceed $8,000,000, to carry out the following activities:

(1) To provide charter schools, either directly or through State educational agencies, with—

(A) information regarding—

(i) Federal funds that charter schools are eligible to receive; and

(ii) other Federal programs in which charter schools may participate; and

(B) assistance in applying for Federal education funds that are allocated by formula, including assistance with filing deadlines and submission of applications.

(2) To provide for other evaluations or studies that include the evaluation of the impact of charter schools on student academic achievement, including information regarding—

(A) students attending charter schools reported on the basis of race, age, disability, gender, limited English proficiency, and previous enrollment in public school; and

(B) the professional qualifications of teachers within a charter school and the turnover of the teaching force.

(3) To provide—

(A) information to applicants for assistance under this subpart;
(B) assistance to applicants for assistance under this subpart with the preparation of applications under section 7221b of this title; (C) assistance in the planning and startup of charter schools; (D) training and technical assistance to existing charter schools; and (E) for the dissemination to other public schools of best or promising practices in charter schools.

(4) To provide (including through the use of one or more contracts that use a competitive bidding process) for the collection of information regarding the financial resources available to charter schools, including access to private capital, and to widely disseminate to charter schools any such relevant information and model descriptions of successful programs.

(5) To carry out evaluations of, technical assistance for, and information dissemination regarding, the per-pupil facilities aid programs. In carrying out the evaluations, the Secretary may carry out one or more evaluations of State programs assisted under this subsection, which shall, at a minimum, address—

(A) how, and the extent to which, the programs promote educational equity and excellence; and
(B) the extent to which charter schools supported through the programs are—

(i) held accountable to the public;
(ii) effective in improving public education; and
(iii) open and accessible to all students.

(b) Per-pupil facilities aid programs

(1) Definition of per-pupil facilities aid program

In this subsection, the term "per-pupil facilities aid program" means a program in which a State makes payments, on a per-pupil basis, to charter schools to provide the schools with financing—

(A) that is dedicated solely for funding charter school facilities; or

(B) a portion of which is dedicated for funding charter school facilities.

(2) Grants

(A) In general

From the amount made available to carry out this subsection under paragraphs (2) and (3)(B) of section 7221(a) of this title for any fiscal year, the Secretary shall make grants, on a competitive basis, to States to pay for the Federal share of the cost of establishing or enhancing, and administering per-pupil facilities aid programs.

(B) Period

The Secretary shall award grants under this subsection for periods of not more than 5 years.

(C) Federal share

The Federal share of the cost described in subparagraph (A) for a per-pupil facilities aid program shall be not more than—

(i) 90 percent of the cost, for the first fiscal year for which the program receives assistance under this subsection;

(ii) 80 percent in the second such year;

(iii) 60 percent in the third such year;

(iv) 40 percent in the fourth such year; and

(v) 20 percent in the fifth such year.

(3) Use of funds

(A) In general

A State that receives a grant under this subsection shall use the funds made available through the grant to establish or enhance, and administer, a per-pupil facilities aid program for charter schools in the State.

(B) Evaluations; technical assistance; dissemination

From the amount made available to a State through a grant under this subsection for a fiscal year, the State may reserve not more than 5 percent to carry out evaluations, to provide technical assistance, and to disseminate information.

(C) Supplement, not supplant

Funds made available under this subsection shall be used to supplement, and not supplant, State and local public funds expended to provide per pupil facilities aid programs, operations financing programs, or other programs, for charter schools.

(4) Requirements

(A) Voluntary participation

No State may be required to participate in a program carried out under this subsection.

(B) State law

To be eligible to receive a grant under this subsection, a State shall establish or enhance, and administer, a per-pupil facilities aid program for charter schools in the State, that—

(i) is specified in State law; and

(ii) provides annual financing, on a per-pupil basis, for charter school facilities.

(5) Applications

To be eligible to receive a grant under this subsection, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(6) Priorities

In making grants under this subsection, the Secretary shall give priority to States that meet the criteria described in paragraph (2), and subparagraphs (A), (B), and (C) of paragraph (3), of section 7221a(e) of this title.

(c) Rule of construction

Nothing in this section shall be construed to require charter schools to collect any data described in subsection (a) of this section.


PRIOR PROVISIONS

A prior section 5205 of Pub. L. 89–10 was classified to section 7235 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

1So in original. Probably should be “per-pupil”. 
§ 7221e. Federal formula allocation during first year and for successive enrollment expansions

(a) In general

For purposes of the allocation to schools by the States or their agencies of funds under part A of subchapter I of this chapter, and any other Federal funds which the Secretary allocates to States on a formula basis, the Secretary and each State educational agency shall take such measures as are necessary to ensure that every charter school receives the Federal funding for which the charter school is eligible not later than 5 months after the charter school first opens, notwithstanding the fact that the identity and characteristics of the students enrolling in that charter school are not fully and completely determined until that charter school actually opens. The measures similarly shall ensure that every charter school expanding its enrollment in any subsequent year of operation receives the Federal funding for which the charter school is eligible not later than 5 months after such expansion.

(b) Adjustment and late openings

(1) In general

The measures described in subsection (a) of this section shall include provision for appropriate adjustments, through recovery of funds or reduction of payments for the succeeding year, in cases where payments made to a charter school on the basis of estimated or projected enrollment data exceed the amounts that the school is eligible to receive on the basis of actual or final enrollment data.

(2) Rule

For charter schools that first open after November 1 of any academic year, the State, in accordance with guidance provided by the Secretary and applicable Federal statutes and regulations, shall ensure that such charter schools that are eligible for the funds described in subsection (a) of this section for such academic year have a full and fair opportunity to receive those funds during the charter schools’ first year of operation.


PRERIOS N W TE T

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

PRIOR PROVISIONS

A prior section 5207 of Pub. L. 89–10 was classified to section 7237 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7221g. Records transfer

State educational agencies and local educational agencies, to the extent practicable, shall ensure that a student’s records and, if applicable, a student’s individualized education program as defined in section 1401 of this title, are transferred to a charter school upon the transfer of the student to the charter school, and to another public school upon the transfer of the student from a charter school to another public school, in accordance with applicable State law.


PRERIOS N W TE T

A prior section 5208 of Pub. L. 89–10 was classified to section 7238 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

AMENDMENTS

2004—Pub. L. 108–446 substituted “section 1401” for “section 1401(11)”.

§ 7221h. Paperwork reduction

To the extent practicable, the Secretary and each authorized public chartering agency shall ensure that implementation of this subpart results in a minimum of paperwork for any eligible applicant or charter school.


§ 7221i. Definitions

In this subpart:

(1) Charter school

The term ‘‘charter school’’ means a public school that—

(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;

(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) operates in pursuit of a specific set of educational objectives determined by the


school’s developer and agreed to by the authorized public chartering agency;
(D) provides a program of elementary or secondary education, or both;
(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
(F) does not charge tuition;
(H) is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
(I) agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;
(J) meets all applicable Federal, State, and local health and safety requirements;
(K) operates in accordance with State law; and
(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(2) Developer
The term “developer” means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(3) Eligible applicant
The term “eligible applicant” means a developer that has—
(A) applied to an authorized public chartering authority to operate a charter school; and
(B) provided adequate and timely notice to that authority under section 7221b(d)(3) of this title.

(4) Authorized public chartering agency
The term “authorized public chartering agency” means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school.

§ 7221j. Authorization of appropriations
(a) In general
There are authorized to be appropriated to carry out this subpart $300,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Reservation
From the amount appropriated under subsection (a) of this section for each fiscal year, the Secretary shall reserve—
(1) $200,000,000 to carry out this subpart, other than section 7221d(b) of this title; and
(2) any funds in excess of $200,000,000, that do not exceed $300,000,000, to carry out section 7221d(b) of this title; and
(3)(A) 50 percent of any funds in excess of $300,000,000 to carry out this subpart, other than section 7221d(b) of this title; and
(B) 50 percent of any funds in excess of $300,000,000 to carry out section 7221d(b) of this title.

§ 7223. Purpose
The purpose of this subpart is to provide grants to eligible entities to permit the eligible entities to demonstrate innovative credit enhancement initiatives that assist charter schools to address the cost of acquiring, constructing, and renovating facilities.

§ 7223a. Grants to eligible entities
(a) Grants
The Secretary shall use 100 percent of the amount available to carry out this subpart to

References in Text
The Age Discrimination Act of 1975, referred to in par. (1)(G), is title III of Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title VI of the Act is classified generally to subchapter V of chapter 21 of Title 42, the Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of Title 42 and Tables.


The Individuals with Disabilities Education Act, referred to in par. (1)(G), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§1411 et seq.) of chapter 33 of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

The Age Discrimination Act of 1975, referred to in par. (1)(G), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of Title 42, the Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of Title 42 and Tables.


The Individuals with Disabilities Education Act, referred to in par. (1)(G), is title VI of Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 28 (§1681 et seq.) of this title. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.


award not less than three grants to eligible entities that have applications approved under this subpart to demonstrate innovative methods of assisting charter schools to address the cost of acquiring, constructing, and renovating facilities by enhancing the availability of loans or bond financing.

(b) Grantee selection

(1) Evaluation of application
The Secretary shall evaluate each application submitted under section 7223b of this title, and shall determine whether the application is sufficient to merit approval.

(2) Distribution of grants
The Secretary shall award at least one grant to an eligible entity described in section 7223i(2)(A) of this title, at least one grant to an eligible entity described in section 7223i(2)(B) of this title, and at least one grant to an eligible entity described in section 7223i(2)(C) of this title, if applications are submitted that permit the Secretary to do so without approving an application that is not of sufficient quality to merit approval.

(c) Grant characteristics
Grants under this subpart shall be of a sufficient size, scope, and quality so as to ensure an effective demonstration of an innovative means of enhancing credit for the financing of charter school acquisition, construction, or renovation.

(d) Special rule
In the event the Secretary determines that the funds made available under this subpart are insufficient to permit the Secretary to award not less than three grants in accordance with subsections (a) through (c) of this section, such three-grant minimum and subsection (b)(2) of this section shall not apply, and the Secretary may determine the appropriate number of grants to be awarded in accordance with subsection (c) of this section.

(7) such other information as the Secretary may reasonably require.

§ 7223c. Charter school objectives
An eligible entity receiving a grant under this subpart shall use the funds deposited in the reserve account established under section 7223d(a) of this title to assist one or more charter schools to access private sector capital to accomplish one or both of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved personal and real property for an objective described in section 7223c of this title, or otherwise enhance credit available to charter schools;

(2) the construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school.

(6) in the case of an application submitted by a State governmental entity, a description of the actions that the entity has taken, or will take, to ensure that charter schools within the State receive the funding the charter schools need to have adequate facilities; and

§ 7223d. Reserve account

(a) Use of funds
To assist charter schools to accomplish the objectives described in section 7223c of this title, an eligible entity receiving a grant under this subpart shall, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, deposit the funds received under this subpart (other than funds used for administrative costs in accordance with section 7223e of this title) in a reserve account established and maintained by the eligible entity for this purpose. Amounts deposited in such account shall be used by the eligible entity for one or more of the following purposes:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein, the proceeds of which are used for an objective described in section 7223c of this title.

(2) Guaranteeing and insuring leases of personal and real property for an objective described in section 7223c of this title.

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.

(4) Facilitating the issuance of bonds by charter schools, or by other public entities for...
the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

(b) Investment

Funds received under this subpart and deposited in the reserve account established under subsection (a) of this section shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities.

(c) Reinvestment of earnings

Any earnings on funds received under this subpart shall be deposited in the reserve account established under subsection (a) of this section and used in accordance with such subsection.


§ 7223e. Limitation on administrative costs

An eligible entity may use not more than 0.25 percent of the funds received under this subpart for the administrative costs of carrying out its responsibilities under this subpart.


§ 7223f. Audits and reports

(a) Financial record maintenance and audit

The financial records of each eligible entity receiving a grant under this subpart shall be maintained in accordance with generally accepted accounting principles and shall be subject to an annual audit by an independent public accountant.

(b) Reports

(1) Grantee annual reports

Each eligible entity receiving a grant under this subpart annually shall submit to the Secretary a report of its operations and activities under this subpart.

(2) Contents

Each annual report submitted under paragraph (1) shall include—

(A) a copy of the most recent financial statements, and any accompanying opinion on such statements, prepared by the independent public accountant reviewing the financial records of the eligible entity;

(B) a copy of any report made on an audit of the financial records of the eligible entity that was conducted under subsection (a) of this section during the reporting period;

(C) an evaluation by the eligible entity of the effectiveness of its use of the Federal funds provided under this subpart in leveraging private funds;

(D) a listing and description of the charter schools served during the reporting period;

(E) a description of the activities carried out by the eligible entity to assist charter schools in meeting the objectives set forth in section 7223c of this title; and

(F) a description of the characteristics of lenders and other financial institutions participating in the activities undertaken by the eligible entity under this subpart during the reporting period.

(3) Secretarial report

The Secretary shall review the reports submitted under paragraph (1) and shall provide a comprehensive annual report to Congress on the activities conducted under this subpart.


§ 7223g. No full faith and credit for grantee obligations

No financial obligation of an eligible entity entered into pursuant to this subpart (such as an obligation under a guarantee, bond, note, evidence of debt, or loan) shall be an obligation of, or guaranteed in any respect by, the United States. The full faith and credit of the United States is not pledged to the payment of funds which may be required to be paid under any obligation made by an eligible entity pursuant to any provision of this subpart.


§ 7223h. Recovery of funds

(a) In general

The Secretary, in accordance with chapter 37 of title 31, shall collect—

(1) all of the funds in a reserve account established by an eligible entity under section 7223d(a) of this title if the Secretary determines, not earlier than 2 years after the date on which the eligible entity first received funds under this subpart, that the eligible entity has failed to make substantial progress in carrying out the purposes described in section 7223d(a) of this title; or

(2) all or a portion of the funds in a reserve account established by an eligible entity under section 7223d(a) of this title if the Secretary determines that the eligible entity has permanently ceased to use all or a portion of the funds in such account to accomplish any purpose described in section 7223d(a) of this title.

(b) Exercise of authority

The Secretary shall not exercise the authority provided in subsection (a) of this section to collect from any eligible entity any funds that are being properly used to achieve one or more of the purposes described in section 7223d(a) of this title.

(c) Procedures

The provisions of sections 451, 452, and 458 of the General Education Provisions Act [20 U.S.C. 1234, 1234a, 1234g] shall apply to the recovery of funds under subsection (a) of this section.

(d) Construction

This section shall not be construed to impair or affect the authority of the Secretary to recover funds under part D of the General Education Provisions Act [20 U.S.C. 1234 et seq.].

§ 7223i. Definitions
In this subpart:
(1) Charter school

The term “charter school” has the meaning given such term in section 7221i of this title.

(2) Eligible entity

The term “eligible entity” means—
(A) a public entity, such as a State or local governmental entity;
(B) a private nonprofit entity; or
(C) a consortium of entities described in subparagraphs (A) and (B).

§ 7223j. Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $150,000,000 for fiscal year 2002 and such sums as may be necessary for fiscal year 2003.

§ 7223k. Priorities

In awarding grants under this subpart, the Secretary shall give priority to an eligible entity—
(1) planning or designing a program (for not more than 1 year); and
(2) whose program would, through various choice options, have the most impact in allowing students in low-performing schools to attend higher-performing schools.

§ 7223l. Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $150,000,000 for fiscal year 2002 and such sums as may be necessary for fiscal year 2003.

§ 7225. Grants

(a) Authorization

From funds made available under section 7225g of this title to carry out this subpart, the Secretary shall award grants, on a competitive basis, to eligible entities to enable the entities to establish or expand a program of public school choice (referred to in this subpart as a “program”) in accordance with this subpart.

(b) Duration

Grants awarded under subsection (a) of this section may be awarded for a period of not more than 5 years.

(a) Required use of funds

An eligible entity that receives a grant under this subpart shall use the grant funds to provide students selected to participate in the program with transportation services or the cost of transportation to and from the public elementary schools and secondary schools, including charter schools, that the students choose to attend under the program.

(b) Permissible uses of funds

An eligible entity that receives a grant under this subpart may use the grant funds for—
(1) planning or designing a program (for not more than 1 year); and
(2) the cost of making tuition transfer payments to public elementary schools or secondary schools to which students transfer under the program.

(c) Nonpermissible uses of funds

An eligible entity that receives a grant under this subpart may not use the grant funds for school construction.

(d) Administrative expenses

The eligible entity may use not more than 5 percent of the funds made available through the grant for any fiscal year for administrative expenses.

§ 7225a. Uses of funds

(a) Required use of funds

An eligible entity that receives a grant under this subpart shall use the grant funds to provide students selected to participate in the program with transportation services or the cost of transportation to and from the public elementary schools and secondary schools, including charter schools, that the students choose to attend under the program.

(b) Permissible uses of funds

An eligible entity that receives a grant under this subpart may use the grant funds for—
(1) planning or designing a program (for not more than 1 year); and
(2) the cost of making tuition transfer payments to public elementary schools or secondary schools to which students transfer under the program.

§ 7225b. Applications

(a) Submission

An eligible entity that desires a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(b) Contents

An application submitted under subsection (a) of this section shall include—
(1) a description of the program for which the eligible entity seeks funds and the goals for such program;
(2) a description of how and when parents of students will be given the notice required under section 7225d(a)(2) of this title;
(3) a description of how students will be selected for the program;
(4) a description of how the program will be coordinated with, and will complement and enhance, other related Federal and non-Federal projects; and
(5) if the program is to be carried out by a partnership, the name of each partner and a description of the partner’s responsibilities; and
(6) such other information as the Secretary may require.

§ 7225c. Priorities

In awarding grants under this subpart, the Secretary shall give priority to an eligible entity—
(1) whose program would provide the widest variety of choices to all students in participating schools;
(2) whose program would, through various choice options, have the most impact in allowing students in low-performing schools to attend higher-performing schools; and
(3) that is a partnership that seeks to implement an interdistrict approach to carrying out a program.
§ 7225d. Requirements and voluntary participation

(a) Parent and community involvement and notice
In carrying out a program under this subpart, an eligible entity shall—
(1) develop the program with—
(A) the involvement of parents and others in the community to be served; and
(B) individuals who will carry out the program, including administrators, teachers, principals, and other staff; and
(2) provide to parents of students in the area to be served by the program with prompt notice of—
(A) the existence of the program;
(B) the program’s availability; and
(C) a clear explanation of how the program will operate.

(b) Selection of students
An eligible entity that receives a grant under this subpart shall select students to participate in a program on the basis of a lottery, if more students apply for admission to the program than can be accommodated.

(c) Voluntary participation
Student participation in a program funded under this subpart shall be voluntary.

§ 7225e. Evaluations

(a) In general
From the amount made available to carry out this subpart for any fiscal year, the Secretary may reserve not more than 5 percent—
(1) to carry out evaluations;
(2) to provide technical assistance; and
(3) to disseminate information.

(b) Evaluations
In carrying out the evaluations under subsection (a) of this section, the Secretary shall, at a minimum, address—
(1) how, and the extent to which, the programs promote educational equity and excellence;
(2) the characteristics of the students participating in the programs; and
(3) the effect of the programs on the academic achievement of students participating in the programs, particularly students who move from schools identified under section 6316 of this title to schools not so identified, and on the overall quality of participating schools and districts.

§ 7225f. Definitions

In this subpart:
(1) Charter school
The term “charter school” has the meaning given such term in section 7221l of this title.

(2) Eligible entity
The term “eligible entity” means—
(A) one or more State educational agencies;
(B) one or more local educational agencies; or
(C) a partnership of—
(i) one or more—
(I) State educational agencies; and
(II) local educational agencies or other public, for-profit, or nonprofit entities; or
(ii) one or more—
(I) local educational agencies; and
(II) public, for-profit, or nonprofit entities.

(3) Low-performing school
The term “low-performing school” means a public elementary school or secondary school that has failed to make adequate yearly progress, as described in section 6311(b) of this title, for two or more consecutive years.

§ 7225g. Authorization of appropriations

There are authorized to be appropriated to carry out this subpart $100,000,000 for fiscal year 2002 and each of the 5 succeeding fiscal years.

§ 7231. Findings and purpose

(a) Findings
Congress makes the following findings:
(1) Magnet schools are a significant part of the Nation’s effort to achieve voluntary desegregation in our Nation’s schools.
(2) The use of magnet schools has increased dramatically since the inception of the magnet schools assistance program under this chapter, with approximately 2,000,000 students nationwide attending such schools, of whom more than 65 percent are non-white.
(3) Magnet schools offer a wide range of distinctive programs that have served as models for school improvement efforts.
(4) It is in the best interests of the United States—
(A) to continue the Federal Government’s support of local educational agencies that are implementing court-ordered desegregation plans and local educational agencies that are voluntarily seeking to foster meaningful interaction among students of different racial and ethnic backgrounds, beginning at the earliest stage of such students’ education;
(B) to ensure that all students have equitable access to a high quality education that will prepare all students to function well in a technologically oriented and a highly competitive economy comprised of people from many different racial and ethnic backgrounds; and
(C) to continue to desegregate and diversify schools by supporting magnet schools,
recognizing that segregation exists between minority and nonminority students as well as among students of different minority groups.

(5) Desegregation efforts through magnet school programs are a significant part of our Nation’s effort to achieve voluntary desegregation in schools and help to ensure equal educational opportunities for all students.

(b) Purpose

The purpose of this part is to assist in the desegregation of schools served by local educational agencies by providing financial assistance to eligible local educational agencies for—

(1) the elimination, reduction, or prevention of minority group isolation in elementary schools and secondary schools with substantial proportions of minority students, which shall include assisting in the efforts of the United States to achieve voluntary desegregation in public schools;

(2) the development and implementation of magnet school programs that will assist local educational agencies in achieving systemic reforms and providing all students the opportunity to meet challenging State academic content standards and student academic achievement standards;

(3) the development and design of innovative educational methods and practices that promote diversity and increase choices in public elementary schools and public secondary schools and public educational programs;

(4) courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the attainment of tangible and marketable vocational, technological, and professional skills of students attending such schools;

(5) improving the capacity of local educational agencies, including through professional development, to continue operating magnet schools at a high performance level after Federal funding for the magnet schools is terminated; and

(6) ensuring that all students enrolled in the magnet school programs have equitable access to high quality education that will enable the students to succeed academically and continue with postsecondary education or productive employment.


PRIOR PROVISIONS


A prior section 5301 of Pub. L. 89–10 was classified to section 7262 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7231d. Application of provisions

For the purpose of this part, the term “magnet school” means a public elementary school, public secondary school, public elementary education center, or public secondary education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.


PRIOR PROVISIONS

A prior section 5302 of Pub. L. 89–10 was classified to section 7262 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7231b. Program authorized

The Secretary, in accordance with this part, is authorized to award grants to eligible local educational agencies, and consortia of such agencies where appropriate, to carry out the purpose of this part for magnet schools that are—

(1) part of an approved desegregation plan; and

(2) designed to bring students from different social, economic, ethnic, and racial backgrounds together.


PRIOR PROVISIONS

A prior section 5303 of Pub. L. 89–10 was classified to section 7263 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7231c. Eligibility

A local educational agency, or consortium of such agencies where appropriate, is eligible to receive a grant under this part to carry out the purpose of this part if such agency or consortium—

(1) is implementing a plan undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, that requires the desegregation of minority-group-segregated children or faculty in the elementary schools and secondary schools of such agency; or

(2) without having been required to do so, has adopted and is implementing, or will, if a grant is awarded to such local educational agency, or consortium of such agencies, under this part, adopt and implement a plan that has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] for the desegregation of minority-group-segregated children or faculty in such schools.


REFERENCES IN TEXT


§ 7231d. Applications and requirements

(a) Applications

An eligible local educational agency, or consortium of such agencies, desiring to receive a grant under this part shall submit an applica-
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(a) of this section shall include—

(1) a description of—

(A) how a grant awarded under this part will be used to promote desegregation, including how the proposed magnet school programs will increase interaction among students of different social, economic, ethnic, and racial backgrounds;

(B) the manner and extent to which the magnet school program will increase student academic achievement in the instructional area or areas offered by the school;

(C) how the applicant will continue the magnet school program after assistance under this part is no longer available, and, if applicable, an explanation of why magnet schools established or supported by the applicant with grant funds under this part cannot be continued without the use of grant funds under this part;

(D) how grant funds under this part will be used—

(i) to improve student academic achievement for all students attending the magnet school programs; and

(ii) to implement services and activities that are consistent with other programs under this chapter, and other Acts, as appropriate; and

(E) the criteria to be used in selecting students to attend the proposed magnet school program; and

(2) assurances that the applicant will—

(A) use grant funds under this part for the purposes specified in section 7231(b) of this title;

(B) employ highly qualified teachers in the courses of instruction assisted under this part;

(C) not engage in discrimination based on race, religion, color, national origin, sex, or disability in—

(i) the hiring, promotion, or assignment of employees of the applicant or other personnel for whom the applicant has any administrative responsibility;

(ii) the assignment of students to schools, or to courses of instruction within the schools, of such applicant, except to carry out the approved plan; and

(iii) designing or operating extracurricular activities for students;

(D) carry out a high-quality education program that will encourage greater parental decisionmaking and involvement; and

(E) give students residing in the local attendance area of the proposed magnet school program equitable consideration for placement in the program, consistent with desegregation guidelines and the capacity of the applicant to accommodate the students.

(c) Special rule

No grant shall be awarded under this part unless the Assistant Secretary of Education for Civil Rights determines that the assurances described in subsection (b)(2)(C) of this section will be met.


PRIOR PROVISIONS

A prior section 5305 of Pub. L. 89–10 was classified to section 7255 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7231e. Priority

In awarding grants under this part, the Secretary shall give priority to applicants that—

(1) demonstrate the greatest need for assistance, based on the expense or difficulty of effectively carrying out approved desegregation plans and the magnet school program for which the grant is sought;

(2) propose to carry out new magnet school programs, or significantly revise existing magnet school programs; and

(3) propose to select students to attend magnet school programs by methods such as lottery, rather than through academic examination.


PRIOR PROVISIONS

A prior section 5306 of Pub. L. 89–10 was classified to section 7266 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7231f. Use of funds

(a) In general

Grant funds made available under this part may be used by an eligible local educational agency, or consortium of such agencies—

(1) for planning and promotional activities directly related to the development, expansion, continuation, or enhancement of academic programs and services offered at magnet schools;

(2) for the acquisition of books, materials, and equipment, including computers and the maintenance and operation of materials, equipment, and computers, necessary to conduct programs in magnet schools;

(3) for the compensation, or subsidization of the compensation, of elementary school and secondary school teachers who are highly qualified, and instructional staff where applicable, who are necessary to conduct programs in magnet schools;

(4) with respect to a magnet school program offered to less than the entire student population of a school, for instructional activities that—

(A) are designed to make available the special curriculum that is offered by the magnet school program to students who are enrolled in the school but who are not enrolled in the magnet school program; and

(B) further the purpose of this part;

(5) for activities, which may include professional development, that will build the recipient’s capacity to operate magnet school programs once the grant period has ended;
(6) to enable the local educational agency, or consortium of such agencies, to have more flexibility in the administration of a magnet school program in order to serve students attending a school who are not enrolled in a magnet school program; and

(7) to enable the local educational agency, or consortium of such agencies, to have flexibility in designing magnet schools for students in all grades.

(b) Special rule

Grant funds under this part may be used for activities described in paragraphs (2) and (3) of subsection (a) of this section only if the activities are directly related to improving student academic achievement based on the State's challenging academic content standards and student academic achievement standards or directly related to improving student reading skills or knowledge of mathematics, science, history, geography, English, foreign languages, art, or music, or to improving vocational, technological, and professional skills.


Prior Provisions

A prior section 5307 of Pub. L. 89–10 was classified to section 7267 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7231g. Prohibition

Grants under this part may not be used for transportation or any activity that does not augment academic improvement.


Prior Provisions

A prior section 5308 of Pub. L. 89–10 was classified to section 7268 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7231h. Limitations

(a) Duration of awards

A grant under this part shall be awarded for a period that shall not exceed 3 fiscal years.

(b) Limitation on planning funds

A local educational agency, or consortium of such agencies, may expend for planning (professional development shall not be considered to be planning for purposes of this subsection) not more than 50 percent of the grant funds received under this part for the first year of the program and not more than 15 percent of such funds for each of the second and third such years.

(c) Amount

No local educational agency, or consortium of such agencies, awarded a grant under this part shall receive more than $4,000,000 under this part for any 1 fiscal year.

(d) Timing

To the extent practicable, the Secretary shall award grants for any fiscal year under this part not later than July 1 of the applicable fiscal year.


§ 7231i. Evaluations

(a) Reservation

The Secretary may reserve not more than 2 percent of the funds appropriated under section 7231(a) of this title for any fiscal year to carry out evaluations, provide technical assistance, and carry out dissemination projects with respect to magnet school programs assisted under this part.

(b) Contents

Each evaluation described in subsection (a) of this section, at a minimum, shall address—

(1) how and the extent to which magnet school programs lead to educational quality and improvement;

(2) the extent to which magnet school programs enhance student access to a high quality education;

(3) the extent to which magnet school programs lead to the elimination, reduction, or prevention of minority group isolation in elementary schools and secondary schools with substantial proportions of minority students; and

(4) the extent to which magnet school programs differ from other school programs in terms of the organizational characteristics and resource allocations of such magnet school programs.

(c) Dissemination

The Secretary shall collect and disseminate to the general public information on successful magnet school programs.


§ 7231j. Authorization of appropriations; reservation

(a) Authorization

For the purpose of carrying out this part, there are authorized to be appropriated $125,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Availability of funds for grants to agencies not previously assisted

In any fiscal year for which the amount appropriated pursuant to subsection (a) of this section exceeds $75,000,000, the Secretary shall give priority in using such amounts in excess of $75,000,000 to awarding grants to local educational agencies or consortia of such agencies that did not receive a grant under this part in the preceding fiscal year.


Prior Provisions

Prior sections 7232 to 7238 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


§ 7241. Authorization of appropriations
There are authorized to be appropriated to carry out this part the following amounts:

(a) Authorization

The Secretary is authorized to support nationally significant programs to improve the quality of elementary and secondary education at the State and local levels and help all children meet challenging State academic content and student academic achievement standards. The Secretary may carry out such programs directly, or through grants to, or contracts with—

(1) States or local educational agencies;
(2) institutions of higher education; and
(3) other public and private agencies, organizations, and institutions.

(b) Uses of funds

Funds made available under section 7241 of this title to carry out this part may be used for any of the following programs:

(1) Activities to promote systemic education reform at the State and local levels, including scientifically based research, development, and evaluation designed to improve—

(A) student academic achievement at the State and local level; and

(B) strategies for effective parent and community involvement.

(2) Programs at the State and local levels that are designed to yield significant results, including programs to explore approaches to public school choice and school-based decisionmaking.

(3) Recognition programs, which may include financial awards to States, local educational agencies, and schools that have made the greatest progress, based on the Secretary’s determination or on a nomination by the State in which the school is located (or in the case of a Bureau funded school, by the Secretary of the Interior) in—

(A) improving the academic achievement of economically disadvantaged students and students from major racial and ethnic minority groups; and

(B) closing the academic achievement gap for those groups of students farthest away from the proficient level on the academic assessments administered by the State under section 6311 of this title.

(4) Scientifically based studies and evaluations of education reform strategies and innovations, and the dissemination of information on the effectiveness of such strategies and innovations.

(5) Identification and recognition of exemplary schools and programs, such as Blue Ribbon Schools, including programs to evaluate the effectiveness of using the best practices of exemplary or Blue Ribbon Schools to improve academic achievement.

(6) Activities to support Scholar-Athlete Games programs, including the World Scholar-Athlete Games and the U.S. Scholar-Athlete Games.

(7) Programs to promote voter participation in American elections through programs, such as the National Student/Parent Mock Election and Kids Voting USA.

(8) Demonstrations relating to the planning and evaluation of the effectiveness of programs under which local educational agencies or schools contract with private management organizations to reform a school or schools.

(9) Other programs that meet the purposes of this chapter.

(c) Basis of awards

The Secretary is authorized to—

(1) make awards under this subpart on the basis of competitions announced by the Secretary; and

(2) support meritorious unsolicited proposals for awards under this subpart.

(d) Effectiveness of programs

The Secretary shall ensure that programs supported under this subpart are designed so that their effectiveness is readily ascertainable, and shall ensure that such effectiveness is assessed using rigorous, scientifically based research and evaluations.

§ 7243a. Applications

(a) Submission

To be eligible for an award under this subpart, an entity shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require.

(b) Contents

Each application submitted under subsection (a) of this section shall—
(1) establish clear objectives, which are based on scientifically based research, for the proposed program; and
(2) describe the activities the applicant will carry out in order to meet the objectives described in paragraph (1).

(c) Peer review

The Secretary shall use a peer review process in reviewing applications for awards under this subpart and in recognizing States, local educational agencies, and schools under section 7243(b)(3) of this title, only if funds are used for such recognition programs. The Secretary may use funds appropriated under this subpart for the cost of such peer review.


§ 7243b. Program requirements

(a) Evaluations

A recipient of an award under this subpart shall—
(1) evaluate the effectiveness of the program funded under the award in achieving the objectives stated in applications submitted under section 7243a of this title; and
(2) report to the Secretary such information as may be required to determine the effectiveness of such program, including evidence of progress toward meeting such objectives.

(b) Dissemination of evaluation results

The Secretary shall provide for the dissemination of the evaluations of programs funded under this subpart by making the evaluations publicly available upon request, and shall provide public notice that the evaluations are so available.

(c) Matching funds

The Secretary may require recipients of awards under this subpart to provide matching funds from non-Federal sources, and shall permit the recipients to match funds in whole or in part with in-kind contributions.

(d) Special rule for recognition programs

The application requirements of section 7243a(b) of this title, and the evaluation requirements of subsections (a) and (b) of this section, do not apply to recognition programs under section 7243(b)(3) of this title.


§ 7243c. Studies of national significance

(a) Studies

The Secretary shall conduct the following studies of national significance:

(1) Unhealthy public school buildings

A study regarding the health and learning impacts of environmentally unhealthy public school buildings on students and teachers. The study shall include the following information:
(A) The characteristics of those public elementary school and secondary school buildings that contribute to unhealthy school environments.
(B) The health and learning impacts of environmentally unhealthy public school buildings on students that are attending or that have attended such schools.
(C) Recommendations to Congress on how to assist schools that are out of compliance with Federal or State health and safety codes, and a cost estimate of bringing up environmentally unhealthy public school buildings to minimum Federal health and safety building standards.

(2) Exposure to violent entertainment

A study regarding how exposure to violent entertainment (such as in movies, music, television, Internet content, video games, and arcade games) affects children’s cognitive development and educational achievement.

(3) Sexual abuse in schools

A study regarding the prevalence of sexual abuse in schools, including recommendations and legislative remedies for addressing the problem of sexual abuse in schools.

(b) Completion date

The studies under subsection (a) of this section shall be completed not later than 18 months after January 8, 2002.

(c) Public dissemination

The Secretary shall make the study conducted under subsection (a)(1) of this section available to the public through the Educational Resources Information Center National Clearinghouse for Educational Facilities of the Department.


SUBPART 2—ELEMENTARY AND SECONDARY SCHOOL COUNSELING PROGRAMS

§ 7245. Elementary and secondary school counseling programs

(a) Grants authorized

(1) In general

The Secretary is authorized to award grants to local educational agencies to enable such agencies to establish or expand elementary school and secondary school counseling programs that comply with the requirements of subsection (c)(2) of this section.

(2) Special consideration

In awarding grants under this section, the Secretary shall give special consideration to applications describing programs that—
(A) demonstrate the greatest need for new or additional counseling services among children in the schools served by the local educational agency, in part by providing information on current ratios of students to school counselors, students to school social workers, and students to school psychologists;
(B) propose the most promising and innovative approaches for initiating or expanding school counseling; and
(C) show the greatest potential for replication and dissemination.

1 So in original. Probably should be “environmentally”.

115 Stat. 1813.
(3) Equitable distribution
In awarding grants under this section, the Secretary shall ensure an equitable geographic distribution among the regions of the United States and among local educational agencies located in urban, rural, and suburban areas.

(4) Duration
A grant under this section shall be awarded for a period not to exceed 3 years.

(5) Maximum grant
A grant awarded under this section shall not exceed $400,000 for any fiscal year.

(6) Supplement, not supplant
Funds made available under this section shall be used to supplement, and not supplant, other Federal, State, or local funds used for providing school-based counseling and mental health services to students.

(b) Applications

(1) In general
Each local educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) Contents
Each application for a grant under this section shall—
(A) describe the school population to be targeted by the program, the particular counseling needs of such population, and the current school counseling resources available for meeting such needs;
(B) describe the activities, services, and training to be provided by the program and the specific approaches to be used to meet the needs described in subparagraph (A);
(C) describe the methods to be used to evaluate the outcomes and effectiveness of the program;
(D) describe how the local educational agency will involve community groups, social service agencies, and other public and private entities in collaborative efforts to enhance the program and promote school-linked services integration;
(E) document that the local educational agency has the personnel qualified to develop, implement, and administer the program;
(F) describe how diverse cultural populations, if applicable, will be served through the program;
(G) assure that the funds made available under this subpart for any fiscal year will be used to supplement, and not supplant, any other Federal, State, or local funds used for providing school-based counseling and mental health services to students; and
(H) assure that the applicant will appoint an advisory board composed of interested parties, including parents, teachers, school administrators, counseling services providers described in subsection (c)(2)(D) of this section, and community leaders, to advise the local educational agency on the design and implementation of the program.

(c) Use of funds

(1) In general
The Secretary is authorized to award grants to local educational agencies to enable the local educational agencies to initiate or expand elementary school or secondary school counseling programs that comply with the requirements of paragraph (2).

(2) Requirements
Each program funded under this section shall—
(A) be comprehensive in addressing the counseling and educational needs of all students;
(B) use a developmental, preventive approach to counseling;
(C) increase the range, availability, quantity, and quality of counseling services in the elementary schools and secondary schools of the local educational agency;
(D) expand counseling services through qualified school counselors, school social workers, school psychologists, other qualified psychologists, or child and adolescent psychiatrists;
(E) use innovative approaches to increase children’s understanding of peer and family relationships, work and self, decision-making, or academic and career planning, or to improve peer interaction;
(F) provide counseling services in settings that meet the range of student needs;
(G) include in-service training appropriate to the activities funded under this chapter for teachers, instructional staff, and appropriate school personnel, including in-service training in appropriate identification and early intervention techniques by school counselors, school social workers, school psychologists, other qualified psychologists, and child and adolescent psychiatrists;
(H) involve parents of participating students in the design, implementation, and evaluation of the counseling program;
(I) involve community groups, social service agencies, or other public or private entities in collaborative efforts to enhance the program and promote school-linked integration of services;
(J) evaluate annually the effectiveness and outcomes of the counseling services and activities assisted under this section;
(K) ensure a team approach to school counseling in the schools served by the local educational agency by working toward ratios recommended by the American School Health Association of one school counselor to 250 students, one school social worker to 800 students, and one school psychologist to 1,000 students; and
(L) ensure that school counselors, school psychologists, other qualified psychologists, school social workers, or child and adolescent psychiatrists paid from funds made available under this section spend a majority of their time counseling students or in other activities directly related to the counseling process.

(d) Limitation on administrative costs
Not more than 4 percent of the amounts made available under this section for any fiscal year
may be used for administrative costs to carry out this section.

(e) Definitions

For the purpose of this section—

(1) the term "child and adolescent psychiatrist" means an individual who—
   (A) possesses State medical licensure; and
   (B) has completed residency training programs in both general psychiatry and child and adolescent psychiatry;
   
(2) the term "other qualified psychologist" means an individual who has demonstrated competence in counseling children in a school setting and who—
   (A) is licensed in psychology by the State in which the individual works; and
   (B) practices in the scope of the individual’s education, training, and experience with children in school settings;
   
(3) the term "school counselor" means an individual who has documented competence in counseling children and adolescents in a school setting and who—
   (A) is licensed by the State or certified by an independent professional regulatory authority;
   (B) in the absence of such State licensure or certification, possesses national certification in school counseling or a specialty of counseling granted by an independent professional organization; or
   (C) holds a minimum of a master’s degree in school counseling from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs or the equivalent;
   
(4) the term "school psychologist" means an individual who—
   (A) has completed a minimum of 60 graduate semester hours in school psychology from an institution of higher education and has completed 1,200 clock hours in a supervised school psychology internship, of which 600 hours are in the school setting;
   (B) is licensed or certified in school psychology by the State in which the individual works; or
   (C) in the absence of such State licensure or certification, possesses national certification by the National School Psychology Certification Board; and

(5) the term "school social worker" means an individual who—
   (A) holds a master’s degree in social work from a program accredited by the Council on Social Work Education; and
   (B)(i) is licensed or certified by the State in which services are provided; or
   (ii) in the absence of such State licensure or certification, possesses a national credential or certification as a school social work specialist granted by an independent professional organization.

(f) Report

Not later than 2 years after assistance is made available to local educational agencies under subsection (c) of this section, the Secretary shall make publicly available a report—

(1) evaluating the programs assisted pursuant to each grant under this subpart; and
(2) outlining the information from local educational agencies regarding the ratios of students to—
   (A) school counselors;
   (B) school social workers; and
   (C) school psychologists.

(g) Special rule

(1) Amount equals or exceeds $40,000,000

If the amount of funds made available by the Secretary for this subpart equals or exceeds $40,000,000, the Secretary shall award not less than $40,000,000 in grants to local educational agencies to enable the agencies to establish or expand counseling programs in elementary schools.

(2) Amount less than $40,000,000

If the amount of funds made available by the Secretary for this subpart is less than $40,000,000, the Secretary shall award grants to local educational agencies only to establish or expand counseling programs in elementary schools.


§ 7247. Partnerships in character education program

(a) Program authorized

(1) In general

The Secretary is authorized to award grants to eligible entities for the design and implementation of character education programs that—

(A) are able to be integrated into classroom instruction and to be consistent with State academic content standards; and
(B) are able to be carried out in conjunction with other educational reform efforts.

(2) Eligible entity

In this section, the term "eligible entity" means—

(A) a State educational agency in partnership with—
   (i) one or more local educational agencies; or
   (ii) one or more—
      (I) local educational agencies; and
      (II) nonprofit organizations or entities, including an institution of higher education;

(B) a local educational agency or consortium of local educational agencies; or
(C) a local educational agency in partnership with one or more nonprofit organizations or entities, including an institution of higher education.

(3) Duration

Each grant under this section shall be awarded for a period not to exceed 5 years, of which the eligible entity may not use more than 1 year for planning and program design.
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(4) Amount of grants for State educational agencies

Subject to the availability of appropriations, the amount of a grant made by the Secretary to a State educational agency under this section shall not be less than $500,000 if the State educational agency—

(A) is in a partnership described in paragraph (2)(A); and

(B) meets such requirements as the Secretary may establish under this section.

(b) Contracts under program

(1) Evaluation

Each eligible entity awarded a grant under this section may contract with outside sources, including institutions of higher education and private and nonprofit organizations, for the purposes of—

(A) evaluating the program for which the assistance is made available;

(B) measuring the integration of such program into the curriculum and teaching methods of schools where the program is carried out; and

(C) measuring the success of such program in fostering the elements of character selected by the recipient under subsection (c) of this section.

(2) Materials and program development

Each eligible entity awarded a grant under this section may contract with outside sources, including institutions of higher education and private and nonprofit organizations, for assistance in—

(A) developing secular curricula, materials, teacher training, and other activities related to character education; and

(B) integrating secular character education into the curricula and teaching methods of schools where the program is carried out.

(c) Elements of character

(1) Selection

(A) In general

Each eligible entity awarded a grant under this section may select the elements of character that will be taught under the program for which the grant was awarded.

(B) Consideration of views

In selecting elements of character under subparagraph (A), the eligible entity shall consider the views of the parents of the students to be taught under the program and the views of the students.

(2) Example elements

Elements of character selected under this subsection may include any of the following:

(A) Caring.

(B) Civic virtue and citizenship.

(C) Justice and fairness.

(D) Respect.

(E) Responsibility.

(F) Trustworthiness.

(G) Giving.

(H) Any other elements deemed appropriate by the eligible entity.

(d) Use of funds by State educational agency recipients

Of the total funds received in any fiscal year under this section by an eligible entity that is a State educational agency—

(1) not more than 3 percent of such funds may be used for administrative purposes; and

(2) the remainder of such funds may be used for—

(A) collaborative initiatives with and between local educational agencies and schools;

(B) the preparation or purchase of materials, and teacher training;

(C) providing assistance to local educational agencies, schools, or institutions of higher education; and

(D) technical assistance and evaluation.

(e) Application

(1) In general

Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

(2) Required information

Each application for a grant under this section shall include (together with any other information that the Secretary may require) information that—

(A) demonstrates that the program for which the grant is sought has clear objectives that are based on scientifically based research;

(B) describes any partnerships or collaborative efforts among the organizations and entities of the eligible entity;

(C) describes the activities that will be carried out with the grant funds and how such activities will meet the objectives described in subparagraph (A), including—

(i) how parents, students, students with disabilities (including those with mental or physical disabilities), and other members of the community, including members of private and nonprofit organizations, will be involved in the design and implementation of the program and how the eligible entity will work with the larger community to increase the reach and promise of the program;

(ii) curriculum and instructional practices that will be used or developed; and

(iii) methods of teacher training and parent education that will be used or developed;

(D) describes how the program for which the grant is sought will be linked to other efforts to improve academic achievement, including—

(i) broader educational reforms that are being instituted by the eligible entity or its partners; and

(ii) State academic content standards;

(E) in the case of an eligible entity that is a State educational agency, describes how the State educational agency—

(i) will provide technical and professional assistance to its local educational
agency partners in the development and implementation of character education programs; and
(ii) will assist other interested local educational agencies that are not members of the original partnership in designing and establishing character education programs;
(F) describes how the eligible entity will evaluate the success of its program—
(i) based on the objectives described in subparagraph (A); and
(ii) in cooperation with any national evaluation conducted pursuant to subsection (b)(2)(B)(iii) of this section; and
(G) assures that the eligible entity annually will provide to the Secretary such information as may be required to determine the effectiveness of the program.

(f) Selection of recipients
(1) Peer review
(A) In general
In selecting eligible entities to receive grants under this section from among the applicants for such grants, the Secretary shall use a peer review process that includes the participation of experts in the field of character education and development.
(B) Use of funds
The Secretary may use funds appropriated under this section for the cost of carrying out peer reviews under this paragraph.

(2) Selection criteria
Each selection under paragraph (1) shall be made on the basis of the quality of the application submitted, taking into consideration such factors as—
(A) the extent to which the program fosters character in students and the potential for improved student academic achievement;
(B) the extent and ongoing nature of parental, student, and community involvement;
(C) the quality of the plan for measuring and assessing success; and
(D) the likelihood that the objectives of the program will be achieved.

(3) Equitable distribution
In making selections under this subsection, the Secretary shall ensure, to the extent practicable, that programs assisted under this section are equitably distributed among the geographic regions of the United States, and among urban, suburban, and rural areas.

(g) Participation by private school children and teachers
Each eligible entity that receives a grant under this section shall provide, to the extent feasible and appropriate, for the participation in programs and activities under this section of students and teachers in private elementary schools and secondary schools.

(h) Evaluation and program development
(1) State and local reporting and evaluation
Each eligible entity receiving a grant under this section shall submit to the Secretary a comprehensive evaluation of the program assisted under this section, including its impact on students, students with disabilities (including those with mental or physical disabilities), teachers, administrators, parents, and others—
(A) by the end of the second year of the program; and
(B) not later than 1 year after completion of the grant period.

(2) National research, dissemination, and evaluation
(A) In general
(i) Authorization
The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, State educational agencies or local educational agencies, institutions of higher education, tribal organizations, or other public or private agencies or organizations to carry out research, development, dissemination, technical assistance, and evaluation activities that support or inform State and local character education programs.
(ii) Reservation of funds
The Secretary shall reserve not more than 5 percent of the funds made available under this section to carry out this paragraph.

(B) Uses
Funds made available under subparagraph (A) may be used for the following:
(i) Conducting research and development activities that focus on matters such as—
(I) the extent to which schools are undertaking character education initiatives;
(II) the effectiveness of instructional models for all students, including students with disabilities (including those with mental or physical disabilities);
(III) materials and curricula for use by programs in character education;
(IV) models of professional development in character education;
(V) the development of measures of effectiveness for character education programs (which may include the factors described in paragraph (3)); and
(VI) the effectiveness of State and local programs receiving funds under this section.
(ii) Providing technical assistance to State and local programs, particularly on matters of program evaluation.
(iii) Conducting evaluations of State and local programs receiving funding under this section, that may be conducted through a national clearinghouse under clause (iv).
(iv) Compiling and disseminating, through a national clearinghouse or other means—
(I) information on model character education programs;
(II) information about high quality character education materials and curricula;
(III) research findings in the area of character education and character development; and
(IV) any other information that will be useful to character education program participants nationwide, including educators, parents, and administrators.

(C) Partnerships

In carrying out national activities under this paragraph, the Secretary may enter into partnerships with national nonprofit character education organizations and institutions of higher education with expertise and successful experience in implementing—
(i) character education programs that had an effective impact on schools, students, students with disabilities (including those with mental or physical disabilities), and teachers; or
(ii) character education program evaluation and research.

(D) Partnership for activities under subparagraph (B)(iv)

In carrying out national activities under subparagraph (B)(iv), the Secretary may enter into a partnership with a national nonprofit character education organization that will disseminate information to educators, parents, administrators, and others nationwide, including information about the range of model character education programs, materials, and curricula.

(E) Report

Each entity awarded a grant or entering into a contract or cooperative agreement under this paragraph shall submit an annual report to the Secretary that—
(i) describes the entity’s progress in carrying out research, development, dissemination, evaluation, and technical assistance under this paragraph;
(ii) identifies unmet and future information needs in the field of character education; and
(iii) if applicable, describes the progress of the entity in carrying out the requirements of subparagraph (B)(iv), including a listing of—
(I) the number of requests for information received by the entity in the course of carrying out such requirements;
(II) the types of organizations making such requests; and
(III) the types of information requested.

(3) Factors

Factors that may be considered in evaluating the success of programs funded under this section include the following:
(A) Discipline issues.
(B) Student academic achievement.
(C) Participation in extracurricular activities.
(D) Parental and community involvement.
(E) Faculty and administration involvement.
(F) Student and staff morale.
(G) Overall improvements in school climate for all students, including students with disabilities (including those with mental or physical disabilities).

(i) Permissive match

(1) In general

The Secretary may require eligible entities to match funds awarded under this section with non-Federal funds, except that the amount of the match may not exceed the amount of the grant award.

(2) Sliding scale

The amount of a match under paragraph (1) shall be established based on a sliding scale that takes into account—
(A) the poverty of the population to be targeted by the eligible entity; and
(B) the ability of the eligible entity to obtain funding for the match.

(3) In-kind contributions

The Secretary shall permit eligible entities to match funds in whole or in part with in-kind contributions.

(4) Consideration

Notwithstanding this subsection, the Secretary in making awards under this section shall not consider the ability of an eligible entity to match funds.

§ 7249. Smaller learning communities

(a) Grant authority

The Secretary is authorized to award grants to local educational agencies to enable the agencies to create a smaller learning community or communities.

(b) Application

Each local educational agency desiring a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. The application shall include descriptions of the following:
(1) Strategies and methods the local educational agency will use to create the smaller learning community or communities.
(2) Curriculum and instructional practices, including any particular themes or emphases, to be used in the smaller learning environment.
(3) The extent of involvement of teachers and other school personnel in investigating, designing, implementing, and sustaining the smaller learning community or communities.
(4) The process to be used for involving students, parents, and other stakeholders in the development and implementation of the smaller learning community or communities.
(5) Any cooperation or collaboration among community agencies, organizations, businesses, and others to develop or implement a plan to create the smaller learning community or communities.
(6) The training and professional development activities that will be offered to teachers
and others involved in the activities assisted under this subpart.

(7) The objectives of the activities assisted under this subpart, including a description of how such activities will better enable all students to reach challenging State academic content standards and State student academic achievement standards.

(8) The methods by which the local educational agency will assess progress in meeting the objectives described in paragraph (7).

(9) If the smaller learning community or communities exist as a school-within-a-school, the relationship, including governance and administration, of the smaller learning community to the remainder of the school.

(10) The administrative and managerial relationship between the local educational agency and the smaller learning community or communities, including how such agency will demonstrate a commitment to the continuity of the smaller learning community or communities (including the continuity of student and teacher assignment to a particular learning community).

(11) How the local educational agency will coordinate or use funds provided under this subpart with other funds provided under this chapter or other Federal laws.

(12) The grade levels or ages of students who will participate in the smaller learning community or communities.

(13) The method of placing students in the smaller learning community or communities, such that students are not placed according to ability or any other measure, but are placed at random or by their own choice, and not pursuant to testing or other judgments.

(c) Authorized activities

Funds under this section may be used for one or more of the following:

(1) To study—
(A) the feasibility of creating the smaller learning community or communities; and
(B) effective and innovative organizational and instructional strategies that will be used in the smaller learning community or communities.

(2) To research, develop, and implement—
(A) strategies for creating the smaller learning community or communities; and
(B) strategies for effective and innovative changes in curriculum and instruction, geared to challenging State academic content standards and State student academic achievement standards.

(3) To provide professional development for school staff in innovative teaching methods that—
(A) challenge and engage students; and
(B) will be used in the smaller learning community or communities.

(4) To develop and implement strategies to include parents, business representatives, local institutions of higher education, community-based organizations, and other community members in the smaller learning communities as facilitators of activities that enable teachers to participate in professional development activities and provide links between students and their community.


SUBPART 5—READING IS FUNDAMENTAL—INEXPENSIVE BOOK DISTRIBUTION PROGRAM

§ 7251. Inexpensive book distribution program for reading motivation

(a) Purpose

The purpose of this subpart is to establish and implement a model partnership between a governmental entity and a private entity, to help prepare young children for reading and to motivate older children to read, through the distribution of inexpensive books. Local reading motivation programs assisted under this section shall use such assistance to provide books, training for volunteers, motivational activities, and other essential literacy resources and shall assign the highest priority to serving the youngest and neediest children in the United States.

(b) Authorization

The Secretary is authorized to enter into a contract with Reading Is Fundamental (RIF) (hereafter in this section referred to as the “contractor”) to support and promote programs, which include the distribution of inexpensive books to young and school-age children, that motivate children to read.

(c) Requirements of contract

Any contract entered into under subsection (b) of this section shall contain each of the following:

(1) A provision that the contractor will enter into subcontracts with local private nonprofit groups or organizations, or with public agencies, under which each subcontractor will agree to establish, operate, and provide the non-Federal share of the cost of reading motivation programs that include the distribution of books, by gift (to the extent feasible) or by loan, to children from birth through secondary school age, including children in family literacy programs.

(2) A provision that funds made available to subcontracts for initial funding, the contractor will give priority to programs that will serve a substantial number or percentage of children with special needs, such as the following:
(A) Low-income children, particularly in high-poverty areas.
(B) Children at risk of school failure.
(C) Children with disabilities.
(D) Foster children.
(E) Homeless children.
(F) Migrant children.
(G) Children whose parents are institutionalized or incarcerated.

1§ 7251. Inexpensive book distribution program for reading motivation

1So in original. Probably should be “(G) Children”.

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subcontractors as may be necessary to carry out the purpose of this subpart.

(5) A provision that the contractor will annually report to the Secretary the number, and a description, of programs funded under paragraph (3).

(6) Such other terms and conditions as the Secretary determines to be appropriate to ensure the effectiveness of such programs.

(d) Restriction on payments

The Secretary shall make no payment of the Federal share of the cost of acquiring and distributing books under any contract under this section unless the Secretary determines that the contractor or subcontractor, as the case may be, has made arrangements with book publishers or distributors to obtain books at discounts at least as favorable as discounts that are customarily given by such publisher or distributor for book purchases made under similar circumstances in the absence of Federal assistance.

(e) Special rules for certain subcontractors

(1) Funds from other Federal sources

Subcontractors operating programs under this section in low-income communities with a substantial number or percentage of children with special needs, as described in subsection (c)(3) of this section, may use funds from other Federal sources to pay the non-Federal share of the cost of the program, if those funds do not comprise more than 50 percent of the non-Federal share of the funds used for the cost of acquiring and distributing books.

(2) Waiver authority

Notwithstanding subsection (c) of this section, the contractor may waive, in whole or in part, the requirement in subsection (c)(1) of this section for a subcontractor, if the subcontractor demonstrates that it would otherwise not be able to participate in the program, and enters into an agreement with the contractor with respect to the amount of the non-Federal share to which the waiver will apply. In a case in which such a waiver is granted, the requirement in subsection (c)(2) of this section shall not apply.

(f) Multi-year contracts

The contractor may enter into a multi-year subcontract under this section, if—

(1) the contractor believes that such subcontract will provide the subcontractor with additional leverage in seeking local commitments; and

(2) the subcontract does not undermine the finances of the national program.

(g) Federal share defined

In this section, the term “Federal share” means, with respect to the cost to a subcontractor of purchasing books to be paid for under this section, 75 percent of such costs to the subcontractor, except that the Federal share for programs serving children of migrant or seasonal farmworkers shall be 100 percent of such costs to the subcontractor.

§ 7253. Short title

This subpart may be cited as the “Jacob K. Javits Gifted and Talented Students Education Act of 2001”.

§ 7253a. Purpose

The purpose of this subpart is to initiate a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary schools and secondary schools nationwide to meet the special educational needs of gifted and talented students.

§ 7253b. Rule of construction

Nothing in this subpart shall be construed to prohibit a recipient of funds under this subpart from serving gifted and talented students simultaneously with students with similar educational needs, in the same educational settings, where appropriate.

§ 7253c. Authorized programs

(a) Establishment of program

(1) In general

The Secretary (after consultation with experts in the field of the education of gifted and talented students) is authorized to make grants to, or enter into contracts with, State educational agencies, local educational agencies, institutions of higher education, other public agencies, and other private agencies and organizations (including Indian tribes and Indian organizations (as such terms are defined in section 450b of title 25) and Native Hawaiian organizations) to assist such agencies, institutions, and organizations in carrying out programs or projects authorized by this subpart that are designed to meet the educational needs of gifted and talented students, including the training of personnel in the education of gifted and talented students and in the use, where appropriate, of gifted and talented services, materials, and methods for all students.

(2) Application

Each entity seeking assistance under this subpart shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall describe how—

(A) the proposed gifted and talented services, materials, and methods can be adapted, if appropriate, for use by all students; and

(B) the proposed programs can be evaluated.

(b) Use of funds

Programs and projects assisted under this section may include each of the following:
(d) Center for research and development

(1) Conducting—
(A) scientifically based research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods to serve all students; and
(B) program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the purpose of this subpart.

(2) Carrying out professional development (including fellowships) for personnel (including leadership personnel) involved in the education of gifted and talented students.

(3) Establishing and operating model projects and exemplary programs for serving gifted and talented students, including innovative methods for identifying and educating students who may not be served by traditional gifted and talented programs (such as summer programs, mentoring programs, service learning programs, and cooperative programs involving business, industry, and education).

(4) Implementing innovative strategies, such as cooperative learning, peer tutoring, and service learning.

(5) Carrying out programs of technical assistance and information dissemination, including assistance and information with respect to how gifted and talented programs and methods, where appropriate, may be adapted for use by all students.

(6) Making materials and services available through State regional educational service centers, institutions of higher education, or other entities.

(7) Providing funds for challenging, high-level course work, disseminated through technologies (including distance learning), for individual students or groups of students in schools and local educational agencies that would not otherwise have the resources to provide such course work.

(e) Special rule

To the extent that funds appropriated to carry out this subpart for a fiscal year beginning with fiscal year 2002 exceed such funds appropriated for fiscal year 2001, the Secretary shall use such excess funds to award grants, on a competitive basis, to State educational agencies, local educational agencies, for the purpose of carrying out activities described in subsection (b) of this section.

(d) Center for research and development

(1) In general

The Secretary (after consultation with experts in the field of the education of gifted and talented students) shall establish a National Research Center for the Education of Gifted and Talented Children and Youth through grants to, or contracts with, one or more institutions of higher education or State educational agencies, or a combination or consortium of such institutions and agencies and other public or private agencies and organizations, for the purpose of carrying out activities described in subsection (b) of this section.

(2) Director

The National Center shall be headed by a Director. The Secretary may authorize the Director to carry out such functions of the National Center as may be agreed upon through arrangements with institutions of higher education, State educational agencies, local educational agencies, or other public or private agencies and organizations.

(3) Funding

The Secretary may use not more than 30 percent of the funds made available under this subpart for fiscal year 2001 to carry out this subsection.

(e) Coordination

Scientifically based research activities supported under this subpart—

(1) shall be carried out in consultation with the Institute of Education Sciences to ensure that such activities are coordinated with and enhance the research and development activities supported by such Institute; and

(2) may include collaborative scientifically based research activities which are jointly funded and carried out with such Institute.

Amendments

2002—Subsec. (e)(1). Pub. L. 107–279 substituted “Institute of Education Sciences” for “Office of Educational Research and Improvement” and “such Institute” for “such Office”.

Subsec. (e)(2). Pub. L. 107–279, § 404(d)(6), substituted “such Institute” for “such Office”.

§ 7253d. Program priorities

(a) General priority

In carrying out this subpart, the Secretary shall give highest priority to programs and projects designed to develop new information that—

(1) improves the capability of schools to plan, conduct, and improve programs to identify and serve gifted and talented students; and

(2) assist schools in the identification of, and provision of services to, gifted and talented students (including economically disadvantaged individuals, individuals with limited English proficiency, and individuals with disabilities) who may not be identified and served through traditional assessment methods.

(b) Service priority

The Secretary shall ensure that not less than 50 percent of the applications approved under section 7253c(a)(2) of this title in a fiscal year address the priority described in subsection (a)(2) of this section.

Amendments


§ 7253e. General provisions

(a) Participation of private school children and teachers

In making grants and entering into contracts under this subpart, the Secretary shall ensure,
where appropriate, that provision is made for the equitable participation of students and teachers in private nonprofit elementary schools and secondary schools, including the participation of teachers and other personnel in professional development programs serving such students.

(b) Review, dissemination, and evaluation

The Secretary shall—
(1) use a peer review process in reviewing applications under this subpart;
(2) ensure that information on the activities and results of programs and projects funded under this subpart is disseminated to appropriate State educational agencies, local educational agencies, and other appropriate organizations, including nonprofit private organizations; and
(3) evaluate the effectiveness of programs under this subpart in accordance with section 7941 of this title, in terms of the impact on students traditionally served in separate gifted and talented programs and on other students, and submit the results of such evaluation to Congress not later than 2 years after January 8, 2002.

(c) Program operations

The Secretary shall ensure that the programs under this subpart are administered within the Department by a person who has recognized professional qualifications and experience in the field of the education of gifted and talented students and who shall—
(1) administer and coordinate the programs authorized under this subpart;
(2) serve as a focal point of national leadership and information on the educational needs of gifted and talented students and the availability of educational services and programs designed to meet such needs;
(3) assist the Assistant Secretary for Educational Research and Improvement in identifying research priorities that reflect the needs of gifted and talented students; and
(4) shall1 disseminate, and consult on, the information developed under this subpart with other offices within the Department.


SUBPART 7—STAR SCHOOLS PROGRAM

§ 7255. Short title

This subpart may be cited as the “Star Schools Act”.


PRIOR PROVISIONS

Provisions naming former part B (§ 6891 et seq.) of this subchapter as the “Star Schools Act” were contained in section 6891 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7255a. Purposes

The purposes of this subpart are the following:
(1) To encourage improved instruction in mathematics, science, and foreign languages as well as other subjects (such as literacy skills and vocational education).
(2) To serve underserved populations, including disadvantaged, illiterate, limited English proficient populations, and individuals with disabilities through a Star Schools program under which grants are made to eligible telecommunication partnerships to enable such partnerships—
(A) to develop, construct, acquire, maintain, and operate telecommunications audio and visual facilities and equipment;
(B) to develop and acquire educational and instructional programming; and
(C) to obtain technical assistance for the use of such facilities and instructional programming.


§ 7255b. Grant program authorized

(a) Authorization

The Secretary, in conjunction with the Office of Educational Technology, is authorized to make grants, in accordance with the provisions of this subpart, to eligible entities to pay the Federal share of the cost of the following:
(1) Development, construction, acquisition, maintenance, and operation of telecommunications facilities and equipment.
(2) Development and acquisition of live, interactive instructional programming.
(3) Development and acquisition of preservice and inservice teacher training programs based on established research regarding teacher-to-teacher mentoring, and ongoing, in-class instruction.
(4) Establishment of teleconferencing facilities and resources for making interactive training available to teachers.
(5) Obtaining technical assistance.
(6) Coordination of the design and connectivity of telecommunications networks to reach the greatest number of schools.

(b) Duration and amount

(1) In general

A grant under this section may not exceed—
(A) 5 years in duration (subject to subsection (c) of this section); and
(B) $10,000,000 in any single fiscal year.

(c) Renewal

(1) In general

Grants awarded under subsection (a) of this section may be renewed for a single additional period of 3 years.

(2) Continuing eligibility

In order to be eligible to receive a grant renewal under this subsection, a grant recipient shall demonstrate, to the satisfaction of the Secretary, in an addendum to its application submitted under section 7255c of this title, that the grant recipient will—
(A) continue to provide services in the subject areas and geographic areas assisted with funds received under this subpart for the previous grant period; and

1So in original. The word “shall” probably should not appear.
§ 7255c. Applications

(a) Submission

Each eligible entity that desires to receive a grant under section 7255b of this title shall submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) Contents

An application submitted under subsection (a) of this section shall include each of the following:

(1) A description of how the proposed program will assist all students to have an opportunity to meet challenging State academic achievement standards, how such program will assist State and local educational reform efforts, and how such program will contribute to creating a high-quality system of educational development.

(2) A description of the telecommunications facilities and equipment and technical assistance for which assistance is sought, which may include—

(A) the design, development, construction, acquisition, maintenance, and operation of State or multistate educational telecommunications networks and technology resource centers;

(B) microwave, fiber optics, cable, and satellite transmission equipment or any combination thereof;

(C) reception facilities;

(D) satellite time;

(E) production facilities;

(F) other telecommunications equipment capable of serving a wide geographic area;

(G) the provision of training services to instructors who will be using the facilities and equipment for which assistance is sought, including training in using such facilities and equipment and training in integrating programs into the classroom curriculum; and

(H) the development of educational and related programming for use on a telecommunications network.

(3) In the case of an application for assistance for instructional programming, a description of the types of programming that will be developed to enhance instruction and training and provide an assurance that such programming will be designed in consultation with professionals (including classroom teachers) who are experts in the applicable subject matter and grade level.

(4) A description of how the eligible entity has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the eligible entity will increase the availability of courses of instruction in English, mathematics, science, foreign languages, arts, history, geography, or other disciplines.

(5) A description of the professional development policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought.
§ 7255c

(6) A description of the manner in which historically underserved students (such as students from low-income families, limited English proficient students, students with disabilities, or students who have low literacy skills) and their families, will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this subpart.

(7) A description of how existing telecommunications equipment, facilities, and services, where available, will be used.

(8) An assurance that the financial interest of the United States in the telecommunications facilities and equipment will be protected for the useful life of such facilities and equipment.

(9) An assurance that a significant portion of any facilities and equipment, technical assistance, and programming for which assistance is sought for elementary schools and secondary schools will be made available to schools or local educational agencies that have a high number or percentage of children eligible to be counted under part A of subchapter I of this chapter.

(10) An assurance that the applicant will use the funds provided under this subpart to supplement, and not supplant, funds available for the purposes of this subpart.

(11) A description of how funds received under this subpart will be coordinated with funds received for educational technology in the classroom.

(12) A description of the activities or services for which assistance is sought, such as—

(A) providing facilities, equipment, training services, and technical assistance;

(B) making programs accessible to students with disabilities through mechanisms such as closed captioning and descriptive video services;

(C) linking networks around issues of national importance (such as elections) or to provide information about employment opportunities, job training, or student and other social service programs;

(D) sharing curriculum resources between networks and development of program guides which demonstrate cooperative, cross-network listing of programs for specific curriculum areas;

(E) providing teacher and student support services, including classroom and training support materials which permit student and teacher involvement in the live interactive distance learning telecasts;

(F) incorporating community resources, such as libraries and museums, into instructional programs;

(G) providing professional development for teachers, including, as appropriate, training to early childhood development and Head Start teachers and staff and vocational education teachers and staff, and adult and family educators;

(H) providing programs for adults to maximize the use of telecommunications facilities and equipment;

(I) providing teacher training on proposed or established models of exemplary academic content standards in mathematics and science and other disciplines as such standards are developed; and

(J) providing parent education programs during and after the regular school day which reinforce a student's course of study and actively involve parents in the learning process.

(13) A description of how the proposed program as a whole will be financed and how arrangements for future financing will be developed before the program expires.

(14) An assurance that a significant portion of any facilities, equipment, technical assistance, and programming for which assistance is sought for elementary schools and secondary schools will be made available to schools in local educational agencies that have a high percentage of children counted for the purpose of part A of subchapter I of this chapter.

(15) An assurance that the applicant will provide such information and cooperate in any evaluation that the Secretary may conduct under this subpart.

(16) Such additional assurances as the Secretary may reasonably require.

(c) Approval

In approving applications submitted under subsection (a) of this section for grants under section 7255b of this title, the Secretary shall—

(1) to the extent feasible, ensure an equitable geographic distribution of services provided under this subpart,

(2) give priority to applications describing programs that—

(A) propose high-quality plans, will provide instruction consistent with State academic content standards, or will otherwise provide significant and specific assistance to States and local educational agencies undertaking systemic education reform;

(B) will provide services to programs serving adults, especially parents, with low levels of literacy;

(C) will serve schools with significant numbers of children counted for the purposes of part A of subchapter I of this chapter;

(D) ensure that the eligible entity will—

(i) serve the broadest range of institutions, programs providing instruction outside of the school setting, programs serving adults, especially parents, with low levels of literacy, institutions of higher education, teacher training centers, research institutes, and private industry;

(ii) have substantial academic and teaching capabilities, including the capability of training, retraining, and inservice upgrading of teaching skills and the capability to provide professional development;

(iii) provide a comprehensive range of courses for educators to teach instructional strategies for students with different skill levels;

(iv) provide training to participating educators in ways to integrate telecommunications courses into existing school curriculum;

(v) provide instruction for students, teachers, and parents;
§ 7255d. Other grant assistance

(a) Special statewide network

(1) In general

The Secretary, in conjunction with the Office of Educational Technology, may provide assistance to a statewide telecommunications network if such network—

(A) provides 2-way full-motion interactive video and audio communications;

(B) links together public colleges and universities and secondary schools throughout the State; and

(C) meets any other requirements determined appropriate by the Secretary.

(2) Matching contribution

A statewide telecommunications network assisted under paragraph (1) shall contribute, either directly or through private contributions, non-Federal funds equal to not less than 50 percent of the cost of such network.

(b) Special local network

(1) In general

The Secretary is authorized to provide assistance, on a competitive basis, to a local educational agency, or a consortium of such agencies, to enable such agency or consortium to establish a high-technology demonstration program.

(2) Program requirements

A high-technology demonstration program assisted under paragraph (1) shall—

(A) include 2-way full-motion interactive video, audio, and text communications;

(B) link together elementary schools and secondary schools, colleges, and universities;

(C) provide parent participation and family programs;

(D) include a staff development program; and

(E) have a significant contribution and participation from business and industry.

(3) Matching requirement

A local educational agency or consortium receiving a grant under paragraph (1) shall provide, either directly or through private contributions, non-Federal matching funds equal to not less than 50 percent of the amount of the grant.

(c) Telecommunications programs for continuing education

(1) Authority

The Secretary is authorized to award grants, on a competitive basis, to eligible entities to develop and operate one or more programs that provide online access to educational resources in support of continuing education and curriculum requirements relevant to achieving a secondary school diploma or its recognized equivalent. The program authorized by this subsection shall be designed to advance adult literacy, secondary school completion, and the acquisition of specified competency by the end of the 12th grade.

(2) Applications

Each eligible entity desiring a grant under this subsection shall submit an application to the Secretary. The application shall include each of the following:

(A) A demonstration that the applicant will use publicly funded or free public telecommunications infrastructure to deliver video, voice, and data in an integrated service to support and assist in the acquisition of a secondary school diploma or its recognized equivalent.

(B) An assurance that the content of the materials to be delivered is consistent with the accreditation requirements of the State for which such materials are used.

(C) To the extent feasible, materials developed in the Federal departments and agencies and under appropriate federally funded programs.

(D) An assurance that the applicant has the technological and substantive experience to carry out the program.

(E) Such additional assurances as the Secretary may reasonably require.

§ 7255e. Administrative provisions

(a) Leadership, evaluation, and peer review

(1) Reservation of funds

The Secretary may reserve not more than 5 percent of the amount made available to carry out this subpart for a fiscal year for national leadership, evaluation, and peer review activities, which the Secretary may carry out directly or through grants, contracts, and cooperative agreements.

(2) Leadership

Funds reserved for leadership activities under paragraph (1) may be used for—

(A) disseminating information, including lists and descriptions of services available from grant recipients under this subpart; and

(B) other activities designed to enhance the quality of distance learning activities nationwide.

(3) Evaluation

Funds reserved for evaluation activities under paragraph (1) may be used to conduct independent evaluations of the activities assisted under this subpart and of distance learning in general, including—

(A) analyses of distance learning efforts (including such efforts that are, or are not, assisted under this subpart); and

(B) comparisons of the effects (including student outcomes) of different technologies in distance learning efforts.
§ 7255f. Definitions

In this subpart:

(1) Educational institution

The term “educational institution” means an institution of higher education, a local educational agency, or a State educational agency.

(2) Eligible entity

The term “eligible entity” includes any of the following that is organized on a Statewide or multistate basis:

(A) A public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, except that any such agency or corporation shall represent the interests of elementary schools and secondary schools that are eligible to participate in the program under part A of subchapter I of this chapter.

(B) A partnership that will provide telecommunications services and that includes three or more of the following entities, at least one of which shall be an agency described in clause (i) or (ii):

(i) A local educational agency that serves a significant number of elementary schools and secondary schools that are eligible for assistance under part A of subchapter I of this chapter, or elementary schools and secondary schools operated or funded for Indian children by the Department of the Interior eligible under section 6331(d)(1)(A) of this title.

(ii) A State educational agency.

(iii) An adult and family education program.

(iv) An institution of higher education or a State higher education agency (as that term is defined in section 1003 of this title).

(v) A teacher training center or academy that—

(I) provides teacher preservice and in-service training; and

(II) receives Federal financial assistance or has been approved by a State agency;

(vi) (I) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computer; or

(II) a public broadcasting entity with such experience.

(vii) A public or private elementary school or secondary school.

(3) Instructional programming

The term “instructional programming” means courses of instruction and training courses for elementary and secondary students, teachers, and others, and materials for use in such instruction and training that have been prepared in audio and visual form on tape, disc, film, or live, and presented by means of telecommunications devices.

(4) Public broadcasting entity

The term “public broadcasting entity” has the same meaning given such term in section 397 of title 47.

§ 7257. Grants

(a) In general

The Secretary is authorized to award grants to a nonprofit telecommunications entity, or partnership of such entities, for the purpose of carrying out a national telecommunications-based program to improve teaching in core curriculum areas. The program shall be designed to assist elementary school and secondary school teachers in preparing all students to achieve challenging State academic content and student academic achievement standards in core curriculum areas.

(b) Digital educational programming

The Secretary is authorized to award grants, as provided for in section 7257c of this title, to eligible entities described in subsection (b) of such section, to enable such entities to develop, produce, and distribute innovative educational and instructional video programming that is designed for use by elementary schools and sec-
ondary schools and based on challenging State academic content and student academic achievement standards. In awarding such grants, the Secretary shall ensure that eligible entities enter into multiyear content development collaborative arrangements with State educational agencies, local educational agencies, institutions of higher education, businesses, or other agencies or organizations.


§ 7257a. Application required

(a) General application

(1) In general

To be eligible to receive a grant under section 7257(a) of this title, a nonprofit telecommunications entity, or partnership of such entities shall submit an application to the Secretary. Each such application shall—

(A) demonstrate that the applicant will use the public broadcasting infrastructure, the Internet, and school digital networks, where available, to deliver video and data in an integrated service to train teachers in the use of materials and learning technologies for achieving challenging State academic content and student academic achievement standards;

(B) ensure that the project for which assistance is sought will be conducted in cooperation with appropriate State educational agencies, local educational agencies, and State or local nonprofit public telecommunications entities;

(C) ensure that a significant portion of the benefits available for elementary schools and secondary schools from the project for which assistance is sought will be available to schools of local educational agencies that have a high percentage of children counted for the purpose of part A of subchapter I of this chapter; and

(D) contain such additional assurances as the Secretary may reasonably require.

(2) Sites

In approving applications under paragraph (1), the Secretary shall ensure that the program authorized by section 7257(a) of this title is conducted at elementary school and secondary school sites throughout the United States.

(b) Programming application

To be eligible to receive a grant under section 7257(b) of this title, an entity shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.


§ 7257b. Reports and evaluation

An entity receiving a grant under section 7257(a) of this title shall prepare and submit to the Secretary an annual report that contains such information as the Secretary may require. At a minimum, such report shall describe the program activities undertaken with funds received under the grant, including—

(1) the core curriculum areas for which program activities have been undertaken and the number of teachers using the program in each core curriculum area; and

(2) the States in which teachers using the program are located.


§ 7257c. Digital educational programming grants

(a) Grants

The Secretary is authorized to award grants under section 7257(b) of this title to eligible entities to facilitate the development of educational programming that shall—

(1) include student assessment tools to provide feedback on student academic achievement;

(2) include built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use;

(3) be created for, or adaptable to, challenging State academic content standards and student academic achievement standards; and

(4) be capable of distribution through digital broadcasting and school digital networks.

(b) Eligible entities

To be eligible to receive a grant under section 7257(b) of this title, an entity shall be a local public telecommunications entity, as defined in section 397(12) of title 47, that is able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality.

(c) Competitive basis

Grants under section 7257(b) of this title shall be awarded on a competitive basis as determined by the Secretary.

(d) Matching requirement

To be eligible to receive a grant under section 7257(b) of this title, an entity shall contribute to the activities assisted under such grant non-Federal matching funds in an amount equal to not less than 100 percent of the amount of the grant. Such matching funds may include funds provided for the transition to digital broadcasting, as well as in-kind contributions.

(e) Duration

A grant under section 7257(b) of this title shall be awarded for a period of 3 years in order to provide a sufficient period of time for the creation of a substantial body of significant content.


§ 7257d. Administrative costs

An entity that receives a grant under this subpart may not use more than 5 percent of the amount received under the grant for administrative costs.

§ 7259. Short title
This subpart may be cited as the "Foreign Language Assistance Act of 2001".

§ 7259a. Program authorized
(a) Program authority
(1) In general
The Secretary is authorized to make grants, on a competitive basis, to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary school and secondary school students.
(2) Duration
Each grant under paragraph (1) shall be awarded for a period of 3 years.
(b) Requirements
(1) Grants to State educational agencies
In awarding a grant under subsection (a) of this section to a State educational agency, the Secretary shall support programs that promote systemic approaches to improving foreign language learning in the State.
(2) Grants to local educational agencies
In awarding a grant under subsection (a) of this section to a local educational agency, the Secretary shall support programs that—
(A) show the promise of being continued beyond the grant period;
(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and
(C) may include a professional development component.
(c) Federal share
(1) In general
The Federal share for each fiscal year shall be 50 percent.
(2) Waiver
Notwithstanding paragraph (1), the Secretary may determine the Federal share for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this subpart.
(d) Special rule
Not less than ¾ of the funds made available under section 7241 of this title to carry out this subpart shall be used for the expansion of foreign language learning in the elementary grades.
(e) Reservation
The Secretary may reserve not more than 5 percent of funds made available under section 7241 of this title to carry out this subpart for a fiscal year to evaluate the efficacy of programs assisted under this subpart.

§ 7259b. Applications
(a) In general
Any State educational agency or local educational agency desiring a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.
(b) Special consideration
The Secretary shall give special consideration to applications describing programs that—
(1) include intensive summer foreign language programs for professional development;
(2) link nonnative English speakers in the community with the schools in order to promote two-way language learning;
(3) promote the sequential study of a foreign language for students, beginning in elementary schools;
(4) make effective use of technology, such as computer-assisted instruction, language laboratories, or distance learning, to promote foreign language study;
(5) promote innovative activities, such as foreign language immersion, partial foreign language immersion, or content-based instruction; and
(6) are carried out through a consortium comprised of the agency receiving the grant and an elementary school or secondary school.

§ 7259c. Elementary school foreign language incentive program
(a) Incentive payments
From amounts made available under section 7241 of this title to carry out this subpart, the Secretary shall make an incentive payment for each fiscal year to each public elementary school that provides to students attending such school a program designed to lead to communicative competency in a foreign language.
(b) Amount
The Secretary shall determine the amount of the incentive payment under subsection (a) of this section for each public elementary school for each fiscal year on the basis of the number of students participating in a program described in such subsection at such school for such year compared to the total number of such students at all such schools in the United States for such year.
(c) Requirement
The Secretary shall consider a program to be designed to lead to communicative competency in a foreign language if such program is comparable to a program that provides not less than 45 minutes of instruction in a foreign language for not fewer than 4 days per week throughout an academic year.

§ 7259d. Elementary school foreign language incentive program

§ 7259e. Elementary school foreign language incentive program

§ 7259f. Elementary school foreign language incentive program

§ 7259g. Elementary school foreign language incentive program

§ 7259h. Elementary school foreign language incentive program

§ 7259i. Elementary school foreign language incentive program

§ 7259j. Elementary school foreign language incentive program

§ 7259k. Elementary school foreign language incentive program

§ 7259l. Elementary school foreign language incentive program

§ 7259m. Elementary school foreign language incentive program
SUBPART 10—PHYSICAL EDUCATION

§ 7261. Short title

This subpart may be cited as the “Carol M. White Physical Education Program”.


PRIOR PROVISIONS


§ 7261a. Purpose

The purpose of this subpart is to award grants and contracts to initiate, expand, and improve physical education programs for all kindergarten through 12th-grade students.


§ 7261b. Program authorized

(a) Authorization

The Secretary is authorized to award grants to local educational agencies and community-based organizations (such as Boys and Girls Clubs, Boy Scouts and Girl Scouts, and the Young Men’s Christian Organization (YMCA) and Young Women’s Christian Organization (YWCA)) to pay the Federal share of the costs of initiating, expanding, and improving physical education programs (including after-school programs) for kindergarten through 12th-grade students by—

(1) providing equipment and support to enable students to participate actively in physical education activities; and

(2) providing funds for staff and teacher training and education.

(b) Program elements

A physical education program funded under this subpart may provide for one or more of the following:

(1) Fitness education and assessment to help students understand, improve, or maintain their physical well-being.

(2) Instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, and social or emotional development of every student.

(3) Development of, and instruction in, cognitive concepts about motor skill and physical fitness that support a lifelong healthy lifestyle.

(4) Opportunities to develop positive social and cooperative skills through physical activity participation.

(5) Instruction in healthy eating habits and good nutrition.

(6) Opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

(c) Special rule

For the purpose of this subpart, extracurricular activities, such as team sports and Reserve Officers’ Training Corps (ROTC) program activities, shall not be considered as part of the curriculum of a physical education program assisted under this subpart.


§ 7261c. Applications

(a) Submission

Each local educational agency or community-based organization desiring a grant or contract under this subpart shall submit to the Secretary an application that contains a plan to initiate, expand, or improve physical education programs in order to make progress toward meeting State standards for physical education.

(b) Private school and home-schooled students

An application for funds under this subpart may provide for the participation, in the activities funded under this subpart, of—

(1) students enrolled in private nonprofit elementary schools or secondary schools, and their parents and teachers; or

(2) home-schooled students, and their parents and teachers.


§ 7261d. Requirements

(a) Annual report to the Secretary

In order to continue receiving funding after the first year of a multiyear grant or contract under this subpart, the administrator of the grant or contract for the local educational agency or community-based organization shall submit to the Secretary an annual report that—

(1) describes the activities conducted during the preceding year; and

(2) demonstrates that progress has been made toward meeting State standards for physical education.

(b) Administrative expenses

Not more than 5 percent of the grant funds made available to a local educational agency or community-based organization under this subpart for any fiscal year may be used for administrative expenses.


§ 7261e. Administrative provisions

(a) Federal share

The Federal share under this subpart may not exceed—

(1) 90 percent of the total cost of a program for the first year for which the program receives assistance under this subpart; and

(2) 75 percent of such cost for the second and each subsequent such year.

(b) Proportionality

To the extent practicable, the Secretary shall ensure that grants awarded under this subpart shall be equitably distributed among local educational agencies and community-based organizations serving urban and rural areas.

(c) Report to Congress

Not later than June 1, 2003, the Secretary shall submit a report to Congress that—
§ 7261f Supplement, not supplant

Funds made available under this subpart shall be used to supplement, and not supplant, any other Federal, State, or local funds available for physical education activities.


Prior Provisions

PRIOR PROVISIONS


SUBPART II—COMMUNITY TECHNOLOGY CENTERS

§ 7263. Purpose and program authorization

(a) Purpose

It is the purpose of this subpart to assist eligible applicants—

1. to create or expand community technology centers that will provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training; and

2. to provide technical assistance and support to community technology centers.

(b) Program authorization

The Secretary is authorized, in conjunction with the Office of Educational Technology, to award grants, contracts, or cooperative agreements, on a competitive basis, for a period of not more than 3 years, to eligible applicants in order to assist such applicants in—

1. creating or expanding community technology centers; or

2. providing technical assistance and support to community technology centers.

3. SERVICE OF AMERICORPS PARTICIPANTS.

The Secretary may collaborate with the Chief Executive Officer of the Corporation for National and Community Service on the use in community technology centers of participants in National Service programs carried out under subtitle C of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).


REFERENCES IN TEXT


PRIOR PROVISIONS


§ 7263a. Eligibility and application requirements

(a) Eligible applicants

In order to be eligible to receive an award under this subpart, an applicant shall—

1. be an entity (such as a foundation, museum, library, for-profit business, public or private nonprofit organization, or community-based organization), an institution of higher education, a State educational agency, a local education agency, or a consortium of such entities, institutions, or agencies; and

2. have the capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities (who would otherwise be denied such access).

(b) Application requirements

In order to receive an award under this subpart, an eligible applicant shall submit an application to the Secretary at such time, and containing such information, as the Secretary may require. The application shall include each of the following:

1. A description of the proposed project, including a description of the magnitude of the need for the services and the proposed project to expand access to information technology and related services to disadvantaged residents of an economically distressed urban or rural community.

2. A demonstration of—

A. the commitment, including the financial commitment, of entities (such as institutions, organizations, business and other groups in the community) that will provide support for the creation, expansion, and continuation of the proposed project; and

B. the extent to which the proposed project coordinates with other appropriate agencies, efforts, and organizations providing services to disadvantaged residents of an economically distressed urban or rural community.

3. A description of how the proposed project would be sustained once the Federal funds awarded under this subpart end.

4. A plan for the evaluation of the program, which shall include benchmarks to monitor progress toward specific project objectives.

(c) Matching requirements

The Federal share of the cost of any project funded under this subpart shall not exceed 50 percent. The non-Federal share of such project may be in cash or in kind, fairly evaluated, including services.

§ 7263b. Uses of funds

(a) Required uses

A recipient shall use funds under this subpart for—

(1) creating or expanding community technology centers that expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities; and

(2) evaluating the effectiveness of the project.

(b) Permissible uses

A recipient may use funds under this subpart for activities, described in its application, that carry out the purposes of this subpart, such as—

(1) supporting a center coordinator, and staff, to supervise instruction and build community partnerships;

(2) acquiring equipment, networking capabilities, and infrastructure to carry out the project; and

(3) developing and providing services and activities for community residents that provide access to computers, information technology, and the use of such technology in support of preschool preparation, academic achievement, educational development, and workforce development, such as the following:

(A) After-school activities in which children and youths use software that provides academic enrichment and assistance with homework, develop their technical skills, explore the Internet, and participate in multimedia activities, including web page design and creation.

(B) Adult education and family literacy activities through technology and the Internet, including—

(i) General Education Development, Language Instruction Educational Programs, and adult basic education classes or programs;

(ii) introduction to computers;

(iii) intergenerational activities; and

(iv) educational development opportunities.

(C) Career development and job preparation activities, such as—

(i) training in basic and advanced computer skills;

(ii) resume writing workshops; and

(iii) access to databases of employment opportunities, career information, and other online materials.

(D) Small business activities, such as—

(i) computer-based training for basic entrepreneurial skills and electronic commerce; and

(ii) access to information on business start-up programs that is available online, or from other sources.

(E) Activities that provide home access to computers and technology, such as assistance and services to promote the acquisition, installation, and use of information technology in the home through low-cost solutions such as networked computers, web-based television devices, and other technology.
Internet, to educate students and their parents about historic and contemporary cultural and trading ties that continue to link the diverse cultures of the peoples involved.

The New Bedford Whaling Museum, in partnership with the New Bedford Whaling National Historical Park, has developed a cultural exchange and educational program with the Inupiat Heritage Center in Barrow, Alaska to bring together the children, parents, and elders from the Arctic region of Alaska with children and families of Massachusetts to learn about their historical ties and about each other's contemporary cultures.

(9) Within the fast-growing cultural sector, meaningful educational and career opportunities based on traditional relationships exist for Alaska Natives, Native Hawaiians, and low-income youth in Massachusetts.

(10) Cultural institutions can provide practical, culturally relevant, education-related internship and apprentice programs, such as the Museum Action Corps at the Peabody-Essex Museum and similar programs at the New Bedford Oceanarium and other institutions, to prepare youths and their families for careers in the cultural sector.

(11) The resources of the institutions described in paragraphs (7) and (8) provide unique opportunities for illustrating and interpreting the contributions of Alaska Natives, Native Hawaiians, the whaling industry, and the China trade to the economic, social, and environmental history of the United States, for educating students and their parents, and for providing opportunities for internships and apprenticeships leading to careers with cultural institutions.

(b) Uses of funds

Activities provided through programs carried out under this subpart may include one or more of the following:

(1) Development and implementation of educational programs to increase understanding of cultural diversity and multicultural communication among Alaska Natives, Native Hawaiians, and the people of the continental United States, based on historic patterns of trading and commerce.

(2) Development and implementation of programs using modern technology, including the Internet, to educate students, their parents, and teachers about historic and contemporary cultural and trading ties that continue to link the diverse cultures of Alaska Natives, Native Hawaiians, and the people of Massachusetts.

(3) Cultural exchanges of elders, students, parents, and teachers among Alaska Natives, Native Hawaiians, and the people of Massachusetts to increase awareness of diverse cultures among each group.

(4) Sharing of collections among cultural institutions designed to increase awareness of diverse cultures and links among them.

(5) Development and implementation of internship and apprentice programs in cultural institutions to train Alaska Natives, Native Hawaiians, and low-income students in Massachusetts for careers with cultural institutions.

(6) Other activities, consistent with the purposes of this subpart, to meet the educational needs of Alaska Natives, Native Hawaiians, and students and their parents in Massachusetts.

(7) Cultural and educational programs relating to any Federally recognized Indian tribe in Mississippi.

(a) Grants and contracts

In order to carry out programs that fulfill the purposes of this subpart, the Secretary is authorized to make grants to, or enter into contracts with, the following:

(1) The Alaska Native Heritage Center in Anchorage, Alaska.

(2) The Inupiat Heritage Center in Barrow, Alaska.

(3) The Bishop Museum in Hawaii.


(6) The Mississippi Band of Choctaw Indians in Choctaw, Mississippi.

(7) Other Alaska Native and Native Hawaiian cultural and educational organizations.

(8) Cultural and educational organizations with experience in developing or operating programs that illustrate and interpret the contributions of Alaska Natives, Native Hawaiians, the whaling industry, and the China trade to the economic, social, and environmental history of the United States.

(9) Consortia of the organizations and entities described in this subsection.

AMENDMENTS

§ 7265b. Program authorization

(a) Grants and contracts

In order to carry out programs that fulfill the purposes of this subpart, the Secretary is authorized to make grants to, or enter into contracts with, the following:

(1) The Alaska Native Heritage Center in Anchorage, Alaska.

(2) The Inupiat Heritage Center in Barrow, Alaska.

(3) The Bishop Museum in Hawaii.


(6) The Mississippi Band of Choctaw Indians in Choctaw, Mississippi.

(7) Other Alaska Native and Native Hawaiian cultural and educational organizations.

(8) Cultural and educational organizations with experience in developing or operating programs that illustrate and interpret the contributions of Alaska Natives, Native Hawaiians, the whaling industry, and the China trade to the economic, social, and environmental history of the United States.

(9) Consortia of the organizations and entities described in this subsection.

(b) Uses of funds

Activities provided through programs carried out under this subpart may include one or more of the following:

(1) Development and implementation of educational programs to increase understanding of cultural diversity and multicultural communication among Alaska Natives, Native Hawaiians, and the people of the continental United States, based on historic patterns of trading and commerce.

(2) Development and implementation of programs using modern technology, including the Internet, to educate students, their parents, and teachers about historic and contemporary cultural and trading ties that continue to link the diverse cultures of Alaska Natives, Native Hawaiians, and the people of Massachusetts.

(3) Cultural exchanges of elders, students, parents, and teachers among Alaska Natives, Native Hawaiians, and the people of Massachusetts to increase awareness of diverse cultures among each group.

(4) Sharing of collections among cultural institutions designed to increase awareness of diverse cultures and links among them.

(5) Development and implementation of internship and apprentice programs in cultural institutions to train Alaska Natives, Native Hawaiians, and low-income students in Massachusetts for careers with cultural institutions.

(6) Other activities, consistent with the purposes of this subpart, to meet the educational needs of Alaska Natives, Native Hawaiians, and students and their parents in Massachusetts.

(7) Cultural and educational programs relating to any Federally recognized Indian tribe in Mississippi.

AMENDMENTS
§ 7265c. Administrative provisions

(a) Application required

No grant may be made under this subpart, and no contract may be entered into under this subpart, unless the entity seeking the grant or contract submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may determine to be necessary to carry out the provisions of this subpart.

(b) Local educational agency coordination

Each applicant for a grant or contract under this subpart shall inform each local educational agency serving students who will participate in the program to be carried out under the grant or contract about the application.

§ 7265d. Availability of funds

If sufficient funds are made available under section 7241 of this title to carry out this subpart for a fiscal year, the Secretary shall make available, to support activities described in section 7265b(b) of this title, the following amounts:

(1) Not less than $2,000,000 each to—
   (A) the New Bedford Whaling Museum, in partnership with the New Bedford Oceanarium, in Massachusetts;
   (B) the Inupiat Heritage Center in Alaska; and
   (C) the Mississippi Band of Choctaw Indians in Choctaw, Mississippi.

(2) For the New Trade Winds project, not less than $1,000,000 each to—
   (A) the Alaska Native Heritage Center in Alaska;
   (B) the Bishop Museum in Hawaii; and
   (C) the Peabody-Essex Museum in Massachusetts.

(3) For internship and apprenticeship programs (including the Museum Action Corps of the Peabody-Essex Museum), not less than $1,000,000 each to—
   (A) the Alaska Native Heritage Center in Alaska;
   (B) the Bishop Museum in Hawaii; and
   (C) the Peabody-Essex Museum in Massachusetts.

(4) To assist States in measuring the impact of education in economics.

(5) To leverage and expand private and public support for economic education partnerships at national, State, and local levels.

AMENDMENTS

2005—Subsec. (a)(6) to (9). Pub. L. 109–149, § 306(2)(A), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.


§ 7265e. Definitions

In this subpart:

(1) Alaska Native

The term “Alaska Native” has the meaning given that term in section 7546 of this title.

(2) Native Hawaiian

The term “Native Hawaiian” has the meaning given that term in section 7517 of this title.

AMENDMENTS

2005—Subsec. (a)(6) to (9). Pub. L. 109–149, § 306(2)(A), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.


§ 7267. Short title

This subpart may be cited as the “Excellence in Economic Education Act of 2001”.

AMENDMENTS

2005—Par. (1)(A). Pub. L. 109–149, § 306(3)(A), which directed striking out “and” after semicolon in subpar. (a), was executed by striking out “and” in subpar. (A) to reflect the probable intent of Congress. Par. (1)(B), (C). Pub. L. 109–149, § 306(3)(B), (C), substituted “; and” for period in subpar. (B), and added subpar. (C).
§ 7267b. Grant program authorized

(a) Authorization

The Secretary is authorized to award a competitive grant to a national nonprofit educational organization that has as its primary purpose the improvement of the quality of student understanding of personal finance and economics through effective teaching of economics in the Nation’s classrooms (referred to in this subpart as the “grantee”).

(b) Uses of funds

(1) Direct activities

The grantee shall use 25 percent of the funds made available through the grant for a fiscal year—

(A) to strengthen and expand the grantee’s relationships with State and local personal finance, entrepreneurial, and economic education organizations;

(B) to support and promote training of teachers who teach a grade from kindergarten through grade 12 regarding economics, including the dissemination of information on effective practices and research findings regarding the teaching of economics;

(C) to support research on effective teaching practices and the development of assessment instruments to document student understanding of personal finance and economics; and

(D) to develop and disseminate appropriate materials to foster economic literacy.

(2) Subgrants

The grantee shall use 75 percent of the funds made available through the grant for a fiscal year to award subgrants to State educational agencies or local educational agencies, and State or local economic, personal finance, or entrepreneurial education organizations (referred to in this section as the “recipient”). The grantee shall award such a subgrant to pay for the Federal share of the cost of enabling the recipient to work in partnership with one or more of the entities described in paragraph (3) for one or more of the following purposes:

(A) Collaboratively establishing and conducting teacher training programs that use effective and innovative approaches to the teaching of economics, personal finance, and entrepreneurship.

(B) Providing resources to school districts that desire to incorporate economics and personal finance into the curricula of the schools in the districts.

(C) Conducting evaluations of the impact of economic and financial literacy education on students.

(D) Conducting economic and financial literacy education research.

(E) Creating and conducting school-based student activities to promote consumer, economic, and personal finance education (such as saving, investing, and entrepreneurial education) and to encourage awareness and student academic achievement in economics.

(F) Encouraging replication of best practices to promote economic and financial literacy.

(3) Partnership entities

The entities described in this paragraph are the following:

(A) A private sector entity.

(B) A State educational agency.

(C) A local educational agency.

(D) An institution of higher education.

(E) An organization promoting economic development.

(F) An organization promoting educational excellence.

(G) An organization promoting personal finance or entrepreneurial education.


§ 7267c. Applications

(a) Grantee applications

To be eligible to receive a grant under this subpart, the grantee shall submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Secretary may require.

(b) Recipient applications

(1) Submission

To be eligible to receive a subgrant under this section, a recipient shall submit an application to the grantee at such time, in such manner, and accompanied by such information as the grantee may require.

(2) Review

The grantee shall invite the individuals described in paragraph (3) to review all applications from recipients for a subgrant under this section and to make recommendations to the grantee regarding the approval of the applications.

(3) Reviewers

The individuals described in this paragraph are the following:

(i) Leaders in the fields of economics and education.

(ii) Such other individuals as the grantee determines to be necessary, especially members of the State and local business, banking, and finance communities.


§ 7267d. Requirements

(a) Administrative costs

The grantee and each recipient receiving a subgrant under this subpart for a fiscal year may use not more than 5 percent of the funds made available through the grant or subgrant for administrative costs.

(b) Teacher training programs

In carrying out the teacher training programs described in section 7267(b)(2)(A) of this title, a recipient shall—

(1) train teachers who teach a grade from kindergarten through grade 12; and
(2) encourage teachers from disciplines other than economics and financial literacy to participate in such teacher training programs, if the training will promote the economic and financial literacy of those teachers’ students.

(c) Involvement of business community

In carrying out the activities assisted under this subpart, the grantee and recipients are strongly encouraged to—

(1) include interactions with the local business community to the fullest extent possible to reinforce the connection between economic and financial literacy and economic development; and

(2) work with private businesses to obtain matching contributions for Federal funds and assist recipients in working toward self-sufficiency.

(d) Additional requirements and technical assistance

The grantee shall—

(1) meet such other requirements as the Secretary determines to be necessary to assure compliance with this section; and

(2) receive from the Secretary such technical assistance as may be necessary to carry out this section.


§ 7267e. Administrative provisions

(a) Federal share

The Federal share of the cost described in section 7267b(b)(2) of this title shall be 50 percent.

(b) Payment of non-Federal share

The non-Federal share may be paid in cash or in kind (fairly evaluated, including plant, equipment, or services).

(c) Reports to Congress

Not later than 2 years after the date funds are first made available to carry out this subpart, and every 2 years thereafter, the Secretary shall submit to the appropriate committees of Congress a report regarding activities assisted under this subpart.


§ 7267f. Supplement, not supplant

Funds made available to carry out this subpart shall be used to supplement, and not supplant, other Federal, State, and local funds expended for the purpose described in section 7267a(a) of this title.


PRIOR PROVISIONS


SUBPART 14—GRANTS TO IMPROVE THE MENTAL HEALTH OF CHILDREN

§ 7269. Grants for the integration of schools and mental health systems

(a) Authorization

The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, State educational agencies, local educational agencies, or Indian tribes, for the purpose of increasing student access to quality mental health care by developing innovative programs to link local school systems with the local mental health system.

(b) Duration

With respect to a grant, contract, or cooperative agreement awarded or entered into under this section, the period during which payments under such grant, contract or agreement are made to the recipient may not exceed 5 years.

(c) Use of funds

A State educational agency, local educational agency, or Indian tribe that receives a grant, contract, or cooperative agreement under this section shall use amounts made available through such grant, contract, or cooperative agreement for the following:

(1) To enhance, improve, or develop collaborative efforts between school-based service systems and mental health service systems to provide, enhance, or improve prevention, diagnosis, and treatment services to students.

(2) To enhance the availability of crisis intervention services, appropriate referrals for students potentially in need of mental health services, and ongoing mental health services.

(3) To provide training for the school personnel and mental health professionals who will participate in the program carried out under this section.

(4) To provide technical assistance and consultation to school systems and mental health agencies and families participating in the program carried out under this section.

(5) To provide linguistically appropriate and culturally competent services.

(6) To evaluate the effectiveness of the program carried out under this section in increasing student access to quality mental health services, and make recommendations to the Secretary about sustainability of the program.

(d) Applications

To be eligible to receive a grant, contract, or cooperative agreement under this section, a State educational agency, local educational agency, or Indian tribe shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. The application shall include each of the following:

(1) A description of the program to be funded under the grant, contract, or cooperative agreement.

(2) A description of how such program will increase access to quality mental health services for students.

(3) A description of how the applicant will establish a crisis intervention program to pro-
vide immediate mental health services to the school community when necessary.

(4) An assurance that—
   (A) persons providing services under the grant, contract, or cooperative agreement are adequately trained to provide such services;
   (B) the services will be provided in accordance with subsection (c) of this section;
   (C) teachers, principal administrators, and other school personnel are aware of the program; and
   (D) parents of students participating in services under this section will be involved in the design and implementation of the services.

(5) An explanation of how the applicant will support and integrate existing school-based services with the program to provide appropriate mental health services for students.

(6) An explanation of how the applicant will establish a program that will support students and the school in maintaining an environment conducive to learning.

(e) Interagency agreements

(1) Designation of lead agency

The recipient of each grant, contract, or cooperative agreement shall designate a lead agency to direct the establishment of an interagency agreement among local educational agencies, juvenile justice authorities, mental health agencies, and other relevant entities in the State, in collaboration with local entities and parents and guardians of students.

(2) Contents

The interagency agreement shall ensure the provision of the services described in subsection (c) of this section, specifying with respect to each agency, authority, or entity—
   (A) the financial responsibility for the services;
   (B) the conditions and terms of responsibility for the services, including quality, accountability, and coordination of the services; and
   (C) the conditions and terms of reimbursement among the agencies, authorities, or entities that are parties to the interagency agreement, including procedures for dispute resolution.

(f) Evaluation

The Secretary shall evaluate each program carried out by a State educational agency, local educational agency, or Indian tribe under this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(g) Distribution of awards

The Secretary shall ensure that grants, contracts, and cooperative agreements awarded or entered into under this section are equitably distributed among the geographical regions of the United States and among urban, suburban, and rural populations.

(h) Rule of construction

Nothing in Federal law shall be construed—
   (1) to prohibit an entity involved with a program carried out under this section from re-

porting a crime that is committed by a student to appropriate authorities; or
   (2) to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student.

(i) Supplement, not supplant

Any services provided through programs carried out under this section must supplement, and not supplant, existing mental health services, including any services required to be provided under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).


REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (i), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1490 of this title and Tables.

§ 7269a. Promotion of school readiness through early childhood emotional and social development

(a) Authorization

The Secretary, in consultation with the Secretary of Health and Human Services, may award grants (to be known as “Foundations for Learning Grants”) to local educational agencies, local councils, community-based organizations, and other public or nonprofit private entities to assist eligible children to become ready for school.

(b) Applications

To be eligible to receive a grant under this section, a local educational agency, local council, community-based organization, or other public or nonprofit private entity, or a combination of such entities, shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require. The application shall include each of the following:

   (1) A description of the population that the applicant intends to serve and the types of services to be provided under the grant.

   (2) A description of the manner in which services under the grant will be coordinated with existing similar services provided by public and nonprofit private entities within the State.

   (3) An assurance that—

       (A) services under the grant shall be provided by or under the supervision of qualified professionals with expertise in early childhood development;
       (B) such services shall be culturally competent;
       (C) such services shall be provided in accordance with subsection (c) of this section;
       (D) funds received under this section shall be used to supplement, and not supplant, non-Federal funds; and
       (E) parents of students participating in services under this section will be involved
in the design and implementation of the services.

(c) Uses of funds

A local educational agency, local council, community-based organization, or other public or nonprofit private entity that receives funds under this section may use such funds to benefit eligible children, for one or more of the following:

1. To deliver services to eligible children and their families that foster eligible children’s emotional, behavioral, and social development and take into consideration the characteristics described in subsection (f)(1) of this section.

2. To coordinate and facilitate access by eligible children and their families to the services available through community resources, including mental health, physical health, substance abuse, educational, domestic violence prevention, child welfare, and social services.

3. To provide ancillary services such as transportation or child care in order to facilitate the delivery of any other services or activities authorized by this section.

4. To develop or enhance early childhood community partnerships and build toward a community system of care that brings together child-serving agencies or organizations to provide individualized supports for eligible children and their families.

5. To evaluate the success of strategies and services provided pursuant to this section in promoting young children’s successful entry to school and to maintain data systems required for effective evaluations.

6. To pay for the expenses of administering the activities authorized under this section, including assessment of children’s eligibility for services.

(d) Limitations

1. Services not otherwise funded

A local educational agency, local council, community-based organization, or other public or nonprofit private entity may use funds under this section only to pay for services that cannot be paid for using other Federal, State, or local public resources or through private insurance.

2. Administrative expenses

A grantee may not use more than 3 percent of the amount of the grant to pay the administrative expenses described in subsection (c)(6) of this section.

(e) Evaluations

The Secretary shall directly evaluate, or enter into a contract for an outside evaluation of, each program carried out under this section and shall disseminate the findings with respect to such evaluation to appropriate public and private entities.

(f) Definitions

In this section:

1. Eligible child

The term “eligible child” means a child who has not attained the age of 7 years, and to whom two or more of the following characteristics apply:

(A) The child has been abused, maltreated, or neglected.

(B) The child has been exposed to violence.

(C) The child has been homeless.

(D) The child has been removed from child care, Head Start, or preschool for behavioral reasons or is at risk of being so removed.

(E) The child has been exposed to parental depression or other mental illness.

(F) The family income with respect to the child is below 200 percent of the poverty line.

(G) The child has been exposed to parental substance abuse.

(H) The child has had early behavioral and peer relationship problems.

(I) The child had a low birth weight.

(J) The child has a cognitive deficit or developmental disability.

2. Local council

The term “local council” means a council that is established or designated by a local government entity, Indian tribe, regional corporation, or native Hawaiian entity, as appropriate, which is composed of representatives of local agencies directly affected by early learning programs, parents, key community leaders, and other individuals concerned with early learning issues in the locality, such as elementary education, child care resource and referral services, early learning opportunities, child care, and health services.

3. Provider of early childhood services

The term “provider of early childhood services” means a public or private entity that has regular contact with young children, including child welfare agencies, child care providers, Head Start and Early Head Start providers, preschools, kindergartens, libraries, mental health professionals, family courts, homeless shelters, and primary care providers.

SUBPART 15—ARTS IN EDUCATION

§ 7271. Assistance for arts education

(a) Purposes

The purposes of this subpart are the following:

1. To support systemic education reform by strengthening arts education as an integral part of the elementary school and secondary school curriculum.

2. To help ensure that all students meet challenging State academic content standards and challenging State student academic achievement standards in the arts.

3. To support the national effort to enable all students to demonstrate competence in the arts.

(b) Authority

The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, eligible entities described in subsection (c) of this section.

(c) Eligible entities

The Secretary may make assistance available under subsection (b) of this section to each of the following eligible entities:
(1) State educational agencies.
(2) Local educational agencies.
(3) Institutions of higher education.
(4) Museums or other cultural institutions.
(5) Any other public or private agencies, institutions, or organizations.

(d) Use of funds
Assistance made available under this subpart may be used for any of the following:
(1) Research on arts education.
(2) Planning, developing, acquiring, expanding, improving, or disseminating information about model school-based arts education programs.
(3) The development of model State arts education assessments based on State academic achievement standards.
(4) The development and implementation of curriculum frameworks for arts education.
(5) The development of model inservice professional development programs for arts educators and other instructional staff.
(6) Supporting collaborative activities with Federal agencies or institutions involved in arts education, arts educators, and organizations representing the arts, including State and local arts agencies involved in arts education.
(7) Supporting model projects and programs in the performing arts for children and youth through arrangements made with the John F. Kennedy Center for the Performing Arts.
(8) Supporting model projects and programs by Very Special Arts which assure the participation in mainstream settings in arts and education programs of individuals with disabilities.
(9) Supporting model projects and programs to integrate arts education into the regular elementary school and secondary school curriculum.
(10) Other activities that further the purposes of this subpart.

(e) Special rule
If the amount made available to the Secretary to carry out this subpart for any fiscal year is $15,000,000 or less, then such amount shall only be available to carry out the activities described in paragraphs (7) and (8) of subsection (d) of this section.

(f) Conditions
As conditions of receiving assistance made available under this subpart, the Secretary shall require each entity receiving such assistance—
(1) to coordinate, to the extent practicable, each project or program carried out with such assistance with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters; and
(2) to use such assistance only to supplement, and not to supplant, any other assistance or funds made available from non-Federal sources for the activities assisted under this subpart.

(g) Consultation
In carrying out this subpart, the Secretary shall consult with Federal agencies or institu-
sure that such grants are distributed in all geographic regions of the United States.


§ 7273b. Applications

(a) Submission

Each nonprofit organization (including a statewide nonprofit organization), or a consortia of such an organization and a local educational agency, that desires a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(b) Contents

Each application submitted under subsection (a) of this section, at a minimum, shall include assurances that the organization or consortium will—

(1)(A) be governed by a board of directors the membership of which includes parents; or

(2) establish a special advisory committee the membership of which includes—

(A) parents of children enrolled in elementary schools and secondary schools, who shall constitute a majority of the members of the special advisory committee;

(B) representatives of education professionals with expertise in improving services for disadvantaged children; and

(C) representatives of local elementary schools (including secondary schools, including students and representatives from local youth organizations;

(3) use at least 50 percent of the funds received under this subpart in each fiscal year to serve areas with high concentrations of low-income families, in order to serve parents who are severely educationally or economically disadvantaged;

(4) operate a center of sufficient size, scope, and quality to ensure that the center is adequate to serve the parents in the area;

(5) serve both urban and rural areas;

(6) design a center that meets the unique training, information, and support needs of parents of children enrolled in elementary schools and secondary schools, particularly such parents who are educationally or economically disadvantaged;

(7) demonstrate the capacity and expertise to conduct the effective training, information, and support activities for which assistance is sought;

(8) network with—

(A) local educational agencies and schools;

(B) parents of children enrolled in elementary schools and secondary schools;

(C) parent training and information centers assisted under section 1471 of this title;

(D) clearinghouses; and

(E) other organizations and agencies;

(9) focus on serving parents of children enrolled in elementary schools and secondary schools who are parents of low-income, minority, and limited English proficient children;

(10) use at least 30 percent of the funds received under this subpart in each fiscal year to establish, expand, or operate Parents as Teachers programs, Home Instruction for Preschool Youngsters programs, or other early childhood parent education programs;

(11) provide assistance to parents in areas such as understanding State and local standards and measures of student and school academic achievement;

(12) work with State educational agencies and local educational agencies to determine parental needs and the best means for delivery of services;

(13) identify and coordinate Federal, State, and local services and programs that support improved student learning, including programs supported under this chapter, violence prevention programs, nutrition programs, housing programs, Head Start programs, adult education, and job training; and

(14) work with and foster partnerships with other agencies that provide programs and deliver services described in paragraph (13) to make such programs and services more accessible to children and families.


Amendments


§ 7273c. Uses of funds

(a) In general

Grant funds received under this subpart shall be used for one or more of the following:

(1) To assist parents in participating effectively in their children's education and to help their children meet State and local standards, such as assisting parents—

(A) to engage in activities that will improve student academic achievement, including understanding the accountability systems in place within their State educational agency and local educational agencies and understanding their children's educational academic achievement in comparison to State and local standards;

(B) to provide follow-up support for their children's educational achievement;

(C) to communicate effectively with teachers, principals, counselors, administrators, and other school personnel;

(D) to become active participants in the development, implementation, and review of school-parent compacts, parent involvement policies, and school planning and improvement;

(E) to participate in the design and provision of assistance to students who are not making adequate academic progress;

(F) to participate in State and local decisionmaking; and

(G) to train other parents (such as training related to Parents as Teachers activities).

(2) To obtain information about the range of options, programs, services, and resources
available at the national, State, and local levels to assist parents and school personnel who work with parents.

(3) To help the parents learn and use the technology applied in their children’s education.

(4) To plan, implement, and fund activities for parents that coordinate the education of their children with other Federal, State, and local services and programs that serve their children or their families.

(5) To provide support for State or local educational personnel, if the participation of such personnel will further the activities assisted under the grant.

(6) To coordinate and integrate early childhood programs with school-age programs.

(b) Permissive activities

Grant funds received under this subpart may be used to assist schools with activities including one or more of the following:

(1) Developing and implementing the schools’ plans or activities under sections 6318 and 6319 of this title.

(2) Developing and implementing school improvement plans, including addressing problems that develop in the implementation of the schools’ plans or activities under sections 6318 and 6319 of this title.

(3) Providing information about assessment and individual results to parents in a manner and a language the family can understand.

(4) Coordinating the efforts of Federal, State, and local parent education and family involvement initiatives.

(5) Providing training, information, and support to—

(A) State educational agencies;

(B) local educational agencies and schools, especially low-performing local educational agencies and schools; and

(C) organizations that support family-school partnerships.


§ 7273d. Administrative provisions

(a) Matching funds for grant renewal

For each fiscal year after the first fiscal year in which an organization or consortium receives assistance under this subpart, the organization or consortium shall demonstrate in the application submitted for such fiscal year, that a portion of the services provided by the organization or consortium is supported through non-Federal contributions, which contributions may be in cash or in kind.

(b) Submission of information

(1) In general

Each organization or consortium receiving assistance under this subpart shall submit to the Secretary, on an annual basis, information concerning the parental information and resource centers assisted under this subpart, including the following information:

(A) The number of parents (including the number of minority and limited English proficient parents) who receive information and training.

(B) The types and modes of training, information, and support provided under this subpart.

(C) The strategies used to reach and serve parents of minority and limited English proficient children, parents with limited literacy skills, and other parents in need of the services provided under this subpart.

(D) The parental involvement policies and practices used by the center and an evaluation of whether such policies and practices are effective in improving home-school communication, student academic achievement, student and school academic achievement, and parental involvement in school planning, review, and improvement.

(E) The effectiveness of the activities that local educational agencies and schools are carrying out, with regard to parental involvement and other activities assisted under this chapter, that lead to improved student academic achievement and improved student and school academic achievement.

(2) Dissemination

The Secretary shall disseminate annually to Congress and the public the information that each organization or consortium submits under paragraph (1).

(c) Technical assistance

The Secretary shall provide technical assistance, by grant or contract, for the establishment, development, and coordination of parent training, information, and support programs and parental information and resource centers.

(d) Rule of construction

Nothing in this subpart shall be construed to prohibit a parental information and resource center from—

(1) having its employees or agents meet with a parent at a site that is not on school grounds; or

(2) working with another agency that serves children.

(e) Parental rights

Notwithstanding any other provision of this subpart—

(1) no person (including a parent who educates a child at home, a public school parent, or a private school parent) shall be required to participate in any program of parent education or developmental screening under this subpart; and

(2) no program or center assisted under this subpart shall take any action that infringes in any manner on the right of a parent to direct the education of their children.

(f) Continuation of awards

The Secretary shall use funds made available under this subpart to continue to make grant or contract payments to each entity that was awarded a multiyear grant or contract under title IV of the Goals 2000: Educate America Act (as such title was in effect on the day before January 8, 2002) for the duration of the grant or contract award.

REFERENCES IN TEXT


§ 7275e. Local family information centers

(a) In general

If the amount made available to carry out this subpart for a fiscal year is more than $50,000,000, the Secretary is authorized to award 50 percent of the amount that exceeds $50,000,000 as grants to, and enter into contracts and cooperative agreements with, local nonprofit parent organizations to enable the organizations to support local family information centers that help ensure that parents of students in elementary schools and secondary schools assisted under this subpart have the training, information, and support the parents need to enable the parents to participate effectively in their children’s early childhood education, in their children’s elementary and secondary education, and in helping their children to meet challenging State academic content and student academic achievement standards.

(b) Local nonprofit parent organization defined

In this section, the term “local nonprofit parent organization” means a private nonprofit organization (other than an institution of higher education) that—

(1) has a demonstrated record of working with low-income individuals and parents;

(2)(A) has a board of directors, the majority of whom are parents of students in elementary schools and secondary schools assisted under part A of subchapter I of this chapter and located in the geographic area to be served by a local family information center; or

(B) has a special governing committee to direct and implement a local family information center, a majority of the members of whom are parents of students in schools assisted under part A of subchapter I of this chapter; and

(3) is located in a community with elementary schools and secondary schools that receive funds under part A of subchapter I of this chapter, and is accessible to the families of students in those schools.


SUBPART 17—COMBATTING DOMESTIC VIOLENCE

§ 7275. Grants to combat the impact of experiencing or witnessing domestic violence on elementary and secondary school children

(a) Definitions

In this section:

(1) Domestic violence

The term “domestic violence” has the meaning given that term in section 3796gg-2 of title 42.

(2) Expert

The term “expert” means—

(A) an expert on domestic violence, sexual assault, and child abuse from the educational, legal, youth, mental health, substance abuse, or victim advocacy field; and

(B) a State or local domestic violence coalition or community-based youth organization.

(3) Witness domestic violence

(A) In general

The term “witness domestic violence” means to witness—

(i) an act of domestic violence that constitutes actual or attempted physical assault; or

(ii) a threat or other action that places the victim in fear of domestic violence.

(B) Witness

In subparagraph (A), the term “witness” means—

(i) to directly observe an act, threat, or action described in subparagraph (A), or the aftermath of that act, threat, or action; or

(ii) to be within earshot of an act, threat, or action described in subparagraph (A), or the aftermath of that act, threat, or action.

(b) Grants authorized

(1) Authority

The Secretary is authorized to award grants to local educational agencies that work with experts to enable the elementary schools and secondary schools served by the local educational agency—

(A) to provide training to school administrators, faculty, and staff, with respect to issues concerning children who experience domestic violence in dating relationships or who witness domestic violence, and the impact of the violence on the children;

(B) to provide educational programming for students regarding domestic violence and the impact of experiencing or witnessing domestic violence on children;

(C) to provide support services for students and school personnel to develop and strengthen effective prevention and intervention strategies with respect to issues concerning children who experience domestic violence in dating relationships or who witness domestic violence, and the impact of the violence on the children; and

(D) to develop and implement school system policies regarding appropriate and safe responses to, identification of, and referral procedures for, students who are experiencing or witnessing domestic violence.

(2) Award basis

The Secretary is authorized to award grants under this section—

(A) on a competitive basis; and

(B) in a manner that ensures that such grants are equitably distributed among local educational agencies located in rural, urban, and suburban areas.

(3) Policy dissemination

The Secretary shall disseminate to local educational agencies any Department policy
guidance regarding the prevention of domestic violence and the impact on children of experiencing or witnessing domestic violence.

(c) Uses of funds

Funds made available to carry out this subpart may be used for one or more of the following purposes:

(1) To provide training for elementary school and secondary school administrators, faculty, and staff that addresses issues concerning elementary school and secondary school students who experience domestic violence in dating relationships or who witness domestic violence, and the impact of such violence on those students.

(2) To provide education programs for elementary school and secondary school students that are developmentally appropriate for the students’ grade levels and are designed to meet any unique cultural and language needs of the particular student populations.

(3) To develop and implement elementary school and secondary school system policies regarding—
   (A) appropriate and safe responses to, identification of, and referral procedures for, students who are experiencing or witnessing domestic violence; and
   (B) to develop and implement policies on reporting and referral procedures for those students.

(4) To provide the necessary human resources to respond to the needs of elementary school and secondary school students and personnel who are faced with the issue of domestic violence, such as a resource person who is either on-site or on-call and who is an expert.

(5) To provide media center materials and educational materials to elementary schools and secondary schools that address issues concerning children who experience domestic violence in dating relationships or who witness domestic violence, and the impact of the violence on those children.

(6) To conduct evaluations to assess the impact of programs and policies assisted under this subpart in order to enhance the development of the programs.

(d) Confidentiality

Policies, programs, training materials, and evaluations developed and implemented under subsection (c) of this section shall address issues of safety and confidentiality for the victim and the victim’s family in a manner consistent with applicable Federal and State laws.

(e) Application

To be eligible for a grant under this section for a fiscal year, a local educational agency, in consultation with an expert, shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall include each of the following:

(1) A description of the need for funds provided under the grant and the plan for implementation of any of the activities described in subsection (c) of this section.

(2) A description of how the experts will work in consultation and collaboration with the local educational agency.

(3) Measurable objectives for, and expected results from, the use of the funds provided under the grant.

(4) Provisions for appropriate remuneration for collaborating partners.

§ 7277. Grant program authorized

The Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, is authorized to award grants to State educational agencies to permit such State educational agencies to carry out section 7277a of this title.


§ 7277a. State uses of funds

(a) Subgrants

(1) In general

A State educational agency receiving a grant under this subpart shall use funds made available under the grant to award subgrants to local educational agencies to carry out the activities described in section 7277b of this title.

(2) Limitation

A State educational agency shall award subgrants under this subsection to local educational agencies that are the neediest, as determined by the State, and that have made a commitment to develop healthy, high-performance school buildings in accordance with the plan developed and approved under paragraph (3)(A).

(3) Implementation

(A) Plans

A State educational agency shall award subgrants under this subsection only to local educational agencies that, in consultation with the State educational agency and State agencies with responsibilities relating to energy and health, have developed plans that the State educational agency determines to be feasible and appropriate in order to achieve the purposes for which the subgrants are made.

(B) Supplementing grant funds

The State educational agency shall encourage local educational agencies that receive subgrants under this subsection to supplement their subgrant funds with funds from other sources in order to implement their plans.

(b) Administration

A State educational agency receiving a grant under this subpart shall use the grant funds made available under this subpart for one or more of the following:

(1) To evaluate compliance by local educational agencies with the requirements of this subpart.
(2) To distribute information and materials on healthy, high-performance school buildings for both new and existing facilities.

(3) To organize and conduct programs for school board members, school district personnel, and others to disseminate information on healthy, high-performance school buildings.

(4) To provide technical services and assistance in planning and designing healthy, high-performance school buildings.

(5) To collect and monitor information pertaining to healthy, high-performance school building projects.


§ 7277b. Local uses of funds

(a) In general

A local educational agency that receives a subgrant under section 7277a(a) of this title shall use the subgrant funds to plan and prepare for healthy, high-performance school building projects that—

(1) reduce energy use to at least 30 percent below that of a school constructed in compliance with standards prescribed in chapter 8 of the 2000 International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent results;

(2) meet Federal and State health and safety codes; and

(3) support healthful, energy efficient, and environmentally sound practices.

(b) Use of funds

A local educational agency that receives a subgrant under section 7277a(a) of this title shall use funds for one or more of the following:

(1) To develop a comprehensive energy audit of the energy consumption characteristics of a building and the need for additional energy conservation measures necessary to allow schools to meet the goals set out in subsection (a) of this section.

(2) To produce a comprehensive analysis of building strategies, designs, materials, and equipment that—

(A) are cost-effective, produce greater energy efficiency, and enhance indoor air quality; and

(B) can be used when conducting school construction and renovation or purchasing materials and equipment.

(3) To obtain research and provide technical services and assistance in planning and designing healthy, high-performance school buildings, including developing a timeline for implementation of such plans.


§ 7277c. Report to Congress

The Secretary shall conduct a biennial review of State actions implementing this subpart and carrying out the plans developed under this subpart through State and local funding, and shall submit a report to Congress on the results of such reviews.


§ 7277d. Limitations

No funds received under this subpart may be used for any of the following:

(1) Payment of maintenance of costs in connection with any projects constructed in whole or in part with Federal funds provided under this subpart.

(2) Construction, renovation, or repair of school facilities.

(3) Construction, renovation, repair, or acquisition of a stadium or other facility primarily used for athletic contests or exhibitions, or other events for which admission is charged to the general public.


§ 7277e. Healthy, high-performance school building defined

In this subpart, the term “healthy, high-performance school building” means a school building in which the design, construction, operation, and maintenance—

(1) use energy-efficient and affordable practices and materials;

(2) are cost-effective;

(3) enhance indoor air quality; and

(4) protect and conserve water.


§ 7279. Grant program authorized

The Secretary is authorized to award grants to State educational agencies, from allotments made under section 7279b of this title, to enable the State educational agencies to award subgrants to local educational agencies to pay for capital expenses in accordance with this subpart.


§ 7279a. Uses of funds

A local educational agency that receives a subgrant under this subpart shall use the subgrant funds only to pay for capital expenses incurred in providing equitable services for private school students under section 6320 of this title.


§ 7279b. Allotments to States

From the funds made available to carry out this subpart for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the funds made available as the number of private school students who received services under part A of subchapter I of this chapter in the State in the most recent year for which data, satisfactory to the Secretary, are available bears to the number of such students in all States in such year.

§ 7279c. Subgrants to local educational agencies

(a) Applications

A local educational agency that desires to receive a subgrant under this subpart shall submit an application to the State educational agency involved at such time, in such manner, and containing such information as the State educational agency may require.

(b) Distribution

A State educational agency shall award subgrants to local educational agencies within the State based on the degree of need set forth in their respective applications submitted under subsection (a) of this section.


§ 7279d. Capital expenses defined

In this subpart, the term “capital expenses” means—

(1) expenditures for noninstructional goods and services, such as the purchase, lease, or renovation of real and personal property, including mobile educational units and leasing of neutral sites or spaces;

(2) insurance and maintenance costs;

(3) transportation; and

(4) other comparable goods and services.


§ 7279e. Termination

The authority provided by this subpart terminates effective October 1, 2003.


SUBPART 20—ADDITIONAL ASSISTANCE FOR CERTAIN LOCAL EDUCATIONAL AGENCIES IMPACTED BY FEDERAL PROPERTY ACQUISITION

§ 7281. Reservation

The Secretary is authorized to provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under section 7702 of this title.


§ 7281a. Eligibility

A local educational agency is eligible to receive additional assistance under this subpart only if such agency—

(1) received a payment under both section 7702 of this title and section 7703(b) of this title for fiscal year 1996 and is eligible to receive payments under those sections for the year of application;

(2) provided a free public education to children described under subparagraph (A), (B), or (D) of section 7703(a)(1) of this title;

(3) had a military installation located within the geographic boundaries of the local educational agency that was closed as a result of base closure or realignment and, at the time at which the agency is applying for a payment under this subpart, the agency does not have a military installation located within its geographic boundaries;

(4) remains responsible for the free public education of children residing in housing located on Federal property within the boundaries of the closed military installation but whose parents are on active duty in the uniformed services and assigned to a military activity located within the boundaries of an adjoining local educational agency; and

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


§ 7281b. Maximum amount

(a) Maximum amount

The maximum amount that a local educational agency is eligible to receive under this subpart for any fiscal year, when combined with its payment under section 7702(b) of this title, shall not be more than 50 percent of the maximum amount determined under section 7702(b) of this title.

(b) Insufficient funds

If funds appropriated under section 7241 of this title are insufficient to pay the amount determined under subsection (a) of this section, the Secretary shall ratably reduce the payment to each local educational agency eligible under this subpart.

(c) Excess funds

If funds appropriated under section 7241 of this title are in excess of the amount determined under subsection (a) of this section, the Secretary shall ratably distribute any excess funds to all local educational agencies eligible for payment under section 7702(b) of this title.

§ 7281c. Additional assistance for educational equity

§ 7283. Short title and findings

(a) Short title

This subpart may be cited as the “Women’s Educational Equity Act of 2001”.

(b) Findings

Congress finds that—

(1) since the enactment of title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], women and girls have made strides in educational achievement and in their ability to avail themselves of educational opportunities;

(2) because of funding provided under the Women’s Educational Equity Act of 2001 [20 U.S.C. 2753 et seq.], more curricula, training, and other educational materials concerning educational equity for women and girls are available for national dissemination;

(3) teaching and learning practices in the United States are frequently inequitable as
such practices relate to women and girls, for example—

(A) sexual harassment, particularly that experienced by girls, undermines the ability of schools to provide a safe and equitable learning or workplace environment;

(B) classroom textbooks and other educational materials do not sufficiently reflect the experiences, achievements, or concerns of women and, in most cases, are not written by women or persons of color;

(C) girls do not take as many mathematics and science courses as boys, girls lose confidence in their mathematics and science ability as girls move through adolescence, and there are few women role models in the sciences; and

(D) pregnant and parenting teenagers are at high risk for dropping out of school and existing dropout prevention programs do not adequately address the needs of such teenagers;

(4) efforts to improve the quality of public education also must include efforts to ensure equal access to quality education programs for all women and girls;

(5) Federal support should address not only research and development of innovative model curricula and teaching and learning strategies to promote gender equity, but should also assist schools and local communities implement gender equitable practices;

(6) Federal assistance for gender equity must be tied to systemic reform, involve collaborative efforts to implement effective gender practices at the local level, and encourage parental participation; and

(7) excellence in education, high educational achievements and standards, and the full participation of women and girls in American society, cannot be achieved without educational equity for women and girls.


§ 7283b. Programs authorized

(a) In general

The Secretary is authorized—

(1) to promote, coordinate, and evaluate gender equity policies, programs, activities, and initiatives in all Federal education programs and offices;

(2) to develop, maintain, and disseminate materials, resources, analyses, and research relating to education equity for women and girls;

(3) to provide information and technical assistance to assure the effective implementation of gender equity programs;

(4) to coordinate gender equity programs and activities with other Federal agencies with jurisdiction over education and related programs;

(5) to assist the Director of the Institute of Education Sciences in identifying research priorities related to education equity for women and girls; and

(6) to perform any other activities consistent with achieving the purposes of this subpart.

(b) Grants authorized

(1) In general

The Secretary is authorized to award grants to, and enter into contracts and cooperative agreements with, public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and individuals, for a period not to exceed 4 years, to—

(A) provide grants to develop model equity programs; and

(B) provide funds for the implementation of equity programs in schools throughout the Nation.

(2) Support and technical assistance

To achieve the purposes of this subpart, the Secretary is authorized to provide support and technical assistance—

(A) to implement effective gender-equity policies and programs at all educational levels, including—

(i) assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]; and

(ii) training for teachers, counselors, administrators, and other school personnel,
(B) for research and development, which shall be coordinated with each of the National Education Centers of the Institute of Education Sciences to avoid duplication of research efforts, designed to advance gender equity nationwide and to help make policies and practices in educational agencies and institutions, and local communities, gender equitable, including—

(i) research and development of innovative strategies and model training programs for teachers and other education personnel;

(ii) the development of high-quality and challenging assessment instruments that are nondiscriminatory;

(iii) the development and evaluation of model curricula, textbooks, software, and other educational materials to ensure the absence of gender stereotyping and bias;

(iv) the development of instruments and procedures that employ new and innovative strategies to assess whether diverse educational settings are gender equitable;

(v) the development of instruments and strategies for evaluation, dissemination, and replication of promising or exemplary programs designed to assist local educational agencies in integrating gender equity in their educational policies and practices;

(vi) updating high-quality educational materials previously developed through awards made under this subpart;

(vii) the development of policies and programs to address and prevent sexual harassment and violence to ensure that educational institutions are free from threats to safety of students and personnel;

(viii) the development and improvement of programs and activities to increase opportunity for women, including continuing educational activities, vocational education, and programs for low-income women, including underemployed and unemployed women, and women receiving assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]; and

(ix) the development of guidance and counseling activities, including career education programs, designed to ensure gender equity.


REFERENCES IN TEXT

and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

**AMENDMENTS**


§ 7283c. Applications

An application under this subpart shall—

(1) set forth policies and procedures that will ensure a comprehensive evaluation of the activities assisted under this subpart, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period;

(2) demonstrate how the applicant will address perceptions of gender roles based on cultural differences or stereotypes;

(3) for applications for assistance under section 7283b(b)(1) of this title, demonstrate how parental involvement in the project will be encouraged; and

(4) for applications for assistance under section 7283b(b)(1) of this title, demonstrate how the applicant will foster partnerships and, where applicable, share resources with State educational agencies, local educational agencies, institutions of higher education, community-based organizations (including organizations serving women), parent, teacher, and student groups, businesses, or other recipients of Federal educational funding which may include State literacy resource centers;

(5) for applications for assistance under section 7283b(b)(1) of this title, describe plans for continuation of the activities assisted under this subpart with local support following completion of the grant period and termination of Federal support under this subpart.


§ 7283d. Criteria and priorities

(a) Criteria and priorities

(1) In general

The Secretary shall establish separate criteria and priorities for awards under paragraphs (1) and (2) of section 7283b(b) of this title to ensure that funds under this subpart are used for programs that most effectively will achieve the purposes of this subpart.

(2) Criteria

The criteria described in paragraph (1) may include the extent to which the activities assisted under this subpart—

(A) address the needs of women and girls of color and women and girls with disabilities;

(B) meet locally defined and documented educational equity needs and priorities, including compliance with title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.];

(C) are a significant component of a comprehensive plan for educational equity and compliance with title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.] in the particular school district, institution of higher education, vocational-technical institution, or other educational agency or institution; and

(D) implement an institutional change strategy with long-term impact that will continue as a central activity of the applicant after the grant under this subpart has terminated.

(b) Priorities

In awarding grants under this subpart, the Secretary may give special consideration to applications—

(1) submitted by applicants that have not received assistance under this subpart or this subpart’s predecessor authorities;

(2) for projects that will contribute significantly to directly improving teaching and learning practices in the local community; and

(3) for projects that will—

(A) provide for a comprehensive approach to enhancing gender equity in educational institutions and agencies;

(B) draw on a variety of resources, including the resources of local educational agencies, community-based organizations, institutions of higher education, and private organizations;

(C) implement a strategy with long-term impact that will continue as a central activity of the applicant after the grant under this subpart has terminated;

(D) address issues of national significance that can be duplicated; and

(E) address the educational needs of women and girls who suffer multiple or compounded discrimination based on sex and on race, ethnic origin, disability, or age.

(c) Special rule

To the extent feasible, the Secretary shall ensure that grants awarded under this subpart for each fiscal year address—

(1) all levels of education, including preschool, elementary and secondary education, higher education, vocational education, and adult education;

(2) all regions of the United States; and

(3) urban, rural, and suburban educational institutions.

(d) Coordination

Research activities supported under this subpart—

(1) shall be carried out in consultation with the Institute of Education Sciences to ensure that such activities are coordinated with and enhance the research and development activities supported by the Institute; and

(2) may include collaborative research activities which are jointly funded and carried out with the Institute of Education Sciences.

(e) Limitation

Nothing in this subpart shall be construed as prohibiting men and boys from participating in
any programs or activities assisted with funds under this subpart.


REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(2)(B), (C), is Pub. L. 92–318, June 23, 1972, 86 Stat. 238, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of this title. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

AMENDMENTS


§ 7283e. Report

Not later than January 1, 2006, the Secretary shall submit to the President and Congress a report on the status of educational equity for girls and women in the Nation.


§ 7283f. Administration

(a) Evaluation and dissemination

Not later than January 1, 2005, the Secretary shall evaluate and disseminate materials and programs developed under this subpart and shall report to Congress regarding such evaluation materials and programs.

(b) Program operations

The Secretary shall ensure that the activities assisted under this subpart are administered within the Department by a person who has recognized professional qualifications and experience in the field of gender equity education.


§ 7283g. Amount

From amounts made available to carry out this subpart for a fiscal year, not less than two-thirds of such amount shall be used to carry out the activities described in section 7283b(b)(1) of this title.


SUBCHAPTER VI—FLEXIBILITY AND ACCOUNTABILITY

CODIFICATION


PART A—IMPROVING ACADEMIC ACHIEVEMENT

SUBPART 1—ACCOUNTABILITY

§ 7301. Grants for State assessments and related activities

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

(1) to pay the costs of the development of the additional State assessments and standards required by section 6311(b) of this title, which may include the costs of working in voluntary partnerships with other States, at the sole discretion of each such State; and

(2) if a State has developed the assessments and standards required by section 6311(b) of this title, to administer those assessments or to carry out other activities described in this subpart and other activities related to ensuring that the State’s schools and local educational agencies are held accountable for results, such as the following:

(A) Developing challenging State academic content and student academic achievement standards and aligned assessments in academic subjects for which standards and assessments are not required by section 6311(b) of this title.

(B) Developing or improving assessments of English language proficiency necessary to comply with section 6311(b)(7) of this title.

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

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

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

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

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

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

§ 7301a. Grants for enhanced assessment instruments

(a) Grant program authorized

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

(1) To enable States (or consortia of States) to collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for such assessments described in section 6311(b)(3) of this title.

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

(3) To chart student progress over time.

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

(b) Application

Each State wishing to apply for funds under this section shall include in its State plan under part A of subchapter I of this chapter such information as the Secretary may require.

(c) Annual report

Each State educational agency receiving a grant under this section shall submit an annual report to the Secretary describing its activities, and the result of those activities, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7301b. Funding

(a) Authorization of appropriations

(1) National assessment of educational progress

For the purpose of administering the State assessments under the National Assessment of Educational Progress, there are authorized to be appropriated $72,000,000 for fiscal year 2002, and such sums as may be necessary for each of the 5 succeeding fiscal years.

(2) State assessments and related activities

For the purpose of carrying out this subpart, there are authorized to be appropriated $490,000,000 for fiscal year 2002, and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Allotment of appropriated funds

(1) In general

From amounts made available for each fiscal year under subsection (a)(2) of this section that are equal to or less than the amount described in section 6311(b)(3)(D) of this title (hereinafter in this subsection referred to as the “trigger amount”), the Secretary shall—

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

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

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

(i) $3,000,000; and

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

(2) Remainder

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

(A)(i) To award funds under section 7301a of this title to States according to the quality, needs, and scope of the State application under that section.

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

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

(c) State defined

In this section, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.


Prior Provisions


§ 7302. In general

From amounts made available for each fiscal year under subsection (a)(2) of this section that are equal to or less than the amount described in section 6311(b)(3)(D) of this title (hereinafter in this subsection referred to as the “trigger amount”), the Secretary shall—
§ 7305. Short title

This subpart may be cited as the “State and Local Transferability Act”.


§ 7305a. Purpose

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

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

(2) to transfer Federal funds allocated to other activities to allocations for certain activities authorized under subchapter I of this chapter.


§ 7305b. Transferability of funds

(a) Transfers by States

(1) In general

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

(A) Section 6613(a)(3) of this title.

(B) Section 6621 of this title.

(C) Subsections (a)(1) (with the agreement of the Governor) and (c)(1) of section 7112 of this title and section 7172(c)(3) of this title.

(D) Section 7211a(b) of this title.

(2) Additional funds for subchapter I

In accordance with this subpart and subject to the percentage limitation described in paragraph (1), a State may transfer any funds allotted to the State under a provision listed in paragraph (1) to its allotment under subchapter I of this chapter.

(b) Transfers by local educational agencies

(1) Authority to transfer funds

(A) In general

In accordance with this subpart, a local educational agency (except a local educational agency identified for improvement under section 6316(c) of this title or subject to corrective action under section 6316(c)(9) [1] of this title) may transfer not more than 50 percent of the funds allocated to it (including funds transferred under subparagraph (C) under each of the provisions listed in paragraph (2) for a fiscal year to one or more of its allocations for such fiscal year under any other provision listed in paragraph (2).

(B) Agencies identified for improvement

In accordance with this subpart, a local educational agency identified for improve-

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[1] So in original. Probably should be section “6316(c)(10)”. 
to each of the rules and requirements applicable to the funds under the provision to which the transferred funds are transferred.

(2) Consultation

Each State educational agency or local educational agency that transfers funds under this section shall conduct consultations in accordance with section 7861 of this title, if such transfer transfers funds from a program that provides for the participation of students, teachers, or other educational personnel, from private schools.


SUBPART 3—STATE AND LOCAL FLEXIBILITY DEMONSTRATION

§7311. Short title

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


PRIOR PROVISIONS


§7311a. Purpose

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

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

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

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

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

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

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

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


§7311b. General provision

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


PRIOR PROVISIONS


Division A—State Flexibility Authority

§7315. State flexibility

(a) Flexibility authority

Except as otherwise provided in this division, the Secretary shall, on a competitive basis, grant flexibility authority to not more than seven eligible State educational agencies, under which the agencies may consolidate and use funds in accordance with section 7315a of this title.

(b) Definitions

In this division:

(1) Eligible State educational agency

The term “eligible State educational agency” means a State educational agency that—

(A) submits an approvable application under subsection (c) of this section; and

(B) proposes performance agreements—

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

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

(iii) that require the local educational agencies described in clause (i) to align their use of consolidated funds under section 7321a of this title with the State educational agency’s use of consolidated funds under section 7315a of this title.

(2) High-poverty local educational agency

The term “high-poverty local educational agency” means a local educational agency for which 20 percent or more of the children who are age 5 through 17, and served by the local educational agency, are from families with incomes below the poverty line.

(c) State applications

(1) Applications

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

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

(i) assisting the State educational agency in making adequate yearly progress, as defined under section 6311(b)(2) of this title; and

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

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

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

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

(E) a list of the programs described in section 7315a(b) of this title that are included in the scope of the grant of authority;

(F) a provision specifying that no requirements of any program described in section 7315a(b) of this title and included by a State educational agency in the scope of the grant of authority shall apply to that agency, except as otherwise provided in this division;

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

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

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

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

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

(i) the State educational agency, and the local educational agencies with which the State educational agency enters into performance agreements, will provide for the equitable participation of students and professional staff in private schools consistent with section 7881 of this title; and

(ii) that sections 7882, 7883, and 7884 of this title shall apply to all services and assistance provided with such funds in the same manner as such sections apply to services and assistance provided in accordance with section 7881 of this title;

(L) an assurance that the State educational agency will, for the duration of the grant of authority, use funds consolidated under section 7315a of this title only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds; and

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

(2) Proposed performance agreements with local educational agencies

(A) In general

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

(B) Performance agreements

Each proposed performance agreement with a local educational agency shall—

(i) contain plans for the local educational agency to consolidate and use funds in accordance with section 7321a of this title, for activities that are aligned with the State educational agency’s plan described in paragraph (1)(G);

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

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

(II) as otherwise provided in this division; and

(iii) contain an assurance that the local educational agency will, for the duration of the grant of authority, use funds consolidated under section 7315a of this title only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students par-
ting in programs assisted with the consolidated funds, and not to supplant those funds.

(d) Approval and selection
The Secretary shall—
(1) establish a peer review process to assist in the review of proposed State applications under this section; and
(2) appoint individuals to participate in the peer review process who are—
(A) representative of parents, teachers, State educational agencies, and local educational agencies; and
(B) familiar with educational standards, assessments, accountability, curricula, instruction, and staff development, and other diverse educational needs of students.

(e) Amendment to grant of authority
(1) In general
Subject to paragraph (2), the Secretary shall amend the grant of flexibility authority made to a State educational agency under this division, in each of the following circumstances:

(A) Reduction in scope of the grant of authority
Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to include in the scope of the grant of authority any program described in section 7315a(b) of this title.

(B) Expansion of scope of the grant of authority
Not later than 1 year after receiving a grant of flexibility authority, the State educational agency seeks to amend the grant of authority to remove from the scope of the grant of authority any additional achievement indicators for which the State will be held accountable.

(C) Changes with respect to number of performance agreements
The State educational agency seeks to amend the grant of authority to include or remove performance agreements that the State educational agency proposes to enter into with eligible local educational agencies, except that in no case may the State educational agency enter into performance agreements that do not meet the requirements of clauses (i) and (ii) of subsection (b)(1)(B) of this section.

(2) Approval and disapproval
(A) Deemed approval
A proposed amendment to a grant of flexibility authority submitted by a State educational agency pursuant to paragraph (1) shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the proposed amendment, that the proposed amendment is not in compliance with this division.

(B) Disapproval
The Secretary shall not finally disapprove the proposed amendment, except after giving the State educational agency notice and an opportunity for a hearing.

(C) Notification
If the Secretary finds that the proposed amendment is not in compliance, in whole or in part, with this division, the Secretary shall—
(i) give the State educational agency notice and an opportunity for a hearing; and
(ii) notify the State educational agency of the finding of noncompliance and, in such notification, shall—
(I) cite the specific provisions in the proposed amendment that are not in compliance; and
(II) request additional information, only as to the noncompliant provisions, needed to make the proposed amendment compliant.

(D) Response
If the State educational agency responds to the Secretary’s notification described in subparagraph (C)(i) during the 45-day period beginning on the date on which the agency received the notice, the Secretary shall—
(i) give the State educational agency an opportunity for a hearing; and
(ii) review the proposed amendment, and, if the Secretary approves the proposed amendment, notify the State educational agency of such approval.

(E) Failure to respond
If the State educational agency does not respond to the Secretary’s notification described in subparagraph (C)(i) during the 45-day period beginning on the date on which the agency received the notification, such proposed amendment shall be deemed to be disapproved.

(3) Treatment of program funds withdrawn from grant of authority
Beginning on the effective date of an amendment executed under paragraph (1)(A), each program requirement of each program removed from the scope of a grant of authority shall apply to the use of funds made available under the program by the State educational agency and each local educational agency with which the State educational agency has a performance agreement.

§ 7315a. Consolidation and use of funds
(a) In general

(1) Authority
Under a grant of flexibility authority made under this division, a State educational agency may consolidate Federal funds described in subsection (b) of this section and made available to the agency, and use such funds for any educational purpose authorized under this chapter.
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§ 7315b  PERFORMANCE REVIEW AND PENALTIES

(2) Program requirements

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

(b) Eligible funds and programs

(1) Funds

The funds described in this subsection are funds, for State-level activities and State administration, that are described in the following provisions:

(A) Section 6304 of this title.
(B) Paragraphs (4) and (5) of section 6362(d) of this title.
(C) Section 6613(a)(3) of this title.
(D) Section 6762(a)(1) of this title.
(E) Subsections (a) (with the agreement of the Governor), (b)(2), and (c)(1) of section 7112 of this title.
(F) Paragraphs (2) and (3) of section 7172(c) of this title.
(G) Section 7211a(b) of this title.

(2) Programs

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

(c) Special rule

A State educational agency that receives a grant of flexibility authority under this division—

(1) shall ensure that the funds described in section 7211a(a) of this title are allocated to local educational agencies in the State in accordance with section 7211a(a) of this title; but
(2) may specify how the local educational agencies shall use the allocated funds.

§ 7315c  RENEWAL OF GRANT OF FLEXIBILITY AUTHORITY

(a) In general

Except as provided in section 7315b of this title and in accordance with this section, if a State educational agency has met, by the end of the original 5-year term of a grant of flexibility authority under this division, the requirements described in section 7315(c) of this title, the Secretary may renew the grant of flexibility authority for one additional 5-year term.

(b) Renewal

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

(c) Effective date

A renewal under this section shall be effective on the later of—

(1) the expiration of the original term of the grant of authority; or
(2) the date on which the State educational agency seeking the renewal provides to the Secretary all data required for the application described in section 7315(c) of this title.

§ 7321  LOCAL FLEXIBILITY DEMONSTRATION AGREEMENTS

(a) Authority

Except as otherwise provided in this division, the Secretary shall, on a competitive basis, enter into local flexibility demonstration agreements—
(1) with local educational agencies that submit approvable proposed agreements under subsection (c) of this section and that are selected under subsection (b) of this section; and

(2) under which those agencies may consolidate and use funds in accordance with section 7321a of this title.

(b) Selection of local educational agencies

(1) In general

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

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

(i) has a substantial promise of assisting the local educational agency in meeting the State’s definition of adequate yearly progress, advancing the education priorities of the local educational agency, meeting the general purposes of the programs included under this division and the purposes of this part, improving student achievement, and narrowing achievement gaps in accordance with section 6311(b) of this title;

(ii) meets the requirements of this division; and

(iii) contains a plan to consolidate and use funds in accordance with section 7321a of this title in order to meet the State’s definition of adequate yearly progress and the local educational agency’s specific, measurable goals for improving student achievement and narrowing achievement gaps; and

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

(2) Geographic distribution

(A) Initial agreements

The Secretary may enter into not more than three local flexibility demonstration agreements under this division with local educational agencies in each State that does not have a grant of flexibility authority under division A of this subpart.

(B) Urban and rural areas

If more than three local educational agencies in a State submit approvable local flexibility demonstration agreements under this division, the Secretary shall select local educational agencies with which to enter into such agreements in a manner that ensures an equitable distribution among such agencies serving urban and rural areas.

(C) Priority of States to enter into State flexibility demonstration agreements

Notwithstanding any other provision of this part, a local educational agency may not seek to enter into a local flexibility demonstration agreement under this division if that agency is located in a State for which the State educational agency—

(i) has, not later than 4 months after January 8, 2002, notified the Secretary of its intent to apply for a grant of flexibility authority under division A of this subpart and, within such period of time as the Secretary may establish, is provided with such authority by the Secretary; or

(ii) has, at any time after such period, been granted flexibility authority under division A of this subpart.

(c) Required terms of local flexibility demonstration agreement

Each local flexibility demonstration agreement entered into with the Secretary under this division shall contain each of the following terms:

(1) Duration

The local flexibility demonstration agreement shall be for a term of 5 years.

(2) Application of program requirements

The local flexibility demonstration agreement shall provide that no requirements of any program described in section 7321a of this title and included by a local educational agency in the scope of its agreement shall apply to that agency, except as otherwise provided in this division.

(3) List of programs

The local flexibility demonstration agreement shall list which of the programs described in section 7321a of this title are included in the scope of the agreement.

(4) Use of funds to improve student achievement

The local flexibility demonstration agreement shall contain a 5-year plan describing how the local educational agency intends to consolidate and use the funds from programs included in the scope of the agreement for any educational purpose authorized under this chapter to advance the education priorities of the local educational agency, meet the general purposes of the included programs, improve student achievement, and narrow achievement gaps in accordance with section 6311(b) of this title.

(5) Local input

The local flexibility demonstration agreement shall contain an assurance that the local educational agency will provide parents, teachers, and representatives of schools with notice and an opportunity to comment on the proposed terms of the local flexibility demonstration agreement.

(6) Fiscal responsibilities

The local flexibility demonstration agreement shall contain an assurance that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the agreement.
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(7) Civil rights

The local flexibility demonstration agreement shall contain an assurance that the local educational agency will meet the requirements of all applicable Federal civil rights laws in carrying out the agreement and in consolidating and using the funds under the agreement.

(8) Private school participation

The local flexibility demonstration agreement shall contain an assurance that the local educational agency agrees that in consolidating and using funds under the agreement—

(A) the local educational agency, will provide for the equitable participation of students and professional staff in private schools consistent with section 7881 of this title; and

(B) that sections 7882, 7883, and 7884 of this title shall apply to all services and assistance provided with such funds in the same manner as such services apply to services and assistance provided in accordance with section 7881 of this title.

(9) Supplanting

The local flexibility demonstration agreement shall contain an assurance that the local educational agency will, for the duration of the grant of authority, use funds consolidated under section 7321a of this title only to supplant those funds.

(10) Annual reports

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

(d) Peer review

The Secretary shall—

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

(2) appoint individuals to the peer review process who are representative of parents, teachers, State educational agencies, and local educational agencies, and who are familiar with educational standards, assessments, accountability, curriculum, instruction and staff development, and other diverse educational needs of students.

(e) Amendment to performance agreement

(1) In general

In each of the following circumstances, the Secretary shall amend a local flexibility demonstration agreement entered into with a local educational agency under this division:

(A) Reduction in scope of local flexibility demonstration agreement

Not later than 1 year after entering into a local flexibility demonstration agreement, the local educational agency seeks to amend the agreement to remove from the scope any program described in section 7321a of this title.

(B) Expansion of scope of local flexibility demonstration agreement

Not later than 1 year after entering into the local flexibility demonstration agreement, a local educational agency seeks to amend the agreement to include in its scope any additional program described in section 7321a of this title1 or any additional achievement indicators for which the local educational agency will be held accountable.

(2) Approval and disapproval

(A) Deemed approval

A proposed amendment to a local flexibility demonstration agreement pursuant to paragraph (1) shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the proposed amendment, that the proposed amendment is not in compliance with this division.

(B) Disapproval

The Secretary shall not finally disapprove the proposed amendment, except after giving the local educational agency notice and an opportunity for a hearing.

(C) Notification

If the Secretary finds that the proposed amendment is not in compliance, in whole or in part, with this division, the Secretary shall—

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

(ii) notify the local educational agency of the finding of noncompliance and, in such notification, shall—

(I) cite the specific provisions in the proposed amendment that are not in compliance; and

(II) request additional information, only as to the noncompliant provisions, needed to make the proposed amendment compliant.

(D) Response

If the local educational agency responds to the Secretary’s notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, and resubmits the

1 See References in Text note below.
proposed amendment with the requested information described in subparagraph (C)(ii)(D), the Secretary shall approve or disapprove such proposed amendment prior to the later of—

(i) the expiration of the 45-day period beginning on the date on which the proposed amendment is resubmitted; or

(ii) the expiration of the 120-day period described in subparagraph (A).

(E) Failure to respond

If the local educational agency does not respond to the Secretary’s notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, such proposed amendment shall be deemed to be disapproved.

(3) Treatment of program funds withdrawn from agreement

Beginning on the effective date of an amendment executed under paragraph (1)(A), each program requirement of each program removed from the scope of a local flexibility demonstration agreement shall apply to the use of funds made available under the program by the local educational agency.


REFERENCES IN TEXT

Section 7321a of this title, referred to in subsec. (e)(1)(B), was in the original “section 6251”, meaning section 6251 of Pub. L. 89–10, which was translated as reading section 6152 of that Act to reflect the probable intent of Congress, because that Act does not contain a section 6251, and section 6152 of that Act describes programs.

§ 7321a. Consolidation and use of funds

(a) In general

(1) Authority

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

(2) Program requirements

Except as otherwise provided in this division, a local educational agency may use funds under paragraph (1) notwithstanding the program requirements of the program under which the funds were made available to the agency.

(b) Eligible programs

Program funds made available to local educational agencies on the basis of a formula under the following provisions may be consolidated and used under subsection (a) of this section:

(1) Subpart 2 of part A of subchapter II of this chapter.

(2) Subpart 1 of part D of subchapter II of this chapter.

(3) Subpart 1 of part A of subchapter IV of this chapter.

(4) Subpart 1 of part A of subchapter V of this chapter.

§ 7321b. Limitations on administrative expenditures

Each local educational agency that has entered into a local flexibility demonstration agreement with the Secretary under this division may use for administrative purposes not more than 4 percent of the total amount of funds allocated to the agency under the programs included in the scope of the agreement.


§ 7321c. Performance review and penalties

(a) Midterm review

(1) Failure to make adequate yearly progress

If, during the term of a local flexibility demonstration agreement, a local educational agency fails to make adequate yearly progress for 2 consecutive years, the Secretary shall, after notice and opportunity for a hearing, promptly terminate the agreement.

(2) Noncompliance

The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide information as provided for in paragraph (3)), terminate a local flexibility demonstration agreement under this division if there is evidence that the local educational agency has failed to comply with the terms of the agreement.

(E) Failure to respond

If, at the end of the 5-year term of a local flexibility demonstration agreement entered into under this division, the local educational agency has not met the requirements described in section 7321d of this title, the Secretary may not renew the agreement under section 7321d of this title and, beginning on the date on which such term ends, the local educational agency shall be required to comply with each of the program requirements in effect on such date for each program included in the local flexibility demonstration agreement.


§ 7321d. Renewal of local flexibility demonstration agreement

(a) In general

Except as provided in section 7321c of this title and in accordance with this section, the Secretary shall renew for one additional 5-year
term a local flexibility demonstration agreement entered into under this division if the local educational agency has met, by the end of the original term of the agreement, the requirements described in section 7321(c) of this title.

(b) Notification

The Secretary may not renew a local flexibility demonstration agreement under this division unless, not less than 6 months before the end of the original term of the agreement, the local educational agency seeking the renewal notifies the Secretary of its intention to renew.

(c) Effective date

A renewal under this section shall be effective at the end of the original term of the agreement or on the date on which the local educational agency seeking renewal provides to the Secretary all data required under the agreement, whichever is later.

§ 7321e. Reports

(a) Transmittal to Congress

Not later than 60 days after the Secretary receives a report described in section 7321(b)(10) of this title, the Secretary shall make the report available to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(b) Limitation

A State in which a local educational agency that has a local flexibility demonstration agreement is located may not require such local educational agency to provide any application information with respect to the programs included within the scope of that agreement other than that information that is required to be included in the report described in section 7321(b)(10) of this title.

§ 7325. Accountability for adequate yearly progress

In the case of a State educational agency that has a plan approved under subpart 1 of part A of subchapter I of this chapter after January 8, 2002, and has a plan approved under subpart 1 of part A of subchapter III of this chapter after January 8, 2002, the Secretary shall annually, starting with the beginning of the first school year following the first two school years for which such plans were implemented, review whether the State has—

(1) made adequate yearly progress, as defined in section 6311(b)(2)(B) of this title, for each of the groups of students described in section 6311(b)(2)(C)(V) of this title; and

(2) met its annual measurable achievement objectives under section 6842(a) of this title.

The Secretary may not renew a local flexibility demonstration agreement under this division unless, not less than 6 months before the end of the original term of the agreement, the local educational agency seeking the renewal notifies the Secretary of its intention to renew.

The Secretary shall annually, beginning with the school year that begins after the effective date of this division, review whether the State has met its annual measurable achievement objectives under section 6842(a) of this title.

(1) A list of each State that has not met its annual measurable achievement objectives under section 6842(a) of this title.

§ 7325a. Peer review

The Secretary shall use a peer review process to review, based on data from the State assessments administered under section 6311(b)(3) of this title and on data from the evaluations conducted under section 6841 of this title, whether the State has failed to make adequate yearly progress for 2 consecutive years or whether the State has met its annual measurable achievement objectives.

§ 7325b. Technical assistance

(a) Provision of assistance

(1) Adequate yearly progress

Based on the review described in section 7325(1) of this title, the Secretary shall provide technical assistance to a State that has failed to make adequate yearly progress, as defined in section 6311(b)(2) of this title, for 2 consecutive years. The Secretary shall provide such assistance not later than the beginning of the first school year that begins after such determination is made.

(2) Annual measurable achievement objectives

Based on the reviews described in section 7325(2) of this title, the Secretary may provide technical assistance to a State that has failed to meet its annual measurable achievement objectives under section 6842(a) of this title for 2 consecutive years. The Secretary shall provide such assistance not later than the beginning of the first school year that begins after such determination is made.

(b) Characteristics

The technical assistance described in subsection (a) of this section shall—

(1) be valid, reliable and rigorous; and

(2) provide constructive feedback to help the State make adequate yearly progress, as defined in section 6311(b)(2) of this title, or meet the annual measurable achievement objectives under section 6842(a) of this title.

§ 7325c. Report to Congress

Beginning with the school year that begins in 2005, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate containing the following:

(1) A list of each State that has not made adequate yearly progress based on the review conducted under section 7325(1) of this title.

(2) A list of each State that has not met its annual measurable achievement objectives based on the review conducted under section 7325(2) of this title.

(3) The information reported by the State to the Secretary pursuant to section 6319(a) of this title.
(4) A description of any technical assistance provided pursuant to section 7232b of this title.


PRIOR PROVISIONS

Prior sections 7331 and 7332 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


PART B—RURAL EDUCATION INITIATIVE

§ 7341. Short title

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


PRIOR PROVISIONS

A prior section 6201 of Pub. L. 89–10 was classified to section 7331 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Another prior section 6201 of Pub. L. 89–10 was classified to section 3271 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

§ 7341a. Purpose

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

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

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


PRIOR PROVISIONS

A prior section 6202 of Pub. L. 89–10 was classified to section 7332 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

Another prior section 6202 of Pub. L. 89–10 was classified to section 3272 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

SUBPART 1—SMALL, RURAL SCHOOL ACHIEVEMENT PROGRAM

§ 7345. Use of applicable funding

(a) Alternative uses

(1) In general

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

(A) Part A of subchapter I of this chapter.

(B) Part A or D of subchapter II of this chapter.

(C) Subchapter III of this chapter.

(D) Part A or B of subchapter IV of this chapter.

(E) Part A of subchapter V of this chapter.

(2) Notification

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

(b) Eligibility

(1) In general

A local educational agency shall be eligible to use the applicable funding in accordance with subsection (a) of this section if—

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

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

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

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

(2) Certification

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

(c) Applicable funding defined

In this section, the term “applicable funding” means funds provided under any of the following provisions:

(1) Subpart 2 of this part and section 6762(a)(2)(A) of this title.

(2) Section 7114 of this title.

(3) Part A of subchapter V of this chapter.

(d) Disbursement

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

(e) Applicable rules

Applicable funding under this section shall be available to carry out local activities authorized under subsection (a) of this section.

§ 7345a. Grant program authorized

(a) In general
The Secretary is authorized to award grants to eligible local educational agencies to enable the local educational agencies to carry out activities authorized under any of the following provisions:

(1) Part A of subchapter I of this chapter.
(2) Part A or D of subchapter II of this chapter.
(3) Subchapter III of this chapter.
(4) Part A or B of subchapter IV of this chapter.
(5) Part A of subchapter V of this chapter.

(b) Allocation

(1) In general
Except as provided in paragraph (3), the Secretary shall award a grant to a local educational agency in the State under section 7345(c) of this title for a fiscal year in an amount equal to the initial amount determined under paragraph (2) for the fiscal year minus the total amount received by the agency under the provisions of law described in section 7345(c) of this title for the preceding fiscal year.

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

(3) Ratable adjustment

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

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

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

(d) Special eligibility rule
A local educational agency that is eligible to receive a grant under this subpart for a fiscal year is not eligible to receive funds for such fiscal year under subpart 2 of this part.

§ 7345b. Accountability

(a) Academic achievement assessment
Each local educational agency that uses or receives funds under this subpart for a fiscal year shall administer an assessment that is consistent with section 6311(b)(3) of this title.

(b) Determination regarding continuing participation
Each State educational agency that receives funding under the provisions of law described in section 7345(c) of this title shall—

(1) after the third year that a local educational agency in the State participates in a program under this subpart and on the basis of the results of the assessments described in subsection (a) of this section, determine whether the local educational agency participating in the program made adequate yearly progress, as described in section 6311(b)(2) of this title;

(2) permit only those local educational agencies that participated and made adequate yearly progress, as described in section 6311(b)(2) of this title, to continue to participate; and

(3) permit those local educational agencies that participated and failed to make adequate yearly progress, as described in section 6311(b)(2) of this title, to continue to participate only if such local educational agencies use applicable funding under this subpart to carry out the requirements of section 631b of this title.

§ 7351. Program authorized

(a) Grants to States

(1) In general
From amounts appropriated under section 7355c of this title for this subpart for a fiscal year that are not reserved under subsection (c) of this section, the Secretary shall award grants (from allotments made under paragraph (2)) for the fiscal year to State educational agencies that have applications submitted under section 7351b of this title approved to enable the State educational agencies to award grants to eligible local educational agencies for local authorized activities described in section 7351a(a) of this title.

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

(3) Specially qualified agencies

(A) Eligibility and application
If a State educational agency elects not to participate in the program under this subpart or does not have an application submitted under section 7351b of this title ap-
proven, a specially qualified agency in such State desiring a grant under this subpart may submit an application under such section directly to the Secretary to receive an award under this subpart.

(B) Direct awards

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

(C) Specially qualified agency defined

In this subpart, the term "specially qualified agency" means an eligible local educational agency served by a State educational agency that does not participate in a program under this subpart or a program under this subpart in a fiscal year, that may apply directly to the Secretary for a grant in such year under this subpart.

(b) Local awards

(1) Eligibility

A local educational agency shall be eligible to receive a grant under this subpart if—

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

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

(2) Award basis

A State educational agency shall award grants to eligible local educational agencies—

(A) on a competitive basis;

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

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

(c) Reservations

From amounts appropriated under section 7355c of this title for this subpart for a fiscal year, the Secretary shall reserve—

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

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

§ 7351a. Uses of funds

(a) Local awards

Grant funds awarded to local educational agencies under this subpart shall be used for any of the following:

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

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

(3) Educational technology, including software and hardware, as described in part D of subchapter II of this chapter.

(4) Parental involvement activities.

(5) Activities authorized under the Safe and Drug-Free Schools program under part A of subchapter IV of this chapter.

(6) Activities authorized under part A of subchapter I of this chapter.

(7) Activities authorized under subchapter III of this chapter.

(b) Administrative costs

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

§ 7351b. Applications

(a) In general

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

(b) Contents

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

(1) increased student academic achievement;

(2) decreased student dropout rates; or

(3) such other factors as the State educational agency or specially qualified agency may choose to measure.
§ 7351c. Accountability

(a) State report

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

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

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

(3) the degree to which progress has been made toward meeting the goals and objectives described in the application submitted under section 7351b of this title.

(b) Specially qualified agency report

Each specially qualified agency that receives a grant under this subpart shall provide an annual report to the Secretary. Such report shall describe—

(1) how such agency uses funds provided under this subpart; and

(2) the degree to which progress has been made toward meeting the goals and objectives described in the application submitted under section 7351b of this title.

(c) Report to Congress

The Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a biennial report. The report shall describe—

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

local educational agencies and schools used funds provided under this subpart; and

(3) the degree to which progress has been made toward meeting the goals and objectives described in the applications submitted under section 7351b of this title.

(d) Academic achievement assessment

Each local educational agency or specially qualified agency that receives a grant under this subpart for a fiscal year shall administer an assessment that is consistent with section 6311(b)(3) of this title.

(e) Determination regarding continuing participation

Each State educational agency or specially qualified agency that receives a grant under this subpart shall—

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

(A) in the case of a local educational agency, determine whether the local educational agency made adequate yearly progress, as described in section 6311(b)(2) of this title; and

(B) in the case of a specially qualified agency, submit to the Secretary information that would allow the Secretary to determine whether the specially qualified agency has made adequate yearly progress, as described in section 6311(b)(2) of this title; and

(2) only those local educational agencies or specially qualified agencies that made an annual report to the Secretary. The report shall describe—

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

(2) permit only those local educational agencies or specially qualified agencies that made adequate yearly progress, as described in section 6311(b)(2) of this title, to continue to receive grants under this subpart; and

(3) permit those local educational agencies or specially qualified agencies that failed to make adequate yearly progress, as described in section 6311(b)(2) of this title, to continue to receive such grants only if the State educational agency disbursed such grants to the local educational agencies or specially qualified agencies to carry out the requirements of section 6316 of this title.


Prior Provisions


SUBPART 3—GENERAL PROVISIONS

§ 7355. Annual average daily attendance determination

(a) Census determination

Each local educational agency desiring a grant under section 7345a of this title and each local educational agency or specially qualified agency desiring a grant under subpart 2 of this part shall—

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

(2) not later than March 1 of each year, submit the number described in paragraph (1) to the Secretary (and to the State educational agency, in the case of a local educational agency seeking a grant under subpart (2)).

(b) Penalty

If the Secretary determines that a local educational agency or specially qualified agency has knowingly submitted false information under subsection (a) of this section for the purpose of gaining additional funds under section 7345a of this title or subpart 2 of this part, then the agency shall be fined an amount equal to twice the difference between the amount the agency received under this section and the correct amount the agency would have received.

1So in original. Probably should be preceded by "(2) how".

1So in original. Probably should be "subpart 2)."
under section 7345a of this title or subpart 2 of this part if the agency had submitted accurate information under subsection (a) of this section.


§ 7355a. Supplement, not supplant

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


§ 7355b. Rule of construction

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


§ 7355c. Authorization of appropriations

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


PART C—GENERAL PROVISIONS

§ 7371. Prohibition against Federal mandates, direction, or control

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


PRIOR PROVISIONS


A prior section 6301 of Pub. L. 89–10 was classified to section 7351 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7372. Rule of construction on equalized spending

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


PRIOR PROVISIONS


A prior section 6302 of Pub. L. 89–10 was classified to section 7352 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.


SUBCHAPTER VII—INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION

CODIFICATION


PART A—INDIAN EDUCATION

§ 7401. Statement of policy

It is the policy of the United States to fulfill the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.


PRIOR PROVISIONS


SAVINGS PROVISIONS

Pub. L. 107–110, title VII, §703, Jan. 8, 2002, 115 Stat. 1947, provided that: ‘‘Funds appropriated for parts A, B, and C of title IX of the Elementary and Secondary Education Act of 1965 [(former 20 U.S.C. 7801 et seq., 7901 et seq., 7931 et seq.)] [as in effect on the day before the date of enactment of this Act (Jan. 8, 2002)] shall be available for use under parts A, B, and C, respectively, of title VII of such Act [parts A, B, and C, respectively, of this subchapter], as added by this section [section 701].’’

EXECUTIVE ORDER NO. 13096

Ex. Ord. No. 13096, Aug. 6, 1998, 63 F.R. 42681, which related to American Indian and Alaska Native education,
was revoked by Ex. Ord. No. 13336, §9(b), Apr. 30, 2004, 69 F.R. 25297, formerly set out below.

EXECUTIVE ORDER No. 13392

EXECUTIVE ORDER No. 13592, IMPROVING AMERICAN INDIAN AND ALASKA NATIVE EDUCATIONAL OPPORTUNITIES AND STRENGTHENING TRIBAL COLLEGES AND UNIVERSITIES
Ex. Ord. No. 13592, Dec. 2, 2011, 76 F.R. 76603, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

SECTION 1. Policy. The United States has a unique political and legal relationship with the federally recognized American Indian and Alaska Native (AI/AN) tribes across the country, as set forth in the Constitution of the United States, treaties, Executive Orders, and court decisions. For centuries, the Federal Government's relationship with these tribes has been guided by a trust responsibility—a long-standing commitment to the solemn obligations it entails—Federal agencies must help improve educational opportunities provided to all AI/AN students, including students attending public schools in cities and in rural areas, students attending schools operated and funded by the Department of the Interior's Bureau of Indian Education (BIE), and students attending postsecondary institutions, including Tribal Colleges and Universities (TCUs). This is an urgent need. Recent studies show that AI/AN students are dropping out of school at an alarming rate, that our nation has made little or no progress in closing the achievement gap between AI/AN students and their non-AI/AN student counterparts, and that many Native languages are on the verge of extinction.

It is the policy of my Administration to support activities that will strengthen the Nation by expanding educational opportunities and improving educational outcomes for all AI/AN students in order to fulfill our commitment to furthering tribal self-determination and to help ensure that AI/AN students have an opportunity to learn their Native languages and histories and receive complete and competitive educations that prepare them for college, careers, and productive and satisfying lives.

My Administration is also committed to improving educational opportunities for students attending TCUs. TCUs maintain, preserve, and restore Native languages and cultural traditions; offer a high-quality college education; provide career and technical education, job training, and other career-building programs; and often serve as anchors in some of the country's poorest and most remote areas.

SEC. 2. Definitions. (a) "Agency" means any executive department or agency designated by the Secretary of Education and the Secretary of the Interior to participate in this order.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as a tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 470a [et seq.].

(c) "American Indian and Alaska Native" means a member of an Indian tribe, as membership is defined by the tribe.

(d) "Public school" means a Head Start center or a pre-kindergarten, elementary, or secondary school that is predominantly funded by public means through the Federal Government, a State, a local educational agency, or an Indian tribal government, including a school operated directly by or through contract or grant with the BIE, an Indian tribe, or a State, county, or local government.

(e) "Tribal Colleges and Universities" are those institutions that are chartered by their respective Indian tribes through the sovereign authority of the tribes, by the Federal Government, and defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1092c).

SIC. 3. White House Initiative on American Indian and Alaska Native Education.

(a) Establishment. There is hereby established the White House Initiative on American Indian and Alaska Native Education (Initiative). The Secretary of Education and the Secretary of the Interior will co-chair the Initiative. The Secretary of Education shall appoint an Executive Director who shall be responsible for overseeing implementation of the Initiative. This individual shall be a senior-level, Department of Education official who shall serve as the Secretary of Education's senior policy advisor on Federal policies affecting AI/AN education.

The Executive Director shall work closely with the BIE Director and shall provide periodic reports to the Secretaries of Education and the Interior regarding progress achieved under the Initiative. The Executive Director shall coordinate frequent consultations with tribal officials and shall provide staff support for the National Advisory Council on Indian Education (NACIE), authorized by section 7141 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7471).

(b) Mission and Functions. (1) The Initiative shall help expand educational opportunities and improve educational outcomes for all AI/AN students, including opportunities to learn their Native languages, cultures, and histories and receive complete and competitive educations that prepare them for college, careers, and productive and satisfying lives, by:

(i) working closely with the Executive Office of the President to help ensure AI/AN participation in the development and implementation of key Administration priorities;

(ii) strengthening the relationship between the Department of Education, which has substantial expertise and resources to help improve Indian education, and the Department of the Interior and its BIE, which directly operates or provides grants to tribes to operate an extensive primary, secondary, and college level school system for AI/AN children and young adults;

(iii) coordinating, in consultation with the Department of Education's Director of Indian Education, career and technical education programs administered by the Department of Education and other executive branch agencies regarding AI/AN education;

(iv) serving as a liaison with other executive branch agencies on AI/AN issues and advising those agencies on how they might help to promote AI/AN educational opportunities;

(v) reporting on the development, implementation, and coordination of education policy and programs that affect AI/AN students;

(vi) furthering tribal sovereignty by supporting efforts, consistent with applicable law, to build the capacity of tribal educational agencies and TCUs to provide high-quality education services to AI/AN children;

(vii) developing in partnership with tribal educational agencies a more routine and streamlined process for entering into agreements for educational studies conducted on tribal lands;

(viii) developing sufficient data resources to inform progress on Federal performance indicators, in close collaboration with the Department of Education's National Center for Educational Statistics;

(ix) encouraging and coordinating Federal partnerships with public, private, philanthropic, and nonprofit entities to help increase the readiness of AI/AN students for school, college, and careers, and to help increase the number and percentage of AI/AN students completing college and;
(x) developing a national network of individuals, organizations, and communities to share best practices in AI/AN education and encouraging them to implement these practices.

(2) In order to help expand educational opportunities and improve education outcomes for AI/AN students, the Initiative shall promote, encourage, and undertake efforts consistent with applicable law, to meet the following objectives:

(i) increasing the number and percentage of AI/AN children who enter kindergarten ready for success through improved access to high-quality early learning programs and services, including Native language immersion programs, that encourage the learning and development of AI/AN children from birth through age five;

(ii) supporting the expanded implementation of education reform strategies that have shown evidence of success in enabling AI/AN students to acquire a rigorous and well-rounded education and increasing their access to the support services that prepare them for college, careers, and civic involvement;

(iii) increasing the number and percentage of AI/AN students who have access to excellent teachers and school leaders, including effective science, technology, engineering, and mathematics (STEM), language, and special education teachers, in part by supporting efforts to improve the recruitment, development, and retention of effective AI/AN teachers and other effective teachers and school leaders, particularly through TCUs;

(iv) reducing the AI/AN student dropout rate and helping a greater number and percentage of those students who stay in high school to be ready for college and careers by the time of their graduation and college completion, in part by promoting a positive school climate and supporting successful and innovative dropout-prevention and recovery strategies that better engage AI/AN youths in their learning and help them catch up academically;

(v) providing pathways that enable those who have dropped out to reenter educational or training programs and acquire degrees, certificates, or industry-recognized credentials and obtain quality jobs, and expanding access to high-quality education programs leading to career advancement, especially in the STEM fields, by supporting adult, career, and technical education;

(vi) increasing college access and completion for AI/AN students through strategies to strengthen the capacity of postsecondary institutions, particularly TCUs; and

(vii) helping to ensure that the unique cultural, educational, and language needs of AI/AN students are met.

(3) To facilitate a new partnership between the Department of Education and the Department of the Interior to improve AI/AN education, the Executive Director shall work with the BIE Director and develop a Memorandum of Understanding (MOU) between the two Departments that will take advantage of both Departments’ expertise, resources, and facilities. The MOU shall be completed within 120 days of the date of this order. Among other things, the MOU shall address how the Departments will collaborate in carrying out the policy set out in section 1 of this order.

(c) Funding and Administrative Support. Subject to the availability of appropriations, the Department of Education shall fund the Initiative, including NACIE. The Department shall also provide administrative support for the Initiative to the extent permitted by law and within existing appropriations.

(d) Interagency Working Group. There is established the Interagency Working Group on AI/AN education and TCUs, which shall be convened by the Initiative’s Executive Director. The Working Group shall consist of senior officials from the Department of Education and the Department of the Interior and officials from the Departments of Justice, Agriculture, Labor, Health and Human Services, and Energy, the Environmental Protection Agency, and the White House Domestic Policy Council, as well as such additional agencies and offices as the Secretaries of Education and the Interior may designate. Senior officials shall be designated by heads of their respective agencies and offices. The Secretaries of Education and the Interior shall serve as the co-chairs of the Interagency Working Group.

(e) Federal Agency Plans. (1) Each agency designated by the co-chairs as a member of the Interagency Working Group shall develop and implement a two-part, 4-year plan of the agency’s efforts to fulfill the purposes of this order, with part one focusing on all AI/AN students except for those attending TCUs, and part two focusing on AI/AN students attending TCUs. Each agency plan shall include:

(i) annual performance indicators and appropriate measurable objectives with which the agency will measure its success in meeting the goals of this order;

(ii) information on how the agency intends to increase the capacity of educational agencies and institutions, including our Nation’s public schools and TCUs, to deliver high-quality education and related social services to all AI/AN students; and

(iii) agency efforts to enhance the ability of these educational agencies and institutions serving AI/AN students to compete effectively for grants, contracts, and other Federal funds, in part by supporting efforts with which to serve the education needs of AI/AN students; and to encourage eligible schools and colleges serving those students to apply for Federal grants and participate in Federal education programs, as appropriate. Agency plans may also emphasize access to high-quality educational opportunities for AI/AN students, consistent with requirements of the ESEA, the Individuals with Disabilities Education Act, and other applicable Federal education statutes; the preservation and revitalization of tribal languages and cultural traditions; and innovative approaches to more seamlessly align early learning, elementary, and secondary education programs with the work of TCUs.

(2) Submission. Each agency shall submit its plan to the Initiative by a deadline established by the co-chairs. In consultation with NACIE, the Initiative shall then review agency plans and develop, for submission to the President, a synthesized interagency plan to achieve the aims of this order.

(f) Annual Performance Reports. Each agency shall submit to the Initiative an Annual Performance Report that measures the agency’s performance against the objectives set forth in its plan. In consultation with NACIE, the Initiative shall review and combine Annual Performance Reports from the various agencies into one annual report, which shall be submitted to the Secretaries of Education and the Interior for review.

(g) Private Sector. In consultation with NACIE, and consistent with applicable law, the Interagency Working Group, led by the Executive Director, shall encourage the private sector to assist State- and locally-operated public schools that serve large numbers of AI/AN students, including those attending our Nation’s public schools, publicly-funded preschools, and TCUs, through increased use of such strategies as:

(1) Providing funds to support the preservation and revitalization of Native languages and cultures;

(2) Providing funds to support increased institutional endowments;

(3) Helping these schools develop expertise in financial and facilities management, information systems, and curricula; and

(4) Providing resources for the hiring and training of effective teachers and administrators.

Sec. 4. Study. In carrying out this order, the Secretaries of Education and the Interior shall study and collect information on the education of AI/AN students.

Sec. 5. General Provisions. (a) NACIE shall serve as the Initiative’s advisory committee.

(b) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply, the Initiative, as amended (5 U.S.C. App.), may apply to the Initiative, any functions of the President under that Act, except for those of reporting to the Congress, shall be per-
§ 7402 Purpose

(a) Purpose

It is the purpose of this part to support the efforts of local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities to meet the unique educational and culturally related academic needs of American Indian and Alaska Native students, so that such students can meet the same challenging State student academic achievement standards as all other students are expected to meet.

(b) Programs

This part carries out the purpose described in subsection (a) of this section by authorizing programs of direct assistance for—

(1) meeting the unique educational and culturally related academic needs of American Indians and Alaska Natives;

(2) the education of Indian children and adults;

(3) the training of Indian persons as educators and counselors, and in other professions serving Indian people; and

(4) research, evaluation, data collection, and technical assistance.


Prior Provisions


Prior sections 7403 to 7405 were omitted in the general amendment of this subchapter by Pub. L. 107–110.

§ 7421 Purpose

It is the purpose of this part to support local educational agencies in their efforts to reform elementary school and secondary school programs that serve Indian students in order to ensure that such programs—

(1) are based on challenging State academic content and student academic achievement standards that are used for all students; and

(2) are designed to assist Indian students in meeting those standards.


Prior Provisions


§ 7422 Grants to local educational agencies and tribes

(a) In general

The Secretary may make grants, from allocations made under section 7423 of this title, to local educational agencies and Indian tribes, in accordance with this section and section 7423 of this title.

(b) Local educational agencies

(1) Enrollment requirements

A local educational agency shall be eligible for a grant under this subpart for any fiscal year if the number of Indian children eligible under section 7427 of this title who were enrolled in the schools of the agency, and to whom the agency provided free public education, during the preceding fiscal year—

(A) was at least 10; or

(B) constituted not less than 25 percent of the total number of individuals enrolled in the schools of such agency.

(2) Exclusion

The requirement of paragraph (1) shall not apply in Alaska, California, or Oklahoma, or with respect to any local educational agency located on, or in proximity to, a reservation.

(c) Indian tribes

(1) In general

If a local educational agency that is otherwise eligible for a grant under this subpart does not establish a committee under section 7424(c)(4) of this title for such grant, an Indian tribe that represents not less than ½ of the eligible Indian children who are served by such local educational agency may apply for such grant.

(2) Special rule

The Secretary shall treat each Indian tribe applying for a grant pursuant to paragraph (1) as if such Indian tribe were a local educational agency for purposes of this subpart, except that any such tribe is not subject to section...
§ 7423. Amount of grants

(a) Amount of grant awards

(1) In general

Except as provided in subsection (b) of this section and paragraph (2), the Secretary shall allocate to each local educational agency that has an approved application under this subpart an amount equal to—

(A) the number of Indian children who are eligible under section 7427 of this title and served by such agency; and

(B) the greater of—

(i) the average per pupil expenditure of the State in which such agency is located; or

(ii) 80 percent of the average per pupil expenditure of all the States.

(2) Reduction

The Secretary shall reduce the amount of each allocation otherwise determined under this section in accordance with subsection (e) of this section.

(b) Minimum grant

(1) In general

Notwithstanding subsection (e) of this section, an entity that is eligible for a grant under section 7422 of this title, and a school that is operated or supported by the Bureau of Indian Affairs that is eligible for a grant under subsection (d) of this section, that submits an application that is approved by the Secretary, shall, subject to appropriations, receive a grant under this subpart in an amount that is not less than $3,000.

(2) Consortia

Local educational agencies may form a consortium for the purpose of obtaining grants under this subpart.

(3) Increase

The Secretary may increase the minimum grant under paragraph (1) to not more than $4,000 for all grantees if the Secretary determines such increase is necessary to ensure the quality of the programs provided.

(c) Definition

For the purpose of this section, the term "average per pupil expenditure", used with respect to a State, means an amount equal to—

(1) the sum of the aggregate current expenditures of all the local educational agencies in the State, plus any direct current expenditures by the State for the operation of such agencies, without regard to the sources of funds from which such local or State expenditures were made, during the second fiscal year preceding the fiscal year for which the computation is made; divided by

(2) the aggregate number of children who were included in average daily attendance for whom such agencies provided free public education during such preceding fiscal year.

(d) Schools operated or supported by the Bureau of Indian Affairs

(1) In general

Subject to subsection (e) of this section, in addition to the grants awarded under subsection (a) of this section, the Secretary shall allocate to the Secretary of the Interior an amount equal to the product of—

(A) the total number of Indian children enrolled in schools that are operated by—

(i) the Bureau of Indian Affairs; or

(ii) an Indian tribe, or an organization controlled or sanctioned by an Indian tribal government, for the children of that tribe under a contract with, or grant from, the Department of the Interior under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.]; and

(B) the greater of—

(i) the average per pupil expenditure of the State in which the school is located; or

(ii) 80 percent of the average per pupil expenditure of all the States.

(2) Special rule

Any school described in paragraph (1)(A) that wishes to receive an allocation under this subpart shall submit an application in accordance with section 7429 of this title, and shall otherwise be treated as a local educational agency for the purpose of this subpart, except that such school shall not be subject to section 7424(c)(4) of this title, section 7428(c) of this title, or section 7429 of this title.

(e) Ratable reductions

If the sums appropriated for any fiscal year under section 7492(a) of this title are insufficient to pay in full the amounts determined for local educational agencies under subsection (a)(1) of this section and for the Secretary of the Interior under subsection (d) of this section, each of those amounts shall be ratably reduced.


References in Text


§ 7424. Applications

(a) Application required

Each local educational agency that desires to receive a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Comprehensive program required

Each application submitted under subsection (a) of this section shall include a description of a comprehensive program for meeting the needs of Indian children served by the local educational agency, including the language and cultural needs of the children, that—

(1) describes how the comprehensive program will offer programs and activities to meet the culturally related academic needs of American Indian and Alaska Native students;

(2)(A) is consistent with the State and local plans submitted under other provisions of this chapter; and

(B) includes academic content and student academic achievement goals for such children, and benchmarks for attaining such goals, that are based on the challenging State academic content and student academic achievement standards adopted under subchapter I of this chapter for all children;

(3) explains how Federal, State, and local programs, especially programs carried out under subchapter I of this chapter, will meet the needs of such students;

(4) demonstrates how funds made available under this subpart will be used for activities described in section 7425 of this title;

(5) describes the professional development opportunities that will be provided, as needed, to ensure that—

(A) teachers and other school professionals who are new to the Indian community are prepared to work with Indian children; and

(B) all teachers who will be involved in programs assisted under this subpart have been properly trained to carry out such programs; and

(6) describes how the local educational agency—

(A) will periodically assess the progress of all Indian children enrolled in the schools of the local educational agency, including Indian children who do not participate in programs assisted under this subpart, in meeting the goals described in paragraph (2);

(B) will provide the results of each assessment referred to in paragraph (A) to—

(i) the committee described in subsection (c)(4) of this section; and

(ii) the community served by the local educational agency; and

(C) is responding to findings of any previous assessments that are similar to the assessments described in subparagraph (A).

(c) Assurances

Each application submitted under subsection (a) of this section shall include assurances that—

(1) the local educational agency will use funds received under this subpart only to supplement the funds that, in the absence of the Federal funds made available under this subpart, such agency would make available for the education of Indian children, and not to supplant such funds;

(2) the local educational agency will prepare and submit to the Secretary such reports, in such form and containing such information, as the Secretary may require to—

(A) carry out the functions of the Secretary under this subpart; and

(B) determine the extent to which activities carried out with funds provided to the local educational agency under this subpart are effective in improving the educational achievement of Indian students served by such agency;

(3) the program for which assistance is sought—

(A) is based on a comprehensive local assessment and prioritization of the unique educational and culturally related academic needs of the American Indian and Alaska Native students for whom the local educational agency is providing an education;

(B) will use the best available talents and resources, including individuals from the Indian community; and

(C) was developed by such agency in open consultation with parents of Indian children and teachers, and, if appropriate, Indian students from secondary schools, including through public hearings held by such agency to provide to the individuals described in this subparagraph a full opportunity to understand the program and to offer recommendations regarding the program; and

(4) the local educational agency developed the program with the participation and written approval of a committee—

(A) that is composed of, and selected by—

(i) parents of Indian children in the local educational agency’s schools;

(ii) teachers in the schools; and

(iii) if appropriate, Indian students attending secondary schools of the agency;

(B) a majority of whose members are parents of Indian children;

(C) that has set forth such policies and procedures, including policies and procedures relating to the hiring of personnel, as will ensure that the program for which assistance is sought will be operated and evaluated in consultation with, and with the involvement of, parents of the children, and representatives of the area, to be served;

(D) with respect to an application describing a schoolwide program in accordance with section 7425(c) of this title, that has—

(i) reviewed in a timely fashion the program; and

(ii) determined that the program will not diminish the availability of culturally re-
lated activities for American Indian and Alaska Native students; and

(E) that has adopted reasonable bylaws for the conduct of the activities of the committee and abides by such bylaws.


PRIOR PROVISIONS


§ 7425. Authorized services and activities

(a) General requirements

Each local educational agency that receives a grant under this subpart shall use the grant funds, in a manner consistent with the purpose specified in section 7421 of this title, for services and activities that—

(1) are designed to carry out the comprehensive program of the local educational agency for Indian students, and described in the application of the local educational agency submitted to the Secretary under section 7424(a) of this title;

(2) are designed with special regard for the language and cultural needs of the Indian students; and

(3) supplement and enrich the regular school program of such agency.

(b) Particular activities

The services and activities referred to in subsection (a) of this section may include—

(1) culturally related activities that support the program described in the application submitted by the local educational agency;

(2) early childhood and family programs that emphasize school readiness;

(3) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging State academic content and student academic achievement standards;

(4) integrated educational services in combination with other programs that meet the needs of Indian children and their families;

(5) career preparation activities to enable Indian students to participate in programs such as the programs supported by the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.], including programs for tech-prep education, mentoring, and apprenticeship;

(6) activities to educate individuals concerning substance abuse and to prevent substance abuse;

(7) the acquisition of equipment, but only if the acquisition of the equipment is essential to achieve the purpose described in section 7421 of this title;

(8) activities that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency;

(9) activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency;

(10) family literacy services; and

(11) activities that recognize and support the unique cultural and educational needs of Indian children, and incorporate appropriately qualified tribal elders and seniors.

(c) Schoolwide programs

Notwithstanding any other provision of law, a local educational agency may use funds made available to such agency under this subpart to support a schoolwide program under section 6314 of this title if—

(1) the committee established pursuant to section 7424(c)(4) of this title approves the use of the funds for the schoolwide program; and

(2) the schoolwide program is consistent with the purpose described in section 7421 of this title.

(d) Limitation on administrative costs

Not more than 5 percent of the funds provided to a grantee under this subpart for any fiscal year may be used for administrative purposes.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS


§ 7426. Integration of services authorized

(a) Plan

An entity receiving funds under this subpart may submit a plan to the Secretary for the integration of education and related services provided to Indian students.

(b) Consolidation of programs

Upon the receipt of an acceptable plan under subsection (a) of this section, the Secretary, in cooperation with each Federal agency providing grants for the provision of education and related services to the entity, shall authorize the entity to consolidate, in accordance with such plan, the federally funded education and related services programs of the entity and the Federal programs, or portions of the programs, serving Indian students in a manner that integrates the program services involved into a single, coordi-
nated, comprehensive program and reduces administrative costs by consolidating administrative functions.

(c) Programs affected

The funds that may be consolidated in a demonstration project under any such plan referred to in subsection (a) of this section shall include funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, under which the entity is eligible for receipt of funds under a statutory or administrative formula for the purposes of providing education and related services that would be used to serve Indian students.

(d) Plan requirements

For a plan to be acceptable pursuant to subsection (b) of this section, the plan shall—

(1) identify the programs or funding sources to be consolidated;

(2) be consistent with the objectives of this section concerning authorizing the services to be integrated in a demonstration project;

(3) describe a comprehensive strategy that identifies the full range of potential educational opportunities and related services to be provided to assist Indian students to achieve the objectives set forth in this subpart;

(4) describe the way in which services are to be integrated and delivered and the results expected from the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the State, tribal, or local agency or agencies to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the entity believes need to be waived in order to implement the plan;

(8) set forth measures for academic content and student academic achievement goals designed to be met within a specific period of time; and

(9) be approved by a committee formed in accordance with section 7424(c)(4) of this title, if such a committee exists.

(e) Plan review

Upon receipt of the plan from an eligible entity, the Secretary shall consult with the Secretary of each Federal department providing funds to be used to implement the plan, and with the entity submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal departmental regulations, policies, or procedures necessary to enable the entity to implement the plan. Notwithstanding any other provision of law, the Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by the entity or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the objectives of this subpart or those provisions of the statute from which the program involved derives authority that are specifically applicable to Indian students.

(f) Plan approval

Within 90 days after the receipt of an entity’s plan by the Secretary, the Secretary shall inform the entity, in writing, of the Secretary’s approval or disapproval of the plan. If the plan is disapproved, the entity shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend the plan or to petition the Secretary to reconsider such disapproval.

(g) Responsibilities of Department of Education

Not later than 180 days after January 8, 2002, the Secretary of Education, the Secretary of the Interior, and the head of any other Federal department or agency identified by the Secretary of Education, shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this section. The lead agency head for a demonstration project under this section shall be—

(1) the Secretary of the Interior, in the case of an entity meeting the definition of a contract or grant school under title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.]; or

(2) the Secretary of Education, in the case of any other entity.

(h) Responsibilities of lead agency

The responsibilities of the lead agency shall include—

(1) the use of a single report format related to the plan for the individual project, which shall be used by an eligible entity to report on the activities undertaken under the project;

(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by an eligible entity to report on all project expenditures for the implementation of the demonstration projects authorized under this section. The lead agency to a demonstration project under this section shall be—

(1) the Secretary of the Interior, in the case of an entity meeting the definition of a contract or grant school under title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.]; or

(2) the Secretary of Education, in the case of any other entity.

(i) Report requirements

A single report format shall be developed by the Secretary, consistent with the requirements of this section. Such report format shall require that reports described in subsection (h) of this section, together with records maintained on the consolidated program at the local level, shall contain such information as will allow a determination that the eligible entity has complied with the requirements incorporated in its approved plan, including making a demonstration of student academic achievement, and will provide assurances to each Secretary that the eligible entity has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements that have not been waived.

(j) No reduction in amounts

In no case shall the amount of Federal funds available to an eligible entity involved in any
demonstration project be reduced as a result of the enactment of this section.

(k) Interagency fund transfers authorized

The Secretary is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to an eligible entity in order to further the objectives of this section.

(l) Administration of funds

(1) In general

Program funds for the consolidated programs shall be administered in such a manner as to allow for a determination that funds from a specific program are spent on allowable activities authorized under such program, except that the eligible entity shall determine the proportion of the funds granted that shall be allocated to such program.

(2) Separate records not required

Nothing in this section shall be construed as requiring the eligible entity to maintain separate records tracing any services or activities conducted under the approved plan to the individual programs under which funds were authorized for the services or activities, nor shall the eligible entity be required to allocate expenditures among such individual programs.

(m) Overage

The eligible entity may commingle all administrative funds from the consolidated programs and shall be entitled to the full amount of such funds (under each program’s or agency’s regulations). The overage (defined as the difference between the amount of the commingled funds and the actual administrative cost of the programs) shall be considered to be properly spent for Federal audit purposes, if the overage is used for the purposes provided for under this section.

(n) Fiscal accountability

Nothing in this part shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to chapter 75 of title 31.

(o) Report on statutory obstacles to program integration

(1) Preliminary report

Not later than 2 years after January 8, 2002, the Secretary of Education shall submit a preliminary report to the Committee on Education and the Workforce and the Committee on Resources of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Indian Affairs of the Senate on the status of the implementation of the demonstration projects authorized under this section. Such report shall identify statutory barriers to the ability of participants to integrate more effectively their education and related services to Indian students in a manner consistent with the objectives of this section.

(p) Definitions

For the purposes of this section, the term “Secretary” means—

(1) the Secretary of the Interior, in the case of an entity meeting the definition of a contract or grant school under title XI of the Education Amendments of 1978 (25 U.S.C. 2001 et seq.); or

(2) the Secretary of Education, in the case of any other entity.


References in Text

The Education Amendments of 1978, referred to in subsection (g)(1) and (p)(1), is Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§2001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of this title and Tables.

Prior Provisions


CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 7427. Student eligibility forms

(a) In general

The Secretary shall require that, as part of an application for a grant under this subpart, each applicant shall maintain a file, with respect to each Indian child for whom the local educational agency provides a free public education, that contains a form that sets forth information establishing the status of the child as an Indian child eligible for assistance under this subpart, and that otherwise meets the requirements of subsection (b) of this section.

(b) Forms

The form described in subsection (a) of this section shall include—

(1) either—

(A)(i) the name of the tribe or band of Indians (as defined in section 7491 of this title) with respect to which the child claims membership;

(ii) the enrollment number establishing the membership of the child (if readily available); and

(iii) the name and address of the organization that maintains updated and accurate membership data for such tribe or band of Indians; or
(B) the name, the enrollment number (if readily available), and the name and address of the organization responsible for maintaining updated and accurate membership data, of any parent or grandparent of the child from whom the child claims eligibility under this subpart, if the child is not a member of the tribe or band of Indians (as so defined);

(2) a statement of whether the tribe or band of Indians (as so defined), with respect to which the child, or parent or grandparent of the child, claims membership, is federally recognized;

(3) the name and address of the parent or legal guardian of the child;

(4) a signature of the parent or legal guardian of the child that verifies the accuracy of the information supplied; and

(5) any other information that the Secretary considers necessary to provide an accurate form of proof.

(c) Statutory construction

Nothing in this section shall be construed to affect a definition contained in section 7491 of this title.

(d) Forms and standards of proof

The forms and the standards of proof (including the standard of good faith compliance) that were in use during the 1985–86 academic year to establish the eligibility of a child for entitlement under the Indian Elementary and Secondary School Assistance Act shall be the forms and standards of proof used—

(1) to establish eligibility under this subpart; and

(2) to meet the requirements of subsection (a) of this section.

(e) Documentation

For purposes of determining whether a child is eligible to be counted for the purpose of computing the amount of a grant award under section 7423 of this title, the membership of the child, or any parent or grandparent of the child, in a tribe or band of Indians (as so defined) may be established by proof other than an enrollment number, notwithstanding the availability of an enrollment number for a member of such tribe or band. Nothing in subsection (b) of this section shall be construed to require the furnishing of an enrollment number.

(f) Monitoring and evaluation review

(1) In general

(A) Review

For each fiscal year, in order to provide such information as is necessary to carry out the responsibility of the Secretary to provide technical assistance under this subpart, the Secretary shall conduct a monitoring and evaluation review of a sampling of the recipients of grants under this subpart.

The sampling conducted under this subpart shall—

(1) establish a date on, or a period not longer than 31 consecutive days during, which the agency counts those children, if that date or period occurs before the deadline established by the Secretary for submitting an application under section 7424 of this title; and

(2) determine that each such child was enrolled, and receiving a free public education, in a school of the agency on that date or during that period, as the case may be.

(B) Exception

A local educational agency may not be held liable to the United States or be subject to any penalty, by reason of the findings of an audit that relates to the date of completion, or the date of submission, of any forms used to establish, before April 28, 1988, the eligibility of a child for an entitlement under the Indian Elementary and Secondary School Assistance Act.

(2) False information

Any local educational agency that provides false information in an application for a grant under this subpart shall—

(A) be ineligible to apply for any other grant under this subpart; and

(B) be liable to the United States for any funds from the grant that have not been expended.

(3) Excluded children

A student who provides false information for the form required under subsection (a) of this section shall not be counted for the purpose of computing the amount of a grant under section 7423 of this title.

(g) Tribal grant and contract schools

Notwithstanding any other provision of this section, in calculating the amount of a grant under this subpart to a tribal school that receives a grant or contract from the Bureau of Indian Affairs, the Secretary shall use only one of the following, as selected by the school:

(1) A count of the number of students in the schools certified by the Bureau.

(2) A count of the number of students for whom the school has eligibility forms that comply with this section.

(h) Timing of child counts

For purposes of determining the number of children to be counted in calculating the amount of a local educational agency’s grant under this subpart (other than in the case described in subsection (g)(1) of this section), the local educational agency shall—

(1) establish a date on, or a period not longer than 31 consecutive days during, which the agency counts those children, if that date or period occurs before the deadline established by the Secretary for submitting an application under section 7424 of this title; and

(2) determine that each such child was enrolled, and receiving a free public education, in a school of the agency on that date or during that period, as the case may be.
English proficient students, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7428. Payments

(a) In general

Subject to subsections (b) and (c) of this section, the Secretary shall pay to each local educational agency that submits an application that is approved by the Secretary under this subpart the amount determined under section 7423 of this title. The Secretary shall notify the local educational agency of the amount of the payment not later than June 1 of the year for which the Secretary makes the payment.

(b) Payments taken into account by the State

The Secretary may not make a grant under this subpart to a local educational agency for a fiscal year if, for such fiscal year, the State in which the local educational agency is located takes into consideration payments made under this chapter in determining the eligibility of the local educational agency for State aid, or the amount of the State aid, with respect to the free public education of children during such fiscal year or the preceding fiscal year.

(c) Reduction of payment for failure to maintain fiscal effort

(1) In general

The Secretary may not pay a local educational agency the full amount of a grant award determined under section 7423 of this title for any fiscal year unless the State educational agency notifies the Secretary, and the Secretary determines, that with respect to the provision of free public education by the local educational agency for the preceding fiscal year, the combined fiscal effort of the local educational agency and the State, computed on either a per student or aggregate expenditure basis, was not less than 90 percent of the amount of the combined fiscal effort, computed on the same basis, for the second preceding fiscal year.

(2) Failure to maintain effort

If, for the preceding fiscal year, the Secretary determines that a local educational agency and State failed to maintain the combined fiscal effort for such agency at the level specified in paragraph (1), the Secretary shall—

(A) reduce the amount of the grant that would otherwise be made to such agency under this subpart in the exact proportion of the failure to maintain the fiscal effort at such level; and

(B) not use the reduced amount of the agency and State expenditures for the preceding year to determine compliance with paragraph (1) for any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1).

(3) Waiver

(A) In general

The Secretary may waive the requirement of paragraph (1) for a local educational agency, for not more than 1 year at a time, if the Secretary determines that the failure to comply with such requirement is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the agency’s financial resources.

(B) Future determinations

The Secretary shall not use the reduced amount of the agency’s expenditures for the fiscal year preceding the fiscal year for which a waiver is granted to determine compliance with paragraph (1) for any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1) in the absence of the waiver.

(d) Reallocations

The Secretary may reallocate, in a manner that the Secretary determines will best carry out the purpose of this subpart, any amounts that—

(1) based on estimates made by local educational agencies or other information, the Secretary determines will not be needed by such agencies to carry out approved programs under this subpart; or

(2) otherwise become available for reallocation under this subpart.


Prior Provisions


§ 7429. State educational agency review

Before submitting an application to the Secretary under section 7424 of this title, a local educational agency shall submit the application to the State educational agency, which may comment on such application. If the State educational agency comments on the application, the agency shall comment on all applications submitted by local educational agencies in the State and shall provide those comments to the respective local educational agencies, with an opportunity to respond.


Prior Provisions


1 So in original. Probably should be “this subpart”.

§ 7429.
§ 7441. Improvement of educational opportunities for Indian children

(a) Purpose

(1) In general

It is the purpose of this section to support projects to develop, test, and demonstrate the effectiveness of services and programs to improve educational opportunities and achievement of Indian children.

(2) Coordination

The Secretary shall take the necessary actions to achieve the coordination of activities assisted under this subpart with—

(A) other programs funded under this chapter;

(B) other Federal programs operated for the benefit of American Indian and Alaska Native children.

(b) Eligible entities

In this section, the term “eligible entity” means a State educational agency, local educational agency, Indian tribe, Indian organization, federally supported elementary school or secondary school for Indian students, Indian institution (including an Indian institution of higher education), or a consortium of such entities.

(c) Grants authorized

(1) In general

The Secretary shall award grants to eligible entities to enable such entities to carry out activities that meet the purpose of this section, including—

(A) innovative programs related to the educational needs of educationally disadvantaged children;

(B) educational services that are not available to such children in sufficient quantity or quality, including remedial instruction, to raise the achievement of Indian children in one or more of the core academic subjects of English, mathematics, science, foreign languages, art, history, and geography;

(C) bilingual and bicultural programs and projects;

(D) special health and nutrition services, and other related activities, that address the special health, social, and psychological problems of Indian children;

(E) special compensatory and other programs and projects designed to assist and encourage Indian children to enter, remain in, or reenter school, and to increase the rate of high school graduation for Indian children;

(F) comprehensive guidance, counseling, and testing services;

(G) early childhood and kindergarten programs, including family-based preschool programs that emphasize school readiness and parental skills, and the provision of services to Indian children with disabilities;

(H) partnership projects between local educational agencies and institutions of higher education that allow secondary school students to enroll in courses at the postsecondary level to aid such students in the transition from secondary to postsecondary education;

(I) partnership projects between schools and local businesses for career preparation programs designed to provide Indian youth with the knowledge and skills such youth need to make an effective transition from school to a high-skill, high-wage career;

(J) programs designed to encourage and assist Indian students to work toward, and gain entrance into, an institution of higher education;

(K) family literacy services;

(L) activities that recognize and support the unique cultural and educational needs of Indian children, and incorporate appropriately qualified tribal elders and seniors; or

(M) other services that meet the purpose described in this section.

(2) Professional development

Professional development of teaching professionals and paraprofessionals may be a part of any program assisted under this section.

(d) Grant requirements and applications

(1) Grant requirements

(A) In general

The Secretary may make multiyear grants under subsection (c) of this section for the planning, development, pilot operation, or demonstration of any activity described in subsection (c) of this section for a period not to exceed 5 years.

(B) Priority

In making multiyear grants described in this paragraph, the Secretary shall give priority to entities submitting applications that present a plan for combining two or more of the activities described in subsection (c) of this section over a period of more than 1 year.

(C) Progress

The Secretary shall make a grant payment for a grant described in this paragraph to an eligible entity after the initial year of the multiyear grant only if the Secretary determines that the eligible entity has made substantial progress in carrying out the activities assisted under the grant in accordance with the application submitted under paragraph (3) and any subsequent modifications to such application.
(2) Dissemination grants

(A) In general

In addition to awarding the multiyear grants described in paragraph (1), the Secretary may award grants under subsection (c) of this section to eligible entities for the dissemination of exemplary materials or programs assisted under this section.

(B) Determination

The Secretary may award a dissemination grant described in this paragraph if, prior to awarding the grant, the Secretary determines that the material or program to be disseminated—

(i) has been adequately reviewed;

(ii) has demonstrated educational merit; and

(iii) can be replicated.

(3) Application

(A) In general

Any eligible entity that desires to receive a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

(B) Contents

Each application submitted to the Secretary under subparagraph (A), other than an application for a dissemination grant under paragraph (2), shall contain—

(i) a description of how parents of Indian children and representatives of Indian tribes have been, and will be, involved in developing and implementing the activities for which assistance is sought;

(ii) assurances that the applicant will participate, at the request of the Secretary, in any national evaluation of activities assisted under this section;

(iii) information demonstrating that the proposed program for the activities is a scientifically based research program, where applicable, which may include a program that has been modified to be culturally appropriate for students who will be served;

(iv) a description of how the applicant will incorporate the proposed activities into the ongoing school program involved once the grant period is over; and

(v) such other assurances and information as the Secretary may reasonably require.

(e) Administrative costs

Not more than 5 percent of the funds provided to a grantees under this subpart for any fiscal year may be used for administrative purposes.


PRIOR PROVISIONS

A prior section 7121 of Pub. L. 89–10 was classified to section 7431 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§7442. Professional development for teachers and education professionals

(a) Purposes

The purposes of this section are—

(1) to increase the number of qualified Indian individuals in teaching or other education professions that serve Indian people;

(2) to provide training to qualified Indian individuals to enable such individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) to improve the skills of qualified Indian individuals who serve in the capacities described in paragraph (2).

(b) Eligible entities

For the purpose of this section, the term "eligible entity" means—

(1) an institution of higher education, including an Indian institution of higher education;

(2) a State educational agency or local educational agency, in consortium with an institution of higher education;

(3) an Indian tribe or organization, in consortium with an institution of higher education; and

(4) a Bureau-funded school (as defined in section 2026) of title 25.

(c) Program authorized

The Secretary is authorized to award grants to eligible entities having applications approved under this section to carry out the activities described in subsection (d) of this section.

(d) Authorized activities

(1) In general

Grant funds under this section shall be used for activities to provide support and training for Indian individuals in a manner consistent with the purposes of this section. Such activities may include continuing programs, symposia, workshops, conferences, and direct financial support, and may include programs designed to train tribal elders and seniors.

(2) Special rules

(A) Type of training

For education personnel, the training received pursuant to a grant under this section may be inservice or preservice training.

(B) Program

For individuals who are being trained to enter any field other than teaching, the training received pursuant to a grant under this section shall be in a program that results in a graduate degree.

(e) Application

Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require.

(f) Special rule

In awarding grants under this section, the Secretary—

(1) shall consider the prior performance of the eligible entity; and

(2) may not limit eligibility to receive a grant under this section on the basis of—

1 See References in Text note below.
(A) the number of previous grants the Secretary has awarded such entity; or
(B) the length of any period during which such entity received such grants.

(g) Grant period
Each grant under this section shall be awarded for a period of not more than 5 years.

(h) Service obligation
(1) In general
The Secretary shall require, by regulation, that an individual who receives training pursuant to a grant made under this section—
(A) perform work—
(i) related to the training received under this section; and
(ii) that benefits Indian people; or
(B) repay all or a prorated part of the assistance received.

(2) Reporting
The Secretary shall establish, by regulation, a reporting procedure under which a grant recipient under this section shall, not later than 12 months after the date of completion of the training, and periodically thereafter, provide information concerning compliance with the work requirement under paragraph (1).


§7452. In-service training for teachers of Indian children

(a) Grants authorized
In addition to the grants authorized by section 7422(c) of this title, the Secretary may make grants to eligible consortia for the provision of high quality in-service training. The Secretary may make such a grant to—
(1) a consortium of a tribal college and an institution of higher education that awards a degree in education; or
(2) a consortium of—
(A) a tribal college;
(B) an institution of higher education that awards a degree in education; and
(C) one or more elementary schools or secondary schools operated by the Bureau of Indian Affairs, local educational agencies serving Indian children, or tribal educational agencies.

(b) Use of funds
(1) In-service training
A consortium that receives a grant under subsection (a) of this section shall use the grant funds only to provide high quality in-service training to teachers, including teachers who are not Indians, in schools of local educational agencies with substantial numbers of Indian children enrolled in their schools, in order to better meet the needs of those children.

(2) Components
The training described in paragraph (1) shall include such activities as preparing teachers to use the best available scientifically based research practices and learning strategies, and...
to make the most effective use of curricula and materials, to respond to the unique needs of Indian children in their classrooms.

(c) Preference for Indian applicants

In applying section 7473 of this title to this section, the Secretary shall give a preference to any consortium that includes one or more of the entities described in section 7473 of this title.


PRIOR PROVISIONS


§7453. Fellowships for Indian students

(a) Fellowships

(1) Authority

The Secretary is authorized to award fellowships to Indian students to enable such students to study in graduate and professional programs at institutions of higher education.

(2) Requirements

The fellowships described in paragraph (1) shall be awarded to Indian students to enable such students to pursue a course of study—

(A) of not more than 4 academic years; and

(B) that leads—

(i) toward a postbaccalaureate degree in medicine, clinical psychology, psychology, law, education, or a related field; or

(ii) to an undergraduate or graduate degree in engineering, business administration, natural resources, or a related field.

(b) Stipends

The Secretary shall pay to Indian students awarded fellowships under subsection (a) of this section such stipends (including allowances for subsistence of such students and dependents of such students) as the Secretary determines to be consistent with prevailing practices under comparable federally supported programs.

(c) Payments to institutions in lieu of tuition

The Secretary shall pay to the institution of higher education at which such a fellowship recipient is pursuing a course of study, in lieu of tuition charged to such recipient, such amounts as the Secretary may determine to be necessary to cover the cost of education provided to such recipient.

(d) Special rules

(1) In general

If a fellowship awarded under subsection (a) of this section is vacated prior to the end of the period for which the fellowship is awarded, the Secretary may award an additional fellowship for the unexpired portion of the period of the first fellowship.

(2) Written notice

Not later than 45 days before the commencement of an academic term, the Secretary shall provide to each individual who is awarded a fellowship under subsection (a) of this section for such academic term written notice of—

(A) the amount of the funding for the fellowship; and

(B) any stipends or other payments that will be made under this section to, or for the benefit of, the individual for the academic term.

(3) Priority

Not more than 10 percent of the fellowships awarded under subsection (a) of this section shall be awarded, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

(e) Service obligation

(1) In general

The Secretary shall require, by regulation, that an individual who receives financial assistance under this section—

(A) perform work—

(i) related to the training for which the individual receives the assistance under this section; and

(ii) that benefits Indian people; or

(B) repay all or a prorated portion of such assistance.

(2) Reporting

The Secretary shall establish, by regulation, a reporting procedure under which a recipient of assistance under this section shall, not later than 12 months after the date of completion of the training, and periodically thereafter, provide information concerning the compliance of such recipient with the work requirement described in paragraph (1).

(f) Administration of fellowships

The Secretary may administer the fellowships authorized under this section through a grant to, or contract or cooperative agreement with, an Indian organization with demonstrated qualifications to administer all facets of the program assisted under this section.


PRIOR PROVISIONS


§7454. Gifted and talented Indian students

(a) Program authorized

The Secretary is authorized to—

(1) establish two centers for gifted and talented Indian students at tribally controlled community colleges in accordance with this section; and

(2) support demonstration projects described in subsection (c) of this section.

(b) Eligible entities

The Secretary shall make grants, or enter into contracts, for the activities described in subsection (a) of this section, to or with—
(1) two tribally controlled community colleges that—
   (A) are eligible for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801 et seq.]; and
   (B) are fully accredited; or
(2) the American Indian Higher Education Consortium,
if the Secretary does not receive applications that the Secretary determines to be approvable from two colleges that meet the requirements of paragraph (1).

(c) Use of funds
(1) In general
Funds made available through the grants made, or contracts entered into, by the Secretary under subsection (b) of this section shall be used for—
   (A) the establishment of centers described in subsection (a) of this section; and
   (B) carrying out demonstration projects designed to—
      (i) address the special needs of Indian students in elementary schools and secondary schools who are gifted and talented; and
      (ii) provide such support services to the families of the students described in clause (i) as are needed to enable such students to benefit from the projects.

(2) Subcontracts
Each recipient of a grant or contract under subsection (b) of this section to carry out a demonstration project under subsection (a) of this section may enter into a contract with any other entity, including the Children's Television Workshop, to carry out the demonstration project.

(3) Demonstration projects
Demonstration projects assisted under subsection (b) of this section may include—
   (A) the identification of the special needs of gifted and talented Indian students, particularly at the elementary school level, giving attention to—
      (i) identifying the emotional and psychosocial needs of such students; and
      (ii) providing such support services to the families of such students as are needed to enable such students to benefit from the projects;
   (B) the conduct of educational, psychosocial, and developmental activities that the Secretary determines hold a reasonable promise of resulting in substantial progress toward meeting the educational needs of such gifted and talented children, including—
      (i) demonstrating and exploring the use of Indian languages and exposure to Indian cultural traditions; and
      (ii) carrying out mentoring and apprenticeship programs;
   (C) the provision of technical assistance and the coordination of activities at schools that receive grants under subsection (d) of this section with respect to the activities assisted under such grants, the evaluation of programs assisted under such grants, or the dissemination of such evaluations;
   (D) the use of public television in meeting the special educational needs of such gifted and talented children;
   (E) leadership programs designed to replicate programs for such children throughout the United States, including disseminating information derived from the demonstration projects conducted under subsection (a) of this section; and
   (F) appropriate research, evaluation, and related activities pertaining to the needs of such children and to the provision of such support services to the families of such children as are needed to enable such children to benefit from the projects.

(4) Application
Each eligible entity desiring a grant or contract under subsection (b) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require.

(d) Additional grants
(1) In general
The Secretary, in consultation with the Secretary of the Interior, shall award 5 grants to schools funded by the Bureau of Indian Affairs (hereafter referred to individually in this section as a “Bureau school”) for program research and development and the development and dissemination of curriculum and teacher training material, regarding—
   (A) gifted and talented students;
   (B) college preparatory studies (including programs for Indian students with an interest in pursuing teaching careers);
   (C) students with special culturally related academic needs, including students with social, lingual, and cultural needs; or
   (D) mathematics and science education.

(2) Applications
Each Bureau school desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require.

(3) Special rule
Each application described in paragraph (2) shall be developed, and each grant under this subsection shall be administered, jointly by the supervisor of the Bureau school and the local educational agency serving such school.

(4) Requirements
In awarding grants under paragraph (1), the Secretary shall achieve a mixture of the programs described in paragraph (1) that ensures that Indian students at all grade levels and in all geographic areas of the United States are able to participate in a program assisted under this subsection.

(5) Grant period
Subject to the availability of appropriations, a grant awarded under paragraph (1) shall be
awarded for a 3-year period and may be renewed by the Secretary for additional 3-year periods if the Secretary determines that the performance of the grant recipient has been satisfactory.

(6) Dissemination

(A) Cooperative efforts

The dissemination of any materials developed from activities assisted under paragraph (1) shall be carried out in cooperation with entities that receive funds pursuant to subsection (b) of this section.

(B) Report

The Secretary shall prepare and submit to the Secretary of the Interior and to Congress a report concerning any results from activities described in this subsection.

(7) Evaluation costs

(A) Division

The costs of evaluating any activities assisted under paragraph (1) shall be divided between the Bureau schools conducting such activities and the recipients of grants or contracts under subsection (b) of this section who conduct demonstration projects under subsection (a) of this section.

(B) Grants and contracts

If no funds are provided under subsection (b) of this section for—

(i) the evaluation of activities assisted under paragraph (1);

(ii) technical assistance and coordination with respect to such activities; or

(iii) the dissemination of the evaluations referred to in clause (i),

the Secretary shall make such grants, or enter into such contracts, as are necessary to provide for the evaluations, technical assistance, and coordination of such activities, and the dissemination of the evaluations.

(c) Information network

The Secretary shall encourage each recipient of a grant or contract under this section to work cooperatively as part of a national network to ensure that the information developed by the grant or contract recipient is readily available to the entire educational community.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS


§7455. Grants to tribes for education administrative planning and development

(a) In general

The Secretary may make grants to Indian tribes, and tribal organizations approved by Indian tribes, to plan and develop a centralized tribal administrative entity to—

(1) coordinate all education programs operated by the tribe or within the territorial jurisdiction of the tribe;

(2) develop education codes for schools within the territorial jurisdiction of the tribe;

(3) provide support services and technical assistance to schools serving children of the tribe; and

(4) conduct demonstration projects to provide for the evaluations, technical assistance, and coordination of such activities, and the dissemination of the evaluations.

(b) Period of grant

Each grant awarded under this section may be awarded for a period of not more than 3 years. Such grant may be renewed upon the termination of the initial period of the grant if the grant recipient demonstrates to the satisfaction of the Secretary that renewing the grant for an additional 3-year period is necessary to carry out the objectives of the grant described in subsection (c)(2)(A) of this section.

(c) Application for grant

(1) In general

Each Indian tribe and tribal organization desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, containing such information, and consistent with such criteria, as the Secretary may prescribe in regulations.

(2) Contents

Each application described in paragraph (1) shall contain—

(A) a statement describing the activities to be conducted, and the objectives to be achieved, under the grant; and

(B) a description of the method to be used for evaluating the effectiveness of the activities for which assistance is sought and for determining whether such objectives are achieved.

(3) Approval

The Secretary may approve an application submitted by a tribe or tribal organization pursuant to this section only if the Secretary is satisfied that such application, including any documentation submitted with the application—

(A) demonstrates that the applicant has consulted with other education entities, if
any, within the territorial jurisdiction of the applicant who will be affected by the activities to be conducted under the grant;
(B) provides for consultation with such other education entities in the operation and evaluation of the activities conducted under the grant; and
(C) demonstrates that there will be adequate resources provided under this section or from other sources to complete the activities for which assistance is sought, except that the availability of such other resources shall not be a basis for disapproval of such application.

(d) Restriction
A tribe may not receive funds under this section if such tribe receives funds under section 2024 of title 25.

REFERENCES IN TEXT

§ 7456. Improvement of educational opportunities for adult Indians
(a) In general
The Secretary shall make grants to State educational agencies, local educational agencies, and Indian tribes, institutions, and organizations—
(1) to support planning, pilot, and demonstration projects that are designed to test and demonstrate the effectiveness of programs for improving employment and educational opportunities for adult Indians;
(2) to assist in the establishment and operation of programs that are designed to stimulate—
(A) the provision of basic literacy opportunities for all nonliterate Indian adults; and
(B) the provision of opportunities to all Indian adults to qualify for a secondary school diploma, or its recognized equivalent, in the shortest period of time feasible;
(3) to support a major research and development program to develop more innovative and effective techniques for achieving literacy and secondary school equivalency for Indians;
(4) to provide for basic surveys and evaluations to define accurately the extent of the problems of illiteracy and lack of secondary school completion among Indians; and
(5) to encourage the dissemination of information and materials relating to, and the evaluation of, the effectiveness of education programs that may offer educational opportunities to Indian adults.

(b) Educational services
The Secretary may make grants to Indian tribes, institutions, and organizations to develop and establish educational services and programs specifically designed to improve educational opportunities for Indian adults.

(c) Information and evaluation
The Secretary may make grants to, and enter into contracts with, public agencies and institutions and Indian tribes, institutions, and organizations, for—
(1) the dissemination of information concerning educational programs, services, and resources available to Indian adults, including evaluations of the programs, services, and resources; and
(2) the evaluation of federally assisted programs in which Indian adults may participate to determine the effectiveness of the programs in achieving the purposes of the programs with respect to Indian adults.

(d) Applications
(1) In general
Each entity desiring a grant or contract under this section shall submit to the Secretary an application at such time, in such manner, containing such information, and consistent with such criteria, as the Secretary may prescribe in regulations.

(2) Contents
Each application described in paragraph (1) shall contain—
(A) a statement describing the activities to be conducted and the objectives to be achieved under the grant or contract; and
(B) a description of the method to be used for evaluating the effectiveness of the activities for which assistance is sought and determining whether the objectives of the grant or contract are achieved.

(3) Approval
The Secretary shall not approve an application described in paragraph (1) unless the Secretary determines that such application, including any documentation submitted with the application, indicates that—
(A) there has been adequate participation, by the individuals to be served and the appropriate tribal communities, in the planning and development of the activities to be assisted; and
(B) the individuals and tribal communities referred to in subparagraph (A) will participate in the operation and evaluation of the activities to be assisted.

(4) Priority
In approving applications under paragraph (1), the Secretary shall give priority to applications from Indian educational agencies, organizations, and institutions.

(e) Administrative costs
Not more than 5 percent of the funds made available to an entity through a grant or contract made or entered into under this section for a fiscal year may be used to pay for administrative costs.

1 See References in Text note below.
§ 7471. National Advisory Council on Indian Education

(a) Membership

There is established a National Advisory Council on Indian Education (hereafter in this section referred to as the “Council”), which shall—

(1) consist of 15 Indian members, who shall be appointed by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations; and

(2) represent different geographic areas of the United States.

(b) Duties

The Council shall—

(1) advise the Secretary concerning the funding and administration (including the development of regulations and administrative policies and practices) of any program, including any program established under this part—

(A) with respect to which the Secretary has jurisdiction; and

(B)(i) that includes Indian children or adults as participants; or

(ii) that may benefit Indian children or adults;

(2) make recommendations to the Secretary for filling the position of Director of Indian Education whenever a vacancy occurs; and

(3) submit to Congress, not later than June 30 of each year, a report on the activities of the Council, including—

(A) any recommendations that the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants, or that may benefit Indian children or adults; and

(B) recommendations concerning the funding of any program described in subparagraph (A).


PRIOR PROVISION


SUBPART 4—FEDERAL ADMINISTRATION

§ 7472. Peer review

The Secretary may use a peer review process to review applications submitted to the Secretary under subpart 2 or subpart 3 of this part.


PRIOR PROVISION


§ 7473. Preference for Indian applicants

In making grants and entering into contracts or cooperative agreements under subpart 2 or subpart 3 of this part, the Secretary shall give a preference to Indian tribes, organizations, and institutions of higher education under any program with respect to which Indian tribes, organizations, and institutions are eligible to apply for grants, contracts, or cooperative agreements.


PRIOR PROVISION


§ 7474. Minimum grant criteria

The Secretary may not approve an application for a grant, contract, or cooperative agreement under subpart 2 or subpart 3 of this part unless the application is for a grant, contract, or cooperative agreement that is—

(1) of sufficient size, scope, and quality to achieve the purpose or objectives of such grant, contract, or cooperative agreement; and

(2) based on relevant research findings.


PRIOR PROVISION


Termination of Advisory Councils

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.
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SUBPART 5—DEFINITIONS; AUTHORIZATIONS OF APPROPRIATIONS

§ 7491. Definitions

For the purposes of this part:

(1) Adult

The term "adult" means an individual who—

(A) has attained the age of 16 years; or

(B) has attained an age that is greater than the age of compulsory school attendance under an applicable State law.

(2) Free public education

The term "free public education" means education that is—

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

(B) provided as elementary or secondary education in the applicable State or to preschool children.

(3) Indian

The term "Indian" means an individual who is—

(A) a member of an Indian tribe or band, as membership is defined by the tribe or band, including—

(i) any tribe or band terminated since 1940; and

(ii) any tribe or band recognized by the State in which the tribe or band resides;

(B) a descendant, in the first or second degree, of an individual described in subparagraph (A);

(C) considered by the Secretary of the Interior to be an Indian for any purpose;

(D) an Eskimo, Aleut, or other Alaska Native; or

(E) a member of an organized Indian group that received a grant under the Indian Education Act of 1988 as in effect the day preceding October 20, 1994.


REFERENCES IN TEXT


§ 7492. Authorizations of appropriations

(a) Subpart 1

For the purpose of carrying out subpart 1 of this part, there are authorized to be appropriated $96,400,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.


PART B—NATIVE HAWAIIAN EDUCATION

§ 7511. Short title

This part may be cited as the "Native Hawaiian Education Act".


PRIOR PROVISIONS

Provisions naming former part B (§7901 et seq.) of subchapter IX of this chapter as the "Native Hawaiian Education Act" were contained in section 7901 of this title, prior to the general amendment of subchapter IX by Pub. L. 107–110.


PRIOR PROVISIONS

Provisions naming former part B (§7901 et seq.) of subchapter IX of this chapter as the "Native Hawaiian Education Act" were contained in section 7901 of this title, prior to the general amendment of subchapter IX by Pub. L. 107–110.

§ 7512. Findings

Congress finds the following:

(1) Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago, whose society was organized as a nation and internationally recognized as a nation by the United States, Britain, France, and Japan, as evidenced by treaties governing friendship, commerce, and navigation.

(2) At the time of the arrival of the first nonindigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.

(3) A unified monarchal government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

(4) From 1826 until 1893, the United States recognized the sovereignty and independence of the Kingdom of Hawaii, which was established in 1810 under Kamehameha I, extended full and complete diplomatic recognition to
the Kingdom of Hawaii, and entered into treaties and conventions with the Kingdom of Hawaii to govern friendship, commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) In 1893, the sovereign, independent, internationally recognized, and indigenous government of Hawaii, the Kingdom of Hawaii, was overthrown by a small group of non-Hawaiians, including United States citizens, who were assisted in their efforts by the United States Minister, a United States naval representative, and armed naval forces of the United States. Because of the participation of United States agents and citizens in the overthrow of the Kingdom of Hawaii, in 1993 the United States apologized to Native Hawaiians for the overthrow and the deprivation of the rights of Native Hawaiians to self-determination through Public Law 103–150 (107 Stat. 1510).

(6) In 1898, the joint resolution entitled “Joint Resolution to provide for annexing the Hawaiian Islands to the United States”, approved July 7, 1898 (30 Stat. 750), ceded absolute title of all lands held by the Republic of Hawaii, including the government and crown lands of the former Kingdom of Hawaii, to the United States, but mandated that revenue generated from the lands be used “solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes”.

(7) By 1919, the Native Hawaiian population had declined from an estimated 1,000,000 in 1778 to an alarming 22,600, and in recognition of this severe decline, Congress enacted the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), which designated approximately 200,000 acres of ceded public lands for homesteading by Native Hawaiians.

(8) Through the enactment of the Hawaiian Homes Commission Act, 1920, Congress affirmed the special relationship between the United States and the Native Hawaiians, which was described by then Secretary of the Interior Franklin K. Lane, who said: “One thing that impressed me . . . was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty.”

(9) In 1938, Congress again acknowledged the unique status of the Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781, chapter 530; 16 U.S.C. 391b, 391c–1, 392b, 392c, 396, 396a), a provision to lease lands within the National Parks extension to Native Hawaiians and to permit fishing in the area “only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance.”

(10) Under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges and amendments to such Act affecting the rights of beneficiaries under such Act.

(11) In 1959, under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, the United States also ceded to the State of Hawaii title to the public lands formerly held by the United States, but mandated that such lands be held by the State “in public trust” and reaffirmed the special relationship that existed between the United States and the Hawaiian people by retaining the legal responsibility to enforce the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians, as defined in section 201(a) of the Hawaiian Homes Commission Act, 1920.

(12) The United States has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;

(B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii;

(D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and

(E) the aboriginal, indigenous people of the United States have—

(i) a continuing right to autonomy in their internal affairs; and

(ii) an ongoing right of self-determination and self-governance that has never been extinguished.

(13) The political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians in—

(A) the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.);

(B) the American Indian Religious Freedom Act (42 U.S.C. 1996, 1996a);

(C) the National Museum of the American Indian Act (20 U.S.C. 80q et seq.);

(D) the National American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

(E) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

(F) the Native American Languages Act (25 U.S.C. 2901 et seq.);

(G) the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4401 et seq.);

(H) the Workforce Investment Act of 1998 (29 U.S.C. 3801 et seq.); and

(I) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).

(14) In 1981, Congress instructed the Office of Education to submit to Congress a comprehen-
sive report on Native Hawaiian education. The report, entitled the “Native Hawaiian Educational Assessment Project”, was released in 1983 and documented that Native Hawaiians scored below parity with regard to national norms on standardized achievement tests, were disproportionately represented in many negative social and physical statistics indicative of special educational needs, and had educational needs that were related to their unique cultural situation, such as different learning styles and low self-image.

(15) In recognition of the educational needs of Native Hawaiians, in 1988, Congress enacted title IV of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (102 Stat. 130) to authorize and develop supplemental educational programs to address the unique conditions of Native Hawaiians.

(16) In 1983, the Kamehameha Schools Bishop Estate released a 10-year update of findings of the Native Hawaiian Educational Assessment Project, which found that despite the successes of the programs established under title IV of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, many of the same educational needs still existed for Native Hawaiians. Subsequent reports by the Kamehameha Schools Bishop Estate and other organizations have generally confirmed those findings. For example—

(A) educational risk factors continue to start even before birth for many Native Hawaiian children, including—

(i) late or no prenatal care;
(ii) high rates of births by Native Hawaiian women who are unmarried; and
(iii) high rates of births to teenage parents;

(B) Native Hawaiian students continue to begin their school experience lagging behind other students in terms of readiness factors such as vocabulary test scores;

(C) Native Hawaiian students continue to score below national norms on standardized education achievement tests at all grade levels;

(D) both public and private schools continue to show a pattern of lower percentages of Native Hawaiian students in the uppermost achievement levels and in gifted and talented programs;

(E) Native Hawaiian students continue to be overrepresented among students qualifying for special education programs provided to students with learning disabilities, mild intellectual disabilities, emotional impairment, and other such disabilities;

(F) Native Hawaiians continue to be underrepresented in institutions of higher education and among adults who have completed four or more years of college;

(G) Native Hawaiians continue to be disproportionately represented in many negative social and physical statistics indicative of special educational needs, as demonstrated by the fact that—

(i) Native Hawaiian students are more likely to be retained in grade level and to be excessively absent in secondary school;

(ii) Native Hawaiian students have the highest rates of drug and alcohol use in the State of Hawaii; and

(iii) Native Hawaiian children continue to be disproportionately victimized by child abuse and neglect; and

(H) Native Hawaiians now comprise over 23 percent of the students served by the State of Hawaii Department of Education, and there are and will continue to be geographically rural, isolated areas with a high Native Hawaiian population density.

(17) In the 1998 National Assessment of Educational Progress, Hawaiian fourth-graders ranked 39th among groups of students from 39 States in reading. Given that Hawaiian students rank among the lowest groups of students nationally in reading, and that Native Hawaiian students rank the lowest among Hawaiian students in reading, it is imperative that greater focus be placed on beginning reading and early education and literacy in Hawaii.

(18) The findings described in paragraphs (16) and (17) are inconsistent with the high rates of literacy and integration of traditional culture and Western education historically achieved by Native Hawaiians through a Hawaiian language-based public school system established in 1840 by Kamehameha III.

(19) Following the overthrow of the Kingdom of Hawaii in 1893, Hawaiian medium schools were banned. After annexation, throughout the territorial and statehood period of Hawaii, and until 1986, use of the Hawaiian language as an instructional medium in education in public schools was declared unlawful. The declaration caused incalculable harm to a culture that placed a very high value on the power of language, as exemplified in the traditional saying: “I ka 'ōlana no ka ʻoia; I ka 'ōlana no ka mālama. In the language rests life; In the language rests death.”

(20) Despite the consequences of over 100 years of nonindigenous influence, the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.

(21) The State of Hawaii, in the constitution and statutes of the State of Hawaii—

(A) reaffirms and protects the unique right of the Native Hawaiian people to practice and perpetuate their culture and religious customs, beliefs, practices, and language;

(B) recognizes the traditional language of the Native Hawaiian people as an official language of the State of Hawaii, which may be used as the language of instruction for all subjects and grades in the public school system; and

(C) promotes the study of the Hawaiian culture, language, and history by providing a Hawaiian education program and using community expertise as a suitable and essential means to further the program.

REFERENCES IN TEXT


PRIOR PROVISIONS

AMENDMENTS

DEFINITIONS
For meaning of references to an intellectual disability and to individuals with intellectual disabilities in provisions amended by section 2 of Pub. L. 111–256, see section 2(k) of Pub. L. 111–256, set out as a note under section 1400 of this title.

§ 7513. Purposes
The purposes of this part are to—
(1) authorize and develop innovative educational programs to assist Native Hawaiians;
(2) provide direction and guidance to appropriate Federal, State, and local agencies to focus resources, including resources made available under this part, on Native Hawaiian education, and to provide periodic assessment and data collection;
(3) supplement and expand programs and authorities in the area of education to further the purposes of this subchapter; and
(4) encourage the maximum participation of Native Hawaiians in planning and management of Native Hawaiian education programs.


PRIOR PROVISIONS

§ 7514. Native Hawaiian Education Council and island councils

(a) Establishment of Native Hawaiian Education Council
In order to better effectuate the purposes of this part through the coordination of educational and related services and programs available to Native Hawaiians, including those programs receiving funding under this part, the
Secretary is authorized to establish a Native Hawaiian Education Council (hereafter in this part referred to as the “Education Council”).

(b) Composition of Education Council

The Education Council shall consist of not more than 21 members, unless otherwise determined by a majority of the council.

(c) Conditions and terms

(1) Conditions

At least 10 members of the Education Council shall be Native Hawaiian education service providers and 10 members of the Education Council shall be Native Hawaiians or Native Hawaiian education consumers. In addition, a representative of the State of Hawaii Office of Hawaiian Affairs shall serve as a member of the Education Council.

(2) Appointments

The members of the Education Council shall be appointed by the Secretary based on recommendations received from the Native Hawaiian community.

(3) Terms

Members of the Education Council shall serve for staggered terms of 3 years, except as provided in paragraph (4).

(4) Council determinations

Additional conditions and terms relating to membership on the Education Council, including term lengths and term renewals, shall be determined by a majority of the Education Council.

(d) Native Hawaiian Education Council grant

The Secretary shall make a direct grant to the Education Council to carry out the following activities:

(1) Coordinate the educational and related services and programs available to Native Hawaiians, including the programs assisted under this part.

(2) Assess the extent to which such services and programs meet the needs of Native Hawaiians, and collect data on the status of Native Hawaiian education.

(3) Provide direction and guidance, through the issuance of reports and recommendations, to appropriate Federal, State, and local agencies in order to focus and improve the use of resources, including resources made available under this part, relating to Native Hawaiian education, and serve, where appropriate, in an advisory capacity.

(4) Make direct grants, if such grants enable the Education Council to carry out the duties of the Education Council, as described in paragraphs (1) through (3).

(e) Additional duties of the Education Council

(1) In general

The Education Council shall provide copies of any reports and recommendations issued by the Education Council, including any information that the Education Council provides to the Secretary pursuant to subsection (f) of this section, to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Indian Affairs of the Senate.

(2) Annual report

The Education Council shall prepare and submit to the Secretary an annual report on the Education Council’s activities.

(3) Island council support and assistance

The Education Council shall provide such administrative support and financial assistance to the island councils established pursuant to subsection (f) of this section as the Secretary determines to be appropriate, in a manner that supports the distinct needs of each island council.

(f) Establishment of island councils

(1) In general

In order to better effectuate the purposes of this part and to ensure the adequate representation of island and community interests within the Education Council, the Secretary is authorized to facilitate the establishment of Native Hawaiian education island councils (hereafter in this part referred to as an “island council”) for the following islands:

(A) Hawaii

(B) Maui

(C) Molokai

(D) Lanai

(E) Oahu

(F) Kauai

(G) Ni'ihau

(2) Composition of island councils

Each island council shall consist of parents, students, and other community members who have an interest in the education of Native Hawaiians, and shall be representative of individuals concerned with the educational needs of all age groups, from children in preschool through adults. At least three-fourths of the members of each island council shall be Native Hawaiians.

(g) Administrative provisions relating to Education Council and island councils

The Education Council and each island council shall meet at the call of the chairperson of the appropriate council, or upon the request of the majority of the members of the appropriate council, but in any event not less often than four times during each calendar year. The provisions of the Federal Advisory Committee Act shall not apply to the Education Council and each island council.

(h) Compensation

Members of the Education Council and each island council shall not receive any compensation for service on the Education Council and each island council, respectively.

(i) Report

Not later than 4 years after January 8, 2002, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Indian Affairs of the Senate a report that summarizes the annual reports of the Education Council, describes the allocation and use of funds under this part, and contains recommendations for changes in Federal, State, and local policy to advance the purposes of this part.
§ 7515. Program authorized

(a) General authority

The Secretary is authorized to make direct grants to, or enter into contracts with—

(A) Native Hawaiian educational organizations;
(B) Native Hawaiian community-based organizations;
(C) public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and
(D) consortia of the organizations, agencies, and institutions described in subparagraphs (A) through (C),

to carry out programs that meet the purposes of this part.

(2) Priorities

In awarding grants or contracts to carry out activities described in paragraph (3), the Secretary shall give priority to entities proposing projects that are designed to address—

(A) beginning reading and literacy among students in kindergarten through third grade;
(B) the needs of at-risk children and youth;
(C) needs in fields or disciplines in which Native Hawaiians are underemployed; and
(D) the use of the Hawaiian language in instruction.

(3) Authorized activities

Activities provided through programs carried out under this part may include—

(A) the development and maintenance of a statewide Native Hawaiian early education and care system to provide a continuum of services for Native Hawaiian children from the prenatal period of the children through age 5;

(B) the operation of family-based education centers that provide such services as—

(i) programs for Native Hawaiian parents and their infants from the prenatal period of the infants through age 3;
(ii) preschool programs for Native Hawaiians; and
(iii) research on, and development and assessment of, family-based, early childhood, and preschool programs for Native Hawaiians;

(C) activities that enhance beginning reading and literacy in either the Hawaiian or the English language among Native Hawaiian students in kindergarten through third grade and assistance in addressing the distinct features of combined English and Hawaiian literacy for Hawaiian speakers in fifth and sixth grade;

(D) activities to meet the special needs of Native Hawaiian students with disabilities, including—

(i) the identification of such students and their needs;
(ii) the provision of support services to the families of those students; and
(iii) other activities consistent with the requirements of the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.];

(E) activities that address the special needs of Native Hawaiian students who are gifted and talented, including—

(i) educational, psychological, and developmental activities designed to assist in the educational progress of those students; and
(ii) activities that involve the parents of those students in a manner designed to assist in the students’ educational progress;

(F) the development of academic and vocational curricula to address the needs of Native Hawaiian children and adults, including curriculum materials in the Hawaiian language and mathematics and science curricula that incorporate Native Hawaiian tradition and culture;

(G) professional development activities for educators, including—

(i) the development of programs to prepare prospective teachers to address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions;
(ii) in-service programs to improve the ability of teachers who teach in schools with concentrations of Native Hawaiian students to meet those students’ unique needs; and
(iii) the recruitment and preparation of Native Hawaiians, and other individuals who live in communities with a high concentration of Native Hawaiians, to become teachers;

(H) the operation of community-based learning centers that address the needs of Native Hawaiian families and communities through the coordination of public and private programs and services, including—

(i) preschool programs;
(ii) after-school programs;
(iii) vocational and adult education programs; and
(iv) programs that recognize and support the unique cultural and educational needs of Native Hawaiian children, and incorporate appropriately qualified Native Hawaiian elders and seniors;

(I) activities, including program co-location, to enable Native Hawaiians to enter
and complete programs of postsecondary education, including—
(i) provision of full or partial scholarships for undergraduate or graduate study that are awarded to students based on their academic promise and financial need, with a priority, at the graduate level, given to students entering professions in which Native Hawaiians are underrepresented;
(ii) family literacy services;
(iii) counseling and support services for students receiving scholarship assistance;
(iv) counseling and guidance for Native Hawaiian secondary students who have the potential to receive scholarships; and
(v) faculty development activities designed to promote the matriculation of Native Hawaiian students;
(J) research and data collection activities to determine the educational status and needs of Native Hawaiian children and adults;
(K) other research and evaluation activities related to programs carried out under this part; and
(L) other activities, consistent with the purposes of this part, to meet the educational needs of Native Hawaiian children and adults.

(4) Special rule and conditions
(A) Institutions outside Hawaii
The Secretary shall not establish a policy under this section that prevents a Native Hawaiian student enrolled at a 2- or 4-year degree granting institution of higher education outside of the State of Hawaii from receiving a scholarship pursuant to paragraph (3)(I).

(B) Scholarship conditions
The Secretary shall establish conditions for receipt of a scholarship awarded under paragraph (3)(I). The conditions shall require that an individual seeking such a scholarship enter into a contract to provide professional services, either during the scholarship period or upon completion of a program of postsecondary education, to the Native Hawaiian community.

(b) Administrative costs
Not more than 5 percent of funds provided to a recipient of a grant or contract under subsection (a) of this section for any fiscal year may be used for administrative purposes.

(c) Authorization of appropriations
(1) In general
There are authorized to be appropriated to carry out this section and section 7514 of this title such sums as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.

(2) Reservation
Of the funds appropriated under this subsection, the Secretary shall reserve $500,000 for fiscal year 2002 and each of the 5 succeeding fiscal years to make a direct grant to the Education Council to carry out section 7514 of this title.

(3) Availability
Funds appropriated under this subsection shall remain available until expended.


REFERENCES IN TEXT
The Individuals with Disabilities Education Act, referred to in subsec. (a)(3)(D)(ii), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

PRIOR PROVISIONS

§ 7516. Administrative provisions

(a) Application required
No grant may be made under this part, and no contract may be entered into under this part, unless the entity seeking the grant or contract submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may determine to be necessary to carry out the provisions of this part.

(b) Special rule
Each applicant for a grant or contract under this part shall submit the application for comment to the local educational agency serving students who will participate in the program to be carried out under the grant or contract, and include those comments, if any, with the application to the Secretary.


PRIOR PROVISIONS

§ 7517. Definitions

In this part:

(1) Native Hawaiian

The term “Native Hawaiian” means any individual who is—
(A) a citizen of the United States; and
(B) a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—
(i) genealogical records;
(ii) Kupuna (elders) or Kamaaina (long-term community residents) verification; or
(iii) certified birth records.

(2) Native Hawaiian community-based organization

The term “Native Hawaiian community-based organization” means any organization
that is composed primarily of Native Hawaiians from a specific community and that assists in the social, cultural, and educational development of Native Hawaiians in that community.

(3) **Native Hawaiian educational organization**

The term “Native Hawaiian educational organization” means a private nonprofit organization that—

(A) serves the interests of Native Hawaiians;

(B) has Native Hawaiians in substantive and policymaking positions within the organization;

(C) incorporates Native Hawaiian perspectives, values, language, culture, and traditions into the core function of the organization;

(D) has demonstrated expertise in the education of Native Hawaiian youth; and

(E) has demonstrated expertise in research and program development.

(4) **Native Hawaiian language**

The term “Native Hawaiian language” means the single Native American language indigenous to the original inhabitants of the State of Hawaii.

(5) **Native Hawaiian organization**

The term “Native Hawaiian organization” means a private nonprofit organization that—

(A) serves the interests of Native Hawaiians;

(B) has Native Hawaiians in substantive and policymaking positions within the organization; and

(C) is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or portions of programs) for the benefit of Native Hawaiians.

(6) **Office of Hawaiian Affairs**

The term “Office of Hawaiian Affairs” means the Office of Hawaiian Affairs established by the Constitution of the State of Hawaii.


**PART C—ALASKA NATIVE EDUCATION**

§ 7541. Short title

This part may be cited as the “Alaska Native Educational Equity, Support, and Assistance Act”.


**Prior Provisions**

Provisions naming former part C (§7931 et seq.) of subchapter IX of this chapter as the “Alaska Native Educational Equity, Support and Assistance Act” were contained in section 7931 of this title, prior to the general amendment of subchapter IX by Pub. L. 107–110.


§ 7542. Findings

Congress finds and declares the following:

(1) The attainment of educational success is critical to the betterment of the conditions, long-term well-being, and preservation of the culture of Alaska Natives.

(2) It is the policy of the Federal Government to encourage the maximum participation by Alaska Natives in the planning and the management of Alaska Native education programs.

(3) Alaska Native children enter and exit school with serious educational handicaps.

(4) The educational achievement of Alaska Native children is far below national norms. Native performance on standardized tests is low, Native student dropout rates are high, and Natives are significantly underrepresented among holders of baccalaureate degrees in the State of Alaska. As a result, Native students are being denied their opportunity to become full participants in society by grade school and high school educations that are condemning an entire generation to an underclass status and a life of limited choices.

(5) The programs authorized in this part, combined with expanded Head Start, infant learning, and early childhood education programs, and parent education programs, are essential if educational handicaps are to be overcome.

(6) The sheer magnitude of the geographic barriers to be overcome in delivering educational services in rural Alaska and Alaska villages should be addressed through the development and implementation of innovative, model programs in a variety of areas.

(7) Native children should be afforded the opportunity to begin their formal education on a par with their non-Native peers. The Federal Government should lend support to efforts developed and undertaken within the Alaska Native community to improve educational opportunity for all students.


**Prior Provisions**


§ 7543. Purposes

The purposes of this part are as follows:

(1) To recognize the unique educational needs of Alaska Natives.

(2) To authorize the development of supplemental educational programs to benefit Alaskan Natives.

(3) To supplement existing programs and authorities in the area of education to further the purposes of this part.

(4) To provide direction and guidance to appropriate Federal, State and local agencies to
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focus resources, including resources made available under this part, on meeting the educational needs of Alaska Natives.


PRIOR PROVISIONS

§ 7544. Program authorized
(a) General authority
(1) Grants and contracts
The Secretary is authorized to make grants to, or enter into contracts with, Alaska Native organizations, educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages, cultural and community-based organizations with experience in developing or operating programs to benefit Alaska Native students and consortia of organizations and entities described in this paragraph to carry out programs that meet the purposes of this part.

(2) Permissible activities
Activities provided through programs carried out under this part may include the following:
(A) The development and implementation of plans, methods, and strategies to improve the education of Alaska Natives.
(B) The development of curricula and educational programs that address the educational needs of Alaska Native students, including the following:
(i) Curriculum materials that reflect the cultural diversity or the contributions of Alaska Natives.
(ii) Instructional programs that make use of Native Alaskan languages.
(iii) Networks that introduce successful programs, materials, and techniques to urban and rural schools.
(C) Professional development activities for educators, including the following:
(i) Programs to prepare teachers to address the cultural diversity and unique needs of Alaska Native students.
(ii) In-service programs to improve the ability of teachers to meet the unique needs of Alaska Native students.
(iii) Recruitment and preparation of teachers who are Alaska Native, reside in communities with high concentrations of Alaska Native students, or are likely to succeed as teachers in isolated, rural communities and engage in cross-cultural instruction in Alaska.
(D) The development and operation of home instruction programs for Alaska Native preschool children, to ensure the active involvement of parents in their children’s education from the earliest ages.
(E) Family literacy services.
(F) The development and operation of student enrichment programs in science and mathematics that—
(i) are designed to prepare Alaska Native students from rural areas, who are preparing to enter secondary school, to excel in science and math;
(ii) provide appropriate support services to the families of such students that are needed to enable such students to benefit from the programs; and
(iii) may include activities that recognize and support the unique cultural and educational needs of Alaska Native children, and incorporate appropriately qualified Alaska Native elders and seniors.
(G) Research and data collection activities to determine the educational status and needs of Alaska Native children and adults.
(H) Other research and evaluation activities related to programs carried out under this part.
(I) Remedial and enrichment programs to assist Alaska Native students in performing at a high level on standardized tests.
(J) Education and training of Alaska Native students enrolled in a degree program that will lead to certification or licensing as teachers.
(K) Parenting education for parents and caregivers of Alaska Native children to improve parenting and caregiving skills (including skills relating to discipline and cognitive development), including parenting education provided through in-home visitation of new mothers.
(L) Cultural education programs operated by the Alaska Native Heritage Center and designed to share the Alaska Native culture with students.
(M) A cultural exchange program operated by the Alaska Humanities Forum and designed to share Alaska Native culture with urban students in a rural setting, which shall be known as the Rose Cultural Exchange Program.
(N) Activities carried out through Even Start programs carried out under subpart 3 of part B of subchapter I of this chapter and Head Start programs carried out under the Head Start Act [42 U.S.C. 9831 et seq.], including the training of teachers for programs described in this subparagraph.
(O) Other early learning and preschool programs.
(P) Dropout prevention programs operated by the Cook Inlet Tribal Council’s Partners for Success program.
(Q) An Alaska Initiative for Community Engagement program.
(R) Career preparation activities to enable Alaska Native children and adults to prepare for meaningful employment, including programs providing tech-prep, mentoring, training, and apprenticeship activities.
(S) Provision of operational support and purchasing of equipment, to develop regional vocational schools in rural areas of Alaska, including boarding schools, for Alaska Native students in grades 9 through 12, or at higher levels of education, to provide the
students with necessary resources to prepare for skilled employment opportunities.

(T) Other activities, consistent with the purposes of this part, to meet the educational needs of Alaska Native children and adults.

(3) Home instruction programs

Home instruction programs for Alaska Native preschool children carried out under paragraph (2)(D) may include the following:

(A) Programs for parents and their infants, from the prenatal period of the infant through age 3.
(B) Preschool programs.
(C) Training, education, and support for parents in such areas as reading readiness, observation, story telling, and critical thinking.

(b) Limitation on administrative costs

Not more than 5 percent of funds provided to a grantee under this section for any fiscal year may be used for administrative purposes.

(c) Priorities

In awarding grants or contracts to carry out activities described in subsection (a)(2) of this section, except for activities listed in subsection (d)(2) of this section, the Secretary shall give priority to applications from Alaska Native regional nonprofit organizations, or consortia that include at least one Alaska Native regional nonprofit organization.

(d) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.

(2) Availability of funds

Of the funds appropriated and made available under this section for a fiscal year, the Secretary shall make available—

(A) not less than $1,000,000 to support activities described in subsection (a)(2)(K) of this section;
(B) not less than $1,000,000 to support activities described in subsection (a)(2)(L) of this section;
(C) not less than $1,000,000 to support activities described in subsection (a)(2)(M) of this section;
(D) not less than $2,000,000 to support activities described in subsection (a)(2)(P) of this section; and
(E) not less than $2,000,000 to support activities described in subsection (a)(2)(Q) of this section.


REMARKS

PRIOR PROVISIONS

AMENDMENTS
2003—Subsec. (a)(2)(P), Pub. L. 108–11 substituted “operated by” for “such as”.

§7545. Administrative provisions

(a) Application required

No grant may be made under this part, and no contract may be entered into under this part, unless the entity seeking the grant or contract submits an application to the Secretary in such form, in such manner, and containing such information as the Secretary may determine necessary to carry out the provisions of this part.

(b) Applications

A State educational agency or local educational agency may apply for an award under this part only as part of a consortium involving an Alaska Native organization. The consortium may include other eligible applicants.

(c) Consultation required

Each applicant for an award under this part shall provide for ongoing advice from and consultation with representatives of the Alaska Native community.

(d) Local educational agency coordination

Each applicant for an award under this part shall inform each local educational agency serving students who would participate in the program to be carried out under the grant or contract about the application.


PRIOR PROVISIONS

§7546. Definitions

In this part:

(1) Alaska Native

The term “Alaska Native” has the same meaning as the term “Native” as has in section 1602(b) of title 43.

(2) Alaska Native organization

The term “Alaska Native organization” means a federally recognized tribe, consortium of tribes, regional nonprofit Native association, and another organization that—

(A) has or commits to acquire expertise in the education of Alaska Natives; and
(B) has Alaska Natives in substantive and policymaking positions within the organization.
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PRIOR PROVISIONS


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


SUBCHAPTER VIII—IMPACT AID

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in chapters 13 (§236 et seq.) and 19 (§631 et seq.) of this title prior to repeal by Pub. L. 103-382, §311.

§ 7701. Purpose

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

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

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

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

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

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


PRIOR PROVISIONS

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

Another prior section 8001 of Pub. L. 89-10 was renumbered section 9001 and was classified to section 3351 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

AMENDMENTS


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

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

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

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 ([div. A], title XVIII, §1818), Oct. 30, 2000, 114 Stat. 1654, 1654A-389, provided that: “This title [amending this section and sections 1228, 7702, 7703, 7705, 7707, 7709 to 7713, and 7714 of this title, repealing section 7706 of this title, and enacting provisions set out as notes under sections 6301, 7003, and 7711 of this title], and the amendments made by this title, shall take effect on October 1, 2000, or the date of the enactment of this Act [Oct. 30, 2000], whichever occurs later.’’

EFFECTIVE DATE


“A Title I [amending generally Pub. L. 89-10 (former chapter 47 of this title, now this chapter)] and the amendment made by Title I of this Act shall take effect July 1, 1995, except that those provisions of title
I that apply to programs under title VIII (Impact Aid) of the Elementary and Secondary Education Act of 1965 [this subchapter], as amended by this Act, and to programs under such Act [this chapter] that are conducted on a competitive basis, shall be effective with respect to appropriations for use under such programs for fiscal year 1995 and for subsequent fiscal years.

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

§ 7702. Payments relating to Federal acquisition of real property

(a) In general

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

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

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

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

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

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

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

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

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

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

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

(b) Amount

(1) In general

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

(II) Except as provided in subclause (III), the Secretary may not reduce the amount of a payment under this section to a local educational agency for a fiscal year by (aa) the amount equal to the amount of revenue, if any, the agency received during the previous fiscal year from activities conducted on Federal property eligible under this section and located in a school district served by the agency, including amounts received from any Federal department or agency (other than the Department of Education) from such activities, by reason of receipt of such revenue, or (bb) any other amount by reason of receipt of such revenue.

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

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

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

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

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

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

(2) Application of current levied real property tax rate

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

(3) Determination of aggregate assessed value

Such aggregate assessed value of such acquired Federal property shall be determined on the basis of the highest and best use of property adjacent to such acquired Federal property as of the time such value is determined, and provided to the Secretary, by the local official responsible for assessing the value of real property located in the jurisdiction.
section of such local educational agency for the purpose of levying a property tax.

(c) Applicability to Tennessee Valley Authority Act

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

(d) Ownership by United States

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

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

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

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

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

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

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

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

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

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

(1) Acreage and acquisition by the Forest Service

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

(2) County charter

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

(f) Special rule

(1) Beginning with fiscal year 1994, and notwithstanding any other provision of law limiting the period during which fiscal year 1994 funds may be obligated, the Secretary shall treat the local educational agency serving the Wheatland R–II School District, Wheatland, Missouri, as meeting the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994) (20 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C) of this section.

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

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

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

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

(g) Former districts

(1) In general

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

(2) Eligible local educational agencies

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

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

For any fiscal year for which the amount appropriated under section 7714(a) of this title is insufficient to pay to each eligible local educational agency the full amount determined under subsection (b) of this section, the Secretary shall make payments to each local educational agency under this section as follows:
(1) Foundation payments for pre-1995 recipients

(A) In general

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

(B) Amount

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

(C) Insufficient appropriations

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

(2) Payments for 1995 recipients

(A) In general

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

(B) Amount

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

(i) Special payments

(1) In general

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

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

(A) received a payment under this section for fiscal year 1998;

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

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

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


(k) Special rule

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

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

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

(l) Prior year data

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

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

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

(m) Eligibility

(1) Old Federal property

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

(2) Combined Federal property

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

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

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

(3) New Federal property

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

(n) Loss of eligibility

(1) In general

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

(2) Local educational agency described

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

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

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

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

AMENDMENTS
2004—Subsec. (m). Pub. L. 108–447 substituted “7 years” for “5 years” in pars. (1), (2)(A), and (3).
2002—Subsec. (h)(1)(B). Pub. L. 107–110, § 801(a)(1), substituted “that, if determined pursuant to statute to meet the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950” for “and was eligible to receive a payment under section 2 of the Act of September 30, 1950”.
Subsec. (h)(1)(B). Pub. L. 107–110, § 801(a)(2), substituted “(or if the local educational agency did not meet, or has not been determined pursuant to statute to meet, the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 for fiscal year 1994)” for “(or if the local educational agency was not eligible to receive a payment under such section for fiscal year 1994)”.
Subsec. (h)(2)(A). Pub. L. 107–110, § 801(b)(1), inserted before period at end “, or whose application under this section for fiscal year 1995 was determined pursuant to statute to be timely filed for purposes of payments for subsequent fiscal years”.
Subsec. (h)(2)(B)(i). Pub. L. 107–110, § 801(b)(2), substituted “(or for each local educational agency described in paragraph (A) for “(for each local educational agency that received a payment under this section for fiscal year 1995)”.
Subsec. (h)(4)(B). Pub. L. 107–110, § 801(c), substituted “(subject to subclauses (II) and (III), the amount)” for “the maximum amount that the agency is eligible to receive under subsection (b) of this section by the total of the maximum amounts for all such agencies)” for “(in the same manner as percentage shares are determined for local educational agencies under paragraph (2)(B)(i))” and “, except that, for the purpose of calculating a local educational agency’s maximum amount under subsection (b) of this section, for purposes of payments for subsequent fiscal years”.
Subsec. (i)(4). Pub. L. 107–110, § 801(d), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: “Notwithstanding subsection (b)(1)(B) of this section, and for any fiscal year beginning with fiscal year 1997 for which the amount appropriated to carry out this section exceeds the amount so appropriated for fiscal year 1996—

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

(B) the Secretary shall use the remainder of the excess amount to increase the payments to each eligible local educational agency described in paragraph (2) of this section.

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal years 1997 to 2000.

Effective Date of 2002 Amendment
Amendment by Pub. L. 107–110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.
§ 7703. Payments for eligible federally connected children

(a) Computation of payment

(1) In general

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

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

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

(C) resided on Indian lands;

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

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

(E) resided in low-rent housing;

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

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

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

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

(2) Determination of weighted student units

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

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

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

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

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

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

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

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

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

(3) Special rule

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

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

(A) In general

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

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

(B) Limitations

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

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

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

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

(5) Military “Build to Lease” program housing

(A) In general

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

(B) Additional requirements

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

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

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

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

(1) Basic support payments

(A) In general

From the amount appropriated under section 7114(b) of this title for a fiscal year, the Secretary is authorized to make basic support payments to eligible local educational agencies with children described in subsection (a) of this section.

(B) Eligibility

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

(i) at least 400 such children; or

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

(C) Maximum amount

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

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

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

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

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

(D) Data

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

(E) Special rule

For purposes of determining the comparable local contribution rate under subparagraph (C)(iii) for a local educational agency described in section 223.39(c)(3) of title 34, Code of Federal Regulations, that
had its comparable local contribution rate for fiscal year 1998 calculated pursuant to section 222.39 of title 34, Code of Federal Regulations, the Secretary shall determine such comparable local contribution rate as the rate upon which payments under this subsection for fiscal year 2000 were made to the local educational agency adjusted by the percentage increase or decrease in the per pupil expenditure in the State serving the local educational agency calculated on the basis of the second most recent preceding school year compared to the third most recent preceding school year for which school year data are available.

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

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

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

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

(A) In general

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

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

(B) Eligibility for continuing heavily impacted local educational agencies

(i) In general

A heavily impacted local educational agency is eligible to receive a basic support payment under subparagraph (A) with respect to a number of children determined under subsection (a)(1) of this section if the agency—

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

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

(bb) has an enrollment of children described in subsection (a)(1) of this section that constitutes a percentage of the total student enrollment of the agency which is not less than 25 percent, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or the average per-pupil expenditure of all States (whichever average per-pupil expenditure is greater), except that a local educational agency with a total student enrollment of less than 350 students shall be deemed to have satisfied such per-pupil expenditure requirement, and has a tax rate for general fund purposes which is not less than 95 percent of the average tax rate for general fund purposes of local educational agencies in the State;

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

(dd) has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) of this section.

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

(ii) Loss of eligibility

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

(iii) Resumption of eligibility

A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more
fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if the agency meets the requirements of clause (i) for that subsequent fiscal year, except that such agency shall not receive a basic support payment under this paragraph until the fiscal year succeeding the fiscal year for which the eligibility determination is made.

(C) Eligibility for new heavily impacted local educational agencies

(i) In general

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

(ii) Resumption of eligibility

A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if the agency is a local educational agency whose boundaries are the same as a Federal military installation (or if the agency is a qualified local educational agency as described in clause (iv)), or meets the requirements of clause (i), for that subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the eligibility determination is made.

(iii) Application

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

(iv) Qualified local educational agency

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

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

(II) The agency has no taxing authority.

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

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

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

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

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

(ii) The Secretary shall calculate the weighted student units of such children for purposes of subsection (a)(2) of this section by multiplying the number of such children by a factor of 0.55.
described in subsection (a)(1) of this section, the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) of this section by multiplying the number of such children by a factor of 1.75.

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

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

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

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

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

(F) Data

For purposes of providing assistance under this paragraph the Secretary—

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

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

(II) the number of such children meet the requirements of subsection (a)(3)(C) of this section.

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

For the purpose of determining average tax rates for general fund purposes for local educational agencies in a State under this paragraph (except under subparagraph (C)(i)(II)(bb)), the Secretary shall use either—

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

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

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

(i) Eligibility

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

(ii) Amount of payment

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

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

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

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

(A) In general

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

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

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

1So in original. Probably should be ‘paragraph (2)(B)(i)(II)(aa)’.
paragraph (1)(C) by the total percentage obtained by adding—

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

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

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

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

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

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

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

(D) Ratable distribution

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

(4) States with only one local educational agency

(A) In general

In any of the 50 States of the United States in which there is only one local educational agency, the Secretary shall, for purposes of subparagraphs (B) and (C) of paragraph (1) or subparagraphs (B) through (D) of paragraph (2), as the case may be, paragraph (3) of this subsection, and subsection (e) of this section, consider each administrative school district in the State to be a separate local educational agency.

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

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

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

(ii) the Secretary shall then—

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

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

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

(A) In general

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

(B) Local educational agency described

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

(C) Additional requirements

The additional requirements described in this subparagraph are the following:

(i) For each fiscal year beginning after the date on which the Federal property is transferred, a child described in subparagraph (B) who continues to reside on such property and who continues to receive a free public education at a school of the agency shall be deemed to be a child who resides on Federal property for purposes of computing under the applicable subpara-
(i)(I) For the third fiscal year beginning after the date on which the Federal property is transferred, and for each fiscal year thereafter, the Secretary shall, after computing the amount that the agency is otherwise eligible to receive under this subsection for the fiscal year involved, deduct from such amount an amount equal to the revenue received by the agency for the immediately preceding fiscal year as a result of the taxable status of the former Federal property.

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

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

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

(2) Exception

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

(3) Maintenance of effort

A local educational agency may receive funds under subsection (b) of this section—

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

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

(2) Maximum amount

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

(3) Ratable reductions

(A) In general

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

(B) Additional funds

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

(f) Other funds

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

(g) Maintenance of effort

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

§ 7703

TITLE 20—EDUCATION

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

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

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


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

Sec. 386 of the National Defense Authorization Act for Fiscal Year 1999, referred to in subsec. (f), is complete classification of this Act to the Code, see Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (b), is section 601 of Pub. L. 99–457, which was added by Pub. L. 102–112, Nov. 5, 2001, 115 Stat. 1654, and calculated in accordance with subparagraph (D) or (E) as the case may be, shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year.

1999—Subsec. (a)(5). Pub. L. 106–398, §1 [div. A], title XVIII, §1806(c)(1)(A), substituted “subsection (b) or (d) (or (f))” for “subsection (b)” in introductory provisions.

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

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

Subsec. (a)(4). Pub. L. 106–398, §1 [div. A], title XVIII, §1801(b)(1), inserted “and Indian” after “Military installation” and “or rebuilding” after “renovation” in par. heading, designated existing provisions as subpar. (A)(i), inserted subpar. (A) heading, inserted “or rebuilding” after “undergoing renovation”, added cl. (ii) to subpar. (A) and added subpar. (B).


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


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


Subsec. (b)(3)(B)(i). Pub. L. 106–398, §1 [div. A], title XVIII, §1806(b)(2)(B), inserted “in lieu of basic support payments under paragraph (1)” before “by multiply-
ing” in introductory provisions and struck out “(not including amounts received under subsection (f) of this section)” after “under this paragraph” in subcl. (II). Subsec. (b)(3)(C)(i)(v). Pub. L. 106–398, §1 [div. A], title XVIII, §1806(b)(2)(C), added cl. (iv).


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


Subsec. (c)(1). Pub. L. 106–398, §1 [div. A], title XVIII, §1808(a)(1), redesignated subsec. (b)(1) as (2), (b)(2) as (3) and (b)(3) as (4) and struck out heading and text of former subsec. (c) generally. Prior to amendment, subsec. (c) required the Secretary to pay local education agencies under subsec. (b) of this section certain minimum amounts for fiscal years 1995 to 1999.

Subsec. (f)(1). Pub. L. 106–398, §1 [div. A], title XVIII, §1808(c)(4), (1808(c)(5)), redesignated subsec. (h) as (f) and struck out heading and text of former subsec. (f) which required the Secretary to provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under this section.

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


Pub. L. 106–398, §1 [div. A], title XVIII, §1806(b)(1), substituted “section 386 of the National Defense Authorization Act for Fiscal Year 1993” for “section 6 of the Act of September 30, 1950 (Public Law 647, 81st Congress) (as such section was in effect on the day preceding October 20, 1994)”.

Subsec. (i). Pub. L. 106–398, §1 [div. A], title XVIII, §1808(b)(1), redesignated subsec. (i) as (g), 1997—Subsec. (i)(2)(A)(ii)(I). Pub. L. 105–178, which directed the amendment of section 8003(2)(A)(ii)(I) of the Elementary and Secondary Education Act of 1965 by substituting “25 percent of the total student enrollment of such agency. For purposes of this subclause, all students described in subsection (a)(1) of this section are used to determine eligibility, regardless of whether or not such amounts are paid to the Secretary from local educational agencies,” for “35 percent” and all that follows through the semicolon, was executed by making the substitution for “35 percent” of the total student enrollment of such agencies;” in subsection (f)(2)(A)(ii)(I) of this section, to reflect the probable intent of Congress.

Subsec. (j)(4). Pub. L. 105–18 struck out hyphen after “Secretary” in introductory provisions, redesignated subpar. (A) as entire par. (4), inserted “expended,” after “revenue,” substituted period for semicolon after “assistance under this subsection,” and struck out subpar. (B) which read as follows: “shall derive the per pupil expenditure amount for the fiscal year for which the local educational agency is applying for assistance under this subsection for the local educational agency’s comparable school districts by increasing or decreasing the per pupil expenditure data for the second fiscal year for which the determination is made by the same percentage increase or decrease reflected between the per pupil expenditure data for the fourth fiscal year preceding the fiscal year for which the determination is made and the per pupil expenditure data for such second year.”

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


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


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


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


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


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


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

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

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

Pub. L. 104–106, §107(g), amended heading and text of par. (4) generally. Prior text read as follows: "The Secretary shall, for purposes of providing assistance under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107–110, set out as an Effective Date note under this subchapter for fiscal year 2002, if the agency submits to the Secretary an application for payment under such section not later than 30 days after the date of enactment of this Act [Jan. 8, 2002]."

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


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

For provisions requiring Secretary of Defense to identify local educational agencies that will experience at least a 5-percent increase or 10-percent reduction in enrollment in number of dependent children of members of Armed Forces and of civilian employees of Department of Defense enrolled in schools under jurisdiction of such agencies during next academic year as a result of closure or realignment of a military installation, and to transmit notice of schedule of such closure or realignment to affected local and State educational agencies, see section 2835 of Pub. L. 101–189, set out as a note under section 2807 of Title 10, Armed Forces.

§ 7703a. Impact aid for children with severe disabilities

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

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

(1) the payment made on behalf of the child with a severe disability that is in excess of the average per pupil expenditure in the State in which the local educational agency is located; less
(2) the sum of the funds received by the local educational agency—
(A) from the State in which the child resides to defray the educational and related services for such child;

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

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

(e) Exclusions

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

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

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

(d) Ratable reduction

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

(e) Report

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

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

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

(f) Payments subject to appropriation

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

(g) Local educational agency defined

In this section, the term "local educational agency" has the meaning given that term in section 7703(b) of this title.


REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(2)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

ODIFICATION

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

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

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

(1) Assistance authorized

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

(2) Eligible local educational agencies

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

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

(1) Assistance authorized

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

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

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

(2) Eligible local educational agencies

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

(A) the local educational agency is eligible for assistance under subsection (a) of this
section for the same fiscal year, or would have been eligible for such assistance if not for the reduction in military dependent students in schools of the local educational agency; and
(B) the overall increase or reduction in military dependent students in schools of the local educational agency is the result of one or more of the following:
(i) The global rebasing plan of the Department of Defense.
(ii) The official creation or activation of one or more new military units.
(iii) The realignment of forces as a result of the base closure process.
(iv) A change in the number of housing units on a military installation.
(3) Calculation of amount of assistance
(A) Pro rata distribution
The amount of the assistance provided under this subsection to a local educational agency that is eligible for such assistance for a fiscal year shall be equal to the product obtained by multiplying—
(i) the per-student rate determined under subparagraph (B) for that fiscal year; by
(ii) the net of the overall increases and reductions in the number of military dependent students in schools of the local educational agency, as determined under paragraph (1).
(B) Per-student rate
For purposes of subparagraph (A)(i), the per-student rate for a fiscal year shall be equal to the dollar amount obtained by dividing—
(i) the total amount of funds made available for that fiscal year to provide assistance under this subsection; by
(ii) the sum of the overall increases and reductions in the number of military dependent students in schools of all eligible local educational agencies for that fiscal year under this subsection.
(C) Maximum amount of assistance
A local educational agency may not receive more than $1,000,000 in assistance under this subsection for any fiscal year.
(4) Duration
Assistance may not be provided under this subsection after September 30, 2012.
(c) Notification
Not later than June 30, 2006, and June 30 of each fiscal year thereafter for which funds are made available to carry out this section, the Secretary of Defense shall notify each local educational agency that is eligible for assistance under this section for that fiscal year of—
(1) the eligibility of the local educational agency for the assistance, including whether the agency is eligible for assistance under either subsection (a) or (b) of this section or both subsections; and
(2) the amount of the assistance for which the local educational agency is eligible.
(d) Disbursement of funds
The Secretary of Defense shall disburse assistance made available under this section for a fiscal year not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (c) of this section for that fiscal year.
(e) Funding for fiscal year 2006
Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities—
(1) $30,000,000 shall be available only for the purpose of providing assistance to local educational agencies under subsection (a) of this section; and
(2) $10,000,000 shall be available only for the purpose of providing assistance to local educational agencies under subsection (b) of this section.
(f) Definitions
In this section:
(2) The term "local educational agency" has the meaning given that term in section 7133(9) of this title.
(3) The term "military dependent agency" refers to—
(A) elementary and secondary school students who are dependents of members of the Armed Forces; and
(B) elementary and secondary school students who are dependents of civilian employees of the Department of Defense.
(4) The term "State" means each of the 50 States and the District of Columbia.

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

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

1 See References in Text note below.
AMENDMENTS


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


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

“(1) Force structure changes.

“(2) The relocation of a military unit.

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

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

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

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

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

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

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

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

“(4) Relevant applications, evaluations, and recommendations relating to such assistance.

“(5) Such other information as is relevant to carry out the purposes of this subsection.

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

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

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

“(A) To share expertise and experience of the Activity with local educational agencies as military dependent students make the transitions described in paragraph (1), including transitions resulting from the closure or realignment of military installations under a base closure law, global rebasing, and force restructuring.

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

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

“(ii) Training for teachers.

“(iii) Academic strategies to increase academic achievement.

“(iv) Curriculum development.

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

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

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

“(e) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

(a) In general

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

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

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

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

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

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

(b) Records

A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 7703 of this title...
shall maintain records demonstrating such agency’s compliance with the requirements contained in subsection (a) of this section.

(c) Waiver

A local educational agency that claims children residing on Indian lands for the purpose of complying with those subsections because the tribe of such agency to such children.

(d) Technical assistance and enforcement

The Secretary shall—

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

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

(e) Complaints

(1) In general

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

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

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

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

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

(2) Hearing

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

(3) Evidence; recommendations; cost

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

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

(4) Findings and recommendations

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

(5) Written determination

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

(6) Copies provided

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

(7) Consolidation

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

(8) Withholding

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

(9) Rejection of determination

If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have educational services provided either directly by the Bureau of Indian Affairs or by contract with the Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) of this section was lodged may be counted
with respect to that local educational agency for the purpose of receiving funds under section 7703 of this title. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

(f) Construction

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


REFERENCES IN TEXT


PRIOR PROVISIONS

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

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

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

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

(a) In general

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

(1) submit an application for such payment to the Secretary; and

(2) provide a copy of such application to the State educational agency.

(b) Contents

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

(1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and

(2) where applicable, an assurance that such agency is in compliance with section 7704 of this title (relating to children residing on Indian lands).

(c) Deadline for submission

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

(d) Approval

(1) In general

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

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

(B) otherwise meets the requirements of this subchapter.

(2) Reduction in payment

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

(3) Late applications

(A) Notice

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

(B) Acceptance and approval of late applications

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

(4) State application authority

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


REFERENCES IN TEXT

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

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

AMENDMENTS


§7707. Construction
(a) Construction payments authorized

(1) In general

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

(2) Additional requirements

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

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

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

(3) Amount of payments

(A) Local educational agencies impacted by military dependent children

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

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

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

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

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

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

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

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

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

(4) Use of funds

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

(b) School facility emergency and modernization grants authorized

(1) In general

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

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

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

(2) Priority

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

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

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

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

(3) Eligibility requirements

(A) Emergency grants

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

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

(I) has no practical capacity to issue bonds;

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

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

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

(B) Modernization grants

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

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

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

(iii) the agency has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of tax-exempt Federal property, or an increase in enrollment due to the expansion of Federal activities, housing privatization, or the acquisition of Federal property.

(C) Additional eligibility for emergency and modernization grants

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

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

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

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

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

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

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

(D) Special rule

(i) In general

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

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

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

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

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

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

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

(E) Rule of construction

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

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

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

(4) Award criteria

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

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

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

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

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

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

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

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

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

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

(E) In the case of a modernization grant—

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

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

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

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

(5) Other award provisions

(A) General provisions

(i) Limitations on amount of funds

(I) In general

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

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

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

(II) In-kind contributions

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

(ii) Prohibitions on use of funds

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

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

(II) stadiums or other school facilities that are primarily used for athletic contests, exhibitions, or other events for
which admission is charged to the general public; or

(iii) Supplement, not supplant

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

(iv) Maintenance costs

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

(v) Environmental safeguards

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

(vi) Carry-over of certain applications

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

(6) Application

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

(A) A description of how the local educational agency meets the award criteria requirements of paragraph (2) and the award criteria requirements of paragraph (4).

(B) Emergency grants; prohibition on use of funds

A local educational agency that is awarded an emergency grant under this subsection may not use amounts under the grant for the school facility modernization project—

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

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

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

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

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

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

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

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

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

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

(7) Report

(A) In general

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

(B) Definition

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

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

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

AMENDMENTS


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

1996—Subsec. (a)(2)(B). Pub. L. 104–134 struck out “and in which the agency at any 2 times during the
four fiscal years preceding October 20, 1994, was denied by a vote of the agency’s eligible voters a bond referendum for the purposes of school construction or renovation before semicolon at end.

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

§ 7708. Facilities
(a) Current facilities
From the amount appropriated for any fiscal year under section 7714(f) of this title, the Secretary may continue to provide assistance for school facilities that were supported by the Secretary under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994).

(b) Transfer of facilities
(1) In general
The Secretary shall, as soon as practicable, transfer to the appropriate local educational agency or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Acts were in effect on the day preceding October 20, 1994), or under section 204 or 310 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Acts were in effect on January 1, 1958).

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

§ 7709. State consideration of payments in providing State aid
(a) General prohibition
Except as provided in subsection (b) of this section, a State may not—

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

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

(B) the amount of such aid; or

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

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

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

(B) Other factors
In making a determination under this subsection, the Secretary shall—

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

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

1 See References in Text note below.
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(3) Exception
Notwithstanding paragraph (2), if the Secretary determines that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—

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

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

c) Procedures for review of State equalization plans

(1) Written notice

(A) In general

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

(B) Contents

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

(2) Opportunity to present views

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

(3) Qualification procedures

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

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

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

(4) Nonqualification procedures

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

(A) so notify the State; and

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

d) Treatment of State aid

(1) In general

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

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

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

(2) Prohibition

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

e) Remedies for State violations

(1) In general

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

(2) Immunity

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

(3) Relief

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

AMENDMENTS

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

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [div. A], title XVIII, § 1812(b)(1), struck out “or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20,
and effective with respect to appropriations for use under section 6301 of this title.

Prior to amendment, text read as follows: “A State may make State aid to a local educational agency that receives a payment under section 7702 or 7703(b) of this title (except the amount calculated in excess of 1.0 under subparagraph (B) of section 7703(a)(2) of this title) or under the Act of September 30, 1950 (Public Law 874, 81st Congress) as such Act was in effect on the day preceding October 20, 1994 (other than an increase in payments described in paragraphs (2)(B), (2)(C), (2)(D), or (3)(B)(i) of section 3(d) of such Act of September 30, 1950) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A) of this section, that such State has in effect a program of funding among local educational agencies in such State.”

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title XVIII, § 1812(2)], struck out “‘under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994)’” after “‘under this subchapter’” wherever appearing.


(i) 25 percent for fiscal year 1995, 1996, or 1997; and

(ii) 20 percent for fiscal year 1998 or 1999”.

§ 7710. Federal administration

(a) Payments in whole dollar amounts

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

(b) Other agencies

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

(c) Special rules

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

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

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

(2) Requirements

A child meets the requirements of this paragraph if—

(A) such child resides—

(i) in a State adjacent to the State in which the local educational agency serving the school such child attends is located; or

(ii) with a parent employed on Federal property in a State adjacent to the State in which such agency is located;

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

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

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

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

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

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

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

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

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

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

§ 7711. Administrative hearings and judicial review

(a) Administrative hearings

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

(b) Judicial review of secretarial action

(1) In general

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

(2) Findings of fact

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

(3) Review

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


REFERENCES IN TEXT

Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994), referred to in subsec. (a), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, which was classified generally to chapter 13 (§ 236 et seq.) of this title prior to repeal by Pub. L. 106–398, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

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2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title XVIII, § 1814(a)(1)], inserted “if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this subchapter” before period at end.
expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds awarded under part A of subchapter I of this chapter and subchapter VI of this chapter. The determination of whether an expenditure for the replacement of equipment is considered a current expenditure or a capital outlay shall be determined in accordance with generally accepted accounting principles as determined by the State.

(5) Federal property

(A) In general

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) pipelines and utility lines.

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

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

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

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

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

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

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

(ii) at any time—

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

(II) satisfied the definition of Federal property under section 403(1)(A) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994).
§ 7713

(6) Free public education
The term "free public education" means education that is provided—
(A) at public expense, under public supervision and direction, and without tuition charge; and
(B) as elementary or secondary education, as determined under State law, except that, notwithstanding State law, such term—
(i) includes preschool education; and
(ii) does not include any education provided beyond grade 12.

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

(8) Local contribution percentage
(A) In general
The term "local contribution percentage" means the percentage of current expenditures in the State derived from local and intermediate sources, as reported to and verified by the National Center for Education Statistics.

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

(9) Local educational agency
(A) In general
Except as provided in subparagraph (B), the term "local educational agency"—
(i) means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; and
(ii) includes any State agency that directly operates and maintains facilities for providing free public education.

(B) Exception
The term "local educational agency" does not include any agency or school authority that the Secretary determines on a case-by-case basis—
(i) was constituted or reconstituted primarily for the purpose of receiving assistance under this subchapter or the Act of September 30, 1950 (Public Law 874, 81st Congress) as such Act was in effect on the day preceding October 20, 1994) or increasing the amount of such assistance; or
(ii) is not constituted or reconstituted for legitimate educational purposes.

(10) Low-rent housing
The term "low-rent housing" means housing located on property that is described in paragraph (5)(A)(ii).

(11) Modernization
The term "modernization" means repair, renovation, alteration, or construction, including—
(A) the concurrent installation of equipment; and
(B) the complete or partial replacement of an existing school facility, but only if such replacement is less expensive and more cost-effective than repair, renovation, or alteration of the school facility.

(12) Revenue derived from local sources
The term "revenue derived from local sources" means—
(A) revenue produced within the boundaries of a local educational agency and available to such agency for such agency's use; or
(B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.

(13) School facilities
The term "school facilities" includes—
(A) classrooms and related facilities; and
(B) equipment, machinery, and utilities necessary or appropriate for school purposes.

REFERENCES IN TEXT


The Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994), referred to in par. (5)(F)(ii)(II) and (9)(B)(ii), is act Sept. 30, 1950, ch. 1124, 61 Stat. 1106, as amended, which was classified generally to chapter 13 (§ 1236 et seq.) of this title prior to repeal by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965.

Section 403 of the Act was classified to section 244 of this title. For complete classification of this Act to the Code, see Tables.

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Act of 1966” for “the mutual help ownership opportunity program under section 202 of the United States Housing Act of 1937”.

Par. (g)(B), Pub. L. 106–398, § 1 [(div. A), title XVIII, §1816(2)], substituted “the 50 States and the District of Columbia” for “all States”.

Pars. (11) to (13), Pub. L. 106–398, § 1 [(div. A), title XVIII, §1816(4), (5)], added par. (11) and redesignated former pars. (11) and (12) as (12) and (13), respectively.

§ 7713a. School facilities for children of Government employees and other residents in Indian reservations, national parks, and national monuments

In order to facilitate the providing of educational opportunities for children of Government employees and other residents in Indian reservations, the national parks and national monuments the Secretary of the Interior is hereby authorized in his discretion to make available for elementary school purposes therein, without charge, space in Government-owned buildings, when such space may be available for such purposes without detriment to the official business of such Indian reservations, national parks and national monuments.

(July 16, 1940, ch. 629, 54 Stat. 761.)

CODIFICATION

Section was not enacted as part of the Elementary and Secondary Education Act of 1965, which comprises this chapter.

Section was formerly classified to section 244a of this title. Prior thereto, section was classified to section 76a of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

§ 7714. Authorization of appropriations

(a) Payments for Federal acquisition of real property

For the purpose of making payments under section 7702 of this title, there are to be appropriated $32,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.

(b) Basic payments; payments for heavily impacted local educational agencies

For the purpose of making payments under section 7703(b) of this title, there are to be appropriated $809,400,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.

(c) Payments for children with disabilities

For the purpose of making payments under section 7703(d) of this title, there are to be appropriated $50,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.


(e) Construction

For the purpose of carrying out section 7707 of this title, there are to be appropriated $10,052,000 for fiscal year 2000 and such sums as may be necessary for each of the five succeeding fiscal years.

(f) Facilities maintenance

For the purpose of carrying out section 7708 of this title, there are to be appropriated $5,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.


AMENDMENTS

2002—Subsecs. (a) to (c). Pub. L. 107–110, § 805(a), substituted “seven succeeding fiscal years” for “three succeeding fiscal years”.

Subsec. (e). Pub. L. 107–110, § 805(b), substituted “for fiscal year 2001, $150,000,000 for fiscal year 2002, and such sums as may be necessary for each of the five succeeding fiscal years” for “for each of the three succeeding fiscal years”.

Subsec. (f). Pub. L. 107–110, § 805(a), substituted “seven succeeding fiscal years” for “three succeeding fiscal years”.

Subsec. (g). Pub. L. 107–110, § 805(c), struck out heading and text of subsec. (g). Text read as follows: “For the purpose of carrying out section 7702(1) of this title there are to be appropriated $1,500,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years.”

2000—Subsec. (a). Pub. L. 106–398, § 1 [(div. A), title XVIII, §1817(a)], substituted “$32,000,000 for fiscal year 2000” for “$16,750,000 for fiscal year 1995” and “three” for “four”.

Subsec. (b). Pub. L. 106–398, § 1 [(div. A), title XVIII, §1817(b)], substituted “section 7703(b)” for “subsections (b) and (f) of section 7703”.


Subsec. (e). Pub. L. 106–398, § 1 [(div. A), title XVIII, §1817(e)], substituted “$10,052,000 for fiscal year 2000” for “$2,000,000 for fiscal year 1995” and “three” for “four”.

Subsec. (f). Pub. L. 106–398, § 1 [(div. A), title XVIII, §1817(f)], substituted “$5,000,000 for fiscal year 2000” for “$2,000,000 for fiscal year 1995” and “three” for “four”.

Subsec. (g). Pub. L. 106–398, § 1 [(div. A), title XVIII, §1817(g)], amended heading and substituted “$1,500,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years” for “such sums as are necessary beginning in fiscal year 1998 and for each succeeding fiscal year” in text.


EFFECTIVE DATE OF 2002 AMENDMENT

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

CODIFICATION


PART A—DEFINITIONS

§ 7801. Definitions

Except as otherwise provided, in this chapter:

(1) Average daily attendance

(A) In general

Except as provided otherwise by State law or this paragraph, the term “average daily attendance” means—

(i) the aggregate number of days of attendance of all students during a school year; divided by

(ii) the number of days school is in session during that year.

(B) Conversion

The Secretary shall permit the conversion of average daily membership (or other similar data) to average daily attendance for local educational agencies in States that provide State aid to local educational agencies on the basis of average daily membership (or other similar data).

(C) Special rule

If the local educational agency in which a child resides makes a tuition or other payment for the free public education of the child in a school located in another school district, the Secretary shall, for the purpose of this chapter—

(i) consider the child to be in attendance at a school of the agency making the payment; and

(ii) not consider the child to be in attendance at a school of the agency receiving the payment.

(D) Children with disabilities

If a local educational agency makes a tuition payment to a private school or to a public school of another local educational agency for a child with a disability, as defined in section 1401 of this title, the Secretary shall, for the purpose of this chapter, consider the child to be in attendance at a school of the agency making the payment.

(2) Average per-pupil expenditure

The term “average per-pupil expenditure” means, in the case of a State or of the United States—

(A) without regard to the source of funds—

(i) the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State or, in the case of the United States, for all States (which, for the purpose of this paragraph, means the 50 States and the District of Columbia); plus

(ii) any direct current expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(3) Beginning teacher

The term “beginning teacher” means a teacher in a public school who has been teaching less than a total of three complete school years.

(4) Child

The term “child” means any person within the age limits for which the State provides free public education.

(5) Child with a disability

The term “child with a disability” has the same meaning given that term in section 1401 of this title.

(6) Community-based organization

The term “community-based organization” means a public or private nonprofit organization of demonstrated effectiveness that—

(A) is representative of a community or significant segments of a community; and

(B) provides educational or related services to individuals in the community.

(7) Consolidated local application

The term “consolidated local application” means an application submitted by a local educational agency pursuant to section 7845 of this title.

(8) Consolidated local plan

The term “consolidated local plan” means a plan submitted by a local educational agency pursuant to section 7845 of this title.

(9) Consolidated State application

The term “consolidated State application” means an application submitted by a State educational agency pursuant to section 7845 of this title.

(10) Consolidated State plan

The term “consolidated State plan” means a plan submitted by a State educational agency pursuant to section 7842 of this title.

(11) Core academic subjects

The term “core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(12) County

The term “county” means one of the divisions of a State used by the Secretary of Commerce in compiling and reporting data regarding counties.
(13) Covered program

The term “covered program” means each of the programs authorized by—

(A) part A of subchapter I of this chapter;
(B) subpart 3 of part B of subchapter I of this chapter;
(C) part C of subchapter I of this chapter;
(D) part D of subchapter I of this chapter;
(E) part F of subchapter I of this chapter;
(F) part A of subchapter II of this chapter;
(G) part D of subchapter II of this chapter;
(H) part A of subchapter III of this chapter;
(I) part A of subchapter IV of this chapter;
(J) part B of subchapter IV of this chapter;
(K) part A of subchapter V of this chapter; and
(L) subpart 2 of part B of subchapter VI of this chapter.

(14) Current expenditures

The term “current expenditures” means expenditures for free public education—

(A) including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities; but
(B) not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds received under subchapter I of this chapter and part A of subchapter V of this chapter.

(15) Department

The term “Department” means the Department of Education.

(16) Distance learning

The term “distance learning” means the transmission of educational or instructional programming to geographically dispersed individuals and groups via telecommunications.

(17) Educational service agency

The term “educational service agency” means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies.

(18) Elementary school

The term “elementary school” means a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(19) Exemplary teacher

The term “exemplary teacher” means a teacher who—

(A) is a highly qualified teacher such as a master teacher;
(B) has been teaching for at least 5 years in a public or private school or institution of higher education;
(C) is recommended to be an exemplary teacher by administrators and other teachers who are knowledgeable about the individual’s performance;
(D) is currently teaching and based in a public school; and
(E) assists other teachers in improving instructional strategies, improves the skills of other teachers, performs teacher mentoring, develops curricula, and offers other professional development.

(20) Family literacy services

The term “family literacy services” means services provided to participants on a voluntary basis that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.
(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.
(C) Parent literacy training that leads to economic self-sufficiency.
(D) An age-appropriate education to prepare children for success in school and life experiences.

(21) Free public education

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

(A) at public expense, under public supervision and direction, and without tuition charge; and
(B) as elementary school or secondary school education as determined under applicable State law, except that the term does not include any education provided beyond grade 12.

(22) Gifted and talented

The term “gifted and talented”, when used with respect to students, children, or youth, means students, children, or youth who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services or activities not ordinarily provided by the school in order to fully develop those capabilities.

(23) Highly qualified

The term “highly qualified”—

(A) when used with respect to any public elementary school or secondary school teacher teaching in a State, means that—

(i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law; and
(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

(B) when used with respect to—

(i) an elementary school teacher who is new to the profession, means that the teacher—
(I) holds at least a bachelor's degree; and

(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

(ii) a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

(I) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(ii) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

(C) when used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor's degree and—

(i) has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or

(ii) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that—

(I) is set by the State for both grade appropriate academic subject matter knowledge and teaching skills;

(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

(III) provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;

(IV) is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

(V) takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

(VI) is made available to the public upon request; and

(VII) may involve multiple, objective measures of teacher competency.

(24) Institution of higher education

The term “institution of higher education” has the meaning given that term in section 1001(a) of this title.

(25) Limited English proficient

The term “limited English proficient”, when used with respect to an individual, means an individual—

(A) who is aged 3 through 21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

(C)(i) who was not born in the United States or whose native language is a language other than English;

(ii) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(ii)(I) who is Native American or Alaska Native, or a native resident of the outlying areas; and

(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) the ability to meet the State's proficiency level of achievement on State assessments described in section 6311(b)(3) of this title;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(26) Local educational agency

(A) In general

The term “local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(B) Administrative control and direction

The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the
student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(D) Educational service agencies
The term includes educational service agencies and consortia of those agencies.

(E) State educational agency
The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

(27) Mentoring
The term “mentoring”, except when used to refer to teacher mentoring, means a process by which a responsible adult, postsecondary student, or secondary school student works with a child to provide a positive role model for the child, to establish a supportive relationship with the child, and to provide the child with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of the child to become a responsible adult.

(28) Native American and Native American language
The terms “Native American” and “Native American language” have the same meaning given those terms in section 2802 of title 25.1

(29) Other staff
The term “other staff” means pupil services personnel, librarians, career guidance and counseling personnel, education aides, and other instructional and administrative personnel.

(30) Outlying area
The term “outlying area” means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and for the purpose of section 6301(b) of this title and any other discretionary grant program under this chapter, includes the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau until an agreement for the extension of United States education assistance under the Compact of Free Association for each of the freely associated states becomes effective after January 8, 2002.

(31) Parent
The term “parent” includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare).

(32) Parental involvement
The term “parental involvement” means the participation of parents in regular, two-way, and meaningful communication involving student academic learning and other school activities, including ensuring—

(A) that parents play an integral role in assisting their child’s learning;
(B) that parents are encouraged to be actively involved in their child’s education at school;
(C) that parents are full partners in their child’s education and are included, as appropriate, in decisionmaking and on advisory committees to assist in the education of their child;
(D) the carrying out of other activities, such as those described in section 6318 of this title.

(33) Poverty line
The term “poverty line” means the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of title 42) applicable to a family of the size involved.

(34) Professional development
The term “professional development” —

(A) includes activities that—
(i) improve and increase teachers’ knowledge of the academic subjects the teachers teach, and enable teachers to become highly qualified;
(ii) are an integral part of broad schoolwide and districtwide educational improvement plans;
(iii) give teachers, principals, and administrators the knowledge and skills to provide students with the opportunity to meet challenging State academic content standards and student academic achievement standards;
(iv) improve classroom management skills;
(v) are high quality, sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction and the teacher’s performance in the classroom; and
(vi) support the recruiting, hiring, and training of highly qualified teachers, including teachers who became highly qualified through State and local alternative routes to certification;
(vii) advance teacher understanding of effective instructional strategies that are—
(I) based on scientifically based research (except that this subclause shall not apply to activities carried out under part D of subchapter II of this chapter); and
(II) strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers; and
(viii) are aligned with and directly related to—
(I) State academic content standards, student academic achievement standards, and assessments; and
(II) the curricula and programs tied to the standards described in subclause (I) except that this subclause shall not
apply to activities described in clauses (ii) and (iii) of section 6623(3)(B)\(^2\) of this title;

(ix) are developed with extensive participation of teachers, principals, parents, and administrators of schools to be served under this chapter;

(x) are designed to give teachers of limited English proficient children, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

(xi) to the extent appropriate, provide training for teachers and principals in the use of technology so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and core academic subjects in which the teachers teach;

(xii) as a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

(xiii) provide instruction in methods of teaching children with special needs;

(xiv) include instruction in the use of data and assessments to inform and instruct classroom practice; and

(xv) include instruction in ways that teachers, principals, pupil services personnel, and school administrators may work more effectively with parents; and

(B) may include activities that—

(i) involve the forming of partnerships with institutions of higher education to establish school-based teacher training programs that provide prospective teachers and beginning teachers with an opportunity to work under the guidance of experienced teachers and college faculty;

(ii) create programs to enable paraprofessionals (assisting teachers employed by a local educational agency receiving assistance under part A of subchapter I of this chapter) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers; and

(iii) provide follow-up training to teachers who have participated in activities described in subparagraph (A) or another clause of this subparagraph that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom.

(35) Public telecommunications entity

The term “public telecommunications entity” has the meaning given that term in section 397(12) of title 47.

(36) Pupil services personnel; pupil services

(A) Pupil services personnel

The term “pupil services personnel” means school counselors, school social work-ers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 1401 of this title) as part of a comprehensive program to meet student needs.

(B) Pupil services

The term “pupil services” means the services provided by pupil services personnel.

(37) Scientifically based research

The term “scientifically based research”—

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(38) Secondary school

The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

(39) Secretary

The term “Secretary” means the Secretary of Education.

State\(^3\)

The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

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\(^2\)So in original. Probably should be section “6623(a)(3)(B)”.

\(^3\)So in original. Probably should be preceded by paragraph designation “(40)”.
(41) State educational agency

The term “State educational agency” means the agency primarily responsible for the State supervision of public elementary and secondary schools.

(42) Teacher mentoring

The term “teacher mentoring” means activities that—
(A) consist of structured guidance and regular and ongoing support for teachers, especially beginning teachers, that—
(i) are designed to help the teachers continue to improve their practice of teaching and to develop their instructional skills; and

(B) may include the establishment of a partnership by a local educational agency with an institution of higher education, another local educational agency, a teacher organization, or another organization.

(43) Technology

The term “technology” means state-of-the-art technology products and services.

§ 7802. Applicability of subchapter

Parts B, C, D, and E of this subchapter do not apply to subchapter VIII of this chapter.


Prior Provisions


§ 7803. Applicability to Bureau of Indian Affairs operated schools

For the purpose of any competitive program under this chapter—
(1) a consortium of schools operated by the Bureau of Indian Affairs;

(2) a school operated under a contract or grant with the Bureau of Indian Affairs in consortium with another contract or grant school or a tribal or community organization; or

(3) a Bureau of Indian Affairs school in consortium with an institution of higher education, a contract or grant school, or a tribal or community organization,

shall be given the same consideration as a local educational agency.


Prior Provisions

Prior sections 7811 to 7818 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


§ 7821. Consolidation of State administrative funds for elementary and secondary education programs

(a) Consolidation of administrative funds

(1) In general

A State educational agency may consolidate the amounts specifically made available to it for State administration under one or more of the programs under paragraph (2) if the State educational agency can demonstrate that the majority of its resources are derived from non-Federal sources.

(2) Applicability

This section applies to any program under this chapter under which funds are authorized to be used for administration, and such other programs as the Secretary may designate.

(b) Use of funds

(1) In general

A State educational agency shall use the amount available under this section for the administration of the programs included in the consolidation under subsection (a) of this section.

(2) Additional uses

A State educational agency may also use funds available under this section for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation under subsection (a) of this section, such as—

(A) the coordination of those programs with other Federal and non-Federal programs;
(B) the establishment and operation of peer-review mechanisms under this chapter;
(C) the administration of this subchapter;
(D) the dissemination of information regarding model programs and practices;
(E) technical assistance under any program under this chapter;
(F) State-level activities designed to carry out this subchapter;
(G) training personnel engaged in audit and other monitoring activities; and
(H) implementation of the Cooperative Audit Resolution and Oversight Initiative of the Department.

(c) Records

A State educational agency that consolidates administrative funds under this section shall not be required to keep separate records, by individual program, to account for costs relating to the administration of programs included in the consolidation under subsection (a) of this section.

(d) Review

To determine the effectiveness of State administration under this section, the Secretary may periodically review the performance of State educational agencies in using consolidated administrative funds under this section and take such steps as the Secretary finds appropriate to ensure the effectiveness of that administration.

(e) Unused administrative funds

If a State educational agency does not use all of the funds available to the agency under this section for administration, the agency may use those funds during the applicable period of availability as funds available under one or more programs included in the consolidation under subsection (a) of this section.

(f) Consolidation of funds for standards and assessment development

In order to develop challenging State academic standards and assessments, a State educational agency may consolidate the amounts described in subsection (a) of this section for those purposes under subchapter I of this chapter.


Prior Provisions

A prior section 9201 of Pub. L. 89–10 was classified to section 7901 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7822. Single local educational agency States

A State educational agency that also serves as a local educational agency shall, in its applications or plans under this chapter, describe how the agency will eliminate duplication in conducting administrative functions.


Prior Provisions

A prior section 9202 of Pub. L. 89–10 was classified to section 7902 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7823. Consolidation of funds for local administration.

(a) General authority

In accordance with regulations of the Secretary and for any fiscal year, a local educational agency, with the approval of its State educational agency, may consolidate and use for the administration of one or more programs under this chapter (or such other programs as the Secretary shall designate) not more than the percentage, established in each program, of the total available for the local educational agency under those programs.

(b) State procedures

Within 1 year after January 8, 2002, a State educational agency shall, in collaboration with local educational agencies in the State, establish procedures for responding to requests from local educational agencies to consolidate administrative funds under subsection (a) of this section and for establishing limitations on the amount of funds under those programs that may be used for administration on a consolidated basis.

(c) Conditions

A local educational agency that consolidates administrative funds under this section for any
fiscal year shall not use any other funds under the programs included in the consolidation for administration for that fiscal year.

(d) Uses of administrative funds

A local educational agency that consolidates administrative funds under this section may use the consolidated funds for the administration of the programs and for uses, at the school district and school levels, comparable to those described in section 7821(b)(2) of this title.

(e) Records

A local educational agency that consolidates administrative funds under this section shall not be required to keep separate records, by individual program, to account for costs relating to the administration of the programs included in the consolidation.

§ 7824. Consolidated set-aside for Department of the Interior funds

(a) General authority

(1) Transfer

The Secretary shall transfer to the Department of the Interior, as a consolidated amount for covered programs, the Indian education programs under part A of subchapter VII of this chapter, and the education for homeless children and youth program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11431 et seq.], the amounts allotted to the Department of the Interior under those programs.

(2) Agreement

(A) In general

The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of the programs specified in paragraph (1), for the distribution and use of those program funds under terms that the Secretary determines best meet the purposes of those programs.

(B) Contents

The agreement shall—

(i) set forth the plans of the Secretary of the Interior for the use of the amount transferred and the achievement measures to assess program effectiveness, including measurable goals and objectives; and

(ii) be developed in consultation with Indian tribes.

(b) Administration

The Department of the Interior may use not more than 1.5 percent of the funds consolidated under this section for its costs related to the administration of the funds transferred under this section.

§ 7841. Purposes

The purposes of this part are—

(1) to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery;

(2) to provide greater flexibility to State and local authorities through consolidated plans, applications, and reporting; and

(3) to enhance the integration of programs under this chapter with State and local programs.

§ 7842. Optional consolidated State plans or applications

(a) General authority

(1) Simplification

In order to simplify application requirements and reduce the burden for State educational agencies under this chapter, the Secretary, in accordance with subsection (b) of this section, shall establish procedures and criteria under which, after consultation with the Governor, a State educational agency may submit a consolidated State plan or a consolidated State application meeting the requirements of this section for—
§ 7843 Consolidated reporting

(a) In general

In order to simplify reporting requirements and reduce reporting burdens, the Secretary shall establish procedures and criteria under which a State educational agency, in consultation with the Governor of the State, may submit a consolidated State annual report.

(b) Contents

The report shall contain information about the programs included in the report, including the performance of the State under those programs, and other matters as the Secretary determines are necessary, such as monitoring activities.

(c) Replacement

The report shall replace separate individual annual reports for the programs included in the consolidated State annual report.

§ 7844 General applicability of State educational agency assurances

(a) Assurances

A State educational agency, in consultation with the Governor of the State, that submits a consolidated State plan or consolidated State application under this chapter, whether separately or under section 7842 of this title, shall have on file with the Secretary a single set of assurances, applicable to each program for which the plan or application is submitted, that provides that—

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

(2)(A) the control of funds provided under each such program and title to property acquired with program funds will be in a public agency, a nonprofit private agency, institution, or organization, or an Indian tribe, if the law authorizing the program provides for assistance to those entities; and

(B) the public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer those funds and property to the extent required by the authorizing law;

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

(A) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program;

(B) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation; and

(C) the adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of the programs;

(4) the State will cooperate in carrying out any evaluation of each such program conducted by or for the Secretary or other Federal officials;

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

(6) the State will—

(A) make reports to the Secretary as may be necessary to enable the Secretary to perform the Secretary’s duties under each such program; and

(B) maintain such records, provide such information to the Secretary, and afford such access to the records as the Secretary may find necessary to carry out the Secretary’s duties; and

(7) before the plan or application was submitted to the Secretary, the State afforded a reasonable opportunity for public comment on
the plan or application and considered such comment.

(b) GEPA provision


PRIOR PROVISIONS

A prior section 9304 of Pub. L. 89–10 was classified to section 7934 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7845. Consolidated local plans or applications

(a) General authority

(i) Consolidated plan

A local educational agency receiving funds under more than one covered program may submit plans or applications to the State educational agency under those programs on a consolidated basis.

(ii) Availability to Governor

The State educational agency shall make any consolidated local plans and applications available to the Governor.

(b) Required consolidated plans or applications

A State educational agency that has an approved consolidated State plan or application under section 7842 of this title may require local educational agencies in the State receiving funds under more than one program included in the consolidated State plan or consolidated State application to submit consolidated local plans or applications under those programs, but may not require those agencies to submit separate plans.

(c) Collaboration

A State educational agency, in consultation with the Governor, shall collaborate with local educational agencies in the State in establishing procedures for the submission of the consolidated State plans or consolidated State applications under this section.

(d) Necessary materials

The State educational agency shall require only descriptions, information, assurances, and other material that are absolutely necessary for the consideration of the local educational agency plan or application.


PRIOR PROVISIONS

A prior section 9305 of Pub. L. 89–10 was classified to section 7935 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7846. Other general assurances

(a) Assurances

Any applicant, other than a State educational agency that submits a plan or application under this chapter, whether separately or pursuant to section 7845 of this title, shall have on file with the State educational agency a single set of assurances, applicable to each program for which a plan or application is submitted, that provides that—

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

(2)(A) the control of funds provided under each such program and title to property acquired with program funds will be in a public agency or in a nonprofit private agency, institution, organization, or Indian tribe, if the law authorizing the program provides for assistance to those entities; and

(B) the public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer the funds and property to the extent required by the authorizing statutes;

(3) the applicant will adopt and use proper methods of administering each such program, including—

(A) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program; and

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

(4) the applicant will cooperate in carrying out any evaluation of each such program conducted by or for the State educational agency, the Secretary, or other Federal officials;

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

(6) the applicant will—

(A) submit such reports to the State educational agency (which shall make the reports available to the Governor) and the Secretary as the State educational agency and Secretary may require to enable the State educational agency and the Secretary to perform their duties under each such program; and

(B) maintain such records, provide such information, and afford such access to the records as the State educational agency (after consultation with the Governor) or the Secretary may reasonably require to carry out the State educational agency’s or the Secretary’s duties; and

(7) before the application was submitted, the applicant afforded a reasonable opportunity for public comment on the application and considered such comment.

(b) GEPA provision


PRIOR PROVISIONS

A prior section 9306 of Pub. L. 89–10 was classified to section 7936 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7861. Waivers of statutory and regulatory requirements

(a) In general

Except as provided in subsection (c) of this section, the Secretary may waive any statutory or regulatory requirement of this chapter for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that—

(1) receives funds under a program authorized by this chapter; and

(2) requests a waiver under subsection (b) of this section.

(b) Request for waiver

(1) In general

A State educational agency, local educational agency, or Indian tribe that desires a waiver shall submit a waiver request to the Secretary that—

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

(B) describes which Federal statutory or regulatory requirements are to be waived and how the waiver of those requirements will—

(i) increase the quality of instruction for students; and

(ii) improve the academic achievement of students;

(C) describes, for each school year, specific, measurable educational goals, in accordance with section 6311(b) of this title, for the State educational agency and for each local educational agency, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually such progress for meeting such goals and outcomes;

(D) explains how the waiver will assist the State educational agency and each affected local educational agency, Indian tribe, or school in reaching those goals; and

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

(2) Additional information

Such requests—

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

(B) shall be developed and submitted—

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

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

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

(c) Restrictions

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

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

(2) maintenance of effort;

(3) comparability of services;

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

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

(6) parental participation and involvement;

(7) applicable civil rights requirements;

(8) the requirement for a charter school under subpart 1 of part B of subchapter V of this chapter;

(9) the prohibitions regarding—

(A) State aid in section 7902 of this title;

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

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

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

(d) Duration and extension of waiver

(1) In general

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

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

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

(B) the extension is in the public interest.

(e) Reports

(1) Local waiver

A local educational agency that receives a waiver under this section shall, at the end of the second year for which a waiver is received under this section and each subsequent year, submit a report to the State educational agency that—

(A) describes the uses of the waiver by the agency or by schools;

(B) describes how schools continued to provide assistance to the same populations served by the programs for which waivers were granted; and

(C) evaluates the progress of the agency and of schools in improving the quality of instruction or the academic achievement of students.

(2) State waiver

A State educational agency that receives reports required under paragraph (1) shall annually submit a report to the Secretary that is based on those reports and contains such information as the Secretary may require.

(3) Indian tribe waiver

An Indian tribe that receives a waiver under this section shall annually submit a report to the Secretary that—

(A) describes the uses of the waiver by schools operated by the tribe; and

(B) evaluates the progress of those schools in improving the quality of instruction or the academic achievement of students.

(4) Report to Congress

Beginning in fiscal year 2002 and for each subsequent year, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report—

(A) summarizing the uses of waivers by State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) describing whether the waivers—

(i) increased the quality of instruction to students; or

(ii) improved the academic achievement of students.

(f) Termination of waivers

The Secretary shall terminate a waiver under this section if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the State or other recipient affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purposes.

(g) Publication

A notice of the Secretary’s decision to grant each waiver under subsection (a) of this section shall be published in the Federal Register and the Secretary shall provide for the dissemination of the notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.


PRIORITY PROVISIONS


Prior sections 7871 to 7874 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


PART E—UNIFORM PROVISIONS

SUBPART 1—PRIVATE SCHOOLS

§ 7881. Participation by private school children and teachers

(a) Private school participation

(1) In general

Except as otherwise provided in this chapter, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b) of this section, who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

(2) Secular, neutral, and nonideological services or benefits

Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

(3) Special rule

Educational services and other benefits provided under this section for private school
children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

(4) Expenditures
Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

(5) Provision of services
An agency, consortium, or entity described in subsection (a)(1) of this section may provide those services directly or through contracts with public and private agencies, organizations, and institutions.

(b) Applicability

(1) In general
This section applies to programs under—
(A) subparts 1 and 3 of part B of subchapter I of this chapter;
(B) part C of subchapter I of this chapter;
(C) part A of subchapter II of this chapter, to the extent provided in paragraph (3);
(D) part B of subchapter II of this chapter;
(E) part D of subchapter II of this chapter;
(F) part A of subchapter III of this chapter;
(G) part A of subchapter IV of this chapter; and
(H) part B of subchapter IV of this chapter.

(2) Definition
For the purpose of this section, the term “eligible children” means children eligible for services under a program described in paragraph (1).

(3) Application
(A) Except as provided in subparagraph (B), this subpart, including subsection (a)(4) of this section, applies to funds awarded to a local educational agency under part A of subchapter II of this chapter only to the extent that the local educational agency uses funds under that part to provide professional development to teachers and others.
(B) Subject to subparagraph (A), the share of the local educational agency’s subgrant under part A of subchapter II of this chapter that is used for professional development and subject to a determination of equitable expenditures under subsection (a)(4) of this section shall not be less than the aggregate share of that agency’s awards that were used for professional development for fiscal year 2001 under section 2203 (1)(B) (as such section was in effect on the day preceding January 8, 2002) and section 306 of the Department of Education Appropriations Act, 2001.

(c) Consultation

(1) In general
To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials during the design and development of the programs under this chapter, on issues such as—
(A) how the children’s needs will be identified;
(B) what services will be offered;
(C) how, where, and by whom the services will be provided;
(D) how the services will be assessed and how the results of the assessment will be used to improve those services;
(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and
(F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

(2) Disagreement
If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

(3) Timing
The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this chapter, and shall continue throughout the implementation and assessment of activities under this section.

(4) Discussion required
The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

(d) Public control of funds

(1) In general
The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer the funds and property.

(2) Provision of services
(A) In general
The provision of services under this section shall be provided—
(i) by employees of a public agency; or
(ii) through contract by the public agency with an individual, association, agency, organization, or other entity.
(B) Independence; public agency

In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.

(C) Commingling of funds prohibited

Funds used to provide services under this section shall not be commingled with non-Federal funds.


§7883. Complaint process for participation of private school children

(a) Procedures for complaints

The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 7881 of this title by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity. The individual or organization shall submit the complaint to the State educational agency for a written resolution by the State educational agency within a reasonable period of time.

(b) Appeals to Secretary

The resolution may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within a reasonable period of time. The appeal shall be accompanied by a copy of the State educational agency’s resolution, and a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 120 days after receipt of the appeal.


§7884. By-pass determination process

(a) Review

(1) In general

(A) Written objections

The Secretary shall not take any final action under section 7882 of this title until the State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity affected by the action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary to show cause why that action should not be taken.

(B) Prior to reduction

Pending final resolution of any investigation or complaint that could result in a determination under this section, the Secretary may withhold from the allocation of the affected State educational agency or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.
(2) Petition for review

(A) Petition

If the affected agency, consortium, or entity is dissatisfied with the Secretary's final action after a proceeding under paragraph (1), the agency, consortium, or entity may, within 60 days after notice of that action, file with the United States court of appeals for the circuit in which the State is located a petition for review of that action.

(B) Transmission

A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary.

(C) Filing

The Secretary, upon receipt of the copy of the petition, shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28.

(3) Findings of fact

(A) In general

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

(B) New or modified findings

Any new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(4) Jurisdiction

(A) In general

Upon the filing of a petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part.

(B) Judgment

The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Determination

Any determination by the Secretary under this section shall continue in effect until the Secretary determines, in consultation with that agency, consortium, or entity and representatives of the affected private school children, teachers, or other educational personnel, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the applicable requirements of section 7881 of this title or any other provision of this chapter.

(c) Payment from State allotment

When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of those services, including the administrative costs of arranging for those services, from the appropriate allocation or allocations under this chapter.

(d) Prior determination

Any by-pass determination by the Secretary under this chapter as in effect on the day preceding January 8, 2002, shall remain in effect to the extent the Secretary determines that that determination is consistent with the purpose of this section.


§ 7885. Prohibition against funds for religious worship or instruction

Nothing contained in this chapter shall be construed to authorize the making of any payment under this chapter for religious worship or instruction.


§ 7886. Private, religious, and home schools

(a) Applicability to nonrecipient private schools

Nothing in this chapter shall be construed to affect any private school that does not receive funds or services under this chapter, nor shall any student who attends a private school that does not receive funds or services under this chapter be required to participate in any assessment referenced in this chapter.

(b) Applicability to home schools

Nothing in this chapter shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this chapter.

(c) Rule of construction on prohibition of Federal control over nonpublic schools

Nothing in this chapter shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this chapter.

(d) Rule of construction on State and local educational agency mandates

Nothing in this chapter shall be construed to require any State educational agency or local educational agency that receives funds under this chapter to mandate, direct, or control the curriculum of a private or home school, regardless of whether or not a home school is treated as a private school under state law, nor shall any funds under this chapter be used for this purpose.


1 So in original. Probably should be “of”.

2 So in original. Probably should be capitalized.
§ 7901. Maintenance of effort

(a) In general
A local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(b) Reduction in case of failure to meet

(1) In general
The State educational agency shall reduce the amount of the allocation of funds under a covered program in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) of this section by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the local agency).

(2) Special rule
No such lesser amount shall be used for computing the effort required under subsection (a) of this section for subsequent years.

(c) Waiver
The Secretary may waive the requirements of this section if the Secretary determines that a waiver would be equitable due to—

(1) exceptional or uncontrollable circumstances, such as a natural disaster; or

(2) a precipitous decline in the financial resources of the local educational agency.


PRIOR PROVISIONS

§ 7902. Prohibition regarding State aid

A State shall not take into consideration payments under this chapter (other than under subchapter VIII) in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.


PRIOR PROVISIONS

§ 7903. Privacy of assessment results

Any results from an individual assessment referred to in this chapter of a student that become part of the education records of the student shall have the protections provided in section 1232g of this title.


PRIOR PROVISIONS

§ 7904. School prayer

(a) Guidance
The Secretary shall provide and revise guidance, not later than September 1, 2002, and of every second year thereafter, to State educational agencies, local educational agencies, and the public on constitutionally protected prayer in public elementary schools and secondary schools, including making the guidance available on the Internet. The guidance shall be reviewed, prior to distribution, by the Office of Legal Counsel of the Department of Justice for verification that the guidance represents the current state of the law concerning constitutionally protected prayer in public elementary schools and secondary schools.

(b) Certification
As a condition of receiving funds under this chapter, a local educational agency shall certify in writing to the State educational agency involved that no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools, as detailed in the guidance required under subsection (a) of this section. The certification shall be provided by October 1 of each year. The State educational agency shall report to the Secretary by November 1 of each year a list of those local educational agencies that have not filed the certification or against which complaints have been made to the State educational agency that the local educational agencies are not in compliance with this section.

(c) Enforcement
The Secretary is authorized and directed to effectuate subsection (b) of this section by issuing, and securing compliance with, rules or orders with respect to a local educational agency that fails to certify, or is found to have certified in bad faith, that no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools.


PRIOR PROVISIONS
§ 7905. Equal access to public school facilities

(a) Short title
This section may be cited as the “Boy Scouts of America Equal Access Act”.

(b) In general

(1) Equal access
Notwithstanding any other provision of law, no public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or a limited public forum and that receives funds made available through the Department shall deny equal access or a fair opportunity to meet, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 (as a patriotic society).

(2) Voluntary sponsorship
Nothing in this section shall be construed to require any school, agency, or a school served by an agency to sponsor any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 (as a patriotic society).

(c) Termination of assistance and other action

(1) Departmental action
The Secretary is authorized and directed to effectuate subsection (b) of this section by issuing and securing compliance with rules or orders with respect to a public elementary school, public secondary school, local educational agency, or State educational agency that receives funds made available through the Department and that denies equal access, or a fair opportunity to meet, or discriminates, as described in subsection (b) of this section.

(2) Procedure
The Secretary shall issue and secure compliance with the rules or orders, under paragraph (1), through the Office for Civil Rights and in a manner consistent with the procedure used by a Federal department or agency under section 2000d-1 of title 42. If the public school or agency does not comply with the rules or orders, then notwithstanding any other provision of law, no funds made available through the Department shall be provided to a school that fails to comply with such rules or orders or to any agency or school served by an agency that fails to comply with such rules or orders.

(3) Judicial review
Any action taken by the Secretary under paragraph (1) shall be subject to the judicial review described in section 2000d-2 of title 42. Any person aggrieved by the action may obtain that judicial review in the manner, and to the extent, provided in section 2000d-2 of title 42.

(d) Definition and rule

(1) Definition
In this section, the term “youth group” means any group or organization intended to serve young people under the age of 21.

(2) Rule
For the purpose of this section, an elementary school or secondary school has a limited public forum whenever the school involved grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.


§ 7906. General prohibitions

(a) Prohibition
None of the funds authorized under this chapter shall be used—

(1) to develop or distribute materials, or operate programs or courses of instruction directed at youth, that are designed to promote or encourage sexual activity, whether homosexual or heterosexual;

(2) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds;

(3) to provide sex education or HIV-prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence; or

(4) to operate a program of contraceptive distribution in schools.

(b) Local control
Nothing in this section shall be construed to—

(1) authorize an officer or employee of the Federal Government to mandate, direct, review, or control a State, local educational agency, or school’s instructional content, curriculum, and related activities;

(2) limit the application of the General Education Provisions Act [20 U.S.C. 1221 et seq.];

(3) require the distribution of scientifically or medically false or inaccurate materials or to prohibit the distribution of scientifically or medically true or accurate materials; or

(4) create any legally enforceable right.


REFERENCES IN TEXT

§ 7907. Prohibitions on Federal Government and use of Federal funds

(a) General prohibition

Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this chapter.

(b) Prohibition on endorsement of curriculum

Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this chapter may be used by the Department to endorse, approve, or sanction any curriculum designed to be used in an elementary school or secondary school.

(c) Prohibition on requiring Federal approval or certification of standards

(1) In general

Notwithstanding any other provision of Federal law, no State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this chapter.

(2) Rule of construction

Nothing in this subsection shall be construed to affect requirements under subchapter I of this chapter or part A of subchapter VI of this chapter.

(d) Rule of construction on building standards

Notwithstanding any other provision of Federal law, no State shall be required to have building standards or building codes approved or certified by the Federal Government, in order to receive assistance under this chapter.

§ 7909. Prohibition on federally sponsored testing

(a) General prohibition

Notwithstanding any other provision of Federal law and except as provided in subsection (b) of this section, no funds provided under this chapter to the Secretary or to the recipient of any award may be used to develop, pilot test, field test, implement, administer, or distribute any federally sponsored national test in reading, mathematics, or any other subject, unless specifically and explicitly authorized by law.

(b) Exceptions

Subsection (a) of this section shall not apply to international comparative assessments developed under the authority of section 9543(a)(5) of this title and administered to only a representative sample of pupils in the United States and in foreign nations.

PRIOR PROVISIONS

§ 7910  TITLE 20—EDUCATION

PRIOR PROVISIONS

AMENDMENTS
2002—Subsec. (b), Pub. L. 107–278 substituted “section 9533(a)(6) of this title” for “section 9003(a)(6) of this title”.

§ 7910. Limitations on national testing or certification for teachers

(a) Mandatory national testing or certification of teachers

Notwithstanding any other provision of this chapter or any other provision of law, no funds available to the Department or otherwise available under this chapter may be used for any purpose relating to a mandatory nationwide test or certification of teachers or education paraprofessionals, including any planning, development, implementation, or administration of such test or certification.

(b) Prohibition on withholding funds

The Secretary is prohibited from withholding funds from any State educational agency or local educational agency if the State educational agency or local educational agency fails to adopt a specific method of teacher or paraprofessional certification.


PRIOR PROVISIONS

§ 7911. Prohibition on nationwide database

Nothing in this chapter (other than section 6398(b) of this title) shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this chapter.


PRIOR PROVISIONS

§ 7912. Unsafe school choice option

(a) Unsafe school choice policy

Each State receiving funds under this chapter shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

(b) Certification

As a condition of receiving funds under this chapter, a State shall certify in writing to the Secretary that the State is in compliance with this section.


PRIOR PROVISIONS

§ 7913. Prohibition on discrimination

(a) In general

Nothing in this chapter shall be construed to require, authorize, or permit, the Secretary, or a State educational agency, local educational agency, or school to grant to a student, or deny or impose upon a student, any financial or educational benefit or burden, in violation of the fifth or 14th amendments to the Constitution or other law relating to discrimination in the provision of federally funded programs or activities.


§ 7914. Civil rights

(a) Rule of construction

Nothing in this chapter shall be construed to permit discrimination on the basis of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)), national origin, or disability in any program funded under this chapter.

(b) Rule of construction

Nothing in this chapter shall be construed to require the disruption of services to a child or the displacement of a child enrolled in or participating in a program administered by an eligible entity, as defined in section 6316 of this title and part B of subchapter V of this chapter, at the commencement of the entity’s participation in a grant under section 6316 of this title or part B of subchapter V of this chapter.


REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Paty Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of this title. For complete classification of title IX to the Code, see Short Title Note set out under section 1681 of this title and Tables.

§ 7916. Severability

If any provision of this chapter is held invalid, the remainder of this chapter shall be unaffected thereby.


Prior Provisions

Sections 7931 to 7938 were omitted in the general amendment of this subchapter by Pub. L. 107–110.


PART F—EVALUATIONS

§ 7941. Evaluations

(a) Reservation of funds

Except as provided in subsections (b) and (c) of this section, the Secretary may reserve not more than 0.5 percent of the amount appropriated to carry out any categorical program and demonstration project authorized under this chapter—

(1) to conduct—

(A) comprehensive evaluations of the program or project; and

(B) studies of the effectiveness of the program or project and its administrative impact on schools and local educational agencies;

(2) to evaluate the aggregate short- and long-term effects and cost efficiencies across Federal programs assisted or authorized under this chapter and related Federal preschool, elementary, and secondary programs under any other Federal law; and

(3) to increase the usefulness of evaluations of grant recipients in order to ensure the continuous progress of the program or project by improving the quality, timeliness, efficiency, and use of information relating to performance under the program or project.

(b) Subchapters I and III excluded

The Secretary may not reserve under subsection (a) of this section funds appropriated to carry out any program authorized under subchapter I or subchapter III of this chapter.

(c) Evaluation activities authorized elsewhere

If, under any other provision of this chapter (other than subchapter I), funds are authorized to be reserved or used for evaluation activities with respect to a program or project, the Secretary may not reserve additional funds under this section for the evaluation of that program or project.


Subchapter X—Programs of National Significance

PART A—Fund for the Improvement of Education


PART B—Gifted and Talented Children


§§ 8061 to 8067

TITLE 20—EDUCATION

related to construction of provisions. See section 7253b
of this title.
Section 8034, Pub. L. 89–10, title X, § 10204, as added
related to authorized programs. See section 7253c of
this title.
Section 8035, Pub. L. 89–10, title X, § 10205, as added
set forth program priorities. See section 7253d of this
title.
Section 8036, Pub. L. 89–10, title X, § 10206, as added
set forth general provisions. See section 7253e of this
title.
Section 8037, Pub. L. 89–10, title X, § 10207, as added
authorized appropriations.

PART C—PUBLIC CHARTER SCHOOLS
SUBPART 1—BASIC CHARTER SCHOOL GRANT
PROGRAM

Section 8061, Pub. L. 89–10, title X, § 10301, as added
2682; Pub. L. 106–554, § 1(a)(1) [title III, § 322(b)(1)], Dec.
21, 2000, 114 Stat. 2763, 2763A–61, set forth findings and
purpose. See section 7221 of this title.
Section 8062, Pub. L. 89–10, title X, § 10302, as added
2682; Pub. L. 106–554, § 1(a)(1) [title III, § 322(b)(1)], Dec.
21, 2000, 114 Stat. 2763, 2763A–61, authorized charter
school grant program. See section 7221a of this title.
Section 8063, Pub. L. 89–10, title X, § 10303, as added
2684; Pub. L. 106–554, § 1(a)(1) [title III, § 322(b)(1)], Dec.
See section 7221b of this title.
Section 8064, Pub. L. 89–10, title X, § 10304, as added
Stat. 2685, 2689; Pub. L. 106–554, § 1(a)(1) [title III,
§ 322(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–61, related
to administration. See section 7221c of this title.
Section 8065, Pub. L. 89–10, title X, § 10305, as added
2686; Pub. L. 106–554, § 1(a)(1) [title III, § 322(b)(1)], Dec.
Section 8065a, Pub. L. 89–10, title X, § 10306, as added
and for successive enrollment expansions. See section
7221e of this title.
Section 8065b, Pub. L. 89–10, title X, § 10307, as added
amended Pub. L. 106–554, § 1(a)(1) [title III, § 322(b)(2)],
Dec. 21, 2000, 114 Stat. 2763, 2763A–61, related to solicitation of input from charter school operators. See section
7221f of this title.
Section 8065c, Pub. L. 89–10, title X, § 10308, as added
Section 8065d, Pub. L. 89–10, title X, § 10309, as added
amended Pub. L. 106–554, § 1(a)(1) [title III, § 322(b)(3)],
Section 8066, Pub. L. 89–10, title X, § 10310, formerly
§ 10306, as added Pub. L. 103–382, title I, § 101, Oct. 20,
1994, 108 Stat. 3829; renumbered § 10310 and amended,

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Section 8067, Pub. L. 89–10, title X, § 10311, formerly
§ 10307, as added Pub. L. 103–382, title I, § 101, Oct. 20,
1994, 108 Stat. 3830; renumbered § 10311 and amended,
SUBPART 2—CREDIT ENHANCEMENT INITIATIVES TO
ASSIST CHARTER SCHOOL FACILITY ACQUISITION,
CONSTRUCTION, AND RENOVATION

Section 8071, Pub. L. 89–10, title X, § 10321, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
Section 8071a, Pub. L. 89–10, title X, § 10322, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
2000, 114 Stat. 2763, 2763A–57, related to grants to eligible entities. See section 7223a of this title.
Section 8071b, Pub. L. 89–10, title X, § 10323, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
See section 7223b of this title.
Section 8071c, Pub. L. 89–10, title X, § 10324, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
objectives. See section 7223c of this title.
Section 8071d, Pub. L. 89–10, title X, § 10325, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
See section 7223d of this title.
Section 8071e, Pub. L. 89–10, title X, § 10326, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
2000, 114 Stat. 2763, 2763A–59, related to limitation on
administrative costs. See section 7223e of this title.
Section 8071f, Pub. L. 89–10, title X, § 10327, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
Section 8071g, Pub. L. 89–10, title X, § 10328, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
2000, 114 Stat. 2763, 2763A–60, related to full faith and
credit for grantee obligations. See section 7223g of this
title.
Section 8071h, Pub. L. 89–10, title X, § 10329, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
2000, 114 Stat. 2763, 2763A–60, related to recovery of
funds. See section 7223h of this title.
Section 8071i, Pub. L. 89–10, title X, § 10330, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
2000, 114 Stat. 2763, 2763A–61, defined terms. See section
7223i of this title.
Section 8071j, Pub. L. 89–10, title X, § 10331, as added
Pub. L. 106–554, § 1(a)(1) [title III, § 322(a)(2)], Dec. 21,
See section 7223j of this title.

PART D—ARTS IN EDUCATION
SUBPART 1—ARTS EDUCATION


X,

Section, Pub. L. 89–10, title X, § 10401, as added Pub.
amended Pub. L. 104–208, div. A, title I, § 101(e) [title
3009–313, related to support for arts education. See section 7271 of this title.




PART E—INEXPENSIVE BOOK DISTRIBUTION PROGRAM


PART F—CIVIC EDUCATION


PART G—ALLEN J. ELLENDER FELLOWSHIP PROGRAM


SUBPART 1—PROGRAM FOR MIDDLE AND SECONDARY SCHOOL STUDENTS


PART B—NATIONAL DIFFUSION NETWORK

Codification


§§ 8651, 8652. Transferred

Codification


PART C—EISENHOWER REGIONAL MATHEMATICS AND SCIENCE EDUCATION CONSORTIA

Codification


§§ 8671 to 8678. Transferred

Codification


§ 8701. Transferred

Codification


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Part A—Definitions


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L. 106–554, § 1(a)(4) [div. B, title XVI, § 1606(a)], Dec. 21,
2000, 114 Stat. 2763, 2763A–334, defined terms. See section
7801 of this title.
Section 8802, Pub. L. 89–10, title XIV, § 14102, as added
related to applicability of subchapter. See section 7802
of this title.
Section 8803, Pub. L. 89–10, title XIV, § 14103, as added
related to applicability of chapter to Bureau of Indian
Affairs operated schools. See section 7803 of this title.

PART B—FLEXIBILITY IN THE USE OF
ADMINISTRATIVE AND OTHER FUNDS
§§ 8821 to 8826. Repealed. Pub. L. 107–110, title X,
Section 8821, Pub. L. 89–10, title XIV, § 14201, as added
related to consolidation of State administrative funds
for elementary and secondary education programs. See
section 7821 of this title.
Section 8822, Pub. L. 89–10, title XIV, § 14202, as added
related to single local educational agency States. See
section 7822 of this title.
Section 8823, Pub. L. 89–10, title XIV, § 14203, as added
related to consolidation of funds for local administration. See section 7823 of this title.
Section 8824, Pub. L. 89–10, title XIV, § 14204, as added
related to administrative funds studies.
Section 8825, Pub. L. 89–10, title XIV, § 14205, as added
related to consolidated set-aside for Department of the
Interior funds. See section 7824 of this title.
Section 8826, Pub. L. 89–10, title XIV, § 14206, as added
related to availability of unneeded program funds.

PART C—COORDINATION OF PROGRAMS; CONSOLIDATED STATE AND LOCAL PLANS AND APPLICATIONS

Section 8851, Pub. L. 89–10, title XIV, § 14301, as added
set forth purpose of part. See section 7841 of this title.
Section 8852, Pub. L. 89–10, title XIV, § 14302, as added
3125, related to optional consolidated State plans or applications. See section 7842 of this title.
Section 8853, Pub. L. 89–10, title XIV, § 14303, as added
related to general applicability of State educational
agency assurances. See section 7844 of this title.
Section 8854, Pub. L. 89–10, title XIV, § 14304, as added
required report on additional coordination.
Section 8855, Pub. L. 89–10, title XIV, § 14305, as added
related to consolidated local plans or applications. See
section 7845 of this title.
Section 8856, Pub. L. 89–10, title XIV, § 14306, as added
related to other general assurances. See section 7846 of
this title.
Section 8857, Pub. L. 89–10, title XIV, § 14307, as added

3126, related to relationship of State and local plans to

PART D—WAIVERS

X,

Section, Pub. L. 89–10, title XIV, § 14401, as added Pub.

PART E—UNIFORM PROVISIONS
Section 8891, Pub. L. 89–10, title XIV, § 14501, as added
related to maintenance of effort. See section 7901 of
this title.
Section 8892, Pub. L. 89–10, title XIV, § 14502, as added
related to prohibition regarding State aid. See section
7902 of this title.
Section 8893, Pub. L. 89–10, title XIV, § 14503, as added
amended Pub. L. 105–277, div. A, § 101(f) [title VIII,
teachers. See section 7881 of this title.
Section 8894, Pub. L. 89–10, title XIV, § 14504, as added
set forth standards for by-pass of requirements. See
section 7882 of this title.
Section 8895, Pub. L. 89–10, title XIV, § 14505, as added
related to complaint process for participation of private school children. See section 7883 of this title.
Section 8896, Pub. L. 89–10, title XIV, § 14506, as added
related to by-pass determination process. See section
7884 of this title.
Section 8897, Pub. L. 89–10, title XIV, § 14507, as added
prohibited payments for religious worship or instruction. See section 7885 of this title.
Section 8898, Pub. L. 89–10, title XIV, § 14508, as added
related to applicability of chapter to home schools. See
section 7886 of this title.
Section 8899, Pub. L. 89–10, title XIV, § 14509, as added
related to construction of provisions prohibiting Federal control of nonrecipient nonpublic schools. See section 7886 of this title.
Section 8900, Pub. L. 89–10, title XIV, § 14510, as added
related to school prayer. See section 7904 of this title.
Section 8901, Pub. L. 89–10, title XIV, § 14511, as added
set forth general prohibitions. See section 7906 of this
title.
Section 8902, Pub. L. 89–10, title XIV, § 14512, as added
contained prohibition on Federal mandates, direction,
and control. See section 7907 of this title.
Section 8903, Pub. L. 89–10, title XIV, § 14513, as added
required report on changes made by the Improving
America’s Schools Act of 1994.
Section 8904, Pub. L. 89–10, title XIV, § 14514, as added
related to participation in Goals 2000: Educate America
Act programs.


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9161. Services for Native Americans.
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9165. Laura Bush 21st Century Librarian Program.

SUBCHAPTER III—MUSEUM SERVICES

9171. Purpose.
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9173. Museum services activities.
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9175. Authorization of appropriations.

(7) Museum and Library Services Board

The term “Museum and Library Services Board” means the National Museum and Library Services Board established under section 9105a of this title.

(8) Obscene

The term “obscene” means, with respect to a project, that—

(A) the average person, applying contemporary community standards, would find that such project, when taken as a whole, appeals to the prurient interest;

(B) such project depicts or describes sexual conduct in a patently offensive way; and

(C) such project, when taken as a whole, lacks serious literary, artistic, political, or scientific value.

(Ref:


REFERENCES IN TEXT

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

PRIORITY PROVISIONS


AMENDMENTS

2010—Pars. (2) to (8). Pub. L. 111–340 added par. (2) and redesignated former pars. (2) to (7) as (3) to (8), respectively.

2003—Par. (1). Pub. L. 108–81, §101(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “The term ‘Commission’ means the National Commission on Libraries and Information Science established under section 1502 of this title.”

Pars. (3) to (5). Pub. L. 108–81, §101(2)–(4), added pars. (3) and (4), redesignated former par. (3) as (5), and struck out heading and text of former par. (4). Text read as follows: “The term ‘Museum Board’ means the National Museum Services Board established under section 9175 of this title.”


EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–81, title V, §506, Sept. 25, 2003, 117 Stat. 1065, provided that: “The amendments made by this Act [enacting sections 9105a and 9107 to 9109 of this title, amending this section, sections 956a, 974, 1503 to 1505, 9102, 9103, 9106, 9121 to 9123, 9131, 9134, 9141, 9162, 9171 to 9173, and 9176 of this title, and section 170 of Title 26, Internal Revenue Code, repealing sections 974 and 9175 of this title, enacting provisions set out as a note under this section, and repealing provisions set out as notes under sections 9102, 9103, and 9105 of this title] shall take effect on the date of enactment of this Act [Sept. 25, 2003], except that the amendments made by sections 203, 204, and 305 of this Act [amending sections 9123, 9131, and 9176 of this title] shall take effect on October 1, 2003.”

SHORT TITLE OF 2010 AMENDMENT


(Ref:


SUBCHAPTER I—GENERAL PROVISIONS

§9101. General definitions

As used in this chapter:

(1) Determined to be obscene

The term “determined to be obscene” means determined, in a final judgment of a court of record and of competent jurisdiction in the United States, to be obscene.

(2) Digital literacy skills

The term “digital literacy skills” means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

(3) Director

The term “Director” means the Director of the Institute appointed under section 9103 of this title.

(4) Final judgment

The term “final judgment” means a judgment that is—

(A) not reviewed by any other court that has authority to review such judgment; or

(B) not reviewable by any other court.

(5) Indian tribe

The term “Indian tribe” means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(6) Institute

The term “Institute” means the Institute of Museum and Library Services established under section 9102 of this title.
of this chapter and sections 9110 and 9111 of this title, amending this section and sections 953, 958, 9103, 9105, 9165a, 9107, 9108, 9121, 9123, 9131, 9134, 9141, 9162, 9171 to 9173, and 9176 of this title, repealing chapter 34 of this title, and enacting provisions set out as notes under section 9102 of this title may be cited as the ‘Museum and Library Services Act of 2010’.

Short Title of 2008 Amendment
Pub. L. 109–81, §1, Sept. 25, 2003, 117 Stat. 991, provided that: ‘‘This Act [amending sections 9105a and 9107 to 9109 of this title, amending this section, sections 956a, 974, 1503 to 1505, 9102, 9103, 9104, 9120 to 9123, 9131, 9134, 9141, 9162, 9171 to 9173, and 9176 of this title, and repealing chapter 34 of this title, and enacting provisions set out as notes under this section and section 956a of this title, and repealing provisions set out as notes under sections 9102, 9103, and 9105 of this title] may be cited as the ‘Museum and Library Services Act of 2003’.’’

Short Title of 1997 Amendment

Short Title of 1996 Amendment
Pub. L. 104–208, div. A, title I, §101(e) [title VII, §701], Sept. 30, 1996, 110 Stat. 3009–233, 3009–293, provided that: ‘‘This title [enacting this chapter, amending sections 10680, 1504, 1505, 3421, 3475, 3509, 3621, 6661, 6664, 6689, 6813, 8091, 8102, and 8104 of this title, section 3315 of Title 5, Government Organization and Employees, section 2763–3 of former Title 40, Public Buildings, Property, and Works, section 214 of former Title 40, Appendix, section 3338 of Title 42, The Public Health and Welfare, section 254 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and section 1668 of Title 48, Territories and Possessions, repealing sections 351 to 366g, 1021 to 1047, 1221, and 700 to 7005 of this title, enacting provisions set out under this section and sections 9102, 9103, and 9105 of this title, and repealing provisions set out as notes under sections 9102, 9103, and 9105 of this title] may be cited as the ‘Museum and Library Services Act of 1996’.’’

Short Title


§9102. Institute of Museum and Library Services
(a) Establishment
There is established, within the National Foundation on the Arts and the Humanities, an Institute of Museum and Library Services.

(b) Offices
The Institute shall consist of an Office of Museum Services and an Office of Library Services.

(c) Museum and Library Services Board
There shall be a National Museum and Library Services Board within the Institute, as provided under section 9105a of this title.

§9103. Director of Institute
(a) Appointment
(1) In general
The Institute shall be headed by a Director, appointed by the President, by and with the advice and consent of the Senate.
Title 20—Education

(b) Compensation

The Director may be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

c) Duties and powers

(1) Primary responsibility

The Director shall have primary responsibility for the development and implementation of policy to ensure the availability of museum, library, and information services adequate to meet the essential information, education, research, economic, cultural, and civic needs of the people of the United States.

(2) Duties

In carrying out the responsibility described in paragraph (1), the Director shall—

(A) advise the President, Congress, and other Federal agencies and offices on museum, library, and information services in order to ensure the creation, preservation, organization, and dissemination of knowledge;

(B) engage Federal, State, and local governmental agencies and private entities in assessing the museum, library, and information services needs of the people of the United States, and coordinate the development of plans, policies, and activities to meet such needs effectively;

(C) carry out programs of research and development, data collection, and financial assistance to extend and improve the museum, library, and information services of the people of the United States; and

(D) ensure that museum, library, and information services are fully integrated into the information and education infrastructures of the United States.

d) Nondelegation

The Director shall not delegate any of the functions of the Director to any person who is not an officer or employee of the Institute.

e) Interagency agreements

The Director may—

(1) enter into interagency agreements to promote or assist with the museum, library, and information services-related activities of other Federal agencies, on either a reimbursable or non-reimbursable basis; and

(2) use funds appropriated under this chapter for the costs of such activities.

(f) Coordination

The Director shall ensure coordination of the policies and activities of the Institute with the policies and activities of other agencies and offices of the Federal Government having interest in and responsibilities for the improvement of museums and libraries and information services. Where appropriate, the Director shall ensure that such policies and activities are coordinated with—

(1) activities under section 6383 of this title;

(2) programs and activities under the Head Start Act (42 U.S.C. 9831 et seq.) (including programs and activities under subparagraphs (H)(vii) and (J)(iii) of section 641(d)(2) of such Act) (42 U.S.C. 9836(d)(2));

(3) activities under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.) (including activities under section 134(c) of such Act) (29 U.S.C. 2864(c)); and

(4) Federal programs and activities that increase the capacity of libraries and museums to act as partners in economic and community development, education and research, improving digital literacy skills, and disseminating health information.

g) Interagency collaboration

The Director shall work jointly with the individuals heading relevant Federal departments and agencies, including the Secretary of Labor, the Secretary of Education, the Administrator of the Small Business Administration, the Chairman of the Federal Communications Commission, the Director of the National Science Foundation, the Secretary of Health and Human Services, the Secretary of State, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment of the Humanities, and the Director of the Office of Management and Budget, or the designees of such individuals, on—

(1) initiatives, materials, or technology to support workforce development activities undertaken by libraries;

(2) resource and policy approaches to eliminate barriers to fully leveraging the role of libraries and museums in supporting the early learning, literacy, lifelong learning, digital literacy, workforce development, and education needs of the people of the United States; and

(3) initiatives, materials, or technology to support educational, cultural, historical, scientific, environmental, and other activities undertaken by museums.

(h) Regulatory authority

The Director may promulgate such rules and regulations as are necessary and appropriate to implement the provisions of this chapter.

(i) Application procedures

(1) In general

In order to be eligible to receive financial assistance under this chapter, a person or agency shall submit an application in accordance with procedures established by the Director by regulation.
§ 9104  TITLE 20—EDUCATION  Page 1568

(2) Review and evaluation

The Director shall establish procedures for reviewing and evaluating applications submitted under this chapter. Actions of the Institute and the Director in the establishment, modification, and revocation of such procedures under this chapter are vested in the discretion of the Institute and the Director. In establishing such procedures, the Director shall ensure that the criteria by which applications are evaluated are consistent with the purposes of this chapter, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.

(3) Treatment of projects determined to be obscene

(A) In general

The procedures described in paragraph (2) shall include provisions that clearly specify that obscenity is without serious literary, artistic, political, or scientific merit, and is not protected speech.

(B) Prohibition

No financial assistance may be provided under this chapter with respect to any project that is determined to be obscene.

(C) Treatment of application disapproval

The disapproval of an application by the Director shall not be construed to mean, and shall not be considered as evidence that, the project for which the applicant requested financial assistance is or is not obscene.

§ 9105. Personnel

(a) In general

The Director may, in accordance with applicable provisions of title 5, appoint and determine the compensation of such employees as the Director determines to be necessary to carry out the duties of the Institute.

(b) Appointment and compensation of technical and professional employees

(1) In general

Subject to paragraph (2), the Director may appoint without regard to the provisions of title 5 governing the appointment in the competitive service and may compensate without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title (relating to the classification and General Schedule pay rates), such technical and professional em-

REPUBLICAN

PRESIDENT'S OFFICE

EDUCATION

JANUARY

2003

Amendments

2010—Subsec. (c). Pub. L. 111–340, § 102(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "The Director shall perform such duties and exercise such powers as may be prescribed by law, including awarding financial assistance for activities described in this chapter."

Subsecs. (e) to (g). Pub. L. 111–340, § 102(2), redesignated subsecs. (f) and (g) as (h) and (i), respectively.

2003—Subsec. (e). Pub. L. 108–81, § 105(1), inserted at end "Where appropriate, the Director shall ensure that activities under subchapter II of this chapter are coordinated with activities under section 6383 of this title."

Subsecs. (f), (g). Pub. L. 108–81, § 103(2), added subsecs. (f) and (g).

SERVICE OF INDIVIDUALS SERVING ON SEPTEMBER 30, 1996

Pub. L. 104–208, div. A, title I, § 101(e) [title VII, § 705], Sept. 30, 1996, 110 Stat. 3009–233, 3009–311, which provided that the individual who was appointed to the position of Director of the Institute of Museum Services and was serving in such position on the day before Sept. 30, 1996, would serve, at the pleasure of the President, as the first Director of the Institute of Museum and Library Services, was repealed by Pub. L. 108–81, title V, § 585(b), Sept. 25, 2003, 117 Stat. 1004.

§ 9104. Deputy Directors

The Office of Library Services shall be headed by a Deputy Director, who shall be appointed by the Director from among individuals who have a graduate degree in library science and expertise in library and information services. The Office of Museum Services shall be headed by a Deputy Director, who shall be appointed by the Director from among individuals who have expertise in museum services.

Prior provisions


Prior provisions


Amendments

2010—Subsec. (c). Pub. L. 111–340, § 102(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "The Director shall ensure coordination of the policies and activities of the Institute with the policies and activities of other agencies and offices of the Federal Government having interest in and responsibilities for the improvement of museums and libraries and information services. Where appropriate, the Director shall ensure that activities under subchapter II of this chapter are coordinated with activities under section 6383 of this title."

Former subsecs. (f) and (g) redesignated (h) and (i), respectively.

2003—Subsec. (e). Pub. L. 108–81, § 105(1), inserted at end "Where appropriate, the Director shall ensure that activities under subchapter II of this chapter are coordinated with activities under section 6383 of this title."

Subsecs. (f), (g). Pub. L. 108–81, § 103(2), added subsecs. (f) and (g).

References in text

This chapter, referred to in subsec. (e)(2) and the second place it appears in subsec. (i)(2), was in the original "this Act" and was translated as reading "this title", meaning title II of Pub. L. 94–462, known as the Museum and Library Services Act, to reflect the probable intent of Congress.


Prior provisions


Prior provisions


Amendments

2010—Subsec. (c). Pub. L. 111–340, § 102(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "The Director shall ensure coordination of the policies and activities of the Institute with the policies and activities of other agencies and offices of the Federal Government having interest in and responsibilities for the improvement of museums and libraries and information services. Where appropriate, the Director shall ensure that activities under subchapter II of this chapter are coordinated with activities under section 6383 of this title."

Former subsecs. (f) and (g) redesignated (h) and (i), respectively.

2003—Subsec. (e). Pub. L. 108–81, § 105(1), inserted at end "Where appropriate, the Director shall ensure that activities under subchapter II of this chapter are coordinated with activities under section 6383 of this title."

Subsecs. (f), (g). Pub. L. 108–81, § 103(2), added subsecs. (f) and (g).
employees as the Director determines to be necessary to carry out the duties of the Institute.

(2) Number and compensation

(A) In general

The number of employees appointed and compensated under paragraph (1) shall not exceed \( \frac{1}{5} \) of the number of full-time regular or professional employees of the Institute.

(B) Rate of compensation

(i) In general

Except as provided in clause (ii), the rate of basic compensation for the employees appointed and compensated under paragraph (1) may not exceed the rate prescribed for level GS–15 of the General Schedule under section 5312 of title 5.

(ii) Exception

The Director may appoint not more than 3 employees under paragraph (1) at a rate of basic compensation that exceeds the rate described in clause (i) but does not exceed the rate of basic pay in effect for positions at level IV of the Executive Schedule under section 5315 of title 5.

(c) Voluntary services

The Director may accept and utilize the voluntary services of individuals and reimburse the individuals for travel expenses, including per diem in lieu of subsistence, in the same amounts and to the same extent as authorized under section 5703 of title 5 for persons employed intermittently in Federal Government service.

(d) Experts and consultants

The Director may use experts and consultants, including panels of experts, who may be employed as authorized under section 3109 of title 5.


PRIOR PROVISIONS


AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–340, §103(1), added par.(2) and struck out heading and text of former par. (2). Prior to amendment, text read as follows: “The number of employees appointed and compensated under paragraph (1) shall not exceed \( \frac{1}{5} \) of the number of full-time regular or professional employees of the Institute. The rate of basic compensation for the employees appointed and compensated under paragraph (1) may not exceed the rate prescribed for level GS–15 of the General Schedule under section 5312 of title 5.”


CONSIDERATION GIVEN TO INDIVIDUALS WITH EXPERIENCE


§ 9105a. National Museum and Library Services Board

(a) Establishment

There is established within the Institute a board to be known as the “National Museum and Library Services Board”.

(b) Membership

(1) Number and appointment

The Museum and Library Services Board shall be composed of the following:

(A) The Director.

(B) The Deputy Director for the Office of Library Services.

(C) The Deputy Director for the Office of Museum Services.

(D) Ten members appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States and who are specially qualified by virtue of their education, training, or experience in the area of library services, or their commitment to libraries.

(E) Ten members appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States and who are specially qualified by virtue of their education, training, or experience in the area of museum services, or their commitment to museums.

(2) Special qualifications

(A) Library members

Of the members of the Museum and Library Services Board appointed under paragraph (1)(D)—

(i) five shall be professional librarians or information specialists, of whom—

(I) not less than one shall be knowledgeable about electronic information and technical aspects of library and information services and sciences; and

(II) not less than one other shall be knowledgeable about the library and information service needs of underserved communities; and

(ii) the remainder shall have special competence in, or knowledge of, the needs for library and information services in the United States.

(B) Museum members

Of the members of the Museum and Library Services Board appointed under paragraph (1)(E)—

(i) five shall be museum professionals who are or have been affiliated with—

(I) resources that, collectively, are broadly representative of the curatorial, conservation, educational, and cultural resources of the United States; or

(II) museums that, collectively, are broadly representative of various types
of museums, including museums relating to science, history, technology, art, zoos, botanical gardens, and museums designed for children; and

(ii) the remainder shall be individuals recognized for their broad knowledge, expertise, or experience in museums or commitment to museums.

(3) Geographic and other representation

Members of the Museum and Library Services Board shall be appointed to reflect persons from various geographic regions of the United States. The Museum and Library Services Board may not include, at any time, more than three appointive members from a single State. In making such appointments, the President shall give due regard to equitable representation of women, minorities, and persons with disabilities who are involved with museums and libraries.

(4) Voting

The Director, the Deputy Director of the Office of Library Services, and the Deputy Director of the Office of Museum Services shall be nonvoting members of the Museum and Library Services Board.

(e) Terms

(1) In general

Each member of the Museum and Library Services Board appointed under subparagraph (D) or (E) of subsection (b)(1) of this section shall serve for a term of 5 years.

(2) Authority to adjust terms

The terms of the members appointed to the Museum and Library Service Board shall be adjusted by the President as necessary to ensure that the terms of not more than four members expire in the same year. Such adjustments shall be carried out through designation of the adjusted term at the time of appointment.

(3) Vacancies

Any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed.

(4) Reappointment

No appointive member of the Museum and Library Services Board who has been a member for more than 7 consecutive years shall be eligible for reappointment.

(5) Service until successor takes office

Notwithstanding any other provision of this subsection, an appointive member of the Museum and Library Services Board shall serve after the expiration of the term of the member until the successor to the member takes office.

(d) Duties and powers

(1) In general

The Museum and Library Services Board shall advise the Director on general policies with respect to the duties, powers, and authority of the Institute relating to museum, library, and information services.

(2) National awards and medals

The Museum and Library Services Board shall advise the Director in awarding national awards and medals under section 9107 of this title.

(e) Chairperson

The Director shall serve as Chairperson of the Museum and Library Services Board.

(f) Meetings

(1) In general

The Museum and Library Services Board shall meet not less than 2 times each year and at the call of the Director.

(2) Vote

All decisions by the Museum and Library Services Board with respect to the exercise of its duties and powers shall be made by a majority vote of the members of the Board who are present and authorized to vote.

(g) Quorum

A majority of the voting members of the Museum and Library Services Board shall constitute a quorum for the conduct of business at official meetings, but a lesser number of members may hold hearings.

(h) Compensation and travel expenses

(1) Compensation

Each member of the Museum and Library Services Board who is not an officer or employee of the Federal Government may be compensated at a rate to be fixed by the President, but not to exceed the daily equivalent of the maximum annual rate of pay authorized for a position above grade GS–15 of the General Schedule under section 5101 of title 5, for each day (including travel time) during which such member is engaged in the performance of the duties of the Museum and Library Services Board. Members of the Museum and Libraries Services Board who are full-time officers or employees of the Federal Government may not receive additional pay, allowances, or benefits by reason of their service on the Museum and Library Services Board.

(2) Travel expenses

Each member of the Museum and Library Services Board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

(i) Coordination

The Director, with the advice of the Museum and Library Services Board, shall coordinate the development and implementation of policies and activities as described in subsections (f) and (g) of section 9103 of this title.


Prior Provisions

A prior section 207 of Pub. L. 94–462 was renumbered section 208 and is classified to section 9106 of this title. Another prior section 207 of Pub. L. 94–462 was classified to section 966 of this title prior to the general

**AMENDMENTS**

2010—Subsec. (b)(1)(D) to (F). Pub. L. 111–340, §104(1)(A), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: “The Chairman of the National Commission on Libraries and Information Science.”


Subsec. (b)(4). Pub. L. 111–340, §104(1)(C), inserted “and” after “Library Services,” and struck out “, and the Chairman of the National Commission on Library and Information Science” before “shall”.

Subsec. (c)(1). Pub. L. 111–340, §104(2)(A), substituted “Each” for “Except as otherwise provided in this subsection, each” and “(D) or (E)” for “(E) or (F)”.

Subsec. (c)(2). Pub. L. 111–340, §104(2)(B), substituted “Authority to adjust terms” for “Initial Board appointments” in heading, struck out subpars. (A) and (B) related to treatment of members serving on effective date of first appointments and subpar. (C) designation and heading, and substituted “The terms of the members” for “The terms of the first members”.

Subsec. (d)(1). Pub. L. 111–340, §104(3)(A), substituted “relating to museum, library, and information services” for “relating to museum and library services, including financial assistance awarded under this chapter”.

Subsec. (d)(2). Pub. L. 111–340, §104(3)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The Museum and Library Services Board shall advise the Director in making awards under section 9007 of this title.”

Subsec. (i). Pub. L. 111–340, §104(4), substituted “coordinate the development and implementation of policies and activities as described in subsections (f) and (g) of section 9108 of this title” for “take steps to ensure that the policies and activities of the Institute are coordinated with other activities of the Federal Government”.

§ 9106. Contributions

The Institute is authorized to solicit, accept, receive, and invest in the name of the United States, gifts, bequests, or devises of money and other property or services and to use such property or services in furtherance of the functions of the Institute. Any proceeds from such gifts, bequests, or devises, after acceptance by the Institute, shall be paid by the donor or the representative of the donor to the Director. The Director shall enter the proceeds in a special-institute account, and the Institute shall advise the Director in making awards under section 9007 of this title.


**AMENDMENTS**

2003—Pub. L. 108–81, §504(e), which directed substitution of “property or services” for “property of services”, could not be executed because the words “property of” did not appear in text.

§ 9107. Awards and medals

The Director, with the advice of the Museum and Library Services Board, may annually award national awards and medals for library and museum services to outstanding libraries and museums that have made significant contributions in service to their communities.


**AMENDMENTS**

2010—Pub. L. 111–340 amended section catchline and text generally. Prior to amendment, text read as follows: “The Director, with the advice of the Museum and Library Services Board, may annually award National Awards for Library Service and National Awards for Museum Service to outstanding libraries and outstanding museums, respectively, that have made significant contributions in service to their communities.”

§ 9108. Policy research, analysis, data collection, and dissemination

(a) In general

The Director shall annually conduct policy research, analysis, and data collection to extend and improve the Nation’s museum, library, and information services.

(b) Requirements

The policy research, analysis, and data collection shall be conducted in ongoing collaboration (as determined appropriate by the Director), and in consultation, with—

(1) State library administrative agencies;

(2) national, State, and regional library and museum organizations; and

(3) other relevant agencies and organizations.

(c) Objectives

The policy research, analysis, and data collection shall be used to—

(1) identify national needs for and trends in museum, library, and information services;

(2) measure and report on the impact and effectiveness of museum, library, and information services throughout the United States, including the impact of Federal programs authorized under this chapter;

(3) identify best practices; and

(4) develop plans to improve museum, library, and information services of the United States and to strengthen national, State, local, regional, and international communications and cooperative networks.

(d) Dissemination

Each year, the Director shall widely disseminate, as appropriate to accomplish the objectives under subsection (c), the results of the policy research, analysis, and data collection carried out under this section.

(e) Authority to contract

The Director is authorized—

(1) to enter into contracts, grants, cooperative agreements, and other arrangements with Federal agencies and other public and private organizations to carry out the objectives under subsection (c); and

(2) to publish and disseminate, in a form determined appropriate by the Director, the re-
ports, findings, studies, and other materials prepared under paragraph (1).

(f) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section $3,500,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.

(2) Availability of funds

Sums appropriated under paragraph (1) for any fiscal year shall remain available for obligation until expended.


References in Text

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this title”, meaning title II of Pub. L. 94–462, known as the Museum and Library Services Act, to reflect the probable intent of Congress.

SUBCHAPTER II—LIBRARY SERVICES AND TECHNOLOGY

§ 9121. Purpose

It is the purpose of this subchapter—

(1) to enhance coordination among Federal programs that relate to library and information services;

(2) to promote continuous improvement in library services in all types of libraries in order to better serve the people of the United States;

(3) to facilitate access to resources in all types of libraries for the purpose of cultivating an educated and informed citizenry;

(4) to encourage resource sharing among all types of libraries for the purpose of achieving economical and efficient delivery of library services to the public;

(5) to promote literacy, education, and lifelong learning and to enhance and expand the services and resources provided by libraries, including those services and resources relating to workforce development, 21st century skills, and digital literacy skills;

(6) to enhance the skills of the current library workforce and to recruit future professionals to the field of library and information services;

(7) to ensure the preservation of knowledge and library collections in all formats and to enable libraries to serve their communities during disasters;

(8) to enhance the role of libraries within the information infrastructure of the United States in order to support research, education, and innovation; and

(9) to promote library services that provide users with access to information through national, State, local, regional, and international collaborations and networks.


Amendments

2010—Par. (1). Pub. L. 111–340, §201(1), added par. (1) and struck out former par. (1) which read as follows: “to consolidate Federal library service programs:”.

Par. (2). Pub. L. 111–340, §201(2), inserted “continuous” after “promote”.

Pars. (5) to (9). Pub. L. 111–340, §201(3)–(5), added pars. (5) to (9).

2003—Pars. (2) to (5). Pub. L. 108–81 added pars. (2) to (5) which read as follows:
"(2) to stimulate excellence and promote access to learning and information resources in all types of libraries for individuals of all ages;

"(3) to promote library services that provide all users access to information through State, regional, national and international electronic networks;

"(4) to provide linkages among and between libraries;

"(5) to promote targeted library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literacy or information skills."

§ 9122. Definitions

As used in this subchapter:

(1) Library

The term “library” includes—

(A) a public library;

(B) a public elementary school or secondary school library;

(C) an academic library;

(D) a research library, which for the purposes of this subchapter means a library that—

(i) makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) is not an integral part of an institution of higher education; and

(E) a private library or other special library, but only if the State in which such private or special library is located determines that the library should be considered a library for purposes of this subchapter.

(2) Library consortium

The term “library consortium” means any local, statewide, regional, interstate, or international cooperative association of library entities which provides for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers, for improved services for the clientele of such library entities.

(3) State

The term “State”, unless otherwise specified, includes each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(4) State library administrative agency

The term “State library administrative agency” means the official agency of a State charged by the law of the State with the extension and development of public library services throughout the State.

(5) State plan

The term “State plan” means the document which gives assurances that the officially designated State library administrative agency has the fiscal and legal authority and capability to administer all aspects of this subchapter, provides assurances for establishing the State’s policies, priorities, criteria, and procedures necessary to the implementation of all programs under this subchapter, submits copies for approval as required by regulations promulgated by the Director, identifies a State’s library needs, and sets forth the activities to be taken toward meeting the identified needs supported with the assistance of Federal funds made available under this subchapter.


AMENDMENTS

2003—Pars. (1) to (6). Pub. L. 108–81 redesignated pars. (2) to (6) as (1) to (5), respectively, and struck out heading and text of former par. (1). Text read as follows: “The term ‘Indian tribe’ means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

1997—Par. (2)(E). Pub. L. 105–128 inserted “or other special library” after “a private library” and “or special” after “such private”.

§ 9123. Authorization of appropriations

(a) In general

There are authorized to be appropriated—

(1) to carry out parts 1, 2, and 3, $232,000,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016; and

(2) to carry out part 4, $24,500,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.

(b) Forward funding

(1) In general

To the end of affording the responsible Federal, State, and local officers adequate notice of available Federal financial assistance for carrying out ongoing library activities and projects, appropriations for grants, contracts, or other payments under any program under this subchapter are authorized to be included in the appropriations Act for the fiscal year preceding the fiscal year during which such activities and projects shall be carried out.

(2) Additional authorization of appropriations

In order to effect a transition to the timing of appropriation action authorized by subsection (a) of this section, the application of this section may result in the enactment, in a fiscal year, of separate appropriations for a program under this subchapter (whether in the same appropriations Act or otherwise) for two consecutive fiscal years.
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AMENDMENTS
2010—Subsec. (a). Pub. L. 111–340, § 203(1), added subsec. (a) and struck out heading and text of former subsec. (a). Prior to amendment, text read as follows: “(1) In general.—There are authorized to be appropriated $150,000,000 for each of the fiscal years 1998 through 2002 to carry out this subchapter.”

2003—Subsec. (a). Pub. L. 108–81, § 203(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “(1) In general.—There are authorized to be appropriated $150,000,000 for fiscal year 1997 and such sums as may be necessary for each of the fiscal years 1998 through 2002 to carry out this subchapter.”

2002—Subsec. (c). Pub. L. 106–81, § 203(3), substituted “3.5 percent” for “3 percent”.

(b) Allotments

§ 9131. Reservations and allotments

(a) Reservations

(1) In general

From the amount appropriated under the authority of section 9123 of this title for any fiscal year, the Director—

(A) shall reserve 1.75 percent to award grants in accordance with section 9161 of this title; and

(B) shall reserve 3.75 percent to award national leadership grants or contracts in accordance with section 9162 of this title.

(2) Special rule

If the funds reserved pursuant to paragraph (1)(B) for a fiscal year have not been obligated by the end of such fiscal year, then such funds shall be allotted in accordance with subsection (c) of this section for the fiscal year succeeding the fiscal year for which the funds were so reserved.

(b) Allotments

(1) In general

From the sums appropriated under the authority of section 9123 of this title and not reserved under subsection (a) of this section for any fiscal year, the Director shall award grants to each State in an amount that bears the same relation to such remainder as the population of the State bears to the population of all States.

(3) Minimum allotments

(A) In general

For purposes of this subsection, the minimum allotment for each State shall be $680,000, except that the minimum allotment shall be $60,000 in the case of the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(B) Ratable reductions

Notwithstanding subparagraph (A), if the sum appropriated under the authority of section 9123 of this title and not reserved under subsection (a) of this section for any fiscal year is insufficient to fully satisfy the requirement of subparagraph (A), each of the minimum allotments under such subparagraph shall be reduced ratably.

(C) Special rule

(i) In general

Notwithstanding any other provision of this subsection and using funds allotted for the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, the Secretary of Education shall—

(A) transfer promptly to the Director any funds appropriated under the authority of paragraph (1), to enable the Director to carry out this subchapter; and

(B) not exercise any authority concerning the administration of this chapter other than the transfer described in subparagraph (A).

(ii) Award basis

The Director shall award grants pursuant to clause (i) on a competitive basis and after taking into consideration available recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.

(iii) Administrative costs

The Director may provide not more than 5 percent of the funds made available for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory regarding activities assisted under this subparagraph.

(4) Data

The population of each State and of all the States shall be determined by the Director on the basis of the most recent data available from the Bureau of the Census.
Nothing in this section shall be construed to limit spending for evaluation costs under section 9134(c) of this title from sources other than this subchapter.


§9133. Payments; Federal share; and maintenance of effort requirements

(a) Payments

Subject to appropriations provided pursuant to section 9123 of this title, the Director shall pay to each State library administrative agency having a State plan approved under section 9134 of this title the Federal share of the cost of the activities described in the State plan.

(b) Federal share

(1) In general

The Federal share shall be 66 percent.

(2) Non-Federal share

The non-Federal share of payments shall be provided from non-Federal, State, or local sources.

(c) Maintenance of effort

(1) State expenditures

(A) Requirement

(i) In general

The amount otherwise payable to a State for a fiscal year pursuant to an allotment under this part shall be reduced if the level of State expenditures, as described in paragraph (2), for the previous fiscal year is less than the average of the total of such expenditures for 3 fiscal years preceding that previous fiscal year. The amount of the reduction in the allotment for any fiscal year shall be equal to the allotment multiplied by a fraction—

(I) the numerator of which is the result of subtracting the level of such State expenditures for the fiscal year for which the determination is made, from the average of the total level of such State expenditures for the 3 fiscal years preceding the fiscal year for which the determination is made; and

(II) the denominator of which is the average of the total level of such State expenditures for the 3 fiscal years preceding the fiscal year for which the determination is made.

(ii) Calculation

Any decrease in State expenditures resulting from the application of subparagraph (B) shall be excluded from the calculation of the average level of State expenditures for any 3-year period described in clause (i).

(B) Decrease in Federal support

If the amount made available under this subchapter for a fiscal year is less than the amount made available under this subchapter for the preceding fiscal year, then
the expenditures required by subparagraph (A) for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available.

(2) Level of State expenditures

The level of State expenditures for the purposes of paragraph (1) shall include all State dollars expended by the State library administrative agency for library programs that are consistent with the purposes of this subchapter. All funds included in the maintenance of effort calculation under this subsection shall be expended during the fiscal year for which the determination is made, and shall not include capital expenditures, special one-time project costs, or similar windfalls.

(3) Waiver

The Director may waive the requirements of paragraph (1) if the Director determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.


AMENDMENTS

1997—Subsec. (c)(1)(A)(i). Pub. L. 105–128 amended second sentence generally. Prior to amendment, second sentence read as follows: “The amount of the reduction in allotment for any fiscal year shall be equal to the amount by which the level of such State expenditures for the fiscal year for which the determination is made is less than the average of the total of such expenditures for the 3 fiscal years preceding the fiscal year for which the determination is made.”

§ 9134. State plans

(a) State plan required

(1) In general

In order to be eligible to receive a grant under this subchapter, a State library administrative agency shall submit a State plan to the Director once every 5 years, as determined by the Director.

(2) Duration

The State plan shall cover a period of 5 fiscal years.

(3) Revisions

If a State library administrative agency makes a substantive revision to its State plan, then the State library administrative agency shall submit to the Director an amendment to the State plan containing such revision not later than April 1 of the fiscal year preceding the fiscal year for which the amendment will be effective.

(b) Contents

The State plan shall—

(1) establish goals, and specify priorities, for the State consistent with the purposes of this subchapter;

(2) describe activities that are consistent with the goals and priorities established under paragraph (1), the purposes of this subchapter, and section 9141 of this title, that the State library administrative agency will carry out during such year using such grant;

(3) describe the procedures that such agency will use to carry out the activities described in paragraph (2);

(4) describe the methodology that such agency will use to evaluate the success of the activities established under paragraph (2) in achieving the goals and meeting the priorities described in paragraph (1);

(5) describe the procedures that such agency will use to involve libraries and library users throughout the State in policy decisions regarding implementation of this subchapter;

(6) describe how the State library administrative agency will work with other State agencies and offices where appropriate to coordinate resources, programs, and activities and leverage, but not replace, the Federal and State investment in—

(A) elementary and secondary education, including coordination with the activities within the State that are supported by a grant under section 6383 of this title;

(B) early childhood education, including coordination with—

(i) the State’s activities carried out under subsections (b)(4) and (e)(1) of section 9837 of title 42; and

(ii) the activities described in the State’s strategic plan in accordance with section 9837(a)(4)(B)(i) of title 42;

(C) workforce development, including coordination with—

(i) the activities carried out by the State workforce investment board under section 2821(d) of title 29; and

(ii) the State’s one-stop delivery system established under section 2864(c) of title 29; and

(D) other Federal programs and activities that relate to library services, including economic and community development and health information;

(7) provide assurances that the State will comply with subsection (f) of this section; and

(8) provide assurances satisfactory to the Director that such agency will make such reports, in such form and containing such information, as the Director may reasonably require to carry out this subchapter and to determine the extent to which funds provided under this subchapter have been effective in carrying out the purposes of this subchapter.

(c) Evaluation and report

Each State library administrative agency receiving a grant under this subchapter shall independently evaluate, and report to the Director regarding, the activities assisted under this subchapter, prior to the end of the 5-year plan.

(d) Information

Each library receiving assistance under this subchapter shall submit to the State library administrative agency such information as such agency may require to meet the requirements of subsection (c) of this section.
(e) Approval

(1) In general

The Director shall approve any State plan under this subchapter that meets the requirements of this subchapter and provides satisfactory assurances that the provisions of such plan will be carried out.

(2) Public availability

Each State library administrative agency receiving a grant under this subchapter shall make the State plan available to the public, including through electronic means.

(3) Administration

If the Director determines that the State plan does not meet the requirements of this section, the Director shall—

(A) immediately notify the State library administrative agency of such determination and the reasons for such determination;

(B) offer the State library administrative agency the opportunity to revise its State plan;

(C) provide technical assistance in order to assist the State library administrative agency in meeting the requirements of this section; and

(D) provide the State library administrative agency the opportunity for a hearing.

(f) Internet safety

(1) In general

No funds made available under this subchapter for a library described in section 9122(1)(A) or (B) of this title that does not receive services at discount rates under section 254(h)(6) of title 47 may be used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, for such library unless—

(A) such library—

(i) has in place a policy of Internet safety for minors that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene;

(II) child pornography; or

(III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors; and

(B) such library—

(i) has in place a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(2) Access to other materials

Nothing in this subsection shall be construed to prohibit a library from limiting Internet access to or otherwise protecting against materials other than those referred to in subclauses (I), (II), and (III) of paragraph (1)(A)(1).

(3) Disabling during certain use

An administrator, supervisor, or other authority may disable a technology protection measure under paragraph (1) to enable access for bona fide research or other lawful purposes.

(4) Timing and applicability of implementation

(A) In general

A library covered by paragraph (1) shall certify the compliance of such library with the requirements of paragraph (1) as part of the application process for the next program funding year under this subchapter following the effective date of this subsection, and for each subsequent program funding year thereafter.

(B) Process

(i) Libraries with Internet safety policies and technology protection measures in place

A library covered by paragraph (1) that has in place an Internet safety policy meeting the requirements of paragraph (1) during each annual program application cycle under this subchapter.

(ii) Libraries without Internet safety policies and technology protection measures in place

A library covered by paragraph (1) that does not have in place an Internet safety policy meeting the requirements of paragraph (1) shall certify its compliance with paragraph (1) during each annual program application cycle under this subchapter.

(C) Disabling during certain use

Any library covered by paragraph (1) that is unable to certify compliance with such requirements in such second program year shall be ineligible for all funding under this subchapter for such second program year and all subsequent program years until such time as such library comes into compliance with such requirements.

(iii) Waivers

Any library subject to a certification under clause (ii)(II) that cannot make the certification otherwise required by that clause may seek a waiver of that clause if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification
otherwise required by that clause. The library shall notify the Director of the Institute of Museum and Library Services of the applicability of that clause to the library. Such notice shall certify that the library will comply with the requirements in paragraph (1) before the start of the third program year after the effective date of this subsection for which the library is applying for funds under this subchapter.

(5) Noncompliance

(A) Use of General Education Provisions Act remedies

Whenever the Director of the Institute of Museum and Library Services has reason to believe that any recipient of funds this subchapter is failing to comply substantially with the requirements of this subsection, the Director may—

(i) withhold further payments to the recipient under this subchapter,

(ii) issue a complaint to compel compliance of the recipient through a cease and desist order, or

(iii) enter into a compliance agreement with a recipient to bring it into compliance with such requirements.

(B) Recovery of funds prohibited

The actions authorized by subparagraph (A) are the exclusive remedies available with respect to the failure of a library to comply substantially with a provision of this subsection, and the Director shall not seek a recovery of funds from the recipient for such failure.

(C) Recommencement of payments

Whenever the Director determines (whether by certification or other appropriate evidence) that a recipient of funds who is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Director shall cease the withholding of payments to the recipient under that subparagraph.

(6) Separability

If any provision of this subsection is held invalid, the remainder of this subsection shall not be affected thereby.

(7) Definitions

In this subsection:

(A) Child pornography

The term "child pornography" has the meaning given such term in section 2256 of title 18.

(B) Harmful to minors

The term "harmful to minors" means any picture, image, graphic image file, or other visual depiction that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(C) Minor

The term "minor" means an individual who has not attained the age of 17.

(D) Obscene

The term "obscene" has the meaning applicable to such term in section 1406 of title 18.

(E) Sexual act; sexual contact

The terms "sexual act" and "sexual contact" have the meanings given such terms in section 2246 of title 18.

References in Text

For the effective date of this subsection, referred to in subsec. (f)(1), as 120 days after Dec. 21, 2000, see §1712(a)(1) of Pub. L. 90–247, Jan. 2, 1968, 81 Stat. 814, as amended, which is classified generally to chapter 31 (§1221 et seq.) of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

Amendments

2010—Subsec. (b)(6) to (8). Pub. L. 111–340, § 204(1), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

Subsec. (e)(2). Pub. L. 111–340, § 204(2), inserted "including through electronic means" before period at end.


Subsec. (f)(1). Pub. L. 108–81, § 205(2)(B), substituted "section 9122(1)(A) or (B)" for "9122(2)(A) or (B)" and made technical amendment to reference in original act which appears in text as reference to section 2246(h) of title 18.


Effective Date of 2000 Amendment

“The amendment made by this section [amending this section] shall take effect 120 days after the date of the enactment of this Act (Dec. 21, 2000).”

**AVAILABILITY OF CERTAIN FUNDS FOR ACQUISITION OF TECHNOLOGY PROTECTION MEASURES**


“(1) IN GENERAL.—Notwithstanding any other provision of law, funds available under section 3134 (former 20 U.S.C. 6844) or part A of title VI of the Elementary and Secondary Education Act of 1965 (former 20 U.S.C. 731 et seq.), or under section 221 of the Library Services and Technology Act (20 U.S.C. 4141), may be used for the purchase or acquisition of technology protection measures that are necessary to meet the requirements of this title (see Short Title of 2000 Amendments note set out under section 6301 of this title) and the amendments made by this title. No other sources of funds for the purchase or acquisition of such measures are authorized by this title, or the amendments made by this title.

“(2) TECHNOLOGY PROTECTION MEASURE DEFINED.—In this section, the term ‘technology protection measure’ has the meaning given that term in section 1738 (set out as a note under section 47 of Title 47, Telephones, and Radiotelegraphs).”

**PART 2—LIBRARY PROGRAMS**

### §9141. Grants to States

**(a) In general**

Of the funds provided to a State library administrative agency under section 9123 of this title, such agency shall expend, either directly or through subgrants or cooperative agreements, at least 96 percent of such funds for—

1. expanding services for learning and access to information and educational resources in a variety of formats, in all types of libraries, for individuals of all ages in order to support such individuals’ needs for education, lifelong learning, workforce development, and digital literacy skills;

2. establishing or enhancing electronic and other linkages and improved coordination among and between libraries and entities, as described in section 9134(b)(6) of this title, for the purpose of improving the quality of and access to library and information services;

3. (A) providing training and professional development, including continuing education, to enhance the skills of the current library workforce and leadership, and advance the delivery of library and information services; and

   (B) enhancing efforts to recruit future professionals to the field of library and information services;

4. developing public and private partnerships with other agencies and community-based organizations;

5. targeting library services to individuals of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to individuals with limited functional literacy or information skills;

6. targeting library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of title 42) applicable to a family of the size involved;

7. developing library services that provide all users access to information through local, State, regional, national, and international collaborations and networks; and

8. carrying out other activities consistent with the purposes set forth in section 9121 of this title, as described in the State library administrative agency’s plan.

**(b) Special rule**

Each State library administrative agency receiving funds under this part may apportion the funds available for the priorities described in subsection (a) as appropriate to meet the needs of the individual State.

**(c) Use of funds for other purposes**

Each State library administrative agency receiving funds under this part may apportion the funds available for the purposes described in subsection (a) of this section among such purposes, as appropriate, to meet the needs of the individual State.

**AMENDMENTS**

2010—Subsec. (a). Pub. L. 111–340, §205(1), inserted “in order to support such individuals’ needs for education, lifelong learning, workforce development, and digital literacy skills before semicolon at end in par. (1), added pars. (2) and (3), redesignated former par. (2) as (7) and substituted “collaborations and networks; and” for “electronic networks;”, struck out former par. (3) which read “providing electronic and other linkages among and between all types of libraries;”, and added par. (8).

Subsec. (b). Pub. L. 111–340, §205(2), added subsec. (b) and struck out heading and text of former subsec. (b). Prior to amendment, text read as follows: “Each State library administrative agency receiving funds under this part may apportion the funds available for the purposes described in subsection (a) of this section among such purposes, as appropriate, to meet the needs of the individual State.”

2003—Subsec. (a)(1) to (6). Pub. L. 108–81, §206(1), added paras. (1) to (6) and struck out former paras. (1) and (2) which read as follows:

1. (A) establishing or enhancing electronic linkages among or between libraries;

2. (B) electronically linking libraries with educational, social, or information services;

3. (C) assisting libraries in accessing information through electronic networks;

4. (D) encouraging libraries in different areas, and encouraging different types of libraries, to establish consortia and share resources; or

5. (E) paying costs for libraries to acquire or share computer systems and telecommunications technologies; and

6. (F) targeting library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of title 42) applicable to a family of the size involved.”

Subsec. (b). Pub. L. 108–81, §206(2), substituted “among such purposes,” for “between the two purposes described in paragraphs (1) and (2) of such subsection.”

**PART 3—ADMINISTRATIVE PROVISIONS**

### SUBPART A—STATE REQUIREMENTS

#### §9151. State advisory councils

Each State desiring assistance under this subchapter may establish a State advisory council...
which is broadly representative of the library entities in the State, including public, school, academic, special, and institutional libraries, and libraries serving individuals with disabilities.


SUBPART B—FEDERAL REQUIREMENTS

§9161. Services for Native Americans

From amounts reserved under section 9131(a)(1)(A) of this title for any fiscal year the Director shall award grants to Indian tribes and to organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 7517 of this title) to enable such tribes and organizations to carry out the activities described in section 9141 of this title.


AMENDMENTS

1997—Pub. L. 105–128 substituted “Native Americans” for “Indian tribes”; in section catchline and in text substituted “to Indian tribes and to organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 7912 of this title)” for “to organizations primarily serving and representing Indian tribes to enable such organizations”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 9141 of this title.

§9162. National leadership grants, contracts, or cooperative agreements

(a) In general

From the amounts reserved under section 9131(a)(1)(B) of this title for any fiscal year the Director shall establish and carry out a program of awarding grants or entering into contracts or cooperative agreements to enhance the quality of library services nationwide and to provide coordination between libraries and museums. Such grants, contracts, and cooperative agreements shall be used for activities that may include—

(1) building workforce and institutional capacity for managing the national information infrastructure and serving the information and education needs of the public;
(2)(A) research and demonstration projects related to the improvement of libraries or the enhancement of library and information services through effective and efficient use of new technologies, including projects that enable library users to acquire digital literacy skills and that make information resources more accessible and available; and
(B) dissemination of information derived from such projects;
(3) preserving or digitizing of library materials and resources, giving priority to projects emphasizing coordination, avoidance of duplication, and access by researchers beyond the institution or library entity undertaking the project; and
(4) model programs demonstrating cooperative efforts between libraries and museums.

(b) Grants, contracts, or cooperative agreements

(1) In general

The Director may carry out the activities described in subsection (a) of this section by awarding grants to, or entering into contracts or cooperative agreements with, libraries, agencies, institutions of higher education, or museums, where appropriate.

(2) Competitive basis

Grants, contracts, and cooperative agreements under this section shall be awarded on a competitive basis.

(c) Special rule

The Director shall make every effort to ensure that activities assisted under this section are administered by appropriate library and museum professionals or experts.


AMENDMENTS

2010—Subsec. (a)(1), (2). Pub. L. 111–340, §206(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) education, recruitment, and training of persons in library and information science, particularly in areas of new technology and other critical needs, including graduate fellowships, traineeships, institutes, or other programs;
(2) research and demonstration projects related to the improvement of libraries, education in library and information science, enhancement of library services through effective and efficient use of new technologies, and dissemination of information derived from such projects.”;

Subsec. (a)(3). Pub. L. 111–340, §206(2), substituted “‘digitizing’ for ‘‘digitization’” and inserted “, including the development of national, regional, statewide, or local emergency plans that would ensure the preservation of knowledge and library collections in the event of a disaster’’ before ‘‘; and’’;

Subsec. (b)(1). Pub. L. 108–81, §504(g), substituted “cooperative agreements with,” for “‘cooperative agreements, with’.”.
1997—Pub. L. 105–128, §7(1), substituted section catchline for former catchline which read as follows: ‘‘National leadership grants or contracts’’.
Subsec. (a). Pub. L. 105–128, §7(2), in introductory provisions, substituted “program of awarding grants or entering into contracts or cooperative agreements” for “program awarding national leadership grants or contracts” and “Such grants, contracts, and cooperative agreements” for “Such grants or contracts”.
Subsec. (a)(3). Pub. L. 105–128, §8, substituted “preserving or digitization” for “preservation of digitization”.

Subsec. (b). Pub. L. 105–128, §7(3)(A), substituted heading for former heading which read as follows: “Grants or contracts”.


Subsec. (b)(2). Pub. L. 105–128, §7(3)(C), substituted “Grants, contracts, and cooperative agreements” for “Grants and contracts”.

§ 9163. State and local initiatives

Nothing in this subchapter shall be construed to interfere with State and local initiatives and responsibility in the conduct of library services. The administration of libraries, the selection of personnel and library books and materials, and insofar as consistent with the purposes of this subchapter, the determination of the best uses of the funds provided under this subchapter, shall be reserved for the States and their local subdivisions.


PART 4—LAURA BUSH 21ST CENTURY LIBRARIANS

§ 9165. Laura Bush 21st Century Librarian Program

(a) Purpose

It is the purpose of this part to develop a diverse workforce of librarians by—

(1) recruiting and educating the next generation of librarians, including by encouraging middle or high school students and post-secondary students to pursue careers in library and information science; and

(2) developing faculty and library leaders, including by increasing the institutional capacity of graduate schools of library and information science; and

(3) enhancing the training and professional development of librarians and the library workforce to meet the needs of their communities, including those needs relating to literacy and education, workforce development, lifelong learning, and digital literacy.

(b) Activities

From the amounts provided under section 9123(a)(2) of this title, the Director may enter into arrangements, including grants, contracts, cooperative agreements, and other forms of assistance, with libraries, library consortia and associations, institutions of higher education (as defined in section 1001 of this title), and other entities that the Director determines appropriate, for projects that further the purpose of this part, such as projects that—

(1) increase the number of students enrolled in nationally accredited graduate library and information science programs and preparing for careers of service in libraries;

(2) recruit future professionals, including efforts to attract promising middle school, high school, or postsecondary students to consider careers in library and information science;

(3) develop or enhance professional development programs for librarians and the library workforce;

(4) enhance curricula within nationally accredited graduate library and information science programs;

(5) enhance doctoral education in order to develop faculty to educate the future generation of library professionals and develop the future generation of library leaders; and

(6) conduct research, including research to support the successful recruitment and education of the next generation of librarians.

(c) Evaluation

The Director shall establish procedures for reviewing and evaluating projects supported under this part.


SUBCHAPTER III—MUSEUM SERVICES

§ 9171. Purpose

It is the purpose of this subchapter—

(1) to encourage and support museums in carrying out their public service role of connecting the whole of society to the cultural, artistic, historical, natural, and scientific understandings that constitute our heritage;

(2) to encourage and support museums in carrying out their educational role, as core providers of learning and in conjunction with schools, families, and communities;

(3) to encourage leadership, innovation, and applications of the most current technologies and practices to enhance museum services through international, national, regional, State, and local networks and partnerships;

(4) to assist, encourage, and support museums in carrying out their stewardship responsibilities to achieve the highest standards in conservation and care of the cultural, historic, natural, and scientific heritage of the United States to benefit future generations;

(5) to assist, encourage, and support museums in achieving the highest standards of management and service to the public, and to ease the financial burden borne by museums as a result of their increasing use by the public;

(6) to support resource sharing and partnerships among museums, libraries, schools, and other community organizations;

(7) to encourage and support museums as a part of economic development and revitalization in communities;

(8) to ensure museums of various types and sizes in diverse geographic regions of the United States are afforded attention and support; and

(9) to support efforts at the State level to leverage museum resources and maximize museum services.


Prior Provisions

A prior section 272 of Pub. L. 94–462 was renumbered section 273 and is classified to section 9172 of this title.
§ 9172. Definitions

As used in this subchapter:

(1) **Museum**

The term “museum” means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or aesthetic purposes, that utilizes a professional staff, owns or utilizes tangible objects, cares for the tangible objects, and exhibits the tangible objects to the public on a regular basis. Such term includes museums that have tangible and digital collections and includes aquariums, arboretums, botanical gardens, art museums, children’s museums, general museums, historic houses and sites, history museums, nature centers, natural history and anthropology museums, planetariums, science and technology centers, specialized museums, and zoological parks.

(2) **State**

The term “State” means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.


(1) to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups;

(2) to assist museums in modernizing their methods and facilities so that the museums are better able to conserve the cultural, historic, and scientific heritage of the United States; and

(3) to ease the financial burden borne by museums as a result of their increasing use by the public.”

§ 9173. Museum services activities

(a) In general

The Director, subject to the policy advice of the Museum and Library Services Board, may enter into arrangements, including grants, contracts, cooperative agreements, and other forms of assistance, with museums, States, local governments, and other entities as the Director considers appropriate, to pay the Federal share of the cost of—

(1) supporting museums in providing learning and access to collections, information, and educational resources in a variety of formats (including exhibitions, programs, publications, and websites) for individuals of all ages;

(2) supporting museums in building learning partnerships with the Nation’s schools and developing museum resources and programs in support of State and local school curricula;

(3) supporting the conservation and preservation of museum collections, including efforts to—

(A) provide optimal conditions for storage, exhibition, and use;

(B) prepare for and respond to disasters and emergency situations;

(C) establish endowments for conservation; and

(D) train museum staff in collections care;

(4) supporting efforts at the State level to leverage museum resources, including statewide assessments of museum services and needs and development of State plans to improve and maximize museum services through the State;

(5) stimulating greater collaboration, in order to share resources and strengthen communities, among museums and—

(A) libraries;

(B) schools;

(C) international, Federal, State, regional, and local agencies or organizations;

(D) nongovernmental organizations; and

(E) other community organizations;

(6) encouraging the use of new technologies and media, including new ways to disseminate information, to enhance access to museum collections, programs, and services;

(7) supporting museums in providing services to people of diverse geographic, cultural, and socioeconomic backgrounds and to individuals with disabilities;

(8) supporting museums in developing and carrying out specialized programs for specific segments of the public, such as programs for urban neighborhoods, rural areas, Indian reservations, and State institutions;

(9) supporting professional development and technical assistance programs to enhance museum operations, and the skills of museum staff, at all levels, and to support the development of the next generation of museum leaders and professionals, in order to ensure the highest standards in all aspects of museum operations;

(10) supporting museums in research, program evaluation, and the collection and dissemination of information to museum professionals and the public; and

(11) encouraging, supporting, and disseminating model programs of museum and library collaboration.
(b) Federal share

(1) 50 percent

Except as provided in paragraph (2), the Federal share described in subsection (a) of this section shall not be more than 50 percent.

(2) Greater than 50 percent

The Director may use not more than 20 percent of the funds made available under this subchapter for a fiscal year to enter into arrangements under subsection (a) of this section for which the Federal share may be greater than 50 percent.

(3) Operational expenses

No funds for operational expenses may be provided under this section to any entity that is not a museum.

(c) Review and evaluation

(1) In general

The Director shall establish procedures for reviewing and evaluating arrangements described in subsection (a) of this section entered into under this subchapter.

(2) Grant distribution

In awarding grants, the Director shall take into consideration the equitable distribution of grants to museums of various types and sizes and to different geographic areas of the United States.\(^1\)

(3) Applications for technical assistance

(A) In general

The Director may use not more than 10 percent of the funds appropriated to carry out this subchapter for technical assistance.

(B) Individual museums

Individual museums may receive not more than 3 technical assistance awards under subparagraph (A). Subsequent awards for technical assistance shall be subject to review outside the Institute.

(d) Services for Native Americans

From amounts appropriated under section 9176 of this title, the Director shall reserve 1.75 percent to award grants to, or enter into contracts or cooperative agreements with, Indian tribes and organizations that primarily serve and represent Native Hawaiians (as defined in section 7517 of this title), to enable such tribes and organizations to carry out the activities described in subsection (a) of this section.


PRIOR PROVISIONS


AMENDMENTS

2010—Subsec. (a), Pub. L. 111–340, §303(1A), inserted ‘‘States, local governments,’’ after ‘‘with museums’’ in introductory provisions.

\(^1\) So in original. Probably should be followed by a period.
(c) Funding rules
Notwithstanding any other provision of this subchapter, if the amount appropriated under subsection (a) for a fiscal year is greater than the amount appropriated under such subsection for fiscal year 2011 by more than $10,000,000, then an amount of not less than 30 percent but not more than 50 percent of the increase in appropriated funds shall be available, from the funds appropriated under such subsection for the fiscal year, to enter into arrangements under section 9173 of this title to carry out the State assessments described in section 9173(a)(4) of this title and to assist States in the implementation of such plans.


Prior Provisions

Amendments
2010—Subsec. (a). Pub. L. 111–340, §305(1), substituted subsection (a) and struck out heading and text of former subsection (a). Prior to amendment, text read as follows: ‘‘For the purpose of carrying out this subchapter, there are authorized to be appropriated to the Director $38,600,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2009.’’

Subsec. (b). Pub. L. 111–340, §305(2), (3), redesignated subsec. (c) (b) and struck out heading and text of former subsec. (b). Prior to amendment, text of former subsec. (b) read as follows: ‘‘Not more than 10 percent of the funds appropriated under this section for a fiscal year may be used for the administrative costs of carrying out this subchapter.’’


2003—Subsec. (a). Pub. L. 108–81, §305(1), substituted ‘‘$38,600,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2009.’’ for ‘‘$38,700,000 for the fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2002.’’

Effective Date of 2003 Amendment

CHAPTER 73—ADULT EDUCATION AND FAMILY LITERACY

SUBCHAPTER I—ADULT EDUCATION AND FAMILY LITERACY

Sec. 9201. Purpose.
9202. Definitions.
9203. Home schools.
9204. Authorization of appropriations.

PART A—ADULT EDUCATION AND LITERACY PROGRAMS

SUBPART 1—FEDERAL PROVISIONS

9211. Reservation of funds; grants to eligible agencies; allotments.
9212. Performance accountability system.

SUBPART 2—STATE PROVISIONS

9221. State administration.
EX. ORD. NO. 13445. STRENGTHENING ADULT EDUCATION
Ex. Ord. No. 13445, Sept. 27, 2007, 72 F.R. 56165, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the United States to use existing Federal programs that serve adults, including new Americans, to strengthen literacy skills, improve opportunities for postsecondary education and employment, and facilitate participation in American life.

SIC. 2. Definitions. As used in this order:
(a) “agency” means an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and
(b) “adult education” means teaching or instruction below the postsecondary level, for individuals who are 16 years of age or older, designed to provide:
(i) mastery of basic education skills needed to function effectively in society;
(ii) a secondary school diploma or its equivalent; or
(iii) the ability to speak, read, or write the English language.

SIC. 3. Establishment of Interagency Adult Education Working Group. The Secretary of Education shall establish within the Department of Education for administrative purposes only, an Interagency Adult Education Working Group (Working Group), consistent with this order.

(a) The Working Group shall consist exclusively of:
(i) the Secretary of Education, who shall serve as Chair;
(ii) the Secretary of the Treasury, the Attorney General, and the Secretaries of the Interior, Labor, Health and Human Services, Housing and Urban Development, and Veterans Affairs; and
(iii) other officers or full-time or permanent part-time employees of the United States, as determined by the Chair, with the concurrence of the head of the agency concerned.

(b) The Chair, or the Chair’s designee under subsection (c) of this section, shall convene and preside at the meetings of the Working Group, determine its agenda, direct its work, and establish and direct subgroups of the Working Group, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Working Group or their designees under subsection (c) of this section.

(c) A member of the Working Group may designate, to perform the Working Group or Working Group subgroup functions of the member, any person who is a part of the member’s agency and who is either an officer of the United States appointed by the President or a member of the Senior Executive Service.

SIC. 5. Functions of the Working Group. Consistent with the policy set forth in section 1 of this order, the Working Group shall:
(a) identify Federal programs that:
(i) focus primarily on improving the basic education skills of adults;
(ii) have the goal of transitioning adults from basic literacy to postsecondary education, training, or employment; or
(iii) constitute programs of adult education;
(b) as appropriate, review the programs identified under subsection (a) of this section and submit to the heads of the agencies administering those programs recommendations to:
(i) promote the transition of adults from such programs to postsecondary education, training, or employment;
(ii) increase the effectiveness, efficiency, and availability of such programs;
(iii) minimize unnecessary duplication among such programs;
(iv) measure and evaluate the performance of such programs; and
(v) undertake and disseminate the results of research related to such programs;
(c) identify gaps in the research about effective ways to teach adult education for postsecondary readiness, recommend areas for further research to improve adult education programs and services, and identify promising practices in disseminating valid existing and future research findings; and
(d) obtain information and advice as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, concerning adult education from:
(i) State, local, territorial, and tribal officials; and
(ii) representatives of entities or other individuals;
(e) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency relating to adult education; and
(f) report to the President, through the Assistant to the President for Domestic Policy, on its work, and on the implementation of any recommendations arising from its work, at such times and in such formats as the Chair may specify, with the first such report to be submitted no later than 9 months after the date of this order.

SIC. 6. Administration of the Working Group. (a) To the extent permitted by law, the Department of Education shall provide the funding and administrative support the Working Group needs, as determined by the Chair, to implement this order.
(b) The heads of agencies shall provide, as appropriate, such assistance and information as the Chair may request to implement this order.

SIC. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to an agency or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

§ 9202. Definitions
In this subchapter:
(1) Adult education
The term “adult education” means services or instruction below the postsecondary level for individuals—
(A) who have attained 16 years of age;
(B) who are not enrolled or required to be enrolled in secondary school under State law; and
(C) who—
(i) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
(ii) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or
(iii) are unable to speak, read, or write the English language.

(2) Adult education and literacy activities
The term “adult education and literacy activities” means activities described in section 9241(b) of this title.
§ 9202

(3) Educational service agency
The term “educational service agency” means a regional public multiservice agency authorized by State statute to develop and manage a service or program, and to provide the service or program to a local educational agency.

(4) Eligible agency
The term “eligible agency” means the sole entity or agency in a State or an outlying area responsible for administering or supervising policy for adult education and literacy in the State or outlying area, respectively, consistent with the law of the State or outlying area, respectively.

(5) Eligible provider
The term “eligible provider” means—
(A) a local educational agency;
(B) a community-based organization of demonstrated effectiveness;
(C) a volunteer literacy organization of demonstrated effectiveness;
(D) an institution of higher education;
(E) a public or private nonprofit agency;
(F) a library;
(G) a public housing authority;
(H) a nonprofit institution that is not described in any of subparagraphs (A) through (G) and has the ability to provide literacy services to adults and families; and
(I) a consortium of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) through (H).

(6) English literacy program
The term “English literacy program” means a program of instruction designed to help individuals of limited English proficiency achieve competence in the English language.

(7) Family literacy services
The term “family literacy services” means services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:
(A) Interactive literacy activities between parents and their children.
(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.
(C) Parent literacy training that leads to economic self-sufficiency.
(D) An age-appropriate education to prepare children for success in school and life experiences.

(8) Governor
The term “Governor” means the chief executive officer of a State or outlying area.

(9) Individual with a disability
(A) In general
The term “individual with a disability” means an individual with any disability (as defined in section 12102 of title 42).

(B) Individuals with disabilities
The term “individuals with disabilities” means more than one individual with a disability.

(10) Individual of limited English proficiency
The term “individual of limited English proficiency” means an adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English language, and—
(A) whose native language is a language other than English; or
(B) who lives in a family or community environment where a language other than English is the dominant language.

(11) Institution of higher education
The term “institution of higher education” has the meaning given the term in section 1001 of this title.

(12) Literacy
The term “literacy” means an individual’s ability to read, write, and speak in English, compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

(13) Local educational agency
The term “local educational agency” has the meaning given the term in section 7801 of this title.

(14) Outlying area
The term “outlying area” has the meaning given the term in section 2801 of title 29.

(15) Postsecondary educational institution
The term “postsecondary educational institution” means—
(A) an institution of higher education that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor’s degree;
(B) a tribally controlled community college;
(C) a nonprofit educational institution offering certificate or apprenticeship programs at the postsecondary level.

(16) Secretary
The term “Secretary” means the Secretary of Education.

(17) State
The term “State” means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(18) Workplace literacy services
The term “workplace literacy services” means literacy services that are offered for the purpose of improving the productivity of the workforce through the improvement of literacy skills.

AMENDMENTS
1998—Pub. L. 105–277 made technical amendment to reference in original act which appears in text as reference to this subchapter.
§ 9203. Home schools

Nothing in this subchapter shall be construed to affect home schools, or to compel a parent engaged in home schooling to participate in an English literacy program, family literacy services, or adult education.


AMENDMENTS

1998—Pub. L. 105–277 made technical amendment to reference in original act which appears in text as reference to this subchapter.

§ 9204. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of the fiscal years 1999 through 2003.


AMENDMENTS

1998—Pub. L. 105–277 made technical amendment to reference in original act which appears in text as reference to this subchapter.

PART A—ADULT EDUCATION AND LITERACY PROGRAMS

CODIFICATION

This part was, in the original, designated subtitle A of title II of Pub. L. 105–220 and has been redesignated part A of this subchapter for purposes of codification. This subchapter does not contain a part B, because subtitle B (§ 251) of title II of Pub. L. 105–220 repealed numerous sections of the Code and has been executed to those sections, see Tables.

SUBPART 1—FEDERAL PROVISIONS

§ 9211. Reservation of funds; grants to eligible agencies; allotments

(a) Reservation of funds

From the sum appropriated under section 9204 of this title for a fiscal year, the Secretary—

(1) shall reserve 1.5 percent to carry out section 9225 of this title, except that the amount so reserved shall not exceed $8,000,000;

(2) shall reserve 1.5 percent to carry out section 9253 of this title, except that the amount so reserved shall not exceed $8,000,000; and

(3) shall make available, to the Secretary of Labor, 1.72 percent for incentive grants under section 9273 of this title.

(b) Grants to eligible agencies

(1) In general

From the sum appropriated under section 9204 of this title and not reserved under subsection (a) of this section for a fiscal year, the Secretary shall award a grant to each eligible agency having a State plan approved under section 9224 of this title in an amount equal to the sum of the initial allotment under subsection (c)(1) of this section and the additional allotment under subsection (c)(2) of this section for the eligible agency for the fiscal year, subject to subsections (f) and (g) of this section, to enable the eligible agency to carry out the activities assisted under this part.

(2) Purpose of grants

The Secretary may award a grant under paragraph (1) only if the eligible entity involved agrees to expend the grant for adult education and literacy activities in accordance with the provisions of this part.

(c) Allotments

(1) Initial allotments

From the sum appropriated under section 9204 of this title and not reserved under subsection (a) of this section for a fiscal year, the Secretary shall allot to each eligible entity having a State plan approved under section 9224(f) of this title—

(A) $100,000, in the case of an eligible agency serving an outlying area; and

(B) $250,000, in the case of any other eligible agency.

(2) Additional allotments

From the sum appropriated under section 9204 of this title, not reserved under subsection (a) of this section, and not allotted under paragraph (1), for a fiscal year, the Secretary shall allot to each eligible agency that receives an initial allotment under paragraph (1) an additional amount that bears the same relationship to such sum as the number of qualifying adults in the State or outlying area served by the eligible agency bears to the number of such adults in all States and outlying areas.

(d) Qualifying adult

For the purpose of subsection (c)(2) of this section, the term “qualifying adult” means an adult who—

(1) is at least 16 years of age;

(2) is beyond the age of compulsory school attendance under the law of the State or outlying area;

(3) does not have a secondary school diploma or its recognized equivalent; and

(4) is not enrolled in secondary school.

(e) Special rule

(1) In general

From amounts made available under subsection (c) of this section for the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, the
Secretary shall award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau to carry out activities described in this part in accordance with the provisions of this part that the Secretary determines are not inconsistent with this subsection.

(2) Award basis

The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.

(3) Termination of eligibility

Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this part for any fiscal year that begins after September 30, 2001.

(4) Administrative costs

The Secretary may provide not more than 5 percent of the funds made available for grants under this subsection to pay the administrative costs of the Pacific Region Educational Laboratory regarding activities assisted under this subsection.

(f) Hold-harmless

(1) In general

Notwithstanding subsection (c) of this section—

(A) for fiscal year 1999, no eligible agency shall receive an allotment under this part that is less than 90 percent of the payments made to the State or outlying area of the eligible agency for fiscal year 1998 for programs for which funds were authorized to be appropriated under section 313 of the Adult Education Act (as such Act was in effect on the day before August 7, 1998); and

(B) for fiscal year 2000 and each succeeding fiscal year, no eligible agency shall receive an allotment under this part that is less than 90 percent of the allotment the eligible agency received for the preceding fiscal year under this part.

(2) Ratable reduction

If for any fiscal year the amount available for allotment under this part is insufficient to satisfy the provisions of paragraph (1), the Secretary shall ratably reduce the payments to all eligible agencies, as necessary.

(g) Reallotment

The portion of any eligible agency’s allotment under this part for a fiscal year that the Secretary determines will not be required for the period such allotment is available for carrying out activities described in this part, shall be available for reallocation from time to time, on such dates during such period as the Secretary shall fix, to other eligible agencies in proportion to the original allotments to such agencies under this part for such year.

References in Text

Section 313 of the Adult Education Act (as such Act was in effect on the day before August 7, 1998), referred to in subsec. (f)(1)(A), means section 313 of Pub. L. 89–750, which was classified to section 226d(b) of this title, prior to repeal by Pub. L. 105–220, title II, §251(a)(1), Aug. 7, 1998, 112 Stat. 1797.

Amendments

1998—Subsec. (d)(1). Pub. L. 105–277 struck out “, but less than 61 years of age” after “16 years of age”.

§ 9212. Performance accountability system

(a) Purpose

The purpose of this section is to establish a comprehensive performance accountability system, comprised of the activities described in this section, to assess the effectiveness of eligible agencies in achieving continuous improvement of adult education and literacy activities funded under this part, in order to optimize the return on investment of Federal funds in adult education and literacy activities.

(b) Eligible agency performance measures

(1) In general

For each eligible agency, the eligible agency performance measures shall consist of—

(A)(i) the core indicators of performance described in paragraph (2)(A); and

(ii) additional indicators of performance (if any) identified by the eligible agency under paragraph (2)(B); and

(B) an eligible agency adjusted level of performance for each indicator described in subparagraph (A).

(2) Indicators of performance

(A) Core indicators of performance

The core indicators of performance shall include the following:

(i) Demonstrated improvements in literacy skill levels in reading, writing, and speaking the English language, numeracy, problem solving, English language acquisition, and other literacy skills.

(ii) Placement in, retention in, or completion of, postsecondary education, training, unsubsidized employment or career advancement.

(iii) Receipt of a secondary school diploma or its recognized equivalent.

(B) Additional indicators

An eligible agency may identify in the State plan additional indicators for adult education and literacy activities authorized under this part.

(3) Levels of performance

(A) Eligible agency adjusted levels of performance for core indicators

(i) In general

For each eligible agency submitting a State plan, there shall be established, in accordance with this subparagraph, levels of performance for each of the core indicators of performance described in paragraph...
(2)(A) for adult education and literacy activities authorized under this part. The levels of performance established under this subparagraph shall, at a minimum—

(I) be expressed in an objective, quantifiable, and measurable form; and

(II) show the progress of the eligible agency toward continuously improving in performance.

(ii) Identification in State plan

Each eligible agency shall identify, in the State plan submitted under section 9224 of this title, expected levels of performance for each of the core indicators of performance for the first 3 program years covered by the State plan.

(iii) Agreement on eligible agency adjusted levels of performance for first 3 years

In order to ensure an optimal return on the Investment of Federal funds in adult education and literacy activities authorized under this part, the Secretary and each eligible agency shall reach agreement on levels of performance for each of the core indicators of performance, for the first 3 program years covered by the State plan, taking into account the levels identified in the State plan under clause (ii) and the factors described in clause (iv). The levels agreed to under this clause shall be considered to be the eligible agency adjusted levels of performance for the eligible agency for such years and shall be incorporated into the State plan prior to the approval of such plan.

(iv) Factors

The agreement described in clause (iii) or (v) shall take into account—

(I) how the levels involved compare with the eligible agency adjusted levels of performance established for other eligible agencies, taking into account factors including the characteristics of participants when the participants entered the program, and the services or instruction to be provided; and

(II) the extent to which such levels involved promote continuous improvement in performance on the performance measures by such eligible agency and ensure optimal return on the investment of Federal funds.

(v) Agreement on eligible agency adjusted levels of performance for 4th and 5th years

Prior to the fourth program year covered by the State plan, the Secretary and each eligible agency shall reach agreement on levels of performance for each of the core indicators of performance for the fourth and fifth program years covered by the State plan, taking into account the factors described in clause (iv). The levels agreed to under this clause shall be considered to be the eligible agency adjusted levels of performance for the eligible agency for such years and shall be incorporated into the State plan.

(vi) Revisions

If unanticipated circumstances arise in a State resulting in a significant change in the factors described in clause (iv)(II), the eligible agency may request that the eligible agency adjusted levels of performance agreed to under clause (iii) or (v) be revised. The Secretary, after collaboration with the representatives described in section 2871(i)(1) of title 29, shall issue objective criteria and methods for making such revisions.

(B) Levels of performance for additional indicators

The eligible agency may identify, in the State plan, eligible agency levels of performance for each of the additional indicators described in paragraph (2)(B). Such levels shall be considered to be eligible agency adjusted levels of performance for purposes of this part.

(c) Report

(1) In general

Each eligible agency that receives a grant under section 9211(b) of this title shall annually prepare and submit to the Secretary a report on the progress of the eligible agency in achieving eligible agency performance measures, including information on the levels of performance achieved by the eligible agency with respect to the core indicators of performance.

(2) Information dissemination

The Secretary—

(A) shall make the information contained in such reports available to the general public through publication and other appropriate methods;

(B) shall disseminate State-by-State comparisons of the information; and

(C) shall provide the appropriate committees of Congress with copies of such reports.

AMENDMENTS

SUBPART 2—STATE PROVISIONS

§ 9221. State administration

Each eligible agency shall be responsible for the State or outlying area administration of activities under this part, including—

(1) the development, submission, and implementation of the State plan;

(2) consultation with other appropriate agencies, groups, and individuals that are involved in, or interested in, the development and implementation of activities assisted under this part; and

(3) coordination and nonduplication with other Federal and State education, training, corrections, public housing, and social service programs.
§ 9222. State distribution of funds; matching requirement

(a) State distribution of funds

Each eligible agency receiving a grant under this part for a fiscal year—
(1) shall use not less than 82.5 percent of the grant funds to award grants and contracts under section 9241 of this title and to carry out section 9225 of this title, of which not more than 10 percent of the 82.5 percent shall be available to carry out section 9225 of this title;
(2) shall use not more than 12.5 percent of the grant funds to carry out State leadership activities under section 9223 of this title; and
(3) shall use not more than 5 percent of the grant funds, or $65,000, whichever is greater, for the administrative expenses of the eligible agency.

(b) Matching requirement

(1) In general

In order to receive a grant from the Secretary under section 9211(b) of this title each eligible agency shall provide, for the costs to be incurred by the eligible agency in carrying out the adult education and literacy activities for which the grant is awarded, a non-Federal contribution in an amount equal to—
(A) in the case of an eligible agency serving an outlying area, 12 percent of the total amount of funds expended for adult education and literacy activities in the outlying area, except that the Secretary may decrease the amount of funds required under this subparagraph for an eligible agency; and
(B) in the case of an eligible agency serving a State, 25 percent of the total amount of funds expended for adult education and literacy activities in the State.

(2) Non-Federal contribution

An eligible agency’s non-Federal contribution required under paragraph (1) may be provided in cash or in kind, fairly evaluated, and used for adult education and literacy activities in a manner that is consistent with the purpose of this part.

§ 9223. State leadership activities

(a) In general

Each eligible agency shall use funds made available under section 9222(a)(2) of this title for one or more of the following adult education and literacy activities:
(1) The establishment or operation of professional development programs to improve the quality of instruction provided pursuant to local activities required under section 9241(b) of this title, including instruction incorporating phonemic awareness, systematic phonics, fluency, and reading comprehension, and instruction provided by volunteers or by personnel of a State or outlying area.
(2) The provision of technical assistance to eligible providers of adult education and literacy activities.
(3) The provision of technology assistance, including staff training, to eligible providers of adult education and literacy activities to enable the eligible providers to improve the quality of such activities.
(4) The support of State or regional networks of literacy resource centers.
(5) The monitoring and evaluation of the quality of, and the improvement in, adult education and literacy activities.
(6) Incentives for—
(A) program coordination and integration; and
(B) performance awards.
(7) Developing and disseminating curricula, including curricula incorporating phonemic awareness, systematic phonics, fluency, and reading comprehension.
(8) Other activities of statewide significance that promote the purpose of this subchapter.
(9) Coordination with existing support services, such as transportation, child care, and other assistance designed to increase rates of enrollment in, and successful completion of, adult education and literacy activities, to adults enrolled in such activities.
(10) Integration of literacy instruction and occupational skill training, and promoting linkages with employers.
(11) Linkages with postsecondary educational institutions.

(b) Collaboration

In carrying out this section, eligible agencies shall collaborate where possible, and avoid duplicating efforts, in order to maximize the impact of the activities described in subsection (a) of this section.

(c) State-imposed requirements

Whenever a State or outlying area implements any rule or policy relating to the administration or operation of a program authorized under this part that has the effect of imposing a requirement that is not imposed under Federal law (including any rule or policy based on a State or outlying area interpretation of a Federal statute, regulation, or guideline), the State or outlying area shall identify, to eligible providers, the rule or policy as being State- or outlying area-imposed.

References in Text

This subchapter, referred to in subsec. (a)(8), was in the original “this title”, meaning title II of Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 1069, known as the Adult Education and Family Literacy Act, which enacted this subchapter, amended sections 6362, 6365, 6366, 6813, and 7881 of this title, and section 3013 of Title 42, The Public Health and Welfare, and repealed sections 1201 to 1213d of this title and provisions set out as notes under sections 1201, 1213c, 2963, and 2966 of this title. For complete classification of title II to the Code, see Short Title note set out under section 9201 of this title and Tables.
have on file with, the Secretary a 5-year State plan.

(2) Comprehensive plan or application

The eligible agency may submit the State plan as part of a comprehensive plan or application for Federal education assistance.

(b) Plan contents

In developing the State plan, and any revisions to the State plan, the eligible agency shall include in the State plan or revisions—

(1) an objective assessment of the needs of individuals in the State or outlying area for adult education and literacy activities, including individuals most in need or hardest to serve;

(2) a description of the adult education and literacy activities that will be carried out with any funds received under this part;

(3) a description of how the eligible agency will evaluate annually the effectiveness of the adult education and literacy activities based on the performance measures described in section 9212 of this title;

(4) a description of the performance measures described in section 9212 of this title and how such performance measures will ensure the improvement of adult education and literacy activities in the State or outlying area;

(5) an assurance that the eligible agency will award not less than one grant under this part to an eligible provider who offers flexible schedules and necessary support services (such as child care and transportation) to enable individuals, including individuals with disabilities, or individuals with other special needs, to participate in adult education and literacy activities, which eligible provider shall attempt to coordinate with support services that are not provided under this part prior to using funds for adult education and literacy activities provided under this part for support services;

(6) an assurance that the funds received under this part will not be expended for any purpose other than for activities under this part;

(7) a description of how the eligible agency will fund local activities in accordance with the considerations described in section 9241(e) of this title;

(8) an assurance that the eligible agency will expend the funds under this part only in a manner consistent with fiscal requirements in section 9251 of this title;

(9) a description of the process that will be used for public participation and comment with respect to the State plan;

(10) a description of how the eligible agency will develop program strategies for populations that include, at a minimum—

(A) low-income students;

(B) individuals with disabilities;

(C) single parents and displaced homemakers; and

(D) individuals with multiple barriers to educational enhancement, including individuals with limited English proficiency;

(11) a description of how the adult education and literacy activities that will be carried out with any funds received under this part will be integrated with other adult education, career development, and employment and training activities in the State or outlying area served by the eligible agency; and

(12) a description of the steps the eligible agency will take to ensure direct and equitable access, as required in section 9241(c)(1) of this title.

(c) Plan revisions

When changes in conditions or other factors require substantial revisions to an approved State plan, the eligible agency shall submit the revisions to the State plan to the Secretary.

(d) Consultation

The eligible agency shall—

(1) submit the State plan, and any revisions to the State plan, to the Governor of the State or outlying area for review and comment; and

(2) ensure that any comments by the Governor regarding the State plan, and any revision to the State plan, are submitted to the Secretary.

(e) Peer review

The Secretary shall establish a peer review process to make recommendations regarding the approval of State plans.

(f) Plan approval

A State plan submitted to the Secretary shall be approved by the Secretary unless the Secretary makes a written determination, within 90 days after receiving the plan, that the plan is inconsistent with the specific provisions of this part.

(g) Transition

The provisions of this section shall be subject to section 9276(b) of this title.

(§ 9225. Programs for corrections education and other institutionalized individuals

(a) Program authorized

From funds made available under section 9222(a)(1) of this title for a fiscal year, each eligible agency shall carry out corrections education and education for other institutionalized individuals.

(b) Uses of funds

The funds described in subsection (a) of this section shall be used for the cost of educational programs for criminal offenders in correctional institutions and for other institutionalized individuals, including academic programs for—

(1) basic education;

(2) special education programs as determined by the eligible agency;

(3) English literacy programs; and

(4) secondary school credit programs.

(c) Priority

Each eligible agency that is using assistance provided under this section to carry out a pro-
gram for criminal offenders in a correctional institution shall give priority to serving individuals who are likely to leave the correctional institution within 5 years of participation in the program.

(d) Definitions

(1) Criminal offender

The term "criminal offender" means any individual who is charged with or convicted of any criminal offense.

(2) Correctional institution

The term "correctional institution" means any—

(A) prison;
(B) jail;
(C) reformatory;
(D) work farm;
(E) detention center; or
(F) halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.


Prior Provisions

Provisions similar to this section were contained in section 1204 of this title prior to repeal by Pub. L. 105-220.

Amendments

1998—Subsec. (a). Pub. L. 105-277, § 101(f) [title VIII, § 404(d)(1)], substituted "and education" for "or education".

Subsec. (c). Pub. L. 105-277, § 101(f) [title VIII, § 404(d)(2)], substituted "within" for "with" before "5 years".

SUBPART 3—LOCAL PROVISIONS

§ 9241. Grants and contracts for eligible providers

(a) Grants and contracts

From grant funds made available under section 9211(b) of this title, each eligible agency shall award multiyear grants or contracts, on a competitive basis, to eligible providers within the State or outlying area to enable the eligible providers to develop, implement, and improve adult education and literacy activities within the State.

(b) Required local activities

The eligible agency shall require that each eligible provider receiving a grant or contract under subsection (a) of this section use the grant or contract to establish or operate one or more programs that provide services or instruction in one or more of the following categories:

(1) Adult education and literacy services, including workplace literacy services.

(2) Family literacy services.

(3) English literacy programs.

(c) Direct and equitable access; same process

Each eligible agency receiving funds under this part shall ensure that—

(1) all eligible providers have direct and equitable access to apply for grants or contracts under this section; and

(2) the same grant or contract announcement process and application process is used for all eligible providers in the State or outlying area.

(d) Special rule

Each eligible agency awarding a grant or contract under this section shall not use any funds made available under this part for adult education and literacy activities for the purpose of supporting or providing programs, services, or activities for individuals who are not individuals described in subparagraphs (A) and (B) of section 9202(1) of this title, except that such agency may use such funds for such purpose if such programs, services, or activities are related to family literacy services. In providing family literacy services under this part, an eligible provider shall attempt to coordinate with programs and services that are not assisted under this part prior to using funds for adult education and literacy activities under this part for activities other than adult education activities.

(e) Considerations

In awarding grants or contracts under this section, the eligible agency shall consider—

(1) the degree to which the eligible provider will establish measurable goals for participant outcomes;

(2) the past effectiveness of an eligible provider in improving the literacy skills of adults and families, and, after the 1-year period beginning with the adoption of an eligible agency’s performance measures under section 9212 of this title, the success of an eligible provider receiving funding under this part in meeting or exceeding such performance measures, especially with respect to those adults with the lowest levels of literacy;

(3) the commitment of the eligible provider to serve individuals in the community who are most in need of literacy services, including individuals who are low-income or have minimal literacy skills;

(4) whether or not the program—

(A) is of sufficient intensity and duration for participants to achieve substantial learning gains; and

(B) uses instructional practices, such as phonemic awareness, systematic phonics, fluency, and reading comprehension that research has proven to be effective in teaching individuals to read;

(5) whether the activities are built on a strong foundation of research and effective educational practice;

(6) whether the activities effectively employ advances in technology, as appropriate, including the use of computers;

(7) whether the activities provide learning in real life contexts to ensure that an individual has the skills needed to compete in the workplace and exercise the rights and responsibilities of citizenship;

(8) whether the activities are staffed by well-trained instructors, counselors, and administrators;

(9) whether the activities coordinate with other available resources in the community, such as by establishing strong links with ele-
mentary schools and secondary schools, post-secondary educational institutions, one-stop centers, job training programs, and social service agencies;

(10) whether the activities offer flexible schedules and support services (such as child care and transportation) that are necessary to enable individuals, including individuals with disabilities or other special needs, to attend and complete programs;

(11) whether the activities maintain a high-quality information management system that has the capacity to report participant outcomes and to monitor program performance against the eligible agency performance measures; and

(12) whether the local communities have a demonstrated need for additional English literacy programs.


§ 9242. Local application

Each eligible provider desiring a grant or contract under this part shall submit an application to the eligible agency containing such information and assurances as the eligible agency may require, including—

(1) a description of how funds awarded under this part will be spent; and

(2) a description of any cooperative arrangements the eligible provider has with other agencies, institutions, or organizations for the delivery of adult education and literacy activities.


§ 9243. Local administrative cost limits

(a) In general

Subject to subsection (b) of this section, of the amount that is made available under this part to an eligible provider—

(1) not less than 95 percent shall be expended for carrying out adult education and literacy activities; and

(2) the remaining amount, not to exceed 5 percent, shall be used for planning, administration, personnel development, and interagency coordination.

(b) Special rule

In cases where the cost limits described in subsection (a) of this section are too restrictive to allow for adequate planning, administration, personnel development, and interagency coordination, the eligible provider shall negotiate with the eligible agency in order to determine an adequate level of funds to be used for noninstructional purposes.


SUBPART 4—GENERAL PROVISIONS

§ 9251. Administrative provisions

(a) Supplement not supplant

Funds made available for adult education and literacy activities under this part shall supplement and not supplant other State or local public funds expended for adult education and literacy activities.

(b) Maintenance of effort

(1) In general

(A) Determination

An eligible agency may receive funds under this part for any fiscal year if the Secretary finds that the fiscal effort per student or the aggregate expenditures of such eligible agency for adult education and literacy activities, in the second preceding fiscal year, was not less than 90 percent of the fiscal effort per student or the aggregate expenditures of such eligible agency for adult education and literacy activities, in the third preceding fiscal year.

(B) Proportionate reduction

Subject to paragraphs (2), (3), and (4), for any fiscal year with respect to which the Secretary determines under subparagraph (A) that the fiscal effort or the aggregate expenditures of an eligible agency for the preceding program year were less than such effort or expenditures for the second preceding program year, the Secretary—

(i) shall determine the percentage decreases in such effort or in such expenditures; and

(ii) shall decrease the payment made under this part for such program year to the agency for adult education and literacy activities by the lesser of such percentages.

(2) Computation

In computing the fiscal effort and aggregate expenditures under paragraph (1), the Secretary shall exclude capital expenditures and special one-time project costs.

(3) Decrease in Federal support

If the amount made available for adult education and literacy activities under this part for a fiscal year is less than the amount made available for adult education and literacy activities under this part for the preceding fiscal year, then the fiscal effort per student and the aggregate expenditures of an eligible agency required in order to avoid a reduction under paragraph (1)(B) shall be decreased by the same percentage as the percentage decrease in the amount so made available.

(4) Waiver

The Secretary may waive the requirements of this subsection for 1 fiscal year only, if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or an unforeseen and precipitous decline in the financial resources of the State or outlying area of the eligible agency. If the Secretary grants a waiver under the preceding sentence for a fiscal year, the level of effort required under paragraph (1) shall not be reduced in the subsequent fiscal year because of the waiver.

§ 9252. National Institute for Literacy

(a) Purpose

The purpose of this section is to establish a National Institute for Literacy that—

(1) provides national leadership regarding literacy;
(2) coordinates literacy services and policy; and
(3) serves as a national resource for adult education and literacy programs by—

(A) providing the best and most current information available, including the work of the Eunice Kennedy Shriver National Institute of Child Health and Human Development in the area of phonemic awareness, systematic phonics, fluency, and reading comprehension, to all recipients of Federal assistance that focuses on reading, including programs under titles I and VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq. and 7401 et seq.), the Head Start Act (42 U.S.C. 9831 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and this Act; and
(B) supporting the creation of new ways to offer services of proven effectiveness.

(b) Establishment

(1) In general

There is established the National Institute for Literacy (in this section referred to as the “Institute”). The Institute shall be administered under the terms of an interagency agreement entered into by the Secretary of Education with the Secretary of Labor and the Secretary of Health and Human Services (in this section referred to as the “Interagency Group”). The Interagency Group may include in the Institute any research and development center, institute, or clearinghouse established within the Department of Education, the Department of Labor, or the Department of Health and Human Services the purpose of which is determined by the Interagency Group to be related to the purpose of the Institute.

(2) Offices

The Institute shall have offices separate from the offices of the Department of Education, the Department of Labor, and the Department of Health and Human Services.

(3) Recommendations

The Interagency Group shall consider the recommendations of the National Institute for Literacy Advisory Board (in this section referred to as the “Board”) established under subsection (e) of this section in planning the goals of the Institute and in the implementation of any programs to achieve the goals. If the Board’s recommendations are not followed, the Interagency Group shall provide a written explanation to the Board concerning actions the Interagency Group takes that are inconsistent with the Board’s recommendations, including the reasons for not following the Board’s recommendations with respect to the actions. The Board may also request a meeting of the Interagency Group to discuss the Board’s recommendations.

(4) Daily operations

The daily operations of the Institute shall be administered by the Director of the Institute.

(c) Duties

(1) In general

In order to provide leadership for the improvement and expansion of the system for delivery of literacy services, the Institute is authorized—

(A) to establish a national electronic data base of information that disseminates information to the broadest possible audience within the literacy and basic skills field, and that includes—

(i) effective practices in the provision of literacy and basic skills instruction, including instruction in phonemic awareness, systematic phonics, fluency, and reading comprehension, and the integration of literacy and basic skills instruction with occupational skills training;

(ii) public and private literacy and basic skills programs, and Federal, State, and local policies, affecting the provision of literacy services at the national, State, and local levels;

(iii) opportunities for technical assistance, meetings, conferences, and other opportunities that lead to the improvement of literacy and basic skills services; and

(iv) a communication network for literacy programs, providers, social service agencies, and students;

(B) to coordinate support for the provision of literacy and basic skills services across Federal agencies and at the State and local levels;

(C) to coordinate the support of reliable and replicable research and development on literacy and basic skills in families and adults across Federal agencies, especially with the Office of Educational Research and Improvement in the Department of Education, and to carry out basic and applied research and development on topics that are not being investigated by other organizations or agencies, such as the special literacy needs of individuals with learning disabilities;

(D) to collect and disseminate information on methods of advancing literacy that show great promise, including phonemic awareness, systematic phonics, fluency, and reading comprehension based on the work of the Eunice Kennedy Shriver National Institute of Child Health and Human Development;

(E) to provide policy and technical assistance to Federal, State, and local entities for the improvement of policy and programs relating to literacy;

(F) to fund a network of State or regional adult literacy resource centers to assist State and local public and private nonprofit efforts to improve literacy by—

(i) encouraging the coordination of literacy services; and

(ii) enhancing the capacity of State and local organizations to provide literacy services; and
(iii) serving as a link between the Institute and providers of adult education and literacy activities for the purpose of sharing information, data, research, expertise, and literacy resources;

(G) to coordinate and share information with national organizations and associations that are interested in literacy and workforce investment activities;

(H) to advise Congress and Federal departments and agencies regarding the development of policy with respect to literacy and basic skills; and

(I) to undertake other activities that lead to the improvement of the Nation’s literacy delivery system and that complement other such efforts being undertaken by public and private agencies and organizations.

(2) Grants, contracts, and cooperative agreements

The Institute may award grants to, or enter into contracts or cooperative agreements with, individuals, public or private institutions, agencies, organizations, or consortia of such institutions, agencies, or organizations to carry out the activities of the Institute.

(d) Literacy leadership

(1) In general

The Institute, in consultation with the Board, may award fellowships, with such stipends and allowances that the Director considers necessary, to outstanding individuals pursuing careers in adult education or literacy in the areas of instruction, management, research, or innovation.

(2) Fellowships

Fellowships awarded under this subsection shall be used, under the auspices of the Institute, to engage in research, education, training, technical assistance, or other activities to advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level.

(3) Interns and volunteers

The Institute, in consultation with the Board, may award paid and unpaid internships to individuals seeking to assist the Institute in carrying out its mission. Notwithstanding section 1342 of title 31, the Institute may accept and use voluntary and uncompensated services as the Institute determines necessary.

(e) National Institute for Literacy Advisory Board

(1) Establishment

(A) In general

There shall be a National Institute for Literacy Advisory Board (in this section referred to as the “Board”), which shall consist of 10 individuals appointed by the President with the advice and consent of the Senate.

(B) Composition

The Board shall be comprised of individuals who are not otherwise officers or employees of the Federal Government and who are representative of entities such as—

(i) literacy organizations and providers of literacy services, including nonprofit providers, providers of English literacy programs and services, social service organizations, and eligible providers receiving assistance under this part;

(ii) businesses that have demonstrated interest in literacy programs;

(iii) literacy students, including literacy students with disabilities;

(iv) experts in the area of literacy research;

(v) State and local governments;

(vi) State Directors of adult education; and

(vii) representatives of employees, including representatives of labor organizations.

(2) Duties

The Board shall—

(A) make recommendations concerning the appointment of the Director and staff of the Institute;

(B) provide independent advice on the operation of the Institute; and

(C) receive reports from the Interagency Group and the Director.

(3) Federal Advisory Committee Act

Except as otherwise provided, the Board established by this subsection shall be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(4) Appointments

(A) In general

Each member of the Board shall be appointed for a term of 3 years, except that the initial terms for members may be 1, 2, or 3 years in order to establish a rotation in which one-third of the members are selected each year. Any such member may be appointed for not more than 2 consecutive terms.

(B) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor has taken office.

(5) Quorum

A majority of the members of the Board shall constitute a quorum but a lesser number may hold hearings. Any recommendation of the Board may be passed only by a majority of the Board’s members present.

(6) Election of officers

The Chairperson and Vice Chairperson of the Board shall be elected by the members of the Board. The term of office of the Chairperson and Vice Chairperson shall be 2 years.

(7) Meetings

The Board shall meet at the call of the Chairperson or a majority of the members of the Board.
(f) Gifts, bequests, and devises

(1) In general

The Institute may accept, administer, and use gifts or donations of services, money, or property, whether real or personal, tangible or intangible.

(2) Rules

The Board shall establish written rules setting forth the criteria to be used by the Institute in determining whether the acceptance of contributions of services, money, or property whether real or personal, tangible or intangible, would reflect unfavorably upon the ability of the Institute or any employee to carry out the responsibilities of the Institute or employee, or official duties, in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of the Institute’s programs or any official involved in those programs.

(g) Mails

The Board and the Institute may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(h) Staff

The Interagency Group, after considering recommendations made by the Board, shall appoint and fix the pay of a Director.

(i) Applicability of certain civil service laws

The Director and staff of the Institute may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for level IV of the Executive Schedule.

(j) Experts and consultants

The Institute may procure temporary and intermittent services under section 3109(b) of title 5.

(k) Report

The Institute shall submit a report biennially to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate. Each report submitted under this subsection shall include—

1. a comprehensive and detailed description of the Institute’s operations, activities, financial condition, and accomplishments in the field of literacy for the period covered by the report;
2. a description of how plans for the operation of the Institute for the succeeding 2 fiscal years will facilitate achievement of the goals of the Institute and the goals of the literacy programs within the Department of Education, the Department of Labor, and the Department of Health and Human Services; and
3. any additional minority, or dissenting views submitted by members of the Board.

(l) Funding

Any amounts appropriated to the Secretary, the Secretary of Labor, the Secretary of Health and Human Services, or any other department that participates in the Institute for purposes that the Institute is authorized to perform under this section may be provided to the Institute for such purposes.


REFERENCES IN TEXT


The Individuals with Disabilities Education Act, referred to in subsec. (a)(3)(A), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.


Level IV of the Executive Schedule, referred to in subsec. (i), is set out in section 5315 of Title 5, Government Organization and Employees.

Prior Provisions

Provisions similar to this section were contained in section 1213c of this title prior to repeal by Pub. L. 105–220.

Amendments


Change of Name

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Termination of Advisory Boards

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.
OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

The Office of Educational Research and Improvement was established by section 3419 of this title. Section 3419 was repealed and a new section 3419 establishing the Institute of Educational Sciences was enacted by Pub. L. 107–279, title IV, § 402(2), Nov. 5, 2002, 116 Stat. 118.

§ 9253. National leadership activities

The Secretary shall establish and carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide. Such activities may include the following:

(1) Technical assistance, including—
   (A) assistance provided to eligible providers in developing and using performance measures for the improvement of adult education and literacy activities, including family literacy services;
   (B) assistance related to professional development activities, and assistance for the purposes of developing, improving, identifying, and disseminating the most successful methods and techniques for providing adult education and literacy activities, including family literacy services, based on scientific evidence where available; and
   (C) assistance in distance learning and promoting and improving the use of technology in the classroom.

(2) Funding national leadership activities that are not described in paragraph (1), either directly or through grants, contracts, or cooperative agreements awarded on a competitive basis to or with postsecondary educational institutions, public or private organizations or agencies, or consortia of such institutions, organizations, or agencies, such as—
   (A) developing, improving, and identifying the most successful methods and techniques for addressing the education needs of adults, including instructional practices using phonemic awareness, synthetic phonics, fluency, and reading comprehension, based on the work of the Eunice Kennedy Shriver National Institute of Child Health and Human Development;
   (B) increasing the effectiveness of, and improving the quality of, adult education and literacy activities, including family literacy services;
   (C) carrying out research, such as estimating the number of adults functioning at the lowest levels of literacy proficiency;
   (D)(i) carrying out demonstration programs;
      (ii) developing and replicating model and innovative programs, such as the development of models for basic skill certificates, identification of effective strategies for working with adults with learning disabilities and with individuals with limited English proficiency who are adults, and workplace literacy programs; and
   (iii) disseminating best practices information, including information regarding promising practices resulting from federally funded demonstration programs;
   (E) providing for the conduct of an independent evaluation and assessment of adult education and literacy activities through studies and analyses conducted independently through grants and contracts awarded on a competitive basis, which evaluation and assessment shall include descriptions of—
      (i) the effect of performance measures and other measures of accountability on the delivery of adult education and literacy activities, including family literacy services;
      (ii) the extent to which the adult education and literacy activities, including family literacy services, increase the literacy skills of adults (and of children, in the case of family literacy services), lead the participants in such activities to involvement in further education and training, enhance the employment and earnings of such participants, and, if applicable, lead to other positive outcomes, such as reductions in recidivism in the case of prison-based adult education and literacy activities;
      (iii) the extent to which the provision of support services to adults enrolled in adult education and family literacy programs increase the rate of enrollment in, and successful completion of, such programs; and
      (iv) the extent to which eligible agencies have distributed funds under section 9241 of this title to meet the needs of adults through community-based organizations;
   (F) supporting efforts aimed at capacity building at the State and local levels, such as technical assistance in program planning, assessment, evaluation, and monitoring of activities carried out under this part;
   (G) collecting data, such as data regarding the improvement of both local and State data systems, through technical assistance and development of model performance data collection systems; and
   (H) other activities designed to enhance the quality of adult education and literacy activities nationwide.


AMENDMENTS


SUBCHAPTER II—GENERAL PROVISIONS

§ 9271. State unified plan

(a) “Appropriate Secretary” defined

In this section, the term “appropriate Secretary” means the head of the Federal agency who exercises administrative authority over an activity or program described in subsection (b) of this section.

(b) State unified plan

(1) In general

A State may develop and submit to the appropriate Secretaries a State unified plan for
2 or more of the activities or programs set forth in paragraph (2), except that the State may include in the plan the activities described in paragraph (2)(A) only with the prior approval of the legislature of the State. The State unified plan shall cover one or more of the activities set forth in subparagraphs (A) through (D) of paragraph (2) and may cover one or more of the activities set forth in subparagraphs (E) through (O) of paragraph (2). For purposes of this paragraph, the activities and programs described in subparagraphs (A) and (B) of paragraph (2) shall not be considered to be 2 or more activities or programs for purposes of the unified plan. Such activities or programs shall be considered to be 1 activity or program.

(2) Activities

The activities and programs referred to in paragraph (1) are as follows:

(A) career1 and technical education programs at the secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.).

(B) career1 and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.).

(C) Activities authorized under title I [29 U.S.C. 2801 et seq.].

(D) Activities authorized under title II [20 U.S.C. 9201 et seq.].

(E) Programs authorized under section 6(d) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)).

(F) Work programs authorized under section 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)).

(G) Activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.).

(H) Programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.).


(J) Activities authorized under chapter 41 of title 38.

(K) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law).

(L) Programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(M) Programs authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.).

(N) Training activities carried out by the Department of Housing and Urban Development.

(O) Programs authorized under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.).

1 So in original. Probably should be capitalized.

(c) Requirements

(1) In general

The portion of a State unified plan covering an activity or program described in subsection (b) of this section shall be subject to the requirements, if any, applicable to a plan or application for assistance under the Federal statute authorizing the activity or program.

(2) Additional submission not required

A State that submits a State unified plan covering an activity or program described in subsection (b) of this section that is approved under subsection (d) of this section shall not be required to submit any other plan or application in order to receive Federal funds to carry out the activity or program.

(3) Coordination

A State unified plan shall include—

(A) a description of the methods used for joint planning and coordination of the programs and activities included in the unified plan; and

(B) an assurance that the methods included an opportunity for the entities responsible for planning or administering such programs and activities to review and comment on all portions of the unified plan.

(d) Approval by appropriate Secretaries

(1) Jurisdiction

The appropriate Secretary shall have the authority to approve the portion of the State unified plan relating to the activity or program over which the appropriate Secretary exercises administrative authority. On the approval of the appropriate Secretary, the portion of the plan relating to the activity or program shall be implemented by the State pursuant to the applicable portion of the State unified plan.

(2) Approval

(A) In general

A portion of the State unified plan covering an activity or program described in subsection (b) of this section that is submitted to the appropriate Secretary under this section shall be considered to be approved by the appropriate Secretary at the end of the 90-day period beginning on the day the appropriate Secretary receives the portion, unless the appropriate Secretary makes a written determination, during the 90-day period, that the portion is not consistent with the requirements of the Federal statute authorizing the activity or program including the criteria for approval of a plan or application, if any, under such statute or the plan is not consistent with the requirements of subsection (c)(3) of this section.

(B) Special rule

In subparagraph (A), the term “criteria for approval of a State plan”, relating to activities carried out under title I [29 U.S.C. 2801 et seq.] or II [20 U.S.C. 9201 et seq.] or under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), includes a requirement for agreement be-
between the State and the appropriate Secretary regarding State performance measures, including levels of performance.


REFERENCES IN TEXT


The Wagner-Peyser Act, referred to in subsec. (b)(2)(H), is act Aug. 18, 1938, ch. 751, 52 Stat. 1063, which is classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.


Codification


Amendments


Pub. L. 109–270, § 2(h)(7)(A), which directed the substitution of “career and technical education programs at the secondary level” for “secondary vocational education programs”, was executed by making the substitution for “Secondary vocational education programs” to reflect the probable intent of Congress.


Pub. L. 109–270, § 2(h)(8)(A), which directed the substitution of “career and technical education programs at the postsecondary level” for “postsecondary vocational education programs”, was executed by making the substitution for “Postsecondary vocational education programs” to reflect the probable intent of Congress.


1998—Subsec. (b)(1). Pub. L. 105–277 inserted at end “For purposes of this paragraph, the activities and programs described in subparagraphs (A) and (B) of paragraph (2) shall not be considered to be 2 or more activities or programs for purposes of the unified plan. Such activities or programs shall be considered to be 1 activity or program.”

Effective Date of 2008 Amendment


§ 9272. Definitions for indicators of performance

(a) In general

In order to ensure nationwide comparability of performance data, the definition of the Secretary of Labor and the Secretary of Education, after consultation with the representatives described in subsection (b) of this section, shall issue definitions for indicators of performance and levels of performance established under titles I [29 U.S.C. 2081 et seq.] and II [20 U.S.C. 9201 et seq.].

(b) Representatives

The representatives referred to in subsection (a) of this section are representatives of States (as defined in section 2801 of title 29) and political subdivisions, business and industry, employers, eligible providers of employment and training activities (as defined in section 2801 of title 29), educators, participants in activities carried out under this Act, State Directors of adult education, providers of adult education, providers of literacy services, individuals with expertise in...
serving the employment and training needs of eligible youth (as defined in section 2801 of title 29), parents, and other interested parties, with expertise regarding activities authorized under this Act.


REFERENCES IN TEXT


Title II, referred to in subsec. (a), is title II of Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 1059, as amended, known as the Adult Education and Family Literacy Act, which is classified principally to subchapter I (§9201 et seq.) of this chapter. For complete classification of title II to the Code, see Short Title note set out under section 9201 of this title and Tables.


§ 9273. Incentive grants

(a) In general

Beginning on July 1, 2000, the Secretary shall award a grant to each State that exceeds the State adjusted levels of performance for title I [29 U.S.C. 2801 et seq.], the adjusted levels of performance for title II [20 U.S.C. 9201 et seq.], and the levels of performance for programs under Public Law 105–332 (20 U.S.C. 2301 et seq.), for the purpose of carrying out an innovative program consistent with the requirements of any one or more of the programs within title I, title II, or such Public Law, respectively.

(b) Application

(1) In general

The Secretary may provide a grant to a State under subsection (a) of this section only if the State submits an application to the Secretary for the grant that meets the requirements of paragraph (2).

(2) Requirements

The Secretary may review an application described in paragraph (1) only to ensure that the application contains the following assurances:

(A) The legislature of the State was consulted with respect to the development of the application.

(B) The application was approved by the Governor, the eligible agency (as defined in section 9202 of this title), and the State agency responsible for programs established under Public Law 105–332 (20 U.S.C. 2301 et seq.).

(C) The State and the eligible agency, as appropriate, exceeded the State adjusted levels of performance for title I [29 U.S.C. 2801 et seq.], the expected levels of performance for title II [20 U.S.C. 9201 et seq.], and the levels of performance for programs under Public Law 105–332 (20 U.S.C. 2301 et seq.).

(c) Amount

(1) Minimum and maximum grant amounts

Subject to paragraph (2), a grant provided to a State under subsection (a) of this section shall be awarded in an amount that is not less than $750,000 and not more than $3,000,000.

(2) Proportionate reduction

If the amount available for grants under this section for a fiscal year is insufficient to award a grant to each State or eligible agency that is eligible for a grant, the Secretary shall reduce the minimum and maximum grant amount by a uniform percentage.

(d) Expected levels of performance as consideration

Notwithstanding any other provision of this section, for fiscal year 2000, the Secretary shall not consider the expected levels of performance under Public Law 105–332 (20 U.S.C. 2301 et seq.), and shall not award a grant under subsection (a) of this section based on the levels of performance for that Act.


REFERENCES IN TEXT

Title I, referred to in subsecs. (a) and (b)(2)(C), is title I of Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 939, which is classified principally to chapter 30 (§2801 et seq.) of title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

Title II, referred to in subsecs. (a) and (b)(2)(C), is title II of Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 1059, as amended, known as the Adult Education and Family Literacy Act, which is classified principally to subchapter I (§9201 et seq.) of this chapter. For complete classification of title II to the Code, see Short Title note set out under section 9201 of this title and Tables.

AMPENDMENTS


§ 9274. Privacy

(a) Effect on privacy protections

Nothing in this Act shall be construed to supersede the privacy protections afforded parents and students under section 1232g of this title.

(b) Prohibition on development of national database

(1) In general

Nothing in this Act shall be construed to permit the development of a national database

1 See References in Text note below.
of personally identifiable information on individuals receiving services under title I of this Act [29 U.S.C. 2801 et seq.].

(2) Limitation

Nothing in paragraph (1) shall be construed to prevent the proper administration of national programs under subtitles C and D of title I of this Act [29 U.S.C. 2881 et seq.] or to carry out program management activities consistent with title I of this Act [29 U.S.C. 2801 et seq.].


REFERENCES IN TEXT


For complete classification of this Act to the Code, see Short Title note set out under section 9201 of this title and Tables.

§ 9275. Buy-American requirements

(a) Compliance with chapter 83 of title 41

None of the funds made available under title I [29 U.S.C. 2801 et seq.], II [20 U.S.C. 9201 et seq.], or III or this subchapter may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with chapter 83 of title 41.

(b) Sense of the Congress; requirement regarding notice

(1) Purchase of American-made equipment and products

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available under title I [29 U.S.C. 2801 et seq.], II [20 U.S.C. 9201 et seq.], or III or this subchapter may be purchased by an entity unless the entity agrees that in expending the funds the entity will comply with chapter 83 of title 41.

(2) Notice to recipients of assistance

In providing financial assistance using funds made available under title I [29 U.S.C. 2801 et seq.], II [20 U.S.C. 9201 et seq.], or III or this subchapter, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in paragraph (1) by Congress.

(c) Prohibition of contracts with persons falsely labeling products as made in America

If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this subtitle,1 pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations, as such sections are in effect on August 7, 1998, or pursuant to any successor regulations.


REFERENCES IN TEXT

Titles I, II, and III, referred to in subsecs. (a) and (b), are titles I, II, and III of Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 939, 1059, 1080. Title I is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. Title II, known as the Adult Education and Family Literacy Act, is classified principally to subchapter I (§ 2851 et seq.) of this chapter. Title III enacted section 490–2 of this title and section 4110B of Title 38, Veterans’ Benefits, amended sections 49a to 49c, 49d to 49g, 49h to 49j, 49k, 633a, and 791 of this title, section 7103 of Title 5, Government Organization and Employees, section 2311 of Title 19, Customs Duties, and sections 655a, 2000e–16, and 2856 of Title 42, the Public Health and Welfare, and enacted provisions set out as notes under sections 49a, 633a, and 2701 of this title. For complete classification of titles I, II, and III to the Code, see Short Title note set out under section 9201 of this title and Tables.

MODIFICATION


AMENDMENTS


Subsec. (b)(1), (2). Pub. L. 105–277, § 101(f) (title VIII, § 401(18)(B)), substituted “under title I, II, or III or this subchapter” for “under this Act”.

§ 9276. Transition provisions

(a) Workforce investment systems

The Secretary of Labor shall take such actions as the Secretary determines to be appropriate to provide for the orderly transition from any authority under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) to the workforce investment systems established under title I of this Act (29 U.S.C. 2801 et seq.). Such actions shall include the provision of guidance relating to the designation of State workforce investment boards, local workforce investment areas, and local workforce investment boards described in such title.

(b) Adult education and literacy programs

(1) In general

The Secretary of Education shall take such actions as the Secretary determines to be appropriate to provide for the transition from any authority under the Adult Education Act to any authority under the Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.) (as added by title II of this Act).

(2) Limitation

The authority to take actions under paragraph (1) shall apply until July 1, 2000.
(c) Regulations

(1) Interim final regulations

Not later than 180 days after August 7, 1998, the Secretary of Labor shall develop and publish in the Federal Register interim final regulations relating to the transition to, and implementation of, this Act.

(2) Final regulations

Not later than December 31, 1999, the Secretary shall develop and publish in the Federal Register final regulations relating to the transition to, and implementation of, this Act.

(d) Expenditure of funds during transition

(1) In general

Subject to paragraph (2) and in accordance with regulations developed under subsection (c) of this section, States, grant recipients, administrative entities, and other recipients of financial assistance under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or under this Act may expend funds received under the Job Training Partnership Act or under this Act, prior to July 1, 2000, in order to plan and implement programs and activities authorized under this Act.

(2) Additional requirements

Not to exceed 2 percent of any allotment to any State from amounts appropriated under the Job Training Partnership Act or under this Act for fiscal year 1998 or 1999 may be made available to carry out planning authorized under paragraph (1) and not less than 50 percent of any such amount used to carry out planning authorized under paragraph (1) shall be made available to local entities for the planning purposes described in such paragraph.

(e) Reorganization

Not later than 1 year after August 7, 1998, the Secretary of Labor shall reorganize and align functions within the Department of Labor and within the Employment and Training Administration in order to carry out the duties and responsibilities required by this Act (and related laws) in an effective and efficient manner.

Amendments

1998—Subsec. (b)(2). Pub. L. 105–332 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The authority to take actions under paragraph (1) shall apply only for the 1-year period beginning on August 7, 1998."

Subsec. (d)(1). Pub. L. 105–277, §101(f) [title VIII, §401(19)(A)], substituted "subsection (c)" for "subsection (b)".

Subsec. (d)(2). Pub. L. 105–277, §101(f) [title VIII, §401(19)(B)], inserted "planning authorized under" after "carry out" in two places and substituted "the planning purposes" for "the purposes".

CHAPTER 74—TROOPS-TO-TEACHERS PROGRAM


Effective Date of Repeal

Repeal effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

CHAPTER 75—EARLY LEARNING OPPORTUNITIES


References in Text

The Job Training Partnership Act, referred to in subsecs. (a) and (d), is Pub. L. 89–750, as amended, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, prior to repeal by Pub. L. 105–220, title II, §251(a)(1), Aug. 7, 1998, 112 Stat. 1079.


For complete classification of this Act to the Code, see Tables.
The purposes of this chapter are—

(1) to increase the availability of voluntary programs, services, and activities that support early childhood development, increase parent effectiveness, and promote the learning readiness of young children so that young children enter school ready to learn;

(2) to support parents, child care providers, and caregivers who want to incorporate early learning activities into the daily lives of young children;

(3) to remove barriers to the provision of an accessible system of early childhood learning programs in communities throughout the United States;

(4) to increase the availability and affordability of professional development activities and compensation for caregivers and child care providers; and

(5) to facilitate the development of community-based systems of collaborative service delivery models characterized by resource sharing, linkages between appropriate supports, and local planning for services.

The purposes of this chapter are—

 INDENTINGS

HORT

TITLE

.—Congress finds that—

(1) medical research demonstrates that adequate stimulation of a young child’s brain between birth and age 5 is critical to the physical development of the young child’s brain;

(2) parents are the most significant and effective teachers of their children, and they alone are responsible for choosing the best early learning opportunities for their child;

(3) parent education and parent involvement are critical to the success of any early learning program or activity;

(4) the more intensively parents are involved in their child’s early learning, the greater the cognitive and noncognitive benefits to their children;

(5) many parents have difficulty finding the information and support the parents seek to help their children grow to their full potential;

(6) each day approximately 13,000,000 young children, including 6,000,000 infants or toddlers, spend some or all of their day being cared for by someone other than their parents;

(7) quality early learning programs, including those designed to promote effective parenting, can decrease the future incidence of teenage pregnancy, welfare dependency, at-risk behaviors, and juvenile delinquency for children;

(8) several cost-benefit analysis studies indicate that for each $1 invested in early learning programs, the Federal Government can save over $5 by reducing the number of children and families who participate in Federal Government programs like special education and welfare;

(9) for children placed in the care of others during the workday, the low salaries paid to the child care staff, the lack of career progression for the staff, and the lack of child development specialists involved in early learning and child care programs, make it difficult to attract and retain the quality of staff necessary for a positive early learning experience;


(A) serve far fewer than half of all eligible children;

(B) are not primarily designed to provide support for parents who care for their young children in the home; and

(C) lack a means of coordinating early learning opportunities in each community; and

(11) by helping communities increase, expand, and better coordinate early learning opportunities for children and their families, the productivity and creativity of future generations will be improved, and the Nation will be prepared for continued leadership in the 21st century.

§ 9402. Definitions

In this chapter:

(1) Caregiver

The term “caregiver” means an individual, including a relative, neighbor, or family friend, who regularly or frequently provides care, with or without compensation, for a child for whom the individual is not the parent.

(2) Child care provider

The term “child care provider” means a provider of non-residential child care services (including center-based, family-based, and in-home child care services) for compensation who or that is legally operating under State law, and complies with applicable State and local requirements for the provision of child care services.

(3) Early learning

The term “early learning”, used with respect to a program or activity, means learning designed to facilitate the development of cognitive, language, motor, and social-emotional skills for, and to promote learning readiness in, young children.

(4) Early learning program

The term “early learning program” means—

(A) a program of services or activities that helps parents, caregivers, and child care providers incorporate early learning into the daily lives of young children; or

(B) a program that directly provides early learning to young children.

(5) Indian tribe

The term “Indian tribe” has the meaning given in the term in section 450b of title 25.
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(6) Local Council
The term “Local Council” means a Local Council established or designated under section 9413(a) of this title that serves one or more localities.

(7) Locality
The term “locality” means a city, county, borough, township, or area served by another general purpose unit of local government, an Indian tribe, a Regional Corporation, or a Native Hawaiian entity.

(8) Parent
The term “parent” means a biological parent, an adoptive parent, a stepparent, a foster parent, or a legal guardian of, or a person standing in loco parentis to, a child.

(9) Poverty line
The term “poverty line” means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42) applicable to a family of the size involved.

(10) Regional Corporation
The term “Regional Corporation” means an entity listed in section 619(4)(B) of title 42.

(11) Secretary
The term “Secretary” means the Secretary of Health and Human Services.

(12) State
The term “State” means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(13) Training
The term “training” means instruction in early learning that—
(A) is required for certification under State and local laws, regulations, and policies;
(B) is required to receive a nationally or State recognized credential or its equivalent;
(C) is received in a postsecondary education program focused on early learning or early childhood development in which the individual is enrolled; or
(D) is provided, certified, or sponsored by an organization that is recognized for its expertise in promoting early learning or early childhood development.

(14) Young child
The term “young child” means any child from birth to the age of mandatory school attendance in the State where the child resides.

§ 9403. Prohibitions
(a) Participation not required
No person, including a parent, shall be required to participate in any program of early childhood education, early learning, parent education, or developmental screening pursuant to the provisions of this chapter.

(b) Rights of parents
Nothing in this chapter shall be construed to affect the rights of parents otherwise established in Federal, State, or local law.

(c) Particular methods or settings
No entity that receives funds under this chapter shall be required to provide services under this chapter through a particular instructional method or in a particular instructional setting to comply with this chapter.

(d) Nonduplication
No funds provided under this chapter shall be used to carry out an activity funded under another provision of law providing for Federal child care or early learning programs, unless an expansion of such activity is identified in the local needs assessment and performance goals under this chapter.

§ 9404. Authorization and appropriation of funds
There are authorized to be appropriated to the Department of Health and Human Services to carry out this chapter—
(1) $750,000,000 for fiscal year 2001;
(2) $1,000,000,000 for fiscal year 2002;
(3) $1,500,000,000 for fiscal year 2003; and
(4) such sums as may be necessary for each of the fiscal years 2004 and 2005.

§ 9405. Coordination of Federal programs
(a) Coordination
The Secretary and the Secretary of Education shall develop mechanisms to resolve administrative and programmatic conflicts between Federal programs that would be a barrier to parents, caregivers, service providers, or children related to the coordination of services and funding for early learning programs.

(b) Use of equipment and supplies
In the case of a collaborative activity funded under this chapter and another provision of law providing for Federal child care or early learning programs, the use of equipment and nonconsumable supplies purchased with funds made available under this chapter or such provision shall not be restricted to children enrolled or otherwise participating in the program carried out under this chapter or such provision, during a period in which the activity is predominately funded under this chapter or such provision.

§ 9406. Program authorized
(a) Grants
From amounts appropriated under section 9404 of this title the Secretary shall award grants to States to enable the States to award grants to Local Councils to pay the Federal share of the cost of carrying out early learning programs in the locality served by the Local Council.
(b) Federal share
(1) In general
The Federal share of the cost described in subsections (a) and (e) of this section shall be 85 percent for the first and second years of the grant, 80 percent for the third and fourth years of the grant, and 75 percent for the fifth and subsequent years of the grant.

(2) Non-Federal share
The non-Federal share of the cost described in subsections (a) and (e) of this section may be contributed in cash or in kind, fairly evaluated, including facilities, equipment, or services, which may be provided from State or local public sources, or through donations from private entities. For the purposes of this paragraph the term “facilities” includes the use of facilities, but the term “equipment” means donated equipment and not the use of equipment.

(c) Maintenance of effort
The Secretary shall not award a grant under this chapter to any State unless the Secretary determines that the total expenditures by the State and its political subdivisions to support early learning programs (other than funds used to pay the non-Federal share under subsection (b)(2) of this section) for the fiscal year for which the determination is made is equal to or greater than such expenditures for the preceding fiscal year.

(d) Supplement not supplant
Amounts received under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to promote early learning.

(e) Special rule
If funds appropriated to carry out this chapter are less than $150,000,000 for any fiscal year, the Secretary shall award grants for the fiscal year directly to Local Councils, on a competitive basis, to pay the Federal share of the cost of carrying out early learning programs in the locality served by the Local Council. In carrying out the preceding sentence—
(1) subsection (c) of this section, subsections (b) and (c) of section 9409 of this title, and paragraphs (1), (2), and (3) of section 9410(a) of this title shall not apply;

(2) State responsibilities described in section 9413 of this title shall be carried out by the Local Council with regard to the locality;

(3) the Secretary shall provide such technical assistance and monitoring as necessary to ensure that the use of the funds by Local Councils and the distribution of the funds to Local Councils are consistent with this chapter; and

(4) subject to paragraph (1), the Secretary shall assume the responsibilities of the Lead State Agency under this chapter, as appropriate.


§ 9407. Uses of funds

(a) In general
Subject to section 9409 of this title, grant funds under this chapter shall be used to pay for developing, operating, or enhancing voluntary early learning programs that are likely to produce sustained gains in early learning.

(b) Limited uses
Subject to section 9409 of this title, Lead State Agencies and Local Councils shall ensure that funds made available under this chapter to the agencies and Local Councils are used for three or more of the following activities:
(1) Helping parents, caregivers, child care providers, and educators increase their capacity to facilitate the development of cognitive, language comprehension, expressive language, social-emotional, and motor skills, and promote learning readiness.

(2) Promoting effective parenting.

(3) Enhancing early childhood literacy.

(4) Developing linkages among early learning programs within a community and between early learning programs and health care services for young children.

(5) Increasing access to early learning opportunities for young children with special needs, including developmental delays, by facilitating coordination with other programs serving such young children.

(6) Increasing access to existing early learning programs by expanding the days or times that the young children are served, or by improving the affordability of the programs for low-income families.

(7) Improving the quality of early learning programs through professional development and training activities, increased compensation, and recruitment and retention incentives, for early learning providers.

(8) Removing ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times.

(c) Requirements
Each Lead State Agency designated under section 9409(c) of this title and Local Councils receiving a grant under this chapter shall ensure—
(1) that Local Councils described in section 9413 of this title work with local educational agencies to identify cognitive, social, emotional, and motor developmental abilities which are necessary to support children's readiness for school;

(2) that the programs, services, and activities assisted under this chapter will represent developmentally appropriate steps toward the acquisition of those abilities; and

(3) that the programs, services, and activities assisted under this chapter collectively provide benefits for children cared for in their own homes as well as children placed in the care of others.

(d) Sliding scale payments
States and Local Councils receiving assistance under this chapter shall ensure that programs, services, and activities assisted under this chapter which customarily require a payment for such programs, services, or activities, adjust the cost of such programs, services, and activities provided to the individual or the individual's child based on the individual's ability to pay.
§ 9408. Reservations and allotments

(a) Reservation for Indian tribes, Alaska Natives, and Native Hawaiians

The Secretary shall reserve 1 percent of the total amount appropriated under section 9404 of this title for each fiscal year, to be allotted to Indian tribes, Regional Corporations, and Native Hawaiian entities, of which—

(1) 0.5 percent shall be available to Indian tribes; and

(2) 0.5 percent shall be available to Regional Corporations and Native Hawaiian entities.

(b) Allotments

From the funds appropriated under this chapter for each fiscal year that are not reserved under subsection (a) of this section, the Secretary shall allot to each State the sum of—

(1) an amount that bears the same ratio to 50 percent of such funds as the number of children 4 years of age and younger in the State bears to the number of such children in all States; and

(2) an amount that bears the same ratio to 50 percent of such funds as the number of children 4 years of age and younger living in families with incomes below the poverty line in the State bears to the number of such children in all States.

(c) Minimum allotment

No State shall receive an allotment under subsection (b) of this section for a fiscal year in an amount that is less than 40 percent of the total amount appropriated for the fiscal year under this chapter.

(d) Availability of funds

Any portion of the allotment to a State that is not expended for activities under this chapter in the fiscal year for which the allotment is made shall remain available to the State for two additional years, after which any unexpended funds shall be returned to the Secretary. The Secretary shall use the returned funds to carry out a discretionary grant program for research-based early learning demonstration projects.

(e) Data

The Secretary shall make allotments under this chapter on the basis of the most recent data available to the Secretary.

§ 9409. Grant administration

(a) Federal administrative costs

The Secretary may use not more than 3 percent of the amount appropriated under section 9404 of this title for a fiscal year to pay for the administrative costs of carrying out this chapter, including the monitoring and evaluation of State and local efforts.

(b) State administrative costs

A State that receives a grant under this chapter may use—

(1) not more than 2 percent of the funds made available through the grant to carry out activities designed to coordinate early learning programs on the State level, including programs funded or operated by the State educational agency, health, children and family, and human service agencies, and any State-level collaboration or coordination council involving early learning and education, such as the entities funded under section 9835(a)(2)(B)(vi) of title 42;

(2) not more than 2 percent of the funds made available through the grant for the administrative costs of carrying out the grant program and the costs of reporting State and local efforts to the Secretary; and

(3) not more than 3 percent of the funds made available through the grant for training, technical assistance, and wage incentives provided by the State to Local Councils.

(c) Lead State Agency

(1) In general

To be eligible to receive an allotment under this chapter, the Governor of a State shall appoint, after consultation with the leadership of the State legislature, a Lead State Agency to carry out the functions described in paragraph (2).

(2) Lead State Agency

(A) Allocation of funds

The Lead State Agency described in paragraph (1) shall allocate funds to Local Councils as described in section 9411 of this title.

(B) Functions of agency

In addition to allocating funds pursuant to subparagraph (A), the Lead State Agency shall—

(i) advise and assist Local Councils in the performance of their duties under this chapter;

(ii) develop and submit the State application;

(iii) evaluate and approve applications submitted by Local Councils under section 9412 of this title;

(iv) ensure collaboration with respect to assistance provided under this chapter between the State agency responsible for education and the State agency responsible for children and family services;

(v) prepare and submit to the Secretary, an annual report on the activities carried out in the State under this chapter, which shall include a statement describing how all funds received under this chapter are expended and documentation of the effects that resources under this chapter have had on—

(I) parental capacity to improve learning readiness in their young children;

(II) early childhood literacy;

(III) linkages among early learning programs;

(IV) linkages between early learning programs and health care services for young children;

(V) access to early learning activities for young children with special needs;

(VI) access to existing early learning programs through expansion of the days or times that children are served;
(VII) access to existing early learning programs through expansion of the number of young children served; 
(VIII) access to and affordability of existing early learning programs for low-income families; 
(IX) the quality of early learning programs resulting from professional development, and recruitment and retention incentives for caregivers; and 
(X) removal of ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times; and 
(vi) ensure that training and research is made available to Local Councils and that such training and research reflects the latest available brain development and early childhood development research related to early learning.


AMENDMENTS

§ 9410. State requirements

(a) Eligibility
To be eligible for a grant under this chapter, a State shall—
(1) ensure that funds received by the State under this chapter shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under State law;
(2) designate a Lead State Agency under section 9409(c) of this title to administer and monitor the grant and ensure State-level coordination of early learning programs;
(3) submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Secretary may require;
(4) ensure that funds made available under this chapter are distributed on a competitive basis throughout the State to Local Councils serving rural, urban, and suburban areas of the State; and
(5) assist the Secretary in developing mechanisms to ensure that Local Councils receiving funds under this chapter comply with the requirements of this chapter.

(b) State preference
In awarding grants to Local Councils under this chapter, the State, to the maximum extent possible, shall ensure that a broad variety of early learning programs that provide a continuum of services across the age spectrum assisted under this chapter are funded under this chapter, and shall give preference to supporting—
(1) a Local Council that meets criteria, that are specified by the State and approved by the Secretary, for qualifying as serving an area of greatest need for early learning programs; and
(2) a Local Council that demonstrates, in the application submitted under section 9412 of this title, the Local Council’s potential to increase collaboration as a means of maximizing use of resources provided under this chapter with other resources available for early learning programs.

(c) Local preference
In awarding grants under this chapter, Local Councils shall give preference to supporting—
(1) programs that demonstrate their potential to collaborate as a means of maximizing use of resources provided under this chapter with other resources available for early learning programs;
(2) programs that provide a continuity of services for young children across the age spectrum, individually, or through community-based networks or cooperative agreements; and
(3) programs that help parents and other caregivers promote early learning with their young children.

(d) Performance goals

(1) Assessments
Based on information and data received from Local Councils, and information and data available through State resources, the State shall biennially assess the needs and available resources related to the provision of early learning programs within the State.

(2) Performance goals
Based on the analysis of information described in paragraph (1), the State shall establish measurable performance goals to be achieved through activities assisted under this chapter.

(3) Requirement
The State shall award grants to Local Councils only for purposes that are consistent with the performance goals established under paragraph (2).

(4) Report
The State shall report to the Secretary annually regarding the State’s progress toward achieving the performance goals established in paragraph (2) and any necessary modifications to those goals, including the rationale for the modifications.

(5) Improvement plans
If the Secretary determines, based on the State report submitted under paragraph (4), that the State is not making progress toward achieving the performance goals described in paragraph (2), then the State shall submit a performance improvement plan to the Secretary, and demonstrate reasonable progress in implementing such plan, in order to remain eligible for funding under this chapter.


§ 9411. Local allocations

(a) In general
The Lead State Agency shall allocate to Local Councils in the State not less than 93 percent of the funds provided to the State under this chapter for a fiscal year.
(b) Limitation

The Lead State Agency shall allocate funds provided under this chapter on the basis of the population of the locality served by the Local Council.


§ 9412. Local applications

(a) In general

To be eligible to receive assistance under this chapter, the Local Council shall submit an application to the Lead State Agency at such time, in such manner, and containing such information as the Lead State Agency may require.

(b) Contents

Each application submitted pursuant to subsection (a) of this section shall include a statement ensuring that the local government entity, Indian tribe, Regional Corporation, or Native Hawaiian entity has established or designated a Local Council under section 9413 of this title, and the Local Council has developed a local plan for carrying out early learning programs under this chapter that includes—

(1) a needs and resources assessment concerning early learning services and a statement describing how early learning programs will be funded consistent with the assessment;

(2) a statement of how the Local Council will ensure that early learning programs will meet the performance goals reported by the Lead State Agency under this chapter; and

(3) a description of how the Local Council will form collaboratives among local youth, social service, and educational providers to maximize resources and concentrate efforts on areas of greatest need.


§ 9413. Local administration

(a) Local Council

(1) In general

To be eligible to receive funds under this chapter, a local government entity, Indian tribe, Regional Corporation, or Native Hawaiian entity, as appropriate, shall establish or designate a Local Council, which shall be composed of—

(A) representatives of local agencies directly affected by early learning programs assisted under this chapter;

(B) parents;

(C) other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and

(D) other key community leaders.

(2) Designating existing entity

If a local government entity, Indian tribe, Regional Corporation, or Native Hawaiian entity has, before December 21, 2000, a Local Council or a regional entity that is comparable to the Local Council described in paragraph (1), the entity, tribe, or corporation may designate the council or entity as a Local Council under this chapter, and shall be considered to have established a Local Council in compliance with this subsection.

(3) Functions

The Local Council shall be responsible for preparing and submitting the application described in section 9412 of this title.

(b) Administration

(1) Administrative costs

Not more than 3 percent of the funds received by a Local Council under this chapter shall be used to pay for the administrative costs of the Local Council in carrying out this chapter.

(2) Fiscal agent

A Local Council may designate any entity, with a demonstrated capacity for administering grants, that is affected by, or concerned with, early learning issues, including the State, to serve as fiscal agent for the administration of grant funds received by the Local Council under this chapter.


CHAPTER 76—EDUCATION RESEARCH, STATISTICS, EVALUATION, INFORMATION, AND DISSEMINATION

SUBCHAPTER I—EDUCATION SCIENCES REFORM

Sec. 9501. Definitions.

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§ 9501 Definitions

In this subchapter:

(1) In general

The terms “elementary school”, “secondary school”, “local educational agency”, and “State educational agency” have the meanings given those terms in section 7801 of this title and the terms “freely associated states” and “outlying area” have the meanings given those terms in section 6331(c) of this title.

(2) Applied research

The term “applied research” means research—

(A) to gain knowledge or understanding necessary for determining the means by which a recognized and specific need may be met; and

(B) that is specifically directed to the advancement of practice in the field of education.

(3) Basic research

The term “basic research” means research—

(A) to gain fundamental knowledge or understanding of phenomena and observable facts, without specific application toward processes or products; and

(B) for the advancement of knowledge in the field of education.

(4) Board

The term “Board” means the National Board for Education Sciences established under section 9516 of this title.

(5) Bureau

The term “Bureau” means the Bureau of Indian Affairs.

(6) Comprehensive center

The term “comprehensive center” means an entity established under section 9602 of this title.

(7) Department

The term “Department” means the Department of Education.

(8) Development

The term “development” means the systematic use of knowledge or understanding gained from the findings of scientifically valid research and the shaping of that knowledge or understanding into products or processes that can be applied and evaluated and may prove useful in areas such as the preparation of materials and new methods of instruction and practices in teaching, that lead to the improvement of the academic skills of students, and that are replicable in different educational settings.

(9) Director

The term “Director” means the Director of the Institute of Education Sciences.

(10) Dissemination

The term “dissemination” means the communication and transfer of the results of scientifically valid research, statistics, and evaluations, in forms that are understandable, easily accessible, and usable, or adaptable for use in, the improvement of educational practice by teachers, administrators, librarians, other practitioners, researchers, parents, policymakers, and the public, through technical assistance, publications, electronic transfer, and other means.

(11) Early childhood educator

The term “early childhood educator” means a person providing, or employed by a provider of, nonresidential child care services (including center-based, family-based, and in-home child care services) that is legally operating under State law, and that complies with applicable State and local requirements for the provision of child care services to children at any age from birth through the age at which a child may start kindergarten in that State.

(12) Field-initiated research

The term “field-initiated research” means basic research or applied research in which specific questions and methods of study are
generated by investigators (including teachers and other practitioners) and that conforms to standards of scientifically valid research.

(13) **Historically Black college or university**

The term “historically Black college or university” means a part B institution as defined in section 9511 of this title.

(14) **Institute**

The term “Institute” means the Institute of Education Sciences established under section 9511 of this title.

(15) **Institution of higher education**

The term “institution of higher education” has the meaning given that term in section 1001(a) of this title.

(16) **National research and development center**

The term “national research and development center” means a research and development center supported under section 9533(c) of this title.

(17) **Provider of early childhood services**

The term “provider of early childhood services” means a public or private entity that serves young children, including—

(A) child care providers;

(B) Head Start agencies operating Head Start programs, and entities carrying out Early Head Start programs, under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) preschools;

(D) kindergartens; and

(E) libraries.

(18) **Scientifically based research standards**

(A) The term “scientifically based research standards” means research standards that—

(i) apply rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to education activities and programs; and

(ii) present findings and make claims that are appropriate to and supported by the methods that have been employed.

(B) The term includes, appropriate to the research being conducted—

(i) employing systematic, empirical methods that draw on observation or experiment;

(ii) involving data analyses that are adequate to support the general findings;

(iii) relying on measurements or observational methods that provide reliable data;

(iv) making claims of causal relationships only in random assignment experiments or other designs (to the extent such designs substantially eliminate plausible competing explanations for the obtained results);

(v) ensuring that studies and methods are presented in sufficient detail and clarity to allow for replication or, at a minimum, to offer the opportunity to build systematically on the findings of the research;

(vi) obtaining acceptance by a peer-reviewed journal or approval by a panel of independent experts through a comparably rigorous, objective, and scientific review; and

(vii) using research designs and methods appropriate to the research question posed.

(19) **Scientifically valid education evaluation**

The term “scientifically valid education evaluation” means an evaluation that—

(A) adheres to the highest possible standards of quality with respect to research design and statistical analysis;

(B) provides an adequate description of the programs evaluated and, to the extent possible, examines the relationship between program implementation and program impacts;

(C) provides an analysis of the results achieved by the program with respect to its projected effects;

(D) employs experimental designs using random assignment, when feasible, and other research methodologies that allow for the strongest possible causal inferences when random assignment is not feasible; and

(E) may study program implementation through a combination of scientifically valid and reliable methods.

(20) **Scientifically valid research**

The term “scientifically valid research” includes applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with scientifically based research standards.

(21) **Secretary**

The term “Secretary” means the Secretary of Education.

(22) **State**

The term “State” includes (except as provided in section 9548 of this title) each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the freely associated states, and the outlying areas.

(23) **Technical assistance**

The term “technical assistance” means—

(A) assistance in identifying, selecting, or designing solutions based on research, including professional development and high-quality training to implement solutions leading to—

(i) improved educational and other practices and classroom instruction based on scientifically valid research; and

(ii) improved planning, design, and administration of programs;

(B) assistance in interpreting, analyzing, and utilizing statistics and evaluations; and

(C) other assistance necessary to encourage the improvement of teaching and learning through the applications of techniques supported by scientifically valid research.


**REFERENCES IN TEXT**

§ 9511. Establishment

(a) Establishment

There shall be in the Department the Institute of Education Sciences, to be administered by a Director (as described in section 9514 of this title) and, to the extent set forth in section 9516 of this title, a board of directors.

(b) Mission

(1) In general

The mission of the Institute is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood through postsecondary study, in order to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about—

(A) the condition and progress of education in the United States, including early childhood education and special education;

(B) educational practices that support learning and improve academic achievement and access to educational opportunities for all students; and

(C) the effectiveness of Federal and other education programs.

(2) Carrying out mission

In carrying out the mission described in paragraph (1), the Institute shall compile statistics, develop products, and conduct research, evaluations, and wide dissemination activities in areas of demonstrated national need (including in technology areas) that are supported by Federal funds appropriated to the Institute and ensure that such activities—

(A) conform to high standards of quality, integrity, and accuracy; and

(B) are objective, secular, neutral, and nonideological and are free of partisan political influence and racial, cultural, gender, or regional bias.

(c) Organization

The Institute shall consist of the following:

(1) The Office of the Director (as described in section 9514 of this title);

(2) The National Board for Education Sciences (as described in section 9516 of this title);

(3) The National Education Centers, which include—

(A) the National Center for Education Research (as described in part B of this subchapter);

(B) the National Center for Education Statistics (as described in part C of this subchapter);

(C) the National Center for Education Evaluation and Regional Assistance (as described in part D of this subchapter); and

(D) the National Center for Special Education Research (as described in part E of this subchapter).


AMENDMENTS


§ 9512. Functions

From funds appropriated under section 9584 of this title, the Institute, directly or through grants, contracts, or cooperative agreements, shall—

(1) conduct and support scientifically valid research activities, including basic research and applied research, statistics activities, scientifically valid education evaluation, development, and wide dissemination;

(2) widely disseminate the findings and results of scientifically valid research in education;

(3) promote the use, development, and application of knowledge gained from scientifically valid research activities;

(4) strengthen the national capacity to conduct, develop, and widely disseminate scientifically valid research in education;

(5) promote the coordination, development, and dissemination of scientifically valid research in education within the Department and the Federal Government; and

(6) promote the use and application of research and development to improve practice in the classroom.

§ 9513. Delegation

(a) Delegation of authority

Notwithstanding section 3472 of this title, the Secretary shall delegate to the Director all functions for carrying out this subchapter (other than administrative and support functions), except that—

(1) nothing in this subchapter or in subchapter III of this chapter (except section 9621(e)(1)(J) of this title) shall be construed to alter or diminish the role, responsibilities, or authority of the National Assessment Governing Board with respect to the National Assessment of Educational Progress (including with respect to the methodologies of the National Assessment of Educational Progress described in section 9621(e)(1)(E) of this title) from those authorized by the National Education Statistics Act of 1994 (20 U.S.C. 9001 et seq.) on the day before November 5, 2002;

(2) members of the National Assessment Governing Board shall continue to be appointed by the Secretary;

(3) section 9621ff(1) of this title shall apply to the National Assessment Governing Board in the exercise of its responsibilities under this Act;

(4) sections 9515 and 9516 of this title shall not apply to the National Assessment of Educational Progress; and

(5) sections 9515 and 9516 of this title shall not apply to the National Assessment Governing Board.

(b) Other activities

The Secretary may assign the Institute responsibility for administering other activities, if those activities are consistent with—

(1) the Institute’s priorities, as approved by the National Board for Education Sciences under section 9516 of this title, and the Institute’s mission, as described in section 9511(b) of this title; or

(2) the Institute’s mission, but only if those activities do not divert the Institute from its priorities.


REFERRENCES IN TEXT


This Act, referred to in subsec. (a)(3), means Pub. L. 107–279, Nov. 5, 2002, 116 Stat. 114, which enacted this chapter and amended sections 3419, 3412, 3461, 6019, 6013, 6012, 6017, 6011, 6012, 7013, 7253c, 7283b, 7283d, 7451, 7703, 7909, 9007, 9010, 9011, 9573, 9623, and 9624 of this title and section 5315 of Title 5, Government Organization and Employees, transferred sections 9010 and 9011 of this title to sections 9621 and 9622 of this title, respectively, repealed sections 3419, 6011, 6021, 6031, 6051, 6055, 6053, 6054, 605b, 6055, 6056, 605a, 9001 to 9009, and 9012 of this title, enacted provisions set out as notes under section 7703 and 9501 of this title, and repealed provisions set out as notes under sections 122e and 9001 of this title.

§ 9514. Office of the Director

(a) Appointment

Except as provided in subsection (b)(2) of this section, the President, by and with the advice and consent of the Senate, shall appoint the Director of the Institute.

(b) Term

(1) In general

The Director shall serve for a term of 6 years, beginning on the date of appointment of the Director.

(2) First Director

The President, without the advice and consent of the Senate, may appoint the Assistant Secretary for the Office of Educational Research and Improvement (as such office existed on the day before November 5, 2002) to serve as the first Director of the Institute.

(3) Subsequent Directors

The Board may make recommendations to the President with respect to the appointment of a Director under subsection (a) of this section, other than a Director appointed under paragraph (2).

(c) Pay

The Director shall receive the rate of basic pay for level II of the Executive Schedule.

(d) Qualifications

The Director shall be selected from individuals who are highly qualified authorities in the fields of scientifically valid research, statistics, or evaluation in education, as well as management within such areas, and have a demonstrated capacity for sustained productivity and leadership in these areas.

(e) Administration

The Director shall—

(1) administer, oversee, and coordinate the activities carried out under the Institute, including the activities of the National Education Centers; and

(2) coordinate and approve budgets and operating plans for each of the National Education Centers for submission to the Secretary.

(f) Duties

The duties of the Director shall include the following:

(1) To propose to the Board priorities for the Institute, in accordance with section 9515(a) of this title.

(2) To ensure the methodology applied in conducting research, development, evaluation, and statistical analysis is consistent with the standards for such activities under this subchapter.

(3) To coordinate education research and related activities carried out by the Institute with such research and activities carried out by other agencies within the Department and the Federal Government.

(4) To advise the Secretary on research, evaluation, and statistics activities relevant to the activities of the Department.
(5) To establish necessary procedures for technical and scientific peer review of the activities of the Institute, consistent with section 5916(b)(3) of this title.

(6) To ensure that all participants in research conducted or supported by the Institute are afforded their privacy rights and other relevant protections as research subjects, in accordance with section 5753 of this title, section 552a of title 5, and sections 1232g and 1232h of this title.

(7) To ensure that activities conducted or supported by the Institute are objective, secular, neutral, and nonideological and are free of partisan political influence and racial, cultural, gender, or regional bias.

(8) To undertake initiatives and programs to increase the participation of researchers and institutions that have been historically underutilized in Federal education research activities of the Institute, including historically Black colleges or universities or other institutions of higher education with large numbers of minority students.

(9) To coordinate with the Secretary to promote and provide for the coordination of research and development activities and technical assistance activities between the Institute and comprehensive centers.

(10) To solicit and consider the recommendations of education stakeholders, in order to ensure that there is broad and regular public and professional input from the educational field in the planning and carrying out of the Institute’s activities.

(11) To coordinate the wide dissemination of information on scientifically valid research.

(12) To carry out and support other activities consistent with the priorities and mission of the Institute.

(g) Expert guidance and assistance

The Director may establish technical and scientific peer-review groups and scientific program advisory committees for research and evaluations that the Director determines are necessary to carry out the requirements of this subchapter. The Director shall appoint such personnel, except that officers and employees of the United States shall comprise no more than 1⁄4 of the members of any such group or committee and shall not receive additional compensation for their service as members of such a group or committee. The Director shall ensure that reviewers are highly qualified and capable to appraise education research and development projects. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a peer-review group or an advisory committee established under this subsection.

(h) Review

The Director may, when requested by other officers of the Department, and shall, when directed by the Secretary, review the products and publications of other offices of the Department to certify that evidence-based claims about those products and publications are scientifically valid.


§ 9515. Priorities

(a) Proposal

The Director shall propose to the Board priorities for the Institute (taking into consideration long-term research and development on core issues conducted through the national research and development centers). The Director shall identify topics that may require long-term research and topics that are focused on understanding and solving particular education problems and issues, including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) [and 42 U.S.C. 2751 et seq.], such as—

(1) closing the achievement gap between high-performing and low-performing children, especially achievement gaps between minority and nonminority children and between disadvantaged children and such children’s more advantaged peers; and

(2) ensuring—

(A) that all children have the ability to obtain a high-quality education (from early childhood through postsecondary education) and reach, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments, particularly in mathematics, science, and reading or language arts;

(B) access to, and opportunities for, postsecondary education; and

(C) the efficacy, impact on academic achievement, and cost-effectiveness of technology use within the Nation’s schools.

(b) Approval

The Board shall approve or disapprove the priorities for the Institute proposed by the Director, including any necessary revision of those priorities. The Board shall transmit any priorities so approved to the appropriate congressional committees.

(c) Consistency

The Board shall ensure that priorities of the Institute and the National Education Centers are consistent with the mission of the Institute.

(d) Public availability and comment

(1) Priorities

Before submitting to the Board proposed priorities for the Institute, the Director shall make such priorities available to the public for comment for not less than 60 days (including by means of the Internet and through publishing such priorities in the Federal Register). The Director shall provide to the Board a copy of each such comment submitted.

(2) Plan

Upon approval of such priorities, the Director shall make the Institute’s plan for address-
ing such priorities available for public comment in the same manner as under paragraph (1).


REFERENCES IN TEXT


The Individuals with Disabilities Education Act, referred to in subsec. (a), is Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 note set out under section 6301 of this title and Tables.


AMENDMENTS


§ 9516. National Board for Education Sciences

(a) Establishment

The Institute shall have a board of directors, which shall be known as the National Board for Education Sciences.

(b) Duties

The duties of the Board shall be the following:

(1) To advise and consult with the Director on the policies of the Institute.

(2) To consider and approve priorities proposed by the Director under section 9515 of this title to guide the work of the Institute.

(3) To review and approve procedures for technical and scientific peer review of the activities of the Institute.

(4) To advise the Director on the establishment of activities to be supported by the Institute, including the general areas of research to be carried out by the National Center for Education Research.

(5) To present to the Director such recommendations as it may find appropriate for—

(A) the strengthening of education research; and

(B) the funding of the Institute.

(6) To advise the Director on the funding of applications for grants, contracts, and cooperative agreements for research, after the completion of peer review.

(7) To review and regularly evaluate the work of the Institute, to ensure that scientifically valid research, development, evaluation, and statistical analysis are consistent with the standards for such activities under this subchapter.

(8) To advise the Director on ensuring that activities conducted or supported by the Institute are objective, secular, neutral, and non-ideological and are free of partisan political influence and racial, cultural, gender, or regional bias.

(9) To solicit advice and information from those in the educational field, particularly practitioners and researchers, to recommend to the Director topics that require long-term, sustained, systematic, programmatic, and integrated research efforts, including knowledge utilization and wide dissemination of research, consistent with the priorities and mission of the Institute.

(10) To advise the Director on opportunities for the participation in, and the advancement of, women, minorities, and persons with disabilities in education research, statistics, and evaluation activities of the Institute.

(11) To recommend to the Director ways to enhance strategic partnerships and collaborative efforts among other Federal and State research agencies.

(12) To recommend to the Director individuals to serve as Commissioners of the National Education Centers.

(c) Composition

(1) Voting members

The Board shall have 15 voting members appointed by the President, by and with the advice and consent of the Senate.

(2) Advice

The President shall solicit advice regarding individuals to serve on the Board from the National Academy of Sciences, the National Science Board, and the National Science Foundation.

(3) Nonvoting ex officio members

The Board shall have the following nonvoting ex officio members:

(A) The Director of the Institute of Education Sciences,

(B) Each of the Commissioners of the National Education Centers,

(C) The Director of the Eunice Kennedy Shriver National Institute of Child Health and Human Development,

(D) The Director of the Census,

(E) The Commissioner of Labor Statistics,

(F) The Director of the National Science Foundation.

(4) Appointed membership

(A) Qualifications

Members appointed under paragraph (1) shall be highly qualified to appraise education research, statistics, evaluations, or development, and shall include the following individuals:

(i) Not fewer than 8 researchers in the field of statistics, evaluation, social sciences, or physical and biological sciences, which may include those researchers recommended by the National Academy of Sciences.
(ii) Individuals who are knowledgeable about the educational needs of the United States, who may include school-based professional educators, parents (including parents with experience in promoting parental involvement in education), Chief State School Officers, State postsecondary education executives, presidents of institutions of higher education, local educational agency superintendents, early childhood experts, special education experts, principals, members of State or local boards of education or Bureau-funded school boards, and individuals from business and industry with experience in promoting private sector involvement in education.

(B) Terms
Each member appointed under paragraph (1) shall serve for a term of 4 years, except that—

(i) the terms of the initial members appointed under such paragraph shall (as determined by a random selection process at the time of appointment) be for staggered terms of—

(I) 4 years for each of 5 members;

(II) 3 years for each of 5 members; and

(III) 2 years for each of 5 members; and

(ii) no member appointed under such paragraph shall serve for more than 2 consecutive terms.

(C) Unexpired terms
Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term.

(D) Conflict of interest
A voting member of the Board shall be considered a special Government employee for the purposes of the Ethics in Government Act of 1978.

(5) Chair
The Board shall elect a chair from among the members of the Board.

(6) Compensation
Members of the Board shall serve without pay for such service. Members of the Board who are officers or employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(7) Travel expenses
The members of the Board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5.

(8) Powers of the Board

(A) Executive Director
The Board shall have an Executive Director who shall be appointed by the Board.

(B) Additional staff
The Board shall utilize such additional staff as may be appointed or assigned by the Director, in consultation with the Chair and the Executive Director.

(C) Detail of personnel
The Board may use the services and facilities of any department or agency of the Federal Government. Upon the request of the Board, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Board to assist the Board in carrying out this Act.

(D) Contracts
The Board may enter into contracts or make other arrangements as may be necessary to carry out its functions.

(E) Information
The Board may, to the extent otherwise permitted by law, obtain directly from any executive department or agency of the Federal Government such information as the Board determines necessary to carry out its functions.

(9) Meetings
The Board shall meet not less than 3 times each year. The Board shall hold additional meetings at the call of the Chair or upon the written request of not less than 6 voting members of the Board. Meetings of the Board are subject to section 552b of title 5 (commonly referred to as the Government in the Sunshine Act).

(10) Quorum
A majority of the voting members of the Board serving at the time of the meeting shall constitute a quorum.

(d) Standing committees

(1) Establishment
The Board may establish standing committees—

(A) that will each serve 1 of the National Education Centers; and

(B) to advise, consult with, and make recommendations to the Director and the Commissioner of the appropriate National Education Center.

(2) Membership
A majority of the members of each standing committee shall be voting members of the Board whose expertise is needed for the functioning of the committee. In addition, the membership of each standing committee may include, as appropriate—

(A) experts and scientists in research, statistics, evaluation, or development who are recognized in their discipline as highly qualified to represent such discipline and who are not members of the Board, but who may have been recommended by the Commissioner of the appropriate National Education Center and approved by the Board;

(B) ex officio members of the Board; and

(C) policymakers and expert practitioners with knowledge of, and experience using, the results of research, evaluation, and statistics who are not members of the Board, but who may have been recommended by the Commissioner of the appropriate National
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Education Center and approved by the Board.

(3) Duties

Each standing committee shall—

(A) review and comment, at the discretion of the Board or the standing committee, on any grant, contract, or cooperative agreement entered into (or proposed to be entered into) by the applicable National Education Center;

(B) prepare for, and submit to, the Board an annual evaluation of the operations of the applicable National Education Center;

(C) review and comment on the relevant plan for activities to be undertaken by the applicable National Education Center for each fiscal year; and

(D) report periodically to the Board regarding the activities of the committee and the applicable National Education Center.

(e) Annual report

The Board shall submit to the Director, the Secretary, and the appropriate congressional committees a report that includes any recommendations regarding any actions that may be taken to enhance the ability of the Institute to carry out its priorities and mission, especially as such priorities and mission relate to carrying out scientifically valid research, conducting unbiased evaluations, collecting and reporting accurate education statistics, and translating research into practice.

(f) Recommendations

The Board shall submit to the Director, the Secretary, and the appropriate congressional committees a report that includes any recommendations regarding any actions that may be taken to enhance the ability of the Institute to carry out its priorities and mission. The Board shall submit an interim report not later than 3 years after November 5, 2002, and a final report not later than 5 years after such date.

References in Text


Subsec. (c)(10). Pub. L. 110–154, title II, §§ 201(b)(2)(D), 202, substituted “Meetings of the Board are subject to section 552b of title 5 (commonly referred to as the Government in the Sunshine Act),” for “Meetings of the Board shall be open to the public.”

Change of Name


§ 9517. Commissioners of the National Education Centers

(a) Appointment of Commissioners

(1) In general

Except as provided in subsection (b) of this section, each of the National Education Centers shall be headed by a Commissioner appointed by the Director. In appointing Commissioners, the Director shall seek to promote continuity in leadership of the National Education Centers and shall consider individuals recommended by the Board. The Director may appoint a Commissioner to carry out the functions of a National Education Center without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) Pay and qualifications

Except as provided in subsection (b) of this section, each Commissioner shall—

(A) receive the rate of basic pay for level IV of the Executive Schedule; and

(B) be highly qualified in the field of education research or evaluation.

(3) Service

Except as provided in subsection (b) of this section, each Commissioner shall serve for a period of not more than 6 years, except that a Commissioner—

(A) may be reappointed by the Director; and

(B) may serve after the expiration of that Commissioner’s term, until a successor has been appointed, for a period not to exceed 1 additional year.

(b) Appointment of Commissioner for Education Statistics

The National Center for Education Statistics shall be headed by a Commissioner for Education Statistics who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall—

(1) have substantial knowledge of programs assisted by the National Center for Education Statistics;

(2) receive the rate of basic pay for level IV of the Executive Schedule; and

(3) serve for a term of 6 years, with the term to expire every sixth June 21, beginning in 2003.
(c) Coordination
Each Commissioner of a National Education Center shall coordinate with each of the other Commissioners of the National Education Centers in carrying out such Commissioner’s duties under this subchapter.

(d) Supervision and approval
Each Commissioner, except the Commissioner for Education Statistics, shall carry out such Commissioner’s duties under this subchapter under the supervision and subject to the approval of the Director.

REFERENCES IN TEXT
Level IV of the Executive Schedule, referred to in subsecs. (a)(2)(A) and (b)(2), is set out in section 5315 of Title 5, Government Organization and Employees.

§ 9518. Agreements
The Institute may carry out research projects of common interest with such entities as the National Science Foundation and the Eunice Kennedy Shriver National Institute of Child Health and Human Development through agreements with such entities that are in accordance with section 1231 of this title.


REFERENCES IN TEXT

§ 9519. Biennial report
The Director shall, on a biennial basis, transmit to the President, the Board, and the appropriate congressional committees, and make widely available to the public (including by means of the Internet), a report containing the following:

(1) A description of the activities carried out by and through the National Education Centers during the prior fiscal years.

(2) A summary of each grant, contract, and cooperative agreement in excess of $100,000 funded through the National Education Centers during the prior fiscal years, including, at a minimum, the amount, duration, recipient, purpose of the award, and the relationship, if any, to the priorities and mission of the Institute, which shall be available in a user-friendly electronic database.

(3) A description of how the activities of the National Education Centers are consistent with the principles of scientifically valid research and the priorities and mission of the Institute.

(4) Such additional comments, recommendations, and materials as the Director considers appropriate.


§ 9520. Competitive awards
Activities carried out under this Act through grants, contracts, or cooperative agreements, at a minimum, shall be awarded on a competitive basis and, when practicable, through a process of peer review.


REFERENCES IN TEXT
This Act, referred to in text, means Pub. L. 107–279, Nov. 5, 2002, 116 Stat. 1940, which enacted this chapter and section 3419 of this title, amended sections 1232j, 3412, 3461, 6194, 6311, 6312, 6317, 6491, 6932, 7013, 7253c, 7283b, 7283d, 7451, 7703, 7969, 9007, 9010, 9011, 9573, 9623, and 9624 of this title and section 5315 of Title 5, Government Organization and Employees, transferred sections 9010 and 9011 of this title to sections 9621 and 9622 of this title, respectively, repealed sections 3419, 6011, 6021, 6031, 6041, 6051, 6053 to 6053e, 6054 to 6054b, 6055 to 6055h, 6056, 6056a, 9001 to 9009, and 9012 of this title, enacted provisions set out as notes under section 7703 and 9501 of this title, and repealed provisions set out as notes under sections 1221e and 9001 of this title. For complete classification of this Act to the Code, see Tables.

PART B—NATIONAL CENTER FOR EDUCATION RESEARCH

§ 9531. Establishment
(a) Establishment
There is established in the Institute a National Center for Education Research (in this part referred to as the “Research Center”).

(b) Mission
The mission of the Research Center is—

(1) to sponsor sustained research that will lead to the accumulation of knowledge and understanding of education, to—

(A) ensure that all children have access to a high-quality education;

(B) improve student academic achievement, including through the use of educational technology;

(C) close the achievement gap between high-performing and low-performing students through the improvement of teaching and learning of reading, writing, mathematics, science, and other academic subjects; and

(D) improve access to, and opportunity for, postsecondary education;

(2) to support the synthesis and, as appropriate, the integration of education research;

(3) to promote quality and integrity through the use of accepted practices of scientific inquiry to obtain knowledge and understanding of the validity of education theories, practices, or conditions; and

(4) to promote scientifically valid research findings that can provide the basis for improving academic instruction and lifelong learning.


§ 9532. Commissioner for Education Research
The Research Center shall be headed by a Commissioner for Education Research (in this
§ 9533. Duties

(a) General duties

The Research Center shall—

(1) maintain published peer-review standards and standards for the conduct and evaluation of all research and development carried out under the auspices of the Research Center in accordance with this part;

(2) propose to the Director a research plan that—

(A) is consistent with the priorities and mission of the Institute and the mission of the Research Center and includes the activities described in paragraph (3); and

(B) shall be carried out pursuant to paragraph (4) and, as appropriate, be updated and modified;

(3) carry out specific, long-term research activities that are consistent with the priorities and mission of the Institute, and are approved by the Director;

(4) implement the plan proposed under paragraph (2) to carry out scientifically valid research that—

(A) uses objective and measurable indicators, including timelines, that are used to assess the progress and results of such research;

(B) meets the procedures for peer review established by the Director under section 9514(f)(5) of this title and the standards of research described in section 9534 of this title; and

(C) includes both basic research and applied research, which shall include research conducted through field-initiated research and ongoing research initiatives;

(5) promote the use of scientifically valid research within the Federal Government, including active participation in interagency research projects described in section 9518 of this title;

(6) ensure that research conducted under the direction of the Research Center is relevant to education practice and policy;

(7) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of education research conducted or supported by the Research Center;

(8) assist the Director in the preparation of a biennial report, as described in section 9519 of this title;

(9) carry out research on successful State and local education reform activities, including those that result in increased academic achievement and in closing the achievement gap, as approved by the Director;

(10) carry out research initiatives regarding the impact of technology, including—

(A) research into how technology affects student achievement;

(B) long-term research into cognition and learning issues as they relate to the uses of technology;

(C) rigorous, peer-reviewed, large-scale, long-term, and broadly applicable empirical research that is designed to determine which approaches to the use of technology are most effective and cost-efficient in practice and under what conditions; and

(D) field-based research on how teachers implement technology and Internet-based resources in the classroom, including an understanding of how these resources are being accessed, put to use, and the effectiveness of such resources; and

(11) carry out research that is rigorous, peer-reviewed, and large scale to determine which methods of mathematics and science teaching are most effective, cost efficient, and able to be applied, duplicated, and scaled up for use in elementary and secondary classrooms, including in low-performing schools, to improve the teaching of, and student achievement in, mathematics and science as required under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

(b) Eligibility

Research carried out under subsection (a) of this section through contracts, grants, or cooperative agreements shall be carried out only by recipients with the ability and capacity to conduct scientifically valid research.

(c) National research and development centers

(1) Support

In carrying out activities under subsection (a)(3) of this section, the Research Commissioner shall support not less than 8 national research and development centers. The Research Commissioner shall assign each of the 8 national research and development centers not less than 1 of the topics described in paragraph (2). In addition, the Research Commissioner may assign each of the 8 national research and development centers additional topics of research consistent with the mission and priorities of the Institute and the mission of the Research Center.

(2) Topics of research

The Research Commissioner shall support the following topics of research, through national research and development centers or through other means:

(A) Adult literacy.

(B) Assessment, standards, and accountability research.

(C) Early childhood development and education.

(D) English language learners research.

(E) Improving low achieving schools.

(F) Innovation in education reform.

(G) State and local policy.

(H) Postsecondary education and training.

(I) Rural education.

(J) Teacher quality.

(K) Reading and literacy.

(3) Duties of centers

The national research and development centers shall address areas of national need, in-
including in educational technology areas. The Research Commissioner may support additional national research and development centers to address topics of research not described in paragraph (2) if such topics are consistent with the priorities and mission of the Institute and the mission of the Research Center. The research carried out by the centers shall incorporate the potential or existing role of educational technology, where appropriate, in achieving the goals of each center.

(4) Scope

Support for a national research and development center shall be for a period of not more than 5 years, shall be of sufficient size and scope to be effective, and notwithstanding section 9534(b) of this title, may be renewed without competition for not more than 5 additional years if the Director, in consultation with the Research Commissioner and the Board, determines that the research of the national research and development center—

(A) continues to address priorities of the Institute; and

(B) merits renewal (applying the procedures and standards established in section 9534 of this title).

(5) Limit

No national research and development center may be supported under this subsection for a period of more than 10 years without submitting to a competitive process for the award of the support.

(6) Continuation of awards

The Director shall continue awards made to the national research and development centers that are in effect on the day before November 5, 2002, in accordance with the terms of those awards and may renew them in accordance with paragraphs (4) and (5).

(7) Disaggregation

To the extent feasible, research conducted under this subsection shall be disaggregated by age, race, gender, and socioeconomic background.


REFERENCES IN TEXT


§9534. Standards for conduct and evaluation of research

(a) In general

In carrying out this part, the Research Commissioner shall—

(1) ensure that all research conducted under the direction of the Research Center follows scientifically based research standards;

(2) develop such other standards as may be necessary to govern the conduct and evaluation of all research, development, and wide dissemination activities carried out by the Research Center to assure that such activities meet the highest standards of professional excellence;

(3) review the procedures utilized by the National Institutes of Health, the National Science Foundation, and other Federal departments or agencies engaged in research and development, and actively solicit recommendations from research organizations and members of the general public in the development of the standards described in paragraph (2); and

(4) ensure that all research complies with Federal guidelines relating to research misconduct.

(b) Peer review

(1) In general

The Director shall establish a peer review system, involving highly qualified individuals with an in-depth knowledge of the subject to be investigated, for reviewing and evaluating all applications for grants and cooperative agreements that exceed $100,000, and for evaluating and assessing the products of research by all recipients of grants and cooperative agreements under this Act.

(2) Evaluation

The Research Commissioner shall—

(A) develop the procedures to be used in evaluating applications for research grants, cooperative agreements, and contracts, and specify the criteria and factors (including, as applicable, the use of longitudinal data linking test scores, enrollment, and graduation rates over time) which shall be considered in making such evaluations; and

(B) evaluate the performance of each recipient of an award of a research grant, contract, or cooperative agreement at the conclusion of the award.

(c) Long-term research

The Research Commissioner shall ensure that not less than 50 percent of the funds made available for research for each fiscal year shall be used to fund long-term research programs of not less than 5 years, which support the priorities and mission of the Institute and the mission of the Research Center.


REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), means Pub. L. 107–279, Nov. 5, 2002, 116 Stat. 1940, which enacted this chapter and section 3419 of this title, amended sections 1223j, 3412, 3461, 6194, 6311, 6312, 6317, 6491, 6932, 7013, 7253c, 7253b, 7253d, 7451, 7703, 7909, 9007, 9010, 9011, 9073, 9023, and 9624 of this title and section 5315 of Title 5, Government Organization and Employees, transferred sections 9010 and 9011 of this title to sections 9621 and 9622 of this title, respectively, repealed sections 3419, 6011, 6021, 6311, 6041, 6051, 6053, 6054 to 6054b, 6055 to 6055h, 6056, 6056a, 9001 to 9009, and 9012 of this title, enacted provisions set out as notes under section 7703 and 9001 of this title, and repealed provisions set out as notes under sections 1223e and 9001 of this title. For complete classification of this Act to the Code, see Tables.
PART C—NATIONAL CENTER FOR EDUCATION STATISTICS

§ 9541. Establishment

(a) Establishment

There is established in the Institute a National Center for Education Statistics (in this part referred to as the “Statistics Center”).

(b) Mission

The mission of the Statistics Center shall be—

(1) to collect and analyze education information and statistics in a manner that meets the highest methodological standards;

(2) to report education information and statistics in a timely manner; and

(3) to collect, analyze, and report education information and statistics in a manner that—

(A) is objective, secular, neutral, and non-ideological and is free of partisan political influence and racial, cultural, gender, or regional bias; and

(B) is relevant and useful to practitioners, researchers, policymakers, and the public.


§ 9542. Commissioner for Education Statistics

The Statistics Center shall be headed by a Commissioner for Education Statistics (in this part referred to as the “Statistics Commissioner”) who shall be highly qualified and have substantial knowledge of statistical methodologies and activities undertaken by the Statistics Center.


§ 9543. Duties

(a) General duties

The Statistics Center shall collect, report, analyze, and disseminate statistical data related to education in the United States and in other nations, including—

(1) collecting, acquiring, compiling (where appropriate, on a State-by-State basis), and disseminating full and complete statistics (disaggregated by the population characteristics described in paragraph (3)) on the condition and progress of education, at the preschool, elementary, secondary, postsecondary, and adult levels in the United States, including data on—

(A) State and local education reform activities;

(B) State and local early childhood school readiness activities;

(C) student achievement in, at a minimum, the core academic areas of reading, mathematics, and science at all levels of education;

(D) secondary school completions, dropouts, and adult literacy and reading skills;

(E) access to, and opportunity for, postsecondary education, including data on financial aid to postsecondary students;

(F) teaching, including—

(i) data on in-service professional development, including a comparison of courses taken in the core academic areas of reading, mathematics, and science with courses in noncore academic areas, including technology courses; and

(ii) the percentage of teachers who are highly qualified (as such term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) in each State and, where feasible, in each local educational agency and school;

(G) instruction, the conditions of the education workplace, and the supply of, and demand for, teachers;

(H) the incidence, frequency, seriousness, and nature of violence affecting students, school personnel, and other individuals participating in school activities, as well as other indices of school safety, including information regarding—

(i) the relationship between victims and perpetrators;

(ii) demographic characteristics of the victims and perpetrators; and

(iii) the type of weapons used in incidents, as classified in the Uniform Crime Reports of the Federal Bureau of Investigation;

(I) the financing and management of education, including data on revenues and expenditures;

(J) the social and economic status of children, including their academic achievement;

(K) the existence and use of educational technology and access to the Internet by students and teachers in elementary schools and secondary schools;

(L) access to, and opportunity for, early childhood education;

(M) the availability of, and access to, before-school and after-school programs (including such programs during school recesses);

(N) student participation in and completion of secondary and postsecondary vocational and technical education programs by specific program area; and

(O) the existence and use of school libraries;

(2) conducting and publishing reports on the meaning and significance of the statistics described in paragraph (1);

(3) collecting, analyzing, cross-tabulating, and reporting, to the extent feasible, information by gender, race, ethnicity, socioeconomic status, limited English proficiency, mobility, disability, urban, rural, suburban districts, and other population characteristics, when such disaggregated information will facilitate educational and policy decisionmaking;

(4) assisting public and private educational agencies, organizations, and institutions in improving and automating statistical and data collection activities, which may include assisting State educational agencies and local
educational agencies with the disaggregation of data and with the development of longitudinal student data systems;

(5) determining voluntary standards and guidelines to assist State educational agencies in developing statewide longitudinal data systems that link individual student data consistent with the requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), promote linkages across States, and protect student privacy consistent with section 9573 of this title, to improve student academic achievement and close achievement gaps;

(6) acquiring and disseminating data on educational activities and student achievement (such as the Third International Math and Science Study) in the United States compared with foreign nations;

(7) conducting longitudinal and special data collections necessary to report on the condition and progress of education;

(8) assisting the Director in the preparation of a biennial report, as described in section 9519 of this title; and

(9) determining, in consultation with the National Research Council of the National Academies, methodology by which States may accurately measure graduation rates (defined as the percentage of students who graduate from secondary school with a regular diploma, in the standard number of years), school completion rates, and dropout rates.

(b) Training program

The Statistics Commissioner may establish a program to train employees of public and private educational agencies, organizations, and institutions in the use of standard statistical procedures and concepts, and may establish a fellowship program to appoint such employees as temporary fellows at the Statistics Center, in order to assist the Statistics Center in carrying out its duties.


REFERENCES IN TEXT


Study by National Center for Education Statistics Respecting Condition of Education for Hispanic Americans

Pub. L. 98–211, §24(b), Dec. 8, 1983, 97 Stat. 1419, provided that: "The National Center for Education Statistics shall not terminate the study of the condition of education for Hispanic Americans unless specifically required or authorized to do so by law."

§ 9544. Performance of duties

(a) Grants, contracts, and cooperative agreements

In carrying out the duties under this part, the Statistics Commissioner, may award grants, enter into contracts and cooperative agreements, and provide technical assistance.

(b) Gathering information

(1) Sampling

The Statistics Commissioner may use the statistical method known as sampling (including random sampling) to carry out this part.

(2) Source of information

The Statistics Commissioner may, as appropriate, use information collected—

(A) from States, local educational agencies, public and private schools, preschools, institutions of higher education, vocational and adult education programs, libraries, administrators, teachers, students, the general public, and other individuals, organizations, agencies, and institutions (including information collected by States and local educational agencies for their own use); and

(B) by other offices within the Institute and by other Federal departments, agencies, and instrumentalities.

(3) Collection

The Statistics Commissioner may—

(A) enter into interagency agreements for the collection of statistics;

(B) arrange with any agency, organization, or institution for the collection of statistics; and

(C) assign employees of the Statistics Center to any such agency, organization, or institution to assist in such collection.

(4) Technical assistance and coordination

In order to maximize the effectiveness of Department efforts to serve the educational needs of children and youth, the Statistics Commissioner shall—

(A) provide technical assistance to the Department offices that gather data for statistical purposes; and

(B) coordinate with other Department offices in the collection of data.

(c) Duration

Notwithstanding any other provision of law, the grants, contracts, and cooperative agreements under this section may be awarded, on a competitive basis, for a period of not more than 5 years, and may be renewed at the discretion of the Statistics Commissioner for an additional period of not more than 5 years.


§ 9545. Reports

(a) Procedures for issuance of reports

The Statistics Commissioner, shall establish procedures, in accordance with section 9576 of this title, to ensure that the reports issued under this section are relevant, of high quality, useful to customers, subject to rigorous peer review, produced in a timely fashion, and free from any partisan political influence.

(b) Report on condition and progress of education

Not later than June 1, 2003, and each June 1 thereafter, the Statistics Commissioner, shall
submit to the President and the appropriate congressional committees a statistical report on the condition and progress of education in the United States.

(c) Statistical reports

The Statistics Commissioner shall issue regular and, as necessary, special statistical reports on education topics, particularly in the core academic areas of reading, mathematics, and science, consistent with the priorities and the mission of the Statistics Center.


§ 9546. Dissemination

(a) General requests

(1) In general

The Statistics Center may furnish transcripts or copies of tables and other statistical records and make special statistical compilations and surveys for State and local officials, public and private organizations, and individuals.

(2) Compilations

The Statistics Center shall provide State educational agencies, local educational agencies, and institutions of higher education with opportunities to suggest the establishment of particular compilations of statistics, surveys, and analyses that will assist those educational agencies.

(b) Congressional requests

The Statistics Center shall furnish such special statistical compilations and surveys as the relevant congressional committees may request.

(c) Joint statistical projects

The Statistics Center may engage in joint statistical projects related to the mission of the Center, or other statistical purposes authorized by law, with nonprofit organizations or agencies, and the cost of such projects shall be shared equitably as determined by the Secretary.

(d) Fees

(1) In general

Statistical compilations and surveys under this section, other than those carried out pursuant to subsections (b) and (c) of this section, may be made subject to the payment of the actual or estimated cost of such work.

(2) Funds received

All funds received in payment for work or services described in this subsection may be used to pay directly the costs of such work or services, to repay appropriations that initially bore all or part of such costs, or to refund excess sums when necessary.

(e) Access

(1) Other agencies

The Statistics Center shall, consistent with section 9573 of this title, cooperate with other Federal agencies having a need for educational data in providing access to educational data received by the Statistics Center.

(2) Interested parties

The Statistics Center shall, in accordance with such terms and conditions as the Center may prescribe, provide all interested parties, including public and private agencies, parents, and other individuals, direct access, in the most appropriate form (including, where possible, electronically), to data collected by the Statistics Center for the purposes of research and acquiring statistical information.


§ 9547. Cooperative education statistics systems

The Statistics Center may establish 1 or more national cooperative education statistics systems for the purpose of producing and maintaining, with the cooperation of the States, comparable and uniform information and data on early childhood education, elementary and secondary education, postsecondary education, adult education, and libraries, that are useful for policymaking at the Federal, State, and local levels.


§ 9548. State defined

In this part, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.


PART D—NATIONAL CENTER FOR EDUCATION EVALUATION AND REGIONAL ASSISTANCE

§ 9561. Establishment

(a) Establishment

There is established in the Institute a National Center for Education Evaluation and Regional Assistance.

(b) Mission

The mission of the National Center for Education Evaluation and Regional Assistance shall be—

(1) to provide technical assistance;

(2) to conduct evaluations of Federal education programs administered by the Secretary (and as time and resources allow, other education programs) to determine the impact of such programs (especially on student academic achievement in the core academic areas of reading, mathematics, and science);

(3) to support synthesis and wide dissemination of results of evaluation, research, and products developed; and

(4) to encourage the use of scientifically valid education research and evaluation throughout the United States.

(c) Grants, contracts, and cooperative agreements

In carrying out the duties under this part, the Director may award grants, enter into contracts and cooperative agreements, and provide technical assistance.

§ 9562. Commissioner for Education Evaluation and Regional Assistance

(a) In general

The National Center for Education Evaluation and Regional Assistance shall be headed by a Commissioner for Education Evaluation and Regional Assistance (in this part referred to as the “Commissioner”) who is highly qualified and has demonstrated a capacity to carry out the mission of the Center and shall—

(1) conduct evaluations pursuant to section 9563 of this title;
(2) widely disseminate information on scientifically valid research, statistics, and evaluation on education, particularly to State educational agencies and local educational agencies, to institutions of higher education, to the public, the media, voluntary organizations, professional associations, and other constituencies, especially with respect to information relating to, at a minimum—
   (A) the core academic areas of reading, mathematics, and science;
   (B) closing the achievement gap between high-performing students and low-performing students;
   (C) educational practices that improve academic achievement and promote learning;
   (D) education technology, including software; and
   (E) those topics covered by the Educational Resources Information Center (as established under section 941(f) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (20 U.S.C. 6041(f)) (as such provision was in effect on the day before November 5, 2002);

(3) make such information accessible in a user-friendly, timely, and efficient manner (including through use of a searchable Internet-based online database that shall include all topics covered in paragraph (2)(E)) to schools, institutions of higher education, educators (including early childhood educators), parents, administrators, policymakers, researchers, public and private entities (including providers of early childhood services), entities responsible for carrying out technical assistance through the Department, and the general public;
(4) support the regional educational laboratories in conducting applied research, the development and dissemination of educational research, products and processes, the provision of technical assistance, and other activities to serve the educational needs of such laboratories’ regions;
(5) manage the National Library of Education described in subsection (d) of this section, and other sources of digital information on education research;
(6) assist the Director in the preparation of a biennial report, described in section 9619 of this title; and
(7) award a contract for a prekindergarten through grade 12 mathematics and science teacher clearinghouse.

(b) Additional duties

In carrying out subsection (a) of this section, the Evaluation and Regional Assistance Commissioner shall—

(1) ensure that information disseminated under this section is provided in a cost-effective, nonduplicative manner that includes the most current research findings, which may include through the continuation of individual clearinghouses authorized under the Educational Research, Development, Dissemination, and Improvement Act of 1994 (title IX of the Goals 2000: Educate America Act; 20 U.S.C. 6001 et seq.) (as such Act existed on the day before November 5, 2002);
(2) describe prominently the type of scientific evidence that is used to support the findings that are disseminated;
(3) explain clearly the scientifically appropriate and inappropriate uses of—
   (A) the findings that are disseminated; and
   (B) the types of evidence used to support those findings; and
(4) respond, as appropriate, to inquiries from schools, educators, parents, administrators, policymakers, researchers, public and private entities, and entities responsible for carrying out technical assistance.

(c) Continuation

The Director shall continue awards for the support of the Educational Resources Information Center Clearinghouses and contracts for regional educational laboratories (established under subsections (f) and (h) of section 941 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (20 U.S.C. 6041(f) and (h)) (as such awards were in effect on the day before November 5, 2002)) for the duration of those awards, in accordance with the terms and agreements of such awards.

(d) National Library of Education

(1) Establishment

There is established within the National Center for Education Evaluation and Regional Assistance a National Library of Education that shall—

(A) be headed by an individual who is highly qualified in library science;
(B) collect and archive information;
(C) provide a central location within the Federal Government for information about education;
(D) provide comprehensive reference services on matters related to education to employees of the Department of Education and its contractors and grantees, other Federal employees, and members of the public; and
(E) promote greater cooperation and resource sharing among providers and repositories of education information in the United States.

(2) Information

The information collected and archived by the National Library of Education shall include—

(A) products and publications developed through, or supported by, the Institute; and
(B) other relevant and useful education-related research, statistics, and evaluation
§ 9563. Evaluations

(a) In general

(1) Requirements

In carrying out its missions, the National Center for Education Evaluation and Regional Assistance may—

(A) conduct or support evaluations consistent with the Center’s mission as described in section 9561(h) of this title;

(B) evaluate programs under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) and Regional Assistance under section 9561(b) of this title, including regional entities that served by the regional educational laboratories and the number of school-age children within the region served by such educational agencies and the number of educational agencies and the number of school-age children within the region served by such educational agencies and the number of school-age children within the region served by such educational agencies and the number of education agency.

(C) to the extent practicable, examine evaluations conducted or supported by others in order to determine the quality and relevance of the evidence of effectiveness generated by those evaluations, with the approval of the Director;

(D) coordinate the activities of the National Center for Education Evaluation and Regional Assistance with other evaluation activities in the Department;

(E) review and, where feasible, supplement Federal education program evaluations, particularly those by the Department, to determine or enhance the quality and relevance of the evidence generated by those evaluations;

(F) establish evaluation methodology; and

(G) assist the Director in the preparation of the biennial report, as described in section 9519 of this title.

(2) Additional requirements

Each evaluation conducted by the National Center for Education Evaluation and Regional Assistance pursuant to paragraph (1) shall—

(A) adhere to the highest possible standards of quality for conducting scientifically valid education evaluation; and

(B) be subject to rigorous peer-review.

(b) Administration of evaluations under title I of the Elementary and Secondary Education Act of 1965

The Evaluation and Regional Assistance Commissioner, consistent with the mission of the National Center for Education Evaluation and Regional Assistance under section 9561(b) of this title, shall administer all operations and contracts associated with evaluations authorized by part E of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6491 et seq.) and administered by the Department as of November 5, 2002.

§ 9564. Regional educational laboratories for research, development, dissemination, and technical assistance

(a) Regional educational laboratories

The Director shall enter into contracts with entities to establish a networked system of 10 regional educational laboratories that serve the needs of each region of the United States in accordance with the provisions of this section. The amount of assistance allocated to each laboratory by the Evaluation and Regional Assistance Commissioner shall reflect the number of local educational agencies and the number of school-age children within the region served by such laboratory, as well as the cost of providing services within the geographic area encompassed by the region.

(b) Regions

The regions served by the regional educational laboratories shall be the 10 geographic regions served by the regional educational laboratories established under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such provision existed on the day before November 5, 2002).

(c) Eligible applicants

The Director may enter into contracts under this section with research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in this section, including regional entities that carried out activities under the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such Act existed on the day before November 5, 2002) and title XIII of the Elementary and Secondary Education Act of...
1965 (as such title existed on the day before January 8, 2002).

(d) Applications

(1) Submission

Each applicant desiring a contract under this section shall submit an application at such time, in such manner, and containing such information as the Director may reasonably require.

(2) Plan

Each application submitted under paragraph (1) shall contain a 5-year plan for carrying out the activities described in this section in a manner that addresses the priorities established under section 9606 of this title and addresses the needs of all States (and to the extent practicable, of local educational agencies) within the region to be served by the regional educational laboratory, on an ongoing basis.

(e) Entering into contracts

(1) In general

In entering into contracts under this section, the Director shall—

(A) enter into contracts for a 5-year period; and

(B) ensure that regional educational laboratories established under this section have strong and effective governance, organization, management, and administration, and employ qualified staff.

(2) Coordination

In order to ensure coordination and prevent unnecessary duplication of activities among the regions, the Evaluation and Regional Assistance Commissioner shall—

(A) share information about the activities of each regional educational laboratory awarded a contract under this section with each other regional educational laboratory awarded a contract under this section and with the Department of Education, including the Director and the Board;

(B) oversee a strategic plan for ensuring that each regional educational laboratory awarded a contract under this section increases collaboration and resource-sharing in such activities;

(C) ensure, where appropriate, that the activities of each regional educational laboratory awarded a contract under this section also serve national interests; and

(D) ensure that each regional educational laboratory awarded a contract under this section coordinates such laboratory's activities with the activities of each other regional technical assistance provider.

(3) Outreach

In conducting competitions for contracts under this section, the Director shall—

(A) actively encourage eligible entities to compete for such awards by making information and technical assistance relating to the competition widely available; and

(B) seek input from the chief executive officers of States, chief State school officers, educators, and parents regarding the need for applied research, wide dissemination, training, technical assistance, and development activities authorized by this subchapter in the regions to be served by the regional educational laboratories and how those educational needs could be addressed most effectively.

(4) Objectives and indicators

Before entering into a contract under this section, the Director shall design specific objectives and measurable indicators to be used to assess the particular programs or initiatives, and ongoing progress and performance, of the regional educational laboratories, in order to ensure that the educational needs of the region are being met and that the latest and best research and proven practices are being carried out as part of school improvement efforts.

(5) Standards

The Evaluation and Regional Assistance Commissioner shall establish a system for technical and peer review to ensure that applied research activities, research-based reports, and products of the regional educational laboratories are consistent with the research standards described in section 9534 of this title and the evaluation standards adhered to pursuant to section 9563(a)(2)(A) of this title.

(f) Central mission and primary function

Each regional educational laboratory awarded a contract under this section shall support applied research, development, wide dissemination, and technical assistance activities by—

(1) providing training (which may include supporting internships and fellowships and providing stipends) and technical assistance to State educational agencies, local educational agencies, school boards, schools funded by the Bureau as appropriate, and State boards of education regarding, at a minimum—

(A) the administration and implementation of programs under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

(B) scientifically valid research in education on teaching methods, assessment tools, and high quality, challenging curriculum frameworks for use by teachers and administrators in, at a minimum—

(i) the core academic subjects of mathematics, science, and reading;

(ii) English language acquisition;

(iii) education technology; and

(iv) the replication and adaption of exemplary and promising practices and new educational methods, including professional development strategies and the use of educational technology to improve teaching and learning; and

(C) the facilitation of communication between educational experts, school officials, and teachers, parents, and librarians, to enable such individuals to assist schools to develop a plan to meet the State education goals;

(2) developing and widely disseminating, including through Internet-based means, scientifically valid research, information, re-
§ 9564

(9564) (g) Activities

Each regional educational laboratory awarded a contract under this section shall carry out the following activities:

1. Collaborate with the National Education Centers in order to:
   (A) maximize the use of research conducted through the National Education Centers in the work of such laboratory;
   (B) keep the National Education Centers apprised of the work of the regional educational laboratory in the field; and
   (C) inform the National Education Centers about additional research needs identified in the field.

2. Consult with the State educational agencies and local educational agencies in the region in developing the plan for serving the region.

3. Develop strategies to utilize schools as critical components in reforming education and revitalizing rural communities in the United States.

4. Report and disseminate information on overcoming the obstacles faced by educators and schools in high poverty, urban, and rural areas.

5. Identify successful educational programs that have either been developed by such laboratory in carrying out such laboratory’s functions or that have been developed or used by others within the region served by the laboratory and make such information available to the Secretary and the network of regional educational laboratories so that such programs may be considered for inclusion in the national education dissemination system.

(h) Governing board and allocation

(1) In general

In carrying out its responsibilities, each regional educational laboratory awarded a contract under this section, in keeping with the terms and conditions of such laboratory’s contract, shall—

(A) establish a governing board that—
   (i) reflects a balanced representation of—
      (I) the States in the region;
      (II) the interests and concerns of regional constituencies; and
      (III) technical expertise;
   (ii) includes the chief State school officer or such officer’s designee of each State represented in such board’s region;
   (iii) includes—
      (I) representatives nominated by chief executive officers of States and State organizations of superintendents, principals, institutions of higher education, teachers, parents, businesses, and researchers; or
      (II) other representatives of the organizations described in subclause (I), as required by State law in effect on the day before November 5, 2002;
   (iv) is the sole entity that—
      (I) guides and directs the laboratory in carrying out the provisions of this subsection and satisfying the terms and conditions of the contract award;
(II) determines the regional agenda of the laboratory;
(III) engages in an ongoing dialogue with the Evaluation and Regional Assistance Commissioner concerning the laboratory’s goals, activities, and priorities; and
(IV) determines at the start of the contract period, subject to the requirements of this section and in consultation with the Evaluation and Regional Assistance Commissioner, the mission of the regional educational laboratory for the duration of the contract period;
(v) ensures that the regional educational laboratory attains and maintains a high level of quality in the laboratory’s work and products;
(vi) establishes standards to ensure that the regional educational laboratory has strong and effective governance, organization, management, and administration, and employs qualified staff;
(vii) directs the regional educational laboratory to carry out the laboratory’s duties in a manner that will make progress toward achieving the State education goals and reforming schools and educational systems; and
(viii) conducts a continuing survey of the educational needs, strengths, and weaknesses within the region, including a process of open hearings to solicit the views of schools and teachers; and
(B) allocate the regional educational laboratory’s resources to and within each State in a manner which reflects the need for assistance, taking into account such factors as the proportion of economically disadvantaged students, the increased cost burden of service delivery in areas of sparse populations, and any special initiatives being undertaken by State, intermediate, local educational agencies, or Bureau-funded schools, as appropriate, which may require special assistance from the laboratory.

(2) Special rule
If a regional educational laboratory needs flexibility in order to meet the requirements of paragraph (1)(A)(i), the regional educational laboratory may select not more than 10 percent of the governing board from individuals outside those representatives nominated in accordance with paragraph (1)(A)(iii).

(i) Duties of governing board
In order to improve the efficiency and effectiveness of the regional educational laboratories, the governing boards of the regional educational laboratories shall establish and maintain a network to—
(1) share information about the activities each laboratory is carrying out;
(2) plan joint activities that would meet the needs of multiple regions;
(3) create a strategic plan for the development of activities undertaken by the laboratories to reduce redundancy and increase collaboration and resource-sharing in such activities; and
(4) otherwise devise means by which the work of the individual laboratories could serve national, as well as regional, needs.

(j) Evaluations
The Evaluation and Regional Assistance Commissioner shall provide for independent evaluations of each of the regional educational laboratories in carrying out the duties described in this section in the third year that such laboratory receives assistance under this section in accordance with the standards developed by the Evaluation and Regional Assistance Commissioner and approved by the Board and shall transmit the results of such evaluations to the relevant committees of Congress, the Board, and the appropriate regional educational laboratory governing board.

(k) Rule of construction
No regional educational laboratory receiving assistance under this section shall, by reason of the receipt of that assistance, be ineligible to receive any other assistance from the Department of Education as authorized by law or be prohibited from engaging in activities involving international projects or endeavors.

(l) Advance payment system
Each regional educational laboratory awarded a contract under this section shall participate in the advance payment system at the Department of Education.

(m) Additional projects
In addition to activities authorized under this section, the Director is authorized to enter into contracts or agreements with a regional educational laboratory for the purpose of carrying out additional projects to enable such regional educational laboratory to assist in efforts to achieve State education goals and for other purposes.

(n) Annual report and plan
Not later than July 1 of each year, each regional educational laboratory awarded a contract under this section shall submit to the Evaluation and Regional Assistance Commissioner—
(1) a plan covering the succeeding fiscal year, in which such laboratory’s mission, activities, and scope of work are described, including a general description of the plans such laboratory expects to submit in the remaining years of such laboratory’s contract; and
(2) a report of how well such laboratory is meeting the needs of the region, including a summary of activities during the preceding year, a list of entities served, a list of products, and any other information that the regional educational laboratory may consider relevant or the Evaluation and Regional Assistance Commissioner may require.

(o) Construction
Nothing in this section shall be construed to require any modifications in a regional educational laboratory contract in effect on the day before November 5, 2002.

The Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such Act existed on the day before November 5, 2002), referred to in subsecs. (b) and (c), is title IX of Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 212, as amended, which was classified principally to subchapter IX (§ 6001 et seq.) of chapter 68 of this title and was substantially repealed by Pub. L. 107–279, title IV, § 403(2), Nov. 5, 2002, 116 Stat. 1985. Section 601 of the Act was classified to section 6041 of this title prior to repeal. For complete classification of this Act to the Code, see section 6001 of this title and Tables.


The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as the “Special Education Research Commissioner”) who shall have substantial knowledge of the Special Education Research Center’s activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.

The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 9567(b) of this title, such as activities that—

(a) General duties

(1) improve services provided under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.] in order to improve—

(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

(B) developmental outcomes for infants or toddlers with disabilities;

(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 6311(b) of this title;

(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

(7) develop and disseminate information and tools to improve the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

(b) Mission

The mission of the Special Education Research Center is—

(1) to sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;

(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

(c) Applicability of this subchapter

Parts A and F of this subchapter, and the standards for peer review of applications and for the conduct and evaluation of research under sections 9533(a) and 9534 of this title, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.


References in Text

The Individuals with Disabilities Education Act, referred to in subsec. (b)(2), (3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

§ 9567a. Commissioner for Special Education Research

The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 9567(b) of this title such as activities that—

(a) General duties

(1) improve services provided under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.] in order to improve—

(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

(B) developmental outcomes for infants or toddlers with disabilities;

(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 6311(b) of this title;

(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;
(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

(9) improve reading and literacy skills of children with disabilities;

(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods to improve educational and transitional results for children with disabilities;

(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

(15) help parents improve educational results for their children, particularly related to transition issues;

(16) address the unique needs of children with significant cognitive disabilities; and

(17) examine the special needs of limited English proficient children with disabilities.

(b) Standards

The Special Education Research Commissioner shall ensure that activities assisted under this section—

(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

(2) are carried out in accordance with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

(c) Plan

The Special Education Research Commissioner shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

(2) is carried out, updated, and modified, as appropriate;

(3) is consistent with the purposes of the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.];

(4) contains an appropriate balance across all age ranges and types of children with disabilities;

(5) provides for research that is objective and uses measurable indicators to assess its progress and results; and

(6) is coordinated with the comprehensive plan developed under section 681 of the Individuals with Disabilities Education Act [20 U.S.C. 1481].

(d) Grants, contracts, and cooperative agreements

(1) In general

In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible applicants.

(2) Eligible applicants

Activities carried out under this subsection through contracts, grants, or cooperative agreements shall be carried out only by recipients with the ability and capacity to conduct scientifically valid research.

(3) Applications

An eligible applicant that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(e) Dissemination

The Special Education Research Center shall—

(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

(2) assist the Director in the preparation of a biennial report, as described in section 9519 of this title.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2005 through 2010.


REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(1) and (c)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

EFFECTIVE DATE


"(1) NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.—Sections 175, 176, and 177 (20 U.S.C. 9567, 9567a, 9567b) (other than section 177(c) [20 U.S.C. 9567b(c)]) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on the date of enactment of this Act [Dec. 3, 2004]."

"(2) PLAN.—Section 177(c) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on October 1, 2005."

PART F—GENERAL PROVISIONS

AMENDMENTS

§ 9571. Interagency data sources and formats
The Secretary, in consultation with the Director, shall ensure that the Department and the Institute use common sources of data in standardized formats.

§ 9572. Prohibitions
(a) National database
Nothing in this subchapter may be construed to authorize the establishment of a nationwide database of individually identifiable information on individuals involved in studies or other collections of data under this subchapter.
(b) Federal Government and use of Federal funds
Nothing in this subchapter may be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control the curriculum, program of instruction, or allocation of State or local resources of a State, or to mandate a State, or any subdivision thereof, to spend any funds or incur any costs not provided for under this subchapter.
(c) Endorsement of curriculum
Nothing in this subchapter may be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control the curriculum, program of instruction, or allocation of State or local resources of a State, or to mandate a State, or any subdivision thereof, to spend any funds or incur any costs not provided for under this subchapter.
(d) Federally sponsored testing
(1) In general
Subject to paragraph (2), no funds provided under this subchapter to the Secretary or to the recipient of any award may be used to develop, pilot test, field test, implement, administer, or distribute any federally sponsored national test in reading, mathematics, or any other subject, unless specifically and explicitly authorized by law.
(2) Exceptions
Subsection (a) of this section shall not apply to international comparative assessments developed under the authority of section 9543(a)(6) of this title or section 9003(a)(6) of this title (as such section was in effect on the day before November 5, 2002) and administered to only a representative sample of pupils in the United States and in foreign nations.

REFERENCES IN TEXT

§ 9573. Confidentiality
(a) In general
All collection, maintenance, use, and wide dissemination of data by the Institute, including each office, board, committee, and center of the Institute, shall conform with the requirements of section 552a of title 5, the confidentiality standards of subsection (c) of this section, and sections 1232g and 1232h of this title.
(b) Student information
The Director shall ensure that all individually identifiable information about students, their academic achievements, their families, and information with respect to individual schools, shall remain confidential in accordance with section 552a of title 5, the confidentiality standards of subsection (c) of this section, and sections 1232g and 1232h of this title.
(c) Confidentiality standards
(1) In general
(A) The Director shall develop and enforce standards designed to protect the confidentiality of persons in the collection, reporting, and publication of data under this subchapter.
(B) This section shall not be construed to protect the confidentiality of information about institutions, organizations, and agencies that receive grants from, or have contracts or cooperative agreements with, the Federal Government.
(2) Prohibition
No person may—
(A) use any individually identifiable information furnished under this subchapter for any purpose other than a research, statistics, or evaluation purpose under this subchapter;
(B) make any publication whereby the data furnished by any particular person under this subchapter can be identified; or
(C) permit anyone other than the individuals authorized by the Director to examine the individual reports.
(d) Administration
(1) In general
(A) Disclosure
No Federal department, bureau, agency, officer, or employee and no recipient of a Federal grant, contract, or cooperative agreement may, for any reason, require the Director, any Commissioner of a National Education Center, or any other employee of the Institute to disclose individually identifiable information that has been collected or retained under this subchapter.
(B) Immunity
Individually identifiable information collected or retained under this subchapter shall be immune from legal process and shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.
(C) Application
This paragraph does not apply to requests for individually identifiable information submitted by or on behalf of the individual identified in the information.
(2) Employee or staff violations
Whoever, being or having been an employee or staff member of the Department, having
taken or subscribed the oath of office, or having sworn to observe the limitations imposed by subsection (c)(2) of this section, knowingly publishes or communicates any individually identifiable information (as defined in paragraph (5)(A)), the disclosure of which is prohibited by subsection (c)(2) of this section, and that comes into such employee or staff’s possession by reason of employment (or otherwise providing services) under this subchapter, shall be found guilty of a class E felony and imprisoned for not more than five years, or fined as specified in section 3571 of title 18, or both.

(3) Temporary staff

The Director may utilize temporary staff, including employees of Federal, State, or local agencies or instrumentalities (including local educational agencies), and employees of private organizations to assist the Director in performing the Director’s responsibilities, but only if such temporary staff are sworn to observe the limitations imposed by this section.

(4) Information requirements

No collection of information or data acquisition activity undertaken by the Director shall be subject to any review, coordination, or approval procedure except as required by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44, except such collection of information or data acquisition activity may be subject to review or coordination if the Director determines that such review or coordination is beneficial.

(5) Definitions

For the purposes of this section—

(A) the term “individually identifiable information” means any record, response form, completed survey, or aggregation thereof from which information about particular individuals may be revealed; and

(B) the term “report” means a response provided by or about an individual to an inquiry from the Director and does not include statistical aggregation from which individually identifiable information cannot be revealed.

(6) Violations

Any person who uses any data provided by the Director, in conjunction with any other information or technique, to identify any individual student, teacher, administrator, or other individual and who knowingly discloses, publishes, or uses such data for a purpose other than a statistical purpose, or who otherwise violates subparagraph (A) or (B) of subsection (c)(2) of this section, shall be found guilty of a class E felony and imprisoned for not more than five years, or fined as specified in section 3571 of title 18, or both.

(7) Access to reports or records

Nothing in this section shall restrict the right of the Secretary, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Librarian of Congress, to gain access to any reports or other records, including information identifying individuals, in the Director’s possession, except that the same restrictions on disclosure that apply under paragraphs (1) and (6) shall apply to such individuals.

(e) Investigation and prosecution of terrorism

(1) In general

Notwithstanding subsections (a) and (b) of this section, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring the Secretary to permit the Attorney General (or his designee) to—

(A) collect reports, records, and information (including individually identifiable information) in the possession of the Director that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18 or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such information, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval

(A) In general.—An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the information sought is described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection

An officer or employee of the Department who, in good faith, produces information in accordance with an order issued under this subsection does not violate subsection (b)(2) of this section and shall not be liable to any person for that production.


CODIFICATION


AMENDMENTS

2002—Subsecs. (c) to (e). Pub. L. 107–279, § 401(a)(6), transferred subsecs. (a) to (c) of section 9007 of this title to this section and redesignated them as subsecs. (c) to (e), respectively. See Codification note above.
§ 9574. Availability of data
Subject to section 9573 of this title, data collected by the Institute, including any office, board, committee, or center of the Institute, in carrying out the priorities and mission of the Institute, shall be made available to the public, including through use of the Internet.


§ 9575. Performance management
The Director shall ensure that all activities conducted or supported by the Institute or a National Education Center make customer service a priority. The Director shall ensure a high level of customer satisfaction through the following methods:

1. Establishing and improving feedback mechanisms in order to anticipate customer needs.
2. Disseminating information in a timely fashion and in formats that are easily accessible and usable by researchers, practitioners, and the general public.
3. Utilizing the most modern technology and other methods available, including arrangements to use data collected electronically by States and local educational agencies, to ensure the efficient collection and timely distribution of information, including data and reports.
4. Establishing and measuring performance against a set of indicators for the quality of data collected, analyzed, and reported.
5. Continuously improving management strategies and practices.


§ 9576. Authority to publish
(a) Publication
The Director may prepare and publish (including through oral presentation) such research, statistics, and evaluation reports from any office, board, committee, and center of the Institute, as needed to carry out the priorities and mission of the Institute without the approval of the Secretary or any other office of the Department.

(b) Advance copies
The Director shall provide the Secretary and other relevant offices with an advance copy of any information to be published under this section before publication.

(c) Peer review
All research, statistics, and evaluation reports conducted by, or supported through, the Institute shall be subjected to rigorous peer review before being published or otherwise made available to the public.

(d) Items not covered
Nothing in subsections (a), (b), or (c) of this section shall be construed to apply to—

1. Information on current or proposed budgets, appropriations, or legislation;
2. Information prohibited from disclosure by law or the Constitution, classified national security information, or information described in section 552(b)(1) of title 5;
3. Review by officers of the United States in order to prevent the unauthorized disclosure of information described in paragraph (1) or (2).


§ 9577. Vacancies
Any member appointed to fill a vacancy on the Board occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A vacancy in an office, board, committee, or center of the Institute shall be filled in the manner in which the original appointment was made. This section does not apply to employees appointed under section 9578 of this title.


§ 9578. Scientific or technical employees
(a) In general
The Director may appoint, for terms not to exceed 6 years (without regard to the provisions of title 5 governing appointment in the competitive service) and may compensate (without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 53 relating to classification and General Schedule pay rates) such scientific or technical employees to carry out the functions of the Institute or the office, board, committee, or center, respectively, if—

1. At least 30 days prior to the appointment of any such employee, public notice is given of the availability of such position and an opportunity is provided for qualified individuals to apply and compete for such position;
2. The rate of basic pay for such employees does not exceed the maximum rate of basic pay payable for positions at GS–15, as determined in accordance with section 5376 of title 5, except that not more than 7 individuals appointed under this section may be paid at a rate that does not exceed the rate of basic pay for level III of the Executive Schedule;
3. The appointment of such employee is necessary (as determined by the Director on the basis of clear and convincing evidence) to provide the Institute or the office, board, committee, or center with scientific or technical expertise which could not otherwise be obtained by the Institute or the office, board, committee, or center through the competitive service; and
4. The total number of such employees does not exceed 40 individuals or \(\frac{1}{5}\) of the number of full-time, regular scientific or professional employees of the Institute, whichever is greater.

(b) Duties of employees
All employees described in subsection (a) of this section shall work on activities of the Insti-
§ 9579. Fellowships

In order to strengthen the national capacity to carry out high-quality research, evaluation, and statistics related to education, the Director shall establish and maintain research, evaluation, and statistics fellowships in institutions of higher education (which may include the establishment of such fellowships in historically Black colleges and universities and other institutions of higher education with large numbers of minority students) that support graduate and postdoctoral study onsite at the Institute or at the institution of higher education. In establishing the fellowships, the Director shall ensure that women and minorities are actively recruited for participation.


§ 9580. Voluntary service

The Director may accept voluntary and uncompensated services to carry out and support activities that are consistent with the priorities and mission of the Institute.


§ 9581. Rulemaking

Notwithstanding section 1232(d) of this title, the exemption for public property, loans, grants, and benefits in section 553(a)(2) of title 5 shall apply to the Institute.


§ 9582. Copyright

Nothing in this Act shall be construed to affect the rights, remedies, limitations, or defense under title 17.


REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 107–279, Nov. 5, 2002, 116 Stat. 1949, which enacted this chapter and section 3419 of this title, amended sections 1232j, 3412, 3461, 6194, 6311, 6312, 6317, 6491, 6932, 7013, 7253c, 7283d, 7283d, 7451, 7703, 7909, 9007, 9010, 9011, 9573, 9623, and 9624 of this title and section 3531 of Title 5, Government Organization and Employees, transferred sections 9001 and 9001 of this title to sections 9623 and 9622 of this title, respectively, repealed sections 3419, 6011, 6021, 6031, 6041, 6051, 6053 to 6053e, 6054 to 6054b, 6054 to 6055h, 6056, 6056a, 9001 to 9009, and 9012 of this title, enacted provisions set out as notes under section 7703 and 9601 of this title, and repealed provisions set out as notes under sections 1221e and 9001 of this title. For complete classification of this Act to the Code, see Tables.

§ 9583. Removal

(a) Presidential

The Director, each member of the Board, and the Commissioner for Education Statistics may be removed by the President prior to the expiration of the term of each such appointee.

(b) Director

Each Commissioner appointed by the Director pursuant to section 9517 of this title may be removed by the Director prior to the expiration of the term of each such Commissioner.


§ 9584. Authorization of appropriations

(a) In general

There are authorized to be appropriated to administer and carry out this subchapter (except section 9564 of this title) $400,000,000 for fiscal year 2003 and such sums as may be necessary for each of the 5 succeeding fiscal years, of which—

(1) not less than the amount provided to the National Center for Education Statistics (as such Center was in existence on the day before November 5, 2002) for fiscal year 2002 shall be provided to the National Center for Education Statistics, as authorized under part C of this subchapter; and

(2) not more than the lesser of 2 percent of such funds or $1,000,000 shall be made available to carry out section 9516 of this title (relating to the National Board for Education Sciences).

(b) Regional educational laboratories

There are authorized to be appropriated to carry out section 9564 of this title $100,000,000 for fiscal year 2003 and such sums as may be necessary for each of the 5 succeeding fiscal years. Of the amounts appropriated under the preceding sentence for a fiscal year, the Director shall obligate not less than 25 percent to carry out such purpose with respect to rural areas (including schools funded by the Bureau which are located in rural areas).

(c) Availability

Amounts made available under this section shall remain available until expended.


SUBCHAPTER II—EDUCATIONAL TECHNICAL ASSISTANCE

§ 9601. Definitions

In this subchapter:

(1) In general

The terms “local educational agency” and “State educational agency” have the mean-
§ 9602

(2) Secretary

The term “Secretary” means the Secretary of Education.


SHORT TITLE

This subchapter known as the “Educational Technical Assistance Act of 2002”, see Short Title note set out under section 9001 of this title.

§ 9602. Comprehensive centers

(a) Authorization

(1) In general

Subject to paragraph (2), beginning in fiscal year 2004, the Secretary is authorized to award not less than 20 grants to local entities, or consortia of such entities, with demonstrated expertise in providing technical assistance and professional development in reading, mathematics, science, and technology, especially to low-performing schools and districts, to establish comprehensive centers.

(2) Regions

In awarding grants under paragraph (1), the Secretary—

(A) shall ensure that not less than 1 comprehensive center is established in each of the 10 geographic regions served by the regional educational laboratories established under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such provision existed on the day before November 5, 2002); and

(B) after meeting the requirements of subparagraph (A), shall consider, in awarding the remainder of the grants, the school-age population, proportion of economically disadvantaged students, the increased cost burdens of service delivery in areas of sparse population, and the number of schools identified for school improvement (as described in section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)))\(^1\) in the population served by the local entity or consortium of such entities.

(b) Eligible applicants

(1) In general

Grants under this section may be made with research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in subsection (f) of this section, including regional entities that carried out activities under the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such Act existed on the day before November 5, 2002) and title XIII of the Elementary and Secondary Education Act of 1965 (as such title existed on the day before January 8, 2002).

(2) Outreach

In conducting competitions for grants under this section, the Secretary shall actively encourage potential applicants to compete for such awards by making widely available information and technical assistance relating to the competition.

(3) Objectives and indicators

Before awarding a grant under this section, the Secretary shall design specific objectives and measurable indicators, using the results of the assessment conducted under section 9605 of this title, to be used to assess the particular programs or initiatives, and ongoing progress and performance, of the regional entities, in order to ensure that the educational needs of the region are being met and that the latest and best research and proven practices are being carried out as part of school improvement efforts.

(c) Application

(1) Submission

Each local entity, or consortium of such entities, seeking a grant under this section shall submit an application at such time, in such manner, and containing such additional information as the Secretary may reasonably require.

(2) Plan

Each application submitted under paragraph (1) shall contain a 5-year plan for carrying out the activities described in this section in a manner that addresses the priorities established under section 9606 of this title and addresses the needs of all States (and to the extent practicable, of local educational agencies) within the region to be served by the comprehensive center, on an ongoing basis.

(d) Allocation

Each comprehensive center established under this section shall allocate such center’s resources to and within each State in a manner which reflects the need for assistance, taking into account such factors as the proportion of economically disadvantaged students, the increased cost burden of service delivery in areas of sparse populations, and any special initiatives being undertaken by State, intermediate, local educational agencies, or Bureau-funded schools, as appropriate, which may require special assistance from the center.

(e) Scope of work

Each comprehensive center established under this section shall work with State educational agencies, local educational agencies, regional educational agencies, and schools in the region where such center is located on school improvement activities that take into account factors such as the proportion of economically disadvantaged students in the region, and give priority to—

(1) schools in the region with high percentages or numbers of students from low-income families, as determined under section 1114(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6314(a)(5)), including such schools in rural and urban areas, and schools

\(^1\) So in original. Probably should be followed by a third closing parenthesis.
receiving assistance under title I of that Act (20 U.S.C. 6301 et seq.);
(2) local educational agencies in the region in which high percentages or numbers of school-age children are from low-income families, as determined under section 1124(c)(1)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)(1)(A)), including such local educational agencies in rural and urban areas; and
(3) schools in the region that have been identified for school improvement under section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)).

(f) Activities

(1) In general
A comprehensive center established under this section shall support dissemination and technical assistance activities by—
(A) providing training, professional development, and technical assistance regarding, at a minimum—
(i) the administration and implementation of programs under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);
(ii) the use of scientifically valid teaching methods and assessment tools for use by teachers and administrators in, at a minimum—
(I) the core academic subjects of mathematics, science, and reading or language arts;
(II) English language acquisition; and
(III) education technology; and
(iii) the facilitation of communication between education experts, school officials, teachers, parents, and librarians, as appropriate; and

(B) disseminating and providing information, reports, and publications that are usable for improving academic achievement, closing achievement gaps, and encouraging and sustaining school improvement (as described in section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b))), to schools, educators, parents, and policymakers within the region in which the center is located; and

(C) developing teacher and school leader inservice and preservice training models that illustrate best practices in the use of technology in different content areas.

(2) Coordination and collaboration
Each comprehensive center established under this section shall coordinate its activities, collaborate, and regularly exchange information with the regional educational laboratory in the region in which the center is located, the National Center for Education Evaluation and Regional Assistance, the Office of the Secretary, the State service agency, and other technical assistance providers in the region.

(g) Comprehensive center advisory board

(1) Establishment
Each comprehensive center established under this section shall have an advisory board that shall support the priorities of such center.

(2) Duties
Each advisory board established under paragraph (1) shall advise the comprehensive center—
(A) concerning the activities described in subsection (d) of this section;
(B) on strategies for monitoring and addressing the educational needs of the region, on an ongoing basis;
(C) on maintaining a high standard of quality in the performance of the center’s activities; and
(D) on carrying out the center’s duties in a manner that promotes progress toward improving student academic achievement.

(3) Composition

(A) In general
Each advisory board shall be composed of—

(i) the chief State school officers, or such officers’ designees or other State officials, in each State served by the comprehensive center who have primary responsibility under State law for elementary and secondary education in the State; and

(ii) not more than 15 other members who are representative of the educational interests in the region served by the comprehensive center and are selected jointly by the officials specified in clause (i) and the chief executive officer of each State served by the comprehensive center, including the following:
(I) Representatives of local educational agencies and regional educational agencies, including representatives of local educational agencies serving urban and rural areas,
(II) Representatives of institutions of higher education.
(III) Parents.
(IV) Practicing educators, including classroom teachers, principals, and administrators.
(V) Policymakers, expert practitioners, and researchers with knowledge of, and experience using, the results of research, evaluation, and statistics.
(B) Special rule
In the case of a State in which the chief executive officer has the primary responsibility under State law for elementary and secondary education in the State, the chief executive officer shall consult, to the extent permitted by State law, with the State educational agency in selecting additional members of the board under subparagraph (A)(i).

(h) Report to Secretary
Each comprehensive center established under this section shall submit to the Secretary an annual report, at such time, in such manner, and containing such information as the Secretary may require, which shall include the following:

(1) A summary of the comprehensive center’s activities during the preceding year.
(2) A listing of the States, local educational agencies, and schools the comprehensive center assisted during the preceding year.


REFERENCES IN TEXT

The Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such Act existed on the day before November 5, 2002), referred to in subsecs. (a)(24A) and (b)(1), is title IX of Pub. L. 103–227, Mar. 31, 1994, 108 Stat. 212, as amended, which was classified principally to subchapter IX (§6601 et seq.) of chapter 68 of this title and was substantially repealed by Pub. L. 107–279, title IV, §403(2), Nov. 5, 2002, 116 Stat. 1985. Section 941(h) of the Act was classified to section 6841(h) of this title prior to repeal. For complete classification of this Act to the Code, see section 6601 of this title and Tables.


The Secretary shall establish a regional advisory committee for each region assisted during the preceding year.


REFERENCES IN TEXT

The Regional Technology in Education Consortia under section 3141 of the Elementary and Secondary Education Act of 1965 (as such part existed on the day before January 8, 2002), and the Comprehensive Regional Assistance Centers established under part K of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such part existed on the day before November 5, 2002), in accordance with the terms of such awards, until the comprehensive centers authorized under section 9602 of this title are established.


TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 9603. Evaluations

The Secretary shall provide for ongoing independent evaluations by the National Center for Education Evaluation and Regional Assistance of the comprehensive centers receiving assistance under this subchapter, the extent to which each of the comprehensive centers meets the objectives of its respective plan, and whether such services meet the educational needs of State educational agencies, local educational agencies, and schools in the region.


§ 9604. Existing technical assistance providers

The Secretary shall continue awards for the support of the Eisenhower Regional Mathematics and Science Education Consortia established under part M of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such part existed on the day before November 5, 2002), the Regional Technology in Education Consortia under section 3141 of the Elementary and Secondary Education Act of 1965 (as such part existed on the day before January 8, 2002), and the Comprehensive Regional Assistance Centers established under part K of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such part existed on the day before November 5, 2002), in accordance with the terms of such awards, until the comprehensive centers authorized under section 9602 of this title are established.


REFERENCES IN TEXT


§ 9605. Regional advisory committees

(a) Establishment

Beginning in 2004, the Secretary shall establish a regional advisory committee for each region described in section 9564(b) of this title.

(b) Membership

(1) Composition

The membership of each regional advisory committee shall—

(A) not exceed 25 members;

(B) contain a balanced representation of States in the region; and

(C) include not more than one representative of each State educational agency geographically located in the region.

(2) Eligibility

The membership of each regional advisory committee may include the following:

(A) Representatives of local educational agencies, including rural and urban local educational agencies.

(B) Representatives of institutions of higher education, including individuals representing university-based education research and university-based research on subjects other than education.
Each regional advisory committee shall advise the Secretary on the following:

(C) Parents.
(D) Practicing educators, including classroom teachers, principals, administrators, school board members, and other local school officials.
(E) Representatives of business.
(F) Researchers.

(3) Recommendations

In choosing individuals for membership on a regional advisory committee, the Secretary shall consult with, and solicit recommendations from, the chief executive officers of States, chief State school officers, and education stakeholders within the applicable region.

(4) Special rule

(A) Total number

The total number of members on each committee who are selected under subparagraphs (A), (C), and (D) of paragraph (2), collectively, shall exceed the total number of members who are selected under paragraph (1)(C) and subparagraphs (B), (E), and (F) of paragraph (2), collectively.

(B) Dissolution

Each regional advisory committee shall be dissolved by the Secretary after submission of such committee's report described in subsection (c)(2) of this section to the Secretary, but each such committee may be reconvened at the discretion of the Secretary.

(c) Duties

Each regional advisory committee shall advise the Secretary on the following:

(1) An educational needs assessment of its region (using the results of the assessment conducted under subsection (d) of this section), in order to assist in making decisions regarding the regional educational priorities.

(2) Not later than 6 months after the committee is first convened, a report based on the assessment conducted under subsection (d) of this section.

(d) Regional assessments

Each regional advisory committee shall—

(1) assess the educational needs within the region to be served;

(2) in conducting the assessment under paragraph (1), seek input from chief executive officers of States, chief State school officers, educators, and parents (including through a process of open hearings to solicit the views and needs of schools (including public charter schools), teachers, administrators, members of the regional educational laboratory governing board, parents, local educational agencies, librarians, businesses, State educational agencies, and other customers (such as adult education programs) within the region) regarding the need for the activities described in section 9564 of this title and section 9602 of this title and how those needs would be most effectively addressed; and

(3) submit the assessment to the Secretary and to the Director of the Institute of Education Sciences, at such time, in such manner, and containing such information as the Secretary may require.

§ 9605 of this title and other relevant regional surveys of educational needs, to the extent the Secretary deems appropriate.


§ 9606. Priorities

The Secretary shall establish priorities for the regional educational laboratories (established under section 9564 of this title) and comprehensive centers (established under section 9602 of this title) to address, taking into account the regional assessments conducted under section 9605 of this title and other relevant regional surveys of educational needs, to the extent the Secretary deems appropriate.


§ 9607. Grant program for statewide, longitudinal data systems

(a) Grants authorized

The Secretary is authorized to award grants, on a competitive basis, to State educational agencies to enable such agencies to design, develop, and implement statewide, longitudinal data systems to efficiently and accurately manage, analyze, disaggregate, and use individual student data, consistent with the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

(b) Applications

Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(c) Awarding of grants

In awarding grants under this section, the Secretary shall use a peer review process that—

(1) ensures technical quality (including validity and reliability), promotes linkages across States, and protects student privacy consistent with section 9573 of this title;

(2) promotes the generation and accurate and timely use of data that is needed—

(A) for States and local educational agencies to comply with the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) and other reporting requirements and close achievement gaps; and

(B) to facilitate research to improve student academic achievement and close achievement gaps; and
§ 9608. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $80,000,000 for fiscal year 2003 and such sums as may be necessary for each of the 5 succeeding fiscal years.


REFERENCES IN TEXT


SUBCHAPTER III—NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

§ 9621. National Assessment Governing Board

(a) Establishment

There is established the National Assessment Governing Board (hereafter in this subchapter referred to as the “Assessment Board”), which shall formulate policy guidelines for the National Assessment (carried out under section 9622 of this title).

(b) Membership

(1) Appointment and composition

The Assessment Board shall be appointed by the Secretary and be composed as follows:

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

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

(C) Two chief State school officers.

(D) One superintendent of a local educational agency.

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

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

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

(H) One representative of business or industry.

(I) Two curriculum specialists.

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

(K) One nonpublic school administrator or policymaker.

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

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

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

(2) Director of the Institute of Education Sciences

The Director of the Institute of Education Sciences shall serve as an ex officio, nonvoting member of the Assessment Board.

(3) Balance and diversity

The Secretary and the Assessment Board shall ensure at all times that the membership of the Assessment Board reflects regional, racial, gender, and cultural balance and diversity and that the Assessment Board exercises its independent judgment, free from inappropriate influences and special interests.

(c) Terms

(1) In general

Terms of service of members of the Assessment Board shall be staggered and may not exceed a period of 4 years, as determined by the Secretary.

(2) Service limitation

Members of the Assessment Board may serve not more than two terms.

(3) Change of status

A member of the Assessment Board who changes status under subsection (b) of this section during the term of the appointment of the member may continue to serve as a member until the expiration of such term.

(4) Conforming provision

Members of the Assessment Board previously granted 3 year terms, whose terms are in effect on December 21, 2000, shall have their terms extended by 1 year.

(d) Vacancies

(1) In general

(A) Organizations

The Secretary shall appoint new members to fill vacancies on the Assessment Board
Duties

(1) In general

In carrying out its functions under this section the Assessment Board shall—

(A) select the subject areas to be assessed (consistent with section 9622(b) of this title);
(B) develop appropriate student achievement levels as provided in section 9622(e) of this title;
(C) develop assessment objectives consistent with the requirements of this section and test specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards;
(D) develop a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public;
(E) design the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys;
(F) consistent with section 9622 of this title, measure student academic achievement in grades 4, 8, and 12 in the authorized academic subjects;
(G) develop guidelines for reporting and disseminating results;
(H) develop standards and procedures for regional and national comparisons;
(I) take appropriate actions needed to improve the form, content, use, and reporting of results of any assessment authorized by section 9622 of this title consistent with the provisions of this section and section 9622 of this title; and
(J) plan and execute the initial public release of National Assessment of Educational Progress reports.

The National Assessment of Educational Progress data shall not be released prior to the release of the reports described in subparagraph (J).

(2) Delegation

The Assessment Board may delegate any of the Board’s procedural and administrative functions to its staff.

(3) All cognitive and noncognitive assessment items

The Assessment Board shall have final authority on the appropriateness of all assessment items.

(4) Prohibition against bias

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

(5) Technical

In carrying out the duties required by paragraph (1), the Assessment Board may seek technical advice, as appropriate, from the Commissioner for Education Statistics and other experts.

(6) Report

Not later than 90 days after an evaluation of the student achievement levels under section 9622(e) of this title, the Assessment Board shall make a report to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate describing the steps the Assessment Board is taking to respond to each of the recommendations contained in such evaluation.

Personnel

(1) In general

In the exercise of its responsibilities, the Assessment Board shall be independent of the Secretary and the other offices and officers of the Department.

(2) Staff

(A) In general

The Secretary may appoint, at the request of the Assessment Board, such staff as will enable the Assessment Board to carry out its responsibilities.

(B) Technical employees

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

Coordination

The Commissioner for Education Statistics and the Assessment Board shall meet periodically—

(1) to ensure coordination of their duties and activities relating to the National Assessment; and
(2) for the Commissioner for Education Statistics to report to the Assessment Board on the Department’s actions to implement the decisions of the Assessment Board.

(h) Administration

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


REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 9011 of this title prior to renumbering by Pub. L. 107–279.

PRIOR PROVISIONS

A prior section 302 of Pub. L. 107–279 was renumbered section 304 and is classified to section 9623 of this title.

AMENDMENTS


Subsec. (a). Pub. L. 107–279, §401(c)(1), substituted “referred to as the ‘Assessment Board’” for “referred to as the ‘Board’” and inserted “(carried out under section 9622 of this title)” after “for the National Assessment”.


Pub. L. 107–279, §401(c)(2), substituted “Assessment Board” for “Board”.


§ 9622 Title 20—Education Page 1640

National Assessment of Educational Progress

(a) Establishment

The Commissioner for Education Statistics shall, with the advice of the Assessment Board established under section 9621 of this title, carry out, through grants, contracts, or cooperative agreements with one or more qualified organizations, or consortia thereof, a National Assessment of Educational Progress, which collectively refers to a national assessment, State assessments, and a long-term trend assessment in reading and mathematics.

(b) Purpose; State assessments

(1) Purpose

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

(2) Measurement and reporting

The Commissioner for Education Statistics, in carrying out the measurement and reporting described in paragraph (1), shall—

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

(B) conduct a national assessment and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in public and private elementary schools and secondary schools at least once every 2 years, in grades 4 and 8 in reading and mathematics;
(C) conduct a national assessment and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in public and private schools in reading and mathematics in grade 12 in regularly scheduled intervals, but at least as often as such assessments were conducted prior to January 8, 2002;

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

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

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

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

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

(3) State assessments

(A) In general

The Commissioner for Education Statistics—

(i) shall conduct biennial State academic assessments of student achievement in reading and mathematics in grades 4 and 8 as described in paragraphs (2)(B) and (2)(E);

(ii) may conduct the State academic assessments of student achievement in reading and mathematics in grade 12 as described in paragraph (2)(C);

(iii) may conduct State academic assessments of student achievement in grades 4, 8, and 12 as described in paragraph (2)(D); and

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

(B) Agreement

(i) In general

States participating in State assessments shall enter into an agreement with the Secretary pursuant to subsection (d)(3) of this section.

(ii) Content

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

(C) Review and release

(i) In general

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

(ii) Special rule

A State participating in the biennial academic assessments of student achievement in reading and mathematics in grades 4 and 8 shall be deemed to have given its permission to release its data if the State has an approved plan under section 6311 of this title.

(4) Prohibited activities

(A) In general

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

(B) Special rule

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

(C) Applicability to student educational decisions

Nothing in this section shall be construed to prescribe the use of any assessment authorized under this section for student promotion or graduation purposes.

(D) Applicability to home schools

Nothing in this section shall be construed to affect home schools, whether or not a home school is treated as a home school or...
§ 9622

a private school under State law, nor shall any home schooled student be required to participate in any assessment referenced or authorized under this section.

(5) Requirement

In carrying out any assessment authorized under this section, the Commissioner for Education Statistics, in a manner consistent with subsection (c)(3) of this section, shall—

(A) use widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, and ensure that any academic assessment authorized under this section be tests that do not evaluate or assess personal or family beliefs and attitudes or publicly disclose personally identifiable information;

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

(C) collect information on race, ethnicity, socioeconomic status, disability, limited English proficiency, and gender.

(6) Technical assistance

In carrying out any assessment authorized under this section, the Commissioner for Education Statistics may provide technical assistance to States, localities, and other parties.

(c) Access

(1) Public access

(A) In general

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

(B) Timeline

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

(C) Prohibition

To protect the integrity of the assessment, no copy of the assessment items or assessment instruments shall be duplicated or taken from the secure setting.

(2) Complaints

(A) In general

Parents and members of the public may submit written complaints to the Assessment Board.

(B) Forwarding of complaints

The Assessment Board shall forward such complaints to the Commissioner for Education Statistics, the Secretary of Education, and the State and local educational agency from within which the complaint originated within 30 days of receipt of such complaint.

(C) Review

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

(D) Report

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

(E) Cognitive questions

(i) In general

The Commissioner for Education Statistics may decline to make available through public means, such as posting on the Internet, distribution to the media, distribution through public agencies, or in response to a request under section 552 of title 5, for a period, not to exceed 10 years after initial use, cognitive questions that the Commissioner for Education Statistics intends to reuse in the future.

(ii) Extension

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

(3) Personally identifiable information

(A) In general

The Commissioner for Education Statistics shall ensure that all personally identifiable information about students, their academic achievement, and their families, and that information with respect to individual schools, remains confidential, in accordance with section 552a of title 5.

(B) Prohibition

The Assessment Board, the Commissioner for Education Statistics, and any contractor or subcontractor shall not maintain any system of records containing a student’s name, birth information, Social Security number, or parents’ name or names, or any other personally identifiable information.

(4) Penalties

Any unauthorized person who knowingly discloses, publishes, or uses assessment questions, or complete and current assessment in-
(d) Participation

(1) Voluntary participation

Participation in any assessment authorized under this section shall be voluntary for students, schools, and local educational agencies.

(2) Student participation

Parents of children selected to participate in any assessment authorized under this section shall be informed before the administration of any authorized assessment, that their child may be excused from participation for any reason, is not required to finish any authorized assessment, and is not required to answer any test question.

(3) State participation

(A) Voluntary

Participation in assessments authorized under this section, other than reading and mathematics in grades 4 and 8, shall be voluntary.

(B) Agreement

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

(4) Review

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

(e) Student achievement levels

(1) Achievement levels

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

(2) Determination of levels

(A) In general

Such levels shall—

(I) be determined by—

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

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

(B) National consensus approach

After the determinations described in subparagraph (A), devising a national consensus approach.

(C) Trial basis

The achievement levels shall be used on a trial basis until the Commissioner for Education Statistics determines, as a result of an evaluation under subsection (f) of this section, that such levels are reasonable, valid, and informative to the public.

(D) Status

The Commissioner for Education Statistics and the Board shall ensure that reports using such levels on a trial basis do so in a manner that makes clear the status of such levels.

(E) Updates

Such levels shall be updated as appropriate by the Assessment Board in consultation with the Commissioner for Education Statistics.

(3) Reporting

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

(4) Review

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

(f) Review of National and State assessments

(1) Review

(A) In general

The Secretary shall provide for continuing review of any assessment authorized under this section, and student achievement levels, by one or more professional assessment evaluation organizations.

(B) Issues addressed

Such continuing review shall address—

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

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

1So in original. No cl. (ii) has been enacted.

2So in original.
(iii) whether any authorized assessment is being administered as a random sample and is reporting the trends in academic achievement in a valid and reliable manner in the subject areas being assessed;

(iv) whether any of the test questions are biased, as described in section 962(e)(4) of this title; and

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

(2) Report
The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, the President, and the Nation on the findings and recommendations of such reviews.

(3) Use of findings and recommendations
The Commissioner for Education Statistics and the Assessment Board shall consider the findings and recommendations of such reviews in designing the competition to select the organization, or organizations, through which the Commissioner for Education Statistics carries out the National Assessment.

(g) Coverage agreements

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

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


Subsec. (c)(2). Pub. L. 107–279, § 401(d)(5), substituted “paragraph (C)” for “subparagraph (B)”.

Subsec. (c)(3). Pub. L. 107–279, § 401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner” in subpars. (A) and (B).


Effect of Amendments
Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

§ 9623. Definitions

In this subchapter:

(1) The term ‘Director’ means the Director of the Institute of Education Sciences.

(2) The term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 9624. Authorization of appropriations

(a) In general

There are authorized to be appropriated—

(1) for fiscal year 2003—

(A) $1,600,000 to carry out section 9621 of this title; and

(B) $107,500,000 to carry out section 9622 of this title; and

(2) such sums as may be necessary for each of the 5 succeeding fiscal years to carry out sections 9621 and 9622 of this title.

(b) Availability

Amounts made available under this section shall remain available until expended.


SUBCHAPTER IV—NATIONAL CENTER FOR RESEARCH IN ADVANCED INFORMATION AND DIGITAL TECHNOLOGIES

§ 9631. National Center for Research in Advanced Information and Digital Technologies

(a) Establishment

There shall be established, during the first fiscal year for which appropriations are made under subsection (c), a nonprofit corporation to be known as the National Center for Research in Advanced Information and Digital Technologies, which shall not be an agency or establishment of the Federal Government. The Center shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act (sec. 29–501 et seq., D.C. Official Code).

(b) Purpose

The purpose of the Center shall be to support a comprehensive research and development program to harness the increasing capacity of advanced information and digital technologies to improve all levels of learning and education, formal and informal, in order to provide Americans with the knowledge and skills needed to compete in the global economy.

(c) Funding

(1) Authorization of appropriations

There are authorized to be appropriated to the Center such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(2) Additional funds

The Center is authorized—

(A) to accept funds from any Federal agency or entity;

(B) to accept, hold, administer, and spend any gift, devise, or bequest of real or personal property made to the Center; and

(C) to enter into competitive contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Center.

(3) Prohibition

The Center shall not accept gifts, devises, or bequests from a foreign government or foreign source.

(d) Board of Directors; vacancies; compensation

(1) In general

A Board of the Center shall be established to oversee the administration of the Center.

(2) Initial composition

The initial Board shall consist of nine members to be appointed by the Secretary of Education from recommendations received from the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate, who—

(A) shall reflect representation from the public and private sectors;

(B) shall provide, as nearly as practicable, a broad representation of various regions of the United States, various professions and occupations, and various kinds of talent and experience appropriate to the functions and responsibilities of the Center;

(C) shall not be in a position to benefit financially directly from the contracts and grants to eligible institutions under subsection (f)(2); and

(D) may not be officers or employees of the Federal Government or a Members of Congress serving at the time of such appointment.

(3) Vacancies and subsequent appointments

To the extent not inconsistent with paragraph (2), in the case of a vacancy on the Board due to death, resignation, or removal, the vacancy shall be filled through nomination and selection by the sitting members of the Board after—

(A) taking into consideration the composition of the Board; and

(B) soliciting recommendations from the public.

(4) Compensation

Members of the Board shall serve without compensation but may be reimbursed for reasonable expenses for transportation, lodging, and other expenses directly related to their duties as members of the Board.

(5) Organization and operation

The Board shall incorporate and operate the Center in accordance with the laws governing tax exempt organizations in the District of Columbia.

(e) Director and staff

(1) Director

The Board shall appoint a Director of the Center after conducting a national, competitive search to find an individual with the appropriate expertise, experience, and knowledge to oversee the operations of the Center.

(2) Staff

In accordance with procedures established by the Board, the Director shall employ indi-
individuals to carry out the functions of the Center.

(3) Compensation
In no case shall the Director or any employee of the Center receive annual compensation that exceeds an amount equal to the annual rate payable for level II of the Executive Schedule under section 5313 of title 5.

(f) Center activities
(1) Uses of funds
The Director, after consultation with the Board, shall use the funds made available to the Center—
(A) to support research to improve education, teaching, and learning that is in the public interest, but that is determined unlikely to be undertaken entirely with private funds;
(B) to support—
(i) precompetitive research, development, and demonstrations;
(ii) assessments of prototypes of innovative digital learning and information technologies, as well as the components and tools needed to create such technologies; and
(iii) pilot testing and evaluation of prototype systems described in clause (ii);
and
(C) to encourage the widespread adoption and use of effective, innovative digital approaches to improving education, teaching, and learning.

(2) Contracts and grants
(A) In general
To carry out the activities described in paragraph (1), the Director, with the agreement of two-thirds of the members of the Board, may award, on a competitive basis, contracts and grants to four-year institutions of higher education, museums, libraries, nonprofit organizations, public institutions with or without for-profit partners, for-profit organizations, and consortia of any such entities.

(B) Public domain
(i) In general
The research and development properties and materials associated with any project funded by a grant or contract under this section shall be freely and nonexclusively available to the general public in a timely manner, consistent with regulations prescribed by the Secretary of Education.

(ii) Exemption
The Director may waive the requirements of clause (i) with respect to a project funded by a grant or contract under this section if—
(I) the Director and the Board (by a unanimous vote of the Board members) determine that the general public will benefit significantly due to the project not being freely and nonexclusively available to the general public in a timely manner; and

(II) the Board issues a public statement as to the specific reasons of the determination under subclause (I).

(C) Peer review
Proposals for grants or contracts shall be evaluated on the basis of comparative merit by panels of experts who represent diverse interests and perspectives, and who are appointed by the Director based on recommendations from the fields served and from the Board.

(g) Accountability and reporting
(1) Report
(A) In general
Not later than December 30 of each year beginning in fiscal year 2009, the Director shall prepare and submit to the Secretary of Education and the authorizing committees a report that contains the information described in subparagraph (B) with respect to the preceding fiscal year.

(B) Contents
A report under subparagraph (A) shall include—
(i) a comprehensive and detailed report of the Center’s operations, activities, financial condition, and accomplishments, and such recommendations as the Director determines appropriate;
(ii) evidence of coordination with the Department of Education, the National Science Foundation, Office of the Assistant Secretary of Defense for Research and Engineering in the Department of Defense, and other related Federal agencies to carry out the operations and activities of the Center;
(iii) a comprehensive and detailed inventory of funds distributed from the Center during the fiscal year for which the report is being prepared; and
(iv) an independent audit of the Center’s finances and operations, and of the implementation of the goals established by the Board.

(C) Statement of the Board
Each report under subparagraph (A) shall include a statement from the Board containing—
(i) a clear description of the plans and priorities of the Board for the subsequent year for activities of the Center; and
(ii) an estimate of the funds that will be expended by the Center for such year.

(2) Testimony
The Director and principal officers of the Center shall testify before the authorizing committees and the Committees on Appropriations of the House of Representatives and the Senate, upon request of such committees, with respect to—
(A) any report required under paragraph (1)(A); and
(B) any other matter that such committees may determine appropriate.

(h) Use of funds subject to appropriations
The authority to award grants, enter into contracts, or otherwise expend funds under this sec-
tion is subject to the availability of amounts deposited into the Center under subsection (c), or amounts otherwise appropriated for such purposes by an Act of Congress.

(i) Definitions

For purposes of this section:

(1) Authorizing committees

The term “authorizing committees” has the meaning given the term in section 1003 of this title.

(2) Board

The term “Board” means the Board of the Center appointed under subsection (d)(1).

(3) Center

The term “Center” means the National Center for Research in Advanced Information and Digital Technologies established under subsection (a).

(4) Director

The term “Director” means the Director of the Center appointed under subsection (e)(1).


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Higher Education Opportunity Act, and not as part of Pub. L. 107–279 which comprises this chapter.

CHANGE OF NAME


CHAPTER 77—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

Sec.

9701. Definitions.

9702. Establishment of Financial Literacy and Education Commission.

9703. Duties of the Commission.


9705. Commission personnel matters.

9706. Studies by the Comptroller General.

9707. "The nation’s financial literacy and financial education initiative"—Builder, in coordination with other Federal agencies, including the Department of Education, the Secretary, the Commission, and the Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681 of Title 15, Commerce and Trade.

§ 9701. Definitions

As used in this chapter—

(1) the term “Chairperson” means the Chairperson of the Financial Literacy and Education Commission; and

(2) the term “Commission” means the Financial Literacy and Education Commission established under section 9702 of this title.


EFFECTIVE DATE

Chapter subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108–159, set out as an Effective Date of 2003 Amendment note under section 1681 of Title 15, Commerce and Trade.

SHORT TITLE


EX. ORD. NO. 13455. ESTABLISHING THE PRESIDENT’S ADVISORY COUNCIL ON FINANCIAL LITERACY

Ex. Ord. No. 13455, Jan. 22, 2008, 73 F.R. 4445, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America and to promote and enhance financial literacy among the American people, it is hereby ordered as follows:

§ 1. Policy.

To help keep America competitive and assist the American people in understanding and addressing financial matters, it is the policy of the Federal Government to encourage financial literacy among the American people.

§ 2. Establishment of the Council.

There is established within the Department of the Treasury the President’s Advisory Council on Financial Literacy (Council).

§ 3. Membership and Operation of the Council.

(a) The Council shall consist of 19 members appointed by the President from among individuals not employed by the Federal Government, consistent with subsection (b) of this section.

(b) In selecting individuals for appointment to the Council, appropriate consideration should be given to selection of individuals with backgrounds as providers of, consumers of, promoters of access to, and educators with respect to financial education and financial services. Each individual member of the Council will serve as a representative of his or her industry, trade group, public interest group, or other organization or group. The composition of the Council will reflect the views of diverse stakeholders.

(c) The President shall designate a Chair and a Vice Chair from among the members of the Council.

(d) Subject to the direction of the Secretary of the Treasury (Secretary), the Chair shall convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to deal with particular subject matters, establish and direct the work of subgroups of the Council that shall consist exclusively of members of the Council.

(e) The Vice Chair shall perform:

(i) the duties of the Chair when the position of Chair is vacant; and

(ii) such other functions as the Chair may from time to time assign.


To assist in implementing the policy set forth in section 1 of this order, the Council shall:

(a) obtain information and advice concerning financial literacy as appropriate in the course of its work from:

(i) officers and employees of executive departments and agencies (including members of the Financial Literacy and Education Commission), unless otherwise directed by the head of the department or agency;

(ii) State, local, territorial, and tribal officials;

(iii) providers of, consumers of, promoters of access to, and educators with respect to financial services;

(iv) experts on matters related to the policy set forth in section 1; and

(v) such other individuals as the Secretary may direct;

(b) advise the President and the Secretary consistent with this order on means to implement effectively the policy set forth in section 1, including by providing advice on means to:

(i) improve financial education efforts for youth in school and for adults in the workplace;
(ii) promote effective access to financial services, especially for those without access to such services; 
(iii) establish effective measures of national financial literacy; 
(iv) conduct research on financial knowledge, including the collection of data on the extent of financial knowledge of individuals; and 
(v) strengthen and coordinate public and private sector financial education programs; and 
(c) periodically report to the President, through the Secretary, on:
(i) the status of financial literacy in the United States; 
(ii) progress made in implementing the policy set forth in section 1 of this order; and 
(iii) recommendations on means to further implement the policy set forth in section 1 of this order, including with respect to the matters set forth in subsection (b)(i) through (v) of this section.

Sect. 5. Administration of the Council. (a) To the extent permitted by law, the Department of the Treasury shall provide funding and administrative support for the Council, as determined by the Secretary, to implement this order.

(b) The heads of executive departments and agencies shall provide, as appropriate and to the extent permitted by law, such assistance and information to the Council as the Secretary may request to implement this order.

(c) Members of the Council:
(i) shall serve without any compensation for their work on the Council; and
(ii) while engaged in the work of the Council, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving as representatives of individual industries, trade groups, public interest groups, or other organizations.

(d) The Secretary shall designate an officer or employee of the United States within the Department of the Treasury to serve as an Executive Director to supervise the administrative support for the Council.

Sect. 6. Termination of the Council. Unless extended by the President, the Council shall terminate 2 years from the date of this order.

Sect. 7. General Provisions. (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the Council, all functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary in accordance with the guidelines issued by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to a department or agency or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

d) This order is not intended to, and does not, create new rights or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13530. PRESIDENT'S ADVISORY COUNCIL ON FINANCIAL CAPABILITY


By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. To help keep America competitive and assist the American people in understanding and addressing financial matters, and thereby contribute to financial stability, it is the policy of the Federal Government to promote and enhance financial capability among the American people. Financial capability is the capacity of individuals to make informed choices, avoid pitfalls, know where to go for help, and take other actions to improve their present and long-term financial well-being.

Sec. 2. Establishment of the Council. There is established within the Department of the Treasury the President's Advisory Council on Financial Capability (Council).

Sec. 3. Membership and Operation of the Council. (a) The Council shall consist of:
(i) the Secretary of the Treasury and the Secretary of Education, who may designate a senior official from each of their respective departments to perform their Council duties; and
(ii) not more than 22 members appointed by the President from among individuals not employed by the Federal Government, up to three of whom shall be selected by the President on the basis of their experience in academia or similar research experience related to financial education and financial access.

(b) Members of the Council shall include individuals with relevant backgrounds, such as financial services providers, consumers, access advocates, and educators.

Members of the Council appointed by the President pursuant to subsection (a)(ii) of this section, may serve as representatives of individual industries, trade groups, public interest groups, or other organizations.

The composition of the Council shall reflect the views of diverse stakeholders.

(c) The President shall designate a Chair and a Vice Chair from among the members of the Council appointed pursuant to subsection (a)(ii) of this section.

(d) Subject to the direction of the Secretary of the Treasury (Secretary), the Chair shall convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to deal with particular subjects, establish and direct the work of subgroups of the Council that shall consist exclusively of members of the Council.

(e) The Vice Chair shall perform:
(i) the duties of the Chair when the position of Chair is vacant; and
(ii) such other functions as the Chair may from time to time assign.

Sec. 4. Functions of the Council. To assist in implementing the policy set forth in section 1 of this order, the Council shall:
(a) collect information and views concerning financial capability from:
(i) officers of executive departments and agencies (including members of the Financial Literacy and Education Commission established under title V of the Fair and Accurate Credit Transaction Act of 2003), Public Law 108-159; 
(ii) State, local, territorial, and tribal officials; 
(iii) financial services providers and consumers, financial access advocates, and financial literacy educators; 
(iv) experts on matters relating to the policy set forth in section 1 of this order; and
(v) such other individuals as the Secretary may direct;
(b) advise the President and the Secretary on means to implement effectively the policy set forth in section 1 of this order, including means to:
(i) build a culture of financial capability by promoting messages and lessons about sound financial practices as broadly as possible; 
(ii) improve financial education efforts directed at youth, young adults, and adults in schools, workplaces, and other settings through innovative approaches; 
(iii) promote access to financial services; 
(iv) promote the private-sector development of financial products and services benefitting consumers, especially low- and moderate-income consumers;
(v) educate consumers about effective use of such products and services;
(vi) identify the most important basic financial concepts and actions individuals need to understand and perform to be financially capable;
(vii) identify effective financial education approaches and methods for evaluating the effectiveness of financial education approaches; and
(viii) strengthen and enhance coordination between public and private-sector financial education programs;
(c) periodically report to the President, through the Secretary, on:
(i) the status of financial capability in the United States;
(ii) progress made in implementing the policy set forth in section 1 of this order; and
(iii) recommended means to further implement the policy set forth in section 1 of this order, including with respect to the matters set forth in subsection (b) of this section; and
(d) where appropriate in providing advice and recommendations, take into consideration the particular needs of traditionally underserved populations.
Sec. 5. Administration of the Council. (a) To the extent permitted by law, the Department of the Treasury shall provide funding and administrative support for the Council, as determined by the Secretary, to implement this order.
(b) The heads of executive departments and agencies shall provide, as appropriate and to the extent permitted by law, such assistance and information to the Council as the Secretary may request to implement this order.
(c) Members of the Council:
(i) shall serve without any compensation for their work on the Council; and
(ii) while engaged in the work of the Council, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.
(d) The Secretary shall designate an official within the Department of the Treasury to serve as an Executive Director to supervise the administrative support for the Council.
Sec. 6. Termination of the Council.] Unless extended by the President, the Council shall terminate on January 29, 2013.
Sec. 7. General Provisions. (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the “Act”), may apply to the Council, any functions of the President under the Act, except for that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines issued by the Administrator of General Services.
(b) Nothing in this order shall be construed to impair
or otherwise affect:
(i) authority granted by law to a department or agency or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama.

§ 9702. Establishment of Financial Literacy and Education Commission

(a) In general
There is established a commission to be known as the “Financial Literacy and Education Commission”.

(b) Purpose
The Commission shall serve to improve the financial literacy and education of persons in the United States through development of a national strategy to promote financial literacy and education.

(c) Membership
(1) Composition
The Commission shall be composed of—
(A) the Secretary of the Treasury;
(B) the respective head of each of the Federal banking agencies (as defined in section 1813 of title 12), the National Credit Union Administration, the Securities and Exchange Commission, each of the Departments of Education, Agriculture, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management;
(C) the Director of the Bureau of Consumer Financial Protection; and
(D) at the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Federal Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

(2) Alternates
Each member of the Commission may designate an alternate if the member is unable to attend a meeting of the Commission. Such alternate shall be an individual who exercises significant decisionmaking authority.

(d) Chairperson
The Secretary of the Treasury shall serve as the Chairperson. The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairperson.

(e) Meetings
The Commission shall hold, at the call of the Chairperson, at least 1 meeting every 4 months. All such meetings shall be open to the public. The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this chapter.

(f) Quorum
A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) Initial meeting
The Commission shall hold its first meeting not later than 60 days after December 4, 2003.

Amendments
2010—Subsec. (c)(1)(C), (D). Pub. L. 111–203, § 1013(d)(5), added subpar. (C) and redesignated former subpar. (C) as (D).
§ 9703. Duties of the Commission

(a) Duties

(1) In general

The Commission, through the authority of the members referred to in section 9702(c) of this title, shall take such actions as it deems necessary to streamline, improve, or augment the financial literacy and education programs, grants, and materials of the Federal Government, including curricula for all Americans.

(2) Areas of emphasis

To improve financial literacy and education, the Commission shall emphasize, among other elements, basic personal income and household money management and planning skills, including how to—

(A) create household budgets, initiate savings plans, and make strategic investment decisions for education, retirement, home ownership, wealth building, or other savings goals;
(B) manage spending, credit, and debt, including credit card debt, effectively;
(C) increase awareness of the availability and significance of credit reports and credit scores in obtaining credit, the importance of their accuracy (and how to correct inaccuracies), their effect on credit terms, and the effect common financial decisions may have on credit scores;
(D) ascertain fair and favorable credit terms;
(E) avoid abusive, predatory, or deceptive credit offers and financial products;
(F) understand, evaluate, and compare financial products, services, and opportunities;
(G) understand resources that ought to be easily accessible and affordable, and that inform and educate investors as to their rights and avenues of recourse when an investor believes his or her rights have been violated by unprofessional conduct of market intermediaries;
(H) increase awareness of the particular financial needs and financial transactions (such as the sending of remittances) of consumers who are targeted in multilingual financial literacy and education programs and improve the development and distribution of multilingual financial literacy and education materials;
(I) promote bringing individuals who lack basic banking services into the financial mainstream by opening and maintaining an account with a financial institution; and
(J) improve financial literacy and education through all other related skills, including personal finance and related economic education, with the primary goal of programs not simply to improve knowledge, but rather to improve consumers' financial choices and outcomes.

(b) Website

(1) In general

The Commission shall establish and maintain a website, such as the domain name "FinancialLiteracy.gov", or a similar domain name.

(2) Purposes

The website established under paragraph (1) shall—

(A) serve as a clearinghouse of information about Federal financial literacy and education programs;
(B) provide a coordinated entry point for accessing information about all Federal publications, grants, and materials promoting enhanced financial literacy and education;
(C) offer information on all Federal grants to promote financial literacy and education, and on how to target, apply for, and receive a grant that is most appropriate under the circumstances;
(D) as the Commission considers appropriate, feature website links to efforts that have no commercial content and that feature information about financial literacy and education programs, materials, or campaigns; and
(E) offer such other information as the Commission finds appropriate to share with the public in the fulfillment of its purpose.

(c) Toll-free hotline

The Commission shall establish a toll-free telephone number that shall be made available to members of the public seeking information about issues pertaining to financial literacy and education.

(d) Development and dissemination of materials

The Commission shall—

(1) develop materials to promote financial literacy and education; and
(2) disseminate such materials to the general public.

(e) Coordination of efforts

The Commission shall take such steps as are necessary to coordinate and promote financial literacy and education efforts at the State and local level, including promoting partnerships among Federal, State, and local governments, nonprofit organizations, and private enterprises.

(f) National strategy

(1) In general

The Commission shall—

(A) not later than 18 months after December 4, 2003, develop a national strategy to promote basic financial literacy and education among all American consumers; and
(B) coordinate Federal efforts to implement the strategy developed under subparagraph (A).

(2) Strategy

The strategy to promote basic financial literacy and education required to be developed under paragraph (1) shall provide for—

(A) participation by State and local governments and private, nonprofit, and public institutions in the creation and implementation of such strategy;
(B) the development of methods—

(i) to increase the general financial education level of current and future consumers of financial services and products; and...
(ii) to enhance the general understanding of financial services and products;

(C) review of Federal activities designed to promote financial literacy and education, and development of a plan to improve coordination of such activities; and

(D) the identification of areas of overlap and duplication among Federal financial literacy and education activities and proposed means of eliminating any such overlap and duplication.

(3) National strategy review

The Commission shall, not less than annually, review the national strategy developed under this chapter and make such changes and recommendations as it deems necessary.

(g) Consultation

The Commission shall actively consult with a variety of representatives from private and non-profit organizations and State and local agencies, as determined appropriate by the Commission.

(h) Reports

(1) In general

Not later than 18 months after the date of the first meeting of the Commission, and annually thereafter, the Commission shall issue a report, the Strategy for Assuring Financial Empowerment ("SAFE Strategy"), to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the progress of the Commission in carrying out this chapter.

(2) Contents

The report required under paragraph (1) shall include—

(A) the national strategy for financial literacy and education, as described under subsection (f);

(B) information concerning the implementation of the duties of the Commission under subsections (a) through (g);

(C) an assessment of the success of the Commission in implementing the national strategy developed under subsection (f);

(D) an assessment of the availability, utilization, and impact of Federal financial literacy and education materials;

(E) information concerning the content and public use of—

(i) the website established under subsection (b); and

(ii) the toll-free telephone number established under subsection (c);

(F) a brief survey of the financial literacy and education materials developed under subsection (d), and data regarding the dissemination and impact of such materials, as measured by improved financial decision-making;

(G) a brief summary of any hearings conducted by the Commission, including a list of witnesses who testified at such hearings;

(H) information about the activities of the Commission planned for the next fiscal year;

(I) a summary of all Federal financial literacy and education activities targeted to communities that have historically lacked access to financial literacy materials and education, and have been underserved by the mainstream financial systems; and

(J) such other materials relating to the duties of the Commission as the Commission deems appropriate.

(3) Initial report

The initial report under paragraph (1) shall include information regarding all Federal programs, materials, and grants which seek to improve financial literacy, and assess the effectiveness of such programs.

(i) Testimony

The Commission shall annually provide testimony by the Chairperson to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

§ 9704. Powers of the Commission

(a) Hearings

(1) In general

The Commission shall hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate to carry out this chapter.

(2) Participation

In hearings held under this subsection, the Commission shall consider inviting witnesses from, among other groups—

(A) other Federal Government officials;

(B) State and local government officials;

(C) consumer and community groups;

(D) nonprofit financial literacy and education groups (such as those involved in personal finance and economic education); and

(E) the financial services industry.

(b) Information from Federal agencies

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this chapter. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Commission.

(c) Periodic studies

The Commission may conduct periodic studies regarding the state of financial literacy and education in the United States, as the Commission determines appropriate.

(d) Multilingual

The Commission may take any action to develop and promote financial literacy and education materials in languages other than English, as the Commission deems appropriate, including for the website established under section 9703(b) of this title, at the toll-free number...
§ 9705. Commission personnel matters

(a) Compensation of members
Each member of the Commission shall serve without compensation in addition to that received for their service as an officer or employee of the United States.

(b) Travel expenses
The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Commission.

(c) Assistance

(1) In general
The Director of the Office of Financial Education of the Department of the Treasury shall provide assistance to the Commission, upon request of the Commission, without reimbursement.

(2) Detail of Government employees
Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

§ 9706. Studies by the Comptroller General

(a) Effectiveness study
Not later than 3 years after December 4, 2003, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of the Commission in promoting financial literacy and education.

(b) Study and report on the need and means for improving financial literacy among consumers

(1) Study required
The Comptroller General of the United States shall conduct a study to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on methods for improving financial literacy among consumers.

(2) Factors to be included
The study required under paragraph (1) shall include the following issues:
   (A) The number of consumers who view their credit reports.
   (B) Under what conditions and for what purposes do consumers primarily obtain a copy of their consumer report (such as for the purpose of ensuring the completeness and accuracy of the contents, to protect against fraud, in response to an adverse action based on the report, or in response to suspected identity theft) and approximately what percentage of the total number of consumers who obtain a copy of their consumer report do so for each such primary purpose.
   (C) The extent of consumers' knowledge of the data collection process.
   (D) The extent to which consumers know how to get a copy of a consumer report.
   (E) The extent to which consumers know and understand the factors that positively or negatively impact credit scores.

(3) Report required
Before the end of the 12-month period beginning on December 4, 2003, the Comptroller General shall submit a report to Congress on the findings and conclusions of the Comptroller General pursuant to the study conducted under this subsection, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate, including recommendations on methods for improving financial literacy among consumers.

§ 9707. The national public service multimedia campaign to enhance the state of financial literacy

(a) In general
The Secretary, after review of the recommendations of the Commission, as part of the national strategy, shall develop, implement, and conduct a pilot national public service multimedia campaign to enhance the state of financial literacy and education in the United States.

(b) Program requirements

(1) Public service campaign
The Secretary, after review of the recommendations of the Commission, shall select and work with a nonprofit organization or organizations that are especially well-qualified in the distribution of public service campaigns, and have secured private sector funds to produce the pilot national public service multimedia campaign.

(2) Development of multimedia campaign
The Secretary, after review of the recommendations of the Commission, shall develop, in consultation with nonprofit, public, or private organizations, especially those that are well qualified by virtue of their experience in the field of financial literacy and education, to develop the financial literacy national public service multimedia campaign.

(3) Focus of campaign
The pilot national public service multimedia campaign shall be consistent with the na-
§ 9709. Coordinated education efforts

(a) In general

The Secretary of the Treasury (in this section referred to as the “Secretary”), in coordination with the Secretary of Education, the Secretary of Agriculture (with respect to land-grant colleges and universities), and any other appropriate agency that is a member of the Financial Literacy and Education Commission established under the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.), shall seek to enhance financial literacy among students at covered educational institutions through—

(1) the development of initiatives, programs, and curricula that improve student awareness of the short- and long-term costs associated with education loans and other debt assumed while in college, their repayment obligations, and their rights as borrowers; and

(2) assisting such students in navigating the financial aid process.

(b) Duties

For purposes of this section, the Secretary, working in conjunction with the Secretary of Education, the Secretary of Agriculture, and the Financial Literacy and Education Commission, shall—

(1) identify programs that promote or enhance financial literacy for college students, with specific emphasis on programs that impart the knowledge and ability for students to best navigate the financial aid process, including those that involve partnerships between nonprofit organizations, colleges and universities, State and local governments, and student organizations;

(2) evaluate the effectiveness of such programs in terms of measured results, including positive behavioral change among college students;

(3) promote the programs identified as being the most effective; and

(4) encourage covered educational institutions to implement financial education programs for their students, including those that have the highest evaluations.

(c) Report

(1) In general

Not later than 2 years after August 14, 2008, the Financial Literacy and Education Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives, describing the status and implementation of the provisions of this section and the state of financial literacy and education in the United States.

(2) Content

The report required by this subsection shall include a description of progress made in enhancing financial education with respect to student understanding of financial aid, including the programs and evaluations required by this section.

(3) Appearance before Congress

The Secretary shall, upon request, provide testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives concerning the report required by this subsection.

References in Text

The Financial Literacy and Education Improvement Act, referred to in subsec. (a), is title V of Pub. L. 108-159, Dec. 4, 2003, 117 Stat. 2003, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9701 of this title and Tables.
CHAPTER 78—SCIENCE, TECHNOLOGY, ENGINEERING, MATHEMATICS, AND CRITICAL FOREIGN LANGUAGE EDUCATION

Sec. 9801. Repealed.

9802. Definitions.

SUBCHAPTER I—TEACHER ASSISTANCE

PART A—TEACHERS FOR A COMPETITIVE TOMORROW

9811. Purpose.

9812. Definitions.

9813. Programs for baccalaureate degrees in science, technology, engineering, mathematics, or critical foreign languages, with concurrent teacher certification.

9814. Programs for master’s degrees in science, technology, engineering, mathematics, or critical foreign language education.

9815. General provisions.

9816. Authorization of appropriations.

PART B—ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS

9831. Purpose.

9832. Definitions.

9833. Advanced Placement and International Baccalaureate programs.

PART C—PROMISING PRACTICES IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS TEACHING

9841. Repealed.

SUBCHAPTER II—MATHEMATICS

9851 to 9854. Repealed.

SUBCHAPTER III—FOREIGN LANGUAGE PARTNERSHIP PROGRAM

9861 to 9864. Repealed.

SUBCHAPTER IV—ALIGNMENT OF EDUCATION PROGRAMS

9871. Alignment of secondary school graduation requirements with the demands of 21st century postsecondary endeavors and support for P–16 education data systems.

SUBCHAPTER V—MATHEMATICS AND SCIENCE PARTNERSHIP BONUS GRANTS

9881, 9882. Repealed.


§ 9811. Purpose
The purpose of this part is—
(1) to develop and implement programs to provide integrated courses of study in science, technology, engineering, mathematics, or critical foreign languages, and teacher education, that lead to a baccalaureate degree in science, technology, engineering, mathematics, or a critical foreign language, with concurrent teacher certification;
(2) to develop and implement 2- or 3-year part-time master’s degree programs in science, technology, engineering, mathematics, or critical foreign language education for teachers in order to enhance the teachers’ content knowledge and pedagogical skills; and
(3) to develop programs for professionals in science, technology, engineering, mathematics, or critical foreign language education that lead to a master’s degree in teaching that results in teacher certification.

§ 9812. Definitions
In this part:
(1) Children from low-income families
The term “children from low-income families” means children described in section 6333(c)(1)(A) of this title.
(2) Eligible recipient
The term “eligible recipient” means an institution of higher education that receives grant funds under this part on behalf of a department of science, technology, engineering, mathematics, or a critical foreign language, or on behalf of a department or school with a competency-based degree program (in science, technology, engineering, mathematics, or a critical foreign language) that includes teacher certification, for use in carrying out activities assisted under this part.
(3) High-need local educational agency
The term “high-need local educational agency” means a local educational agency or educational service agency—
(A)(i) that serves not fewer than 10,000 children from low-income families;
(ii) for which not less than 20 percent of the children served by the agency are children from low-income families; or
(iii) with a total of less than 600 students in average daily attendance at the schools that are served by the agency and all of whose schools are designated with a school locale code of 41, 42, or 43, as determined by the Secretary; and
(B)(i) for which there is a high percentage of teachers providing instruction in academic subject areas or grade levels for which the teachers are not highly qualified; or
(ii) for which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.
(4) Scientifically valid research
The term “scientifically valid research” includes applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with accepted principles of scientific research.

Prior Provisions
A prior section 6001 of Pub. L. 110–69 was classified to section 9801 of this title prior to repeal by Pub. L. 111–358.

Subchapter I—Teacher Assistance

Part A—Teachers for a Competitive Tomorrow

§ 9811. Purpose
The purpose of this part is—
(1) to develop and implement programs to provide integrated courses of study in science, technology, engineering, mathematics, or critical foreign languages, and teacher education, that lead to a baccalaureate degree in science, technology, engineering, mathematics, or a critical foreign language, with concurrent teacher certification;
(2) to develop and implement 2- or 3-year part-time master’s degree programs in science, technology, engineering, mathematics, or critical foreign language education for teachers in order to enhance the teachers’ content knowledge and pedagogical skills; and
(3) to develop programs for professionals in science, technology, engineering, mathematics, or critical foreign language education that lead to a master’s degree in teaching that results in teacher certification.

§ 9812. Definitions
In this part:
(1) Children from low-income families
The term “children from low-income families” means children described in section 6333(c)(1)(A) of this title.
(2) Eligible recipient
The term “eligible recipient” means an institution of higher education that receives grant funds under this part on behalf of a department of science, technology, engineering, mathematics, or a critical foreign language, or on behalf of a department or school with a competency-based degree program (in science, technology, engineering, mathematics, or a critical foreign language) that includes teacher certification, for use in carrying out activities assisted under this part.
(3) High-need local educational agency
The term “high-need local educational agency” means a local educational agency or educational service agency—
(A)(i) that serves not fewer than 10,000 children from low-income families;
(ii) for which not less than 20 percent of the children served by the agency are children from low-income families; or
(iii) with a total of less than 600 students in average daily attendance at the schools that are served by the agency and all of whose schools are designated with a school locale code of 41, 42, or 43, as determined by the Secretary; and
(B)(i) for which there is a high percentage of teachers providing instruction in academic subject areas or grade levels for which the teachers are not highly qualified; or
(ii) for which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.
(4) Scientifically valid research
The term “scientifically valid research” includes applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with accepted principles of scientific research.

Prior Provisions
A prior section 6001 of Pub. L. 110–69 was classified to section 9801 of this title prior to repeal by Pub. L. 111–358.
§ 9813  

Programs for baccalaureate degrees in science, technology, engineering, mathematics, or critical foreign languages, with concurrent teacher certification

(a) Program authorized

From the amounts made available to carry out this section under section 9816(1) of this title and not reserved under section 9815(d) of this title for a fiscal year, the Secretary is authorized to award grants, on a competitive basis, to eligible recipients to enable partnerships served by the eligible recipients to develop and implement programs to provide courses of study in science, technology, engineering, mathematics, or critical foreign languages that—

(1) are integrated with teacher education; and

(2) lead to a baccalaureate degree in science, technology, engineering, mathematics, or a critical foreign language with concurrent teacher certification.

(b) Application

Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require. Each application shall—

(1) describe the program for which assistance is sought;

(2) describe how a department of science, technology, engineering, mathematics, or a critical foreign language participating in the partnership will ensure significant collaboration with a teacher preparation program in the development of undergraduate degrees in science, technology, engineering, mathematics, or a critical foreign language, with concurrent teacher certification, including providing student teaching and other clinical classroom experiences or how a department or school participating in the partnership with a competency-based degree program has ensured, in the development of a baccalaureate degree program in science, technology, engineering, mathematics, or a critical foreign language, the provision of concurrent teacher certification, including providing student teaching and other clinical classroom experiences;

(3) describe the high-quality research, laboratory, or internship experiences, integrated with coursework, that will be provided under the program;

(4) describe how members of groups that are underrepresented in the teaching of science, technology, engineering, mathematics, or critical foreign languages will be encouraged to participate in the program;

(5) describe how program participants will be encouraged to teach in schools determined by the partnership to be most in need, and the assistance in finding employment in such schools that will be provided;

(6) describe the ongoing activities and services that will be provided to graduates of the program;

(7) describe how the activities of the partnership will be coordinated with any activities funded through other Federal grants, and how the partnership will continue the activities assisted under the program when the grant period ends;

(8) describe how the partnership will begin significant collaboration with schools determined by the partnership to be most in need, and actively assist the participants in finding employment in such schools;

(9) provide any other information the Secretary may reasonably require.

(c) Priority

Priority shall be given to applications whose primary focus is on placing participants in high-need local educational agencies.

(d) Authorized activities

(1) In general

Each eligible recipient receiving a grant under this section shall use the grant funds to enable a partnership to develop and implement a program to provide courses of study in science, technology, engineering, mathematics, or a critical foreign language that—

(A) are integrated with teacher education programs that promote effective teaching skills; and

(B) lead to a baccalaureate degree in science, technology, engineering, mathematics, or a critical foreign language with concurrent teacher certification.

(2) Program requirements

The program shall—

(A) provide high-quality research, laboratory, or internship experiences for program participants;

(B) provide student teaching or other clinical classroom experiences that—

(i) are integrated with coursework; and

(ii) lead to the participants’ ability to demonstrate effective teaching skills;

(C) if implementing a program in which program participants are prepared to teach science, technology, engineering, mathematics, or critical foreign language courses, include strategies for improving student literacy;

(D) encourage the participation of individuals who are members of groups that are underrepresented in the teaching of science, technology, engineering, mathematics, or critical foreign languages;

(E) encourage participants to teach in schools determined by the partnership to be most in need, and actively assist the participants in finding employment in such schools;

(F) offer training in the use of and integration of educational technology;
(G) collect data regarding and evaluate, using measurable objectives and benchmarks, the extent to which the program succeeded in—

(i) increasing the percentage of highly qualified mathematics, science, and critical foreign language teachers, including increasing the percentage of such teachers teaching in those schools determined by the partnership to be most in need;

(ii) improving student academic achievement in mathematics, science, and, where applicable, technology and engineering;

(iii) increasing the number of students in secondary schools enrolled in upper level mathematics, science, and, where applicable, technology and engineering courses; and

(iv) increasing the numbers of elementary school and secondary school students enrolled in and continuing in critical foreign language courses;

(H) collect data on the employment placement and retention of all graduates of the program, including information on how many graduates are teaching and in what kinds of schools;

(I) provide ongoing activities and services to graduates of the program who teach elementary school or secondary school, by—

(i) keeping the graduates informed of the latest developments in their respective academic fields; and

(ii) supporting the graduates of the program who are employed in schools in the local educational agency participating in the partnership during the initial years of teaching through—

(I) induction programs;

(II) promotion of effective teaching skills; and

(III) providing opportunities for regular professional development; and

(J) develop recommendations to improve the school, department, or program of education participating in the partnership.

(e) Annual report

Each eligible recipient receiving a grant under this section shall collect and report to the Secretary annually such information as the Secretary may reasonably require, including—

(1) the number of participants in the program;

(2) information on the academic majors of participating students;

(3) the race, gender, income, and disability status of program participants;

(4) the placement of program participants as teachers in schools determined by the partnership to be most in need;

(5) the extent to which the program succeeded in meeting the objectives and benchmarks described in subsection (d)(2)(G); and

(6) the data collected under subparagraphs (G) and (H) of subsection (d)(2).

(f) Technical assistance

From the funds made available under section 9816(1) of this title, the Secretary may provide technical assistance to an eligible recipient developing a baccalaureate degree program with concurrent teacher certification, including technical assistance provided through a grant or contract awarded on a competitive basis to an institution of higher education or a technical assistance center.

(g) Compliance with FERPA

Any activity under this section shall be carried out in compliance with section 9822g of this title (commonly known as the Family Educational Rights and Privacy Act of 1974).

(h) Induction program defined

In this section, the term “induction program” means a formalized program for new teachers during not less than the teachers’ first 2 years of teaching that is designed to provide support for, and improve the professional performance and advance the retention in the teaching field of, beginning teachers. Such program shall promote effective teaching skills and shall include the following components:

(1) High-quality teacher mentoring.

(2) Periodic, structured time for collaboration with teachers in the same department or field, as well as time for information-sharing among teachers, principals, administrators, and participating faculty in the partner institution.

(3) The application of empirically based practice and scientifically valid research on instructional practices.

(4) Opportunities for new teachers to draw directly upon the expertise of teacher mentors, faculty, and researchers to support the integration of empirically based practice and scientifically valid research with practice.

(5) The development of skills in instructional and behavioral interventions derived from empirically based practice and, where applicable, scientifically valid research.

(6) Faculty who—

(A) model the integration of research and practice in the classroom; and

(B) assist new teachers with the effective use and integration of technology in the classroom.

(7) Interdisciplinary collaboration among exemplary teachers, faculty, researchers, and other staff who prepare new teachers on the learning process and the assessment of learning.

(8) Assistance with the understanding of data, particularly student achievement data, and the data’s applicability in classroom instruction.

(9) Regular evaluation of the new teacher.


§ 9814. Programs for master’s degrees in science, technology, engineering, mathematics, or critical foreign language education

(a) Program authorized

From the amounts made available to carry out this section under section 9816(2) of this title and not reserved under section 9815(d) of this title for a fiscal year, the Secretary is authorized to award grants, on a competitive basis, to
eligible recipients to enable the partnerships served by the eligible recipients to develop and implement—

(1) 2- or 3-year part-time master's degree programs in science, technology, engineering, mathematics, or critical foreign language education for teachers in order to enhance the teacher's content knowledge and teaching skills; or

(2) programs for professionals in science, technology, engineering, mathematics, or a critical foreign language that lead to a 1-year master's degree in teaching that results in teacher certification.

(b) Application

Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require. Each application shall describe—

(1) how a department of science, technology, engineering, mathematics, or a critical foreign language will ensure significant collaboration with a school, department, or program of education in the development of the master's degree programs authorized under subsection (a), or how a department or school with a competency-based degree program has ensured, in the development of a master's degree program, the provision of rigorous studies in science, technology, engineering, mathematics, or a critical foreign language that enhance the teachers' content knowledge and teaching skills;

(2) the role of the local educational agency in the partnership in developing and administering the program and how feedback from the local educational agency, school, and participants will be used to improve the program;

(3) how the program will help increase the percentage of highly qualified mathematics, science, or critical foreign language teachers, including increasing the percentage of such teachers teaching in schools determined by the partnership to be most in need;

(4) how the program will—

(A) improve student academic achievement in mathematics, science, and, where applicable, technology and engineering and increase the number of students taking upper-level courses in such subjects; or

(B) increase the numbers of elementary school and secondary school students enrolled and continuing in critical foreign language courses;

(5) how the program will prepare participants to become more effective science, technology, engineering, mathematics, or critical foreign language teachers;

(6) how the program will prepare participants to assume leadership roles in their schools;

(7) how teachers (or science, technology, engineering, mathematics, or critical foreign language professionals) who are members of groups that are underrepresented in the teaching of science, technology, engineering, mathematics, or critical foreign languages and teachers from schools determined by the partnership to be most in need will be encouraged to apply for and participate in the program;

(8) the ongoing activities and services that will be provided to graduates of the program;

(9) how the partnership will continue the activities assisted under the grant when the grant period ends;

(10) how the partnership will assess, during the program, the content knowledge and teaching skills of the program participants; and

(11) methods to ensure applicants to the master's degree program for professionals in science, technology, engineering, mathematics, or a critical foreign language demonstrate advanced knowledge in the relevant subject.

(c) Authorized activities

Each eligible recipient receiving a grant under this section shall use the grant funds to develop and implement a 2- or 3-year part-time master's degree program in science, technology, engineering, mathematics, or critical foreign language education for teachers in order to enhance the teachers' content knowledge and teaching skills, or programs for professionals in science, technology, engineering, mathematics, or a critical foreign language that lead to a 1-year master's degree in teaching that results in teacher certification. The program shall—

(1) promote effective teaching skills so that program participants become more effective science, technology, engineering, mathematics, or critical foreign language teachers;

(2) prepare teachers to assume leadership roles in their schools by participating in activities such as teacher mentoring, development of curricula that integrate state of the art applications of science, technology, engineering, mathematics, or critical foreign language into the classroom, working with school administrators in establishing in-service professional development of teachers, and assisting in evaluating data and assessments to improve student academic achievement;

(3) use high-quality research, laboratory, or internship experiences for program participants that are integrated with coursework;

(4) provide student teaching or clinical classroom experience;

(5) if implementing a program in which participants are prepared to teach science, technology, engineering, mathematics, or critical foreign language courses, provide strategies for improving student literacy;

(6) align the content knowledge in the master's degree program with challenging student academic achievement standards and challenging academic content standards established by the State in which the program is conducted;

(7) encourage the participation of—

(A) individuals who are members of groups that are underrepresented in the teaching of science, technology, engineering, mathematics, or critical foreign languages;

(B) members of the Armed Forces who are transitioning to civilian life; and

(C) teachers teaching in schools determined by the partnership to be most in need;

(8) offer tuition assistance, based on need, as appropriate;
(d) Evaluation and report
Each eligible recipient receiving a grant under this section shall evaluate, using measurable objectives and benchmarks, and provide an annual report to the Secretary regarding, the extent to which the program assisted under this section succeeded in the following:

(1) Increasing the number and percentage of science, technology, engineering, mathematics, or critical foreign language teachers who have a master's degree and meet 1 or more of the following requirements:
(A) Are teaching in schools determined by the partnership to be most in need, and taught in such schools prior to participation in the program.
(B) Are teaching in schools determined by the partnership to be most in need, and did not teach in such schools prior to participation in the program.
(C) Are members of a group underrepresented in the teaching of science, technology, engineering, mathematics, or a critical foreign language.
(2) Bringing professionals in science, technology, engineering, mathematics, or a critical foreign language.
(3) Retaining teachers who participate in the program.

§ 9815. General provisions
(a) Duration of grants
The Secretary shall award each grant under this part for a period of not more than 5 years.
(b) Matching requirement
Each eligible recipient that receives a grant under this part shall provide, from non-Federal sources, an amount equal to 50 percent of the amount of the grant (which may be provided in cash or in kind) to carry out the activities supported by the grant.
(c) Supplement, not supplant
Grant funds provided under this part shall be used to supplement, and not supplant, other Federal or State funds.
(d) Evaluation
From amounts made available for any fiscal year under section 9816 of this title, the Secretary shall reserve such sums as may be necessary—
(1) to provide for the conduct of an annual independent evaluation, by grant or by contract, of the activities assisted under this part, which shall include an assessment of the impact of the activities on student academic achievement; and
(2) to prepare and submit an annual report on the results of the evaluation described in paragraph (1) to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Education and Labor of the House of Representatives, and the Committees on Appropriations of the Senate and House of Representatives.

Change of Name
Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§ 9816. Authorization of appropriations
There are authorized to be appropriated to carry out this part $4,000,000 for each of fiscal years 2011 through 2013, of which—
(1) $2,000,000 shall be available to carry out section 9813 of this title for each of fiscal years 2011 through 2013; and
(2) $2,000,000 shall be available to carry out section 9814 of this title for each of fiscal years 2011 through 2013.

Amendments
2011—Pub. L. 111–358 amended section generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out this section $276,200,000 for fiscal year 2008, and such sums as may be necessary for each of the 2 succeeding fiscal years, of which—
(1) $151,200,000 shall be available to carry out section 9813 of this title for fiscal year 2008 and each succeeding fiscal year; and
(2) $125,000,000 shall be available to carry out section 9814 of this title for fiscal year 2008 and each succeeding fiscal year."

PART B—ADVANCED PLACEMENT AND INTERNATIONAL BACCALAUREATE PROGRAMS
§ 9831. Purpose
It is the purpose of this part—
(1) to raise academic achievement through Advanced Placement and International Baccalaureate programs by increasing, by 70,000, over a 4-year period beginning in 2008, the number of teachers serving high-need schools who are qualified to teach Advanced Placement or International Baccalaureate courses in mathematics, science, and critical foreign languages;
(2) to increase, to 700,000 per year, the number of students attending high-need schools who—
(A) take and score a 3, 4, or 5 on an Advanced Placement examination in mathematics, science, or a critical foreign language administered by the College Board; or
(B) achieve a passing score on an examination administered by the International Baccalaureate Organization in such a subject;
(3) to increase the availability of, and enrollment in, Advanced Placement or International Baccalaureate courses in mathematics,
§9832. Definitions

In this part:

(1) **Advanced Placement or International Baccalaureate course**

The term "Advanced Placement or International Baccalaureate course" means—

(A) a course of college-level instruction provided to secondary school students, terminating in an examination administered by the College Board or the International Baccalaureate Organization, or another such examination approved by the Secretary;

(B) another highly rigorous, evidence-based, postsecondary preparatory program terminating in an examination administered by another nationally recognized educational organization that has a demonstrated record of effectiveness in assessing secondary school students, or another such examination approved by the Secretary.

(2) **Eligible entity**

The term "eligible entity" means—

(A) a State educational agency;

(B) a local educational agency; or

(C) a partnership consisting of—

(i) a national, regional, or statewide nonprofit organization, with experience in providing Advanced Placement or International Baccalaureate services; and

(ii) a State educational agency or local educational agency.

(3) **Low-income student**

The term "low-income student" has the meaning given the term "low-income individual" in section 6537(3) of this title.

(4) **High concentration of low-income students**

The term "high concentration of low-income students" has the meaning given the term in section 6537(2) of this title.

(5) **High-need local educational agency**

The term "high-need local educational agency" means a local educational agency or educational service agency described in 6121(3)(A), 1 of this title.

(6) **High-need school**

The term "high-need school" means a secondary school—

(A) with a pervasive need for Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages, or for additional Advanced Placement or International Baccalaureate courses in such a subject; and

(B)(i) with a high concentration of low-income students; or

(ii) designated with a school locale code of 41, 42, or 43, as determined by the Secretary.

§9833. Advanced Placement and International Baccalaureate programs

(a) **Program authorized**

From the amounts appropriated under subsection (f), the Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities to carry out the authorized activities described in subsection (g).

(b) **Duration of grants**

The Secretary may award grants under this section for a period of not more than 5 years.

(c) **Coordination**

The Secretary shall coordinate the activities carried out under this section with the activities carried out under section 6535 of this title.

(d) **Priority**

In awarding grants under this section, the Secretary shall give priority to eligible entities that are part of a statewide strategy for increasing—

(1) the availability of Advanced Placement or International Baccalaureate courses in mathematics, science, and critical foreign languages, and pre-Advanced Placement or pre-International Baccalaureate courses in such subjects, in high-need schools; and

(2) the number of students who participate in Advanced Placement or International Baccalaureate courses in mathematics, science, and critical foreign language in high-need schools, and take and score a 3, 4, or 5 on an Advanced Placement examination in such a subject, or pass an examination administered by the International Baccalaureate Organization in such a subject in such schools.

(e) **Equitable distribution**

The Secretary, to the extent practicable, shall—

(1) ensure an equitable geographic distribution of grants under this section among the States; and

(2) promote an increase in participation in Advanced Placement or International Baccalaureate mathematics, science, and critical foreign language courses and examinations in all States.

(f) **Application**

(1) **In general**

Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) **Contents**

The application shall, at a minimum, include a description of—

1So in original. Probably should be preceded by "section".
(A) the goals and objectives for the project, including—
(i) increasing the number of teachers serving high-need schools who are qualified to teach Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages;
(ii) increasing the number of qualified teachers serving high-need schools who are teaching Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages to students in the high-need schools;
(iii) increasing the number of Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages that are available to students attending high-need schools; and
(iv) increasing the number of students attending a high-need school, particularly low-income students, who enroll in and pass—
(I) Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages; and
(II) pre-Advanced Placement or pre-International Baccalaureate courses in such a subject (where provided in accordance with subparagraph (B));
(B) how the eligible entity will ensure that students have access to courses, including pre-Advanced Placement and pre-International Baccalaureate courses, that will prepare the students to enroll and succeed in Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages;
(C) how the eligible entity will provide professional development for teachers assisted under this section;
(D) how the eligible entity will ensure that teachers serving high-need schools are qualified to teach Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages;
(E) how the eligible entity will provide for the involvement of business and community organizations and other entities, including institutions of higher education, in the activities to be assisted; and
(F) how the eligible entity will use funds received under this section, including how the eligible entity will evaluate the success of its project.

(g) Authorized activities

(1) In general

Each eligible entity that receives a grant under this section shall use the grant funds to carry out activities designed to increase—
(A) the number of qualified teachers serving high-need schools who are teaching Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages; and
(B) the number of students attending high-need schools who enroll in, and pass, the examinations for such Advanced Placement or International Baccalaureate courses.

(2) Permissive activities

The activities described in paragraph (1) may include—
(A) teacher professional development, in order to expand the pool of teachers in the participating State, local educational agency, or high-need school who are qualified to teach Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages;
(B) pre-Advanced Placement or pre-International Baccalaureate course development and professional development;
(C) coordination and articulation between grade levels to prepare students to enroll and succeed in Advanced Placement or International Baccalaureate courses in mathematics, science, or critical foreign languages;
(D) purchase of instructional materials;
(E) activities to increase the availability of, and participation in, online Advanced Placement or International Baccalaureate courses in mathematics, science, and critical foreign languages;
(F) reimbursing low-income students attending high-need schools for part or all of the cost of Advanced Placement or International Baccalaureate examination fees;
(G) carrying out subsection (j), relating to collecting and reporting data;
(H) in the case of a State educational agency that receives a grant under this section, awarding subgrants to local educational agencies to enable the local educational agencies to carry out authorized activities described in subparagraphs (A) through (G); and
(I) providing salary increments or bonuses to teachers serving high-need schools who—
(i) become qualified to teach, and teach, Advanced Placement or International Baccalaureate courses in mathematics, science, or a critical foreign language; or
(ii) increase the number of low-income students, who take Advanced Placement or International Baccalaureate examinations in mathematics, science, or a critical foreign language with the goal of successfully passing such examinations.

(h) Matching requirement

(1) In general

Subject to paragraph (2), each eligible entity that receives a grant under this section shall provide, toward the cost of the activities assisted under the grant, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, except that an eligible entity that is a high-need local educational agency shall provide an amount equal to not more than 50 percent of the amount of the grant.

(2) Waiver

The Secretary may waive all or part of the matching requirement described in paragraph (1) for any fiscal year for an eligible entity described in subparagraph (A) or (B) of section...


AMENDMENTS
2011—Subsec. (h)(1). Pub. L. 111–358, § 1003(b)(1), substituted “50” for “100” and “100” for “200”.
Subsec. (i). Pub. L. 111–358, § 1003(b)(2), added subsec. (i) and struck out former subsec. (l). Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this section $75,000,000 for fiscal year 2008, and such sums as may be necessary for each of the 2 succeeding fiscal years.”

CHANGE OF NAME
Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

PART C—PROMISING PRACTICES IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS TEACHING


SUBCHAPTER II—MATHEMATICS


SUBCHAPTER III—FOREIGN LANGUAGE PARTNERSHIP PROGRAM


§ 9871. Alignment of secondary school graduation requirements with the demands of 21st century postsecondary endeavors and support for P-16 education data systems

(a) Purpose
It is the purpose of this section—
(1) to promote more accountability with respect to preparation for higher education, the 21st century workforce, and the Armed Forces, by aligning—
(A) student knowledge, student skills, State academic content standards and assessments, and curricula, in elementary and secondary education, especially with respect to mathematics, science, reading, and, where applicable, engineering and technology; with
(B) the demands of higher education, the 21st century workforce, and the Armed Forces;
(2) to support the establishment or improvement of statewide P-16 education data systems that—
(A) assist States in improving the rigor and quality of State academic content standards and assessments;
(B) ensure students are prepared to succeed in—
(i) academic credit-bearing coursework in higher education without the need for remediation;
(ii) the 21st century workforce; or
(iii) the Armed Forces; and
(3) enable States to have valid and reliable information to inform education policy and practice.

(b) Definitions
In this section:
(1) P-16 education
The term “P-16 education” means the educational system from preschool through the conferring of a baccalaureate degree.

(2) Statewide partnership
The term “statewide partnership” means a partnership that—
(A) shall include—
(i) the Governor of the State or the designee of the Governor;
(ii) the heads of the State systems for public higher education, or, if such a position does not exist, not less than 1 representative of a public degree-granting institution of higher education;
(iii) a representative of the agencies in the State that administer Federal or State-funded early childhood education programs;
(iv) not less than 1 representative of a public community college;
(v) not less than 1 representative of a technical school;
(vi) not less than 1 representative of a public secondary school;
(vii) the chief State school officer;
(viii) the chief executive officer of the State higher education coordinating board;
(ix) not less than 1 public elementary school teacher employed in the State;
(x) not less than 1 early childhood educator in the State;
(xi) not less than 1 public secondary school teacher employed in the State;
(xii) not less than 1 representative of the business community in the State; and
(xiii) not less than 1 member of the Armed Forces; and
(B) may include other individuals or representatives of other organizations, such as a school administrator, a faculty member at an institution of higher education, a member of a civic or community organization, a representative from a private institution of higher education, a dean or similar representative of a school of education at an institution of higher education or a similar teacher certification or licensure program, or the State official responsible for economic development.

(c) Grants authorized
The Secretary is authorized to award grants, on a competitive basis, to States to enable each such State to work with a statewide partnership—
(1) to promote better alignment of content knowledge requirements for secondary school graduation with the knowledge and skills needed to succeed in postsecondary education, the 21st century workforce, or the Armed Forces; or
(2) to establish or improve a statewide P-16 education data system.

(d) Period of grants; non-renewability
(1) Grant period
The Secretary shall award a grant under this section for a period of not more than 3 years.

(2) Non-renewability
The Secretary shall not award a State more than 1 grant under this section.

(e) Authorized activities
(1) Grants for P-16 alignment
Each State receiving a grant under subsection (c)(1)—
(A) shall use the grant funds for—
(i) identifying and describing the content knowledge and skills students who enter institutions of higher education, the workforce, and the Armed Forces need to have in order to succeed without any remediation based on detailed requirements obtained from institutions of higher education, employers, and the Armed Forces;
(ii) identifying and making changes that need to be made to a State’s secondary school graduation requirements, academic content standards, academic achievement standards, and assessments preceding graduation from secondary school in order to align the requirements, standards, and assessments with the knowledge and skills necessary for success in academic credit-bearing coursework in postsecondary education, in the 21st century workforce, and in the Armed Forces without the need for remediation;

(iii) convening stakeholders within the State and creating a forum for identifying and deliberating on education issues that—

(I) involve preschool through grade 12 education, postsecondary education, the 21st century workforce, and the Armed Forces; and

(II) transcend any single system of education’s ability to address; and

(iv) implementing activities designed to ensure the enrollment of all elementary school and secondary school students in rigorous coursework, which may include—

(I) specifying the courses and performance levels necessary for acceptance into institutions of higher education; and

(II) developing or providing guidance to local educational agencies within the State on the adoption of curricula and assessments aligned with State academic content standards, which assessments may be used as measures of student academic achievement in secondary school as well as for entrance or placement at institutions of higher education, including through collaboration with institutions of higher education in, or State educational agencies serving, other States; and

(B) may use the grant funds for—

(i) developing and making available specific opportunities for extensive professional development for teachers, para-professionals, principals, and school administrators, including collection and dissemination of effective teaching practices to improve instruction and instructional support mechanisms;

(ii) identifying changes in State academic content standards, academic achievement standards, and assessments for students in grades preceding secondary school in order to ensure such standards and assessments are appropriately aligned and adequately reflect the content needed to prepare students to enter secondary school;

(iii) developing a plan to provide remediation and additional learning opportunities for students who are performing below grade level to ensure that all students will have the opportunity to meet secondary school graduation requirements;

(iv) identifying and addressing teacher certification needs; or

(v) incorporating 21st century learning skills into the State plan, which skills shall include critical thinking, problem solving, communication, collaboration, global awareness, and business and financial literacy.

(2) Grants for statewide P–16 education data systems

(A) Establishment of system

Each State that receives a grant under subsection (c)(2) shall establish a statewide P–16 education longitudinal data system that—

(i) provides each student, upon enrollment in a public elementary school or secondary school in the State, with a unique identifier, such as a bar code, that—

(I) does not permit a student to be individually identified by users of the system; and

(II) is retained throughout the student’s enrollment in P–16 education in the State; and

(ii) meets the requirements of subparagraphs (B) through (E).

(B) Improvement of existing system

Each State that receives a grant under subsection (c)(2) for the improvement of a statewide P–16 education data system may employ, coordinate, or revise an existing statewide data system to establish a statewide longitudinal P–16 education data system that meets the requirements of subparagraph (A), if the statewide longitudinal P–16 education data system produces valid and reliable data.

(C) Privacy and access to data

(i) In general

Each State that receives a grant under subsection (c)(2) shall implement measures to—

(I) ensure that the statewide P–16 education data system meets the requirements of section 1232g of this title (commonly known as the Family Educational Rights and Privacy Act of 1974);

(II) limit the use of information in the statewide P–16 education data system by institutions of higher education and State or local educational agencies or institutions to the activities set forth in paragraph (1) or State law regarding education, consistent with the purposes of this subchapter;

(III) prohibit the disclosure of personally identifiable information except as permitted under section 1232g of this title and any additional limitations set forth in State law;

(IV) keep an accurate accounting of the date, nature, and purpose of each disclosure of personally identifiable information in the statewide P–16 education data system, a description of the information disclosed, and the name and address of the person, agency, institution, or entity to whom the disclosure is made, which accounting shall be made available on request to parents of any student whose information has been disclosed;
(V) notwithstanding section 1232g of this title, require any non-governmental party obtaining personally identifiable information to sign a data use agreement prior to disclosure that—

(aa) prohibits the party from further disclosing the information;

(bb) prohibits the party from using the information for any purpose other than the purpose specified in the agreement; and

(cc) requires the party to destroy the information when the purpose for which the disclosure was made is accomplished;

(VI) maintain adequate security measures to ensure the confidentiality and integrity of the statewide P–16 education data system, such as protecting a student record from identification by a unique identifier;

(VII) where rights are provided to parents under this clause, provide those rights to the student instead of the parent if the student has reached the age of 18 or is enrolled in a postsecondary educational institution; and

(VIII) ensure adequate enforcement of the requirements of this clause.

(ii) Use of unique identifiers

(I) Governmental use of unique identifiers

It shall be unlawful for any Federal, State, or local governmental agency to use the unique identifiers employed in the statewide P–16 education data systems for any purpose other than as authorized by Federal or State law regarding education, or to deny any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose the individual’s unique identifier.

(II) Regulations

Not later than 180 days after August 9, 2007, the Secretary shall promulgate regulations governing the use by governmental and non-governmental entities of the unique identifiers employed in statewide P–16 education data systems, including, where necessary, regulations requiring States desiring grants for statewide P–16 education data systems under this section to implement specified measures, with the goal of safeguarding individual privacy to the maximum extent practicable consistent with the uses of the information authorized in this Act or other Federal or State law regarding education.

(D) Required elements of a statewide P–16 education data system

The State shall ensure that the statewide P–16 education data system includes the following elements:

(i) Preschool through grade 12 education and postsecondary education

With respect to preschool through grade 12 education and postsecondary education—

(I) a unique statewide student identifier that does not permit a student to be individually identified by users of the system;

(II) student-level enrollment, demographic, and program participation information;

(III) student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete P–16 education programs;

(IV) the capacity to communicate with higher education data systems; and

(V) a State data audit system assessing data quality, validity, and reliability.

(ii) Preschool through grade 12 education

With respect to preschool through grade 12 education—

(I) yearly test records of individual students with respect to assessments under section 6311(b) of this title;

(II) information on students not tested by grade and subject;

(III) a teacher identifier system with the ability to match teachers to students;

(IV) student-level transcript information, including information on courses completed and grades earned; and

(V) student-level college readiness test scores.

(iii) Postsecondary education

With respect to postsecondary education, data that provide—

(I) information regarding the extent to which students transition successfully from secondary school to postsecondary education, including whether students enroll in remedial coursework; and

(II) other information determined necessary to address alignment and adequate preparation for success in postsecondary education.

(E) Functions of the statewide P–16 education data system

In implementing the statewide P–16 education data system, the State shall—

(i) identify factors that correlate to students’ ability to successfully engage in and complete postsecondary-level general education coursework without the need for prior developmental coursework;

(ii) identify factors to increase the percentage of low-income and minority students who are academically prepared to enter and successfully complete postsecondary-level general education coursework; and

(iii) use the data in the system to otherwise inform education policy and practice in order to better align State academic content standards, and curricula, with the demands of postsecondary education, the 21st century workforce, and the Armed Forces.
(f) Application

(1) In general

Each State desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Application contents

Each application submitted under this section shall specify whether the State application is for the conduct of P–16 education alignment activities, or the establishment or improvement of a statewide P–16 education data system. The application shall include, at a minimum, the following:

(A) A description of the activities and programs to be carried out with the grant funds and a comprehensive plan for carrying out the activities.

(B) A description of how the concerns and interests of the larger education community, including parents, students, teachers, teacher educators, principals, and preschool administrators will be represented in carrying out the authorized activities described in subsection (e).

(C) In the case of a State applying for funding for P–16 education alignment, a description of how the State will provide assistance to local educational agencies in implementing rigorous State academic content standards, substantive curricula, remediation, and acceleration opportunities for students, as well as other changes determined necessary by the State.

(D) In the case of a State applying for funding to establish or improve a statewide P–16 education data system—

(1) a description of the privacy protection and enforcement measures that the State has implemented or will implement pursuant to subsection (e)(2)(C), and assurances that these measures will be in place prior to the establishment or improvement of the statewide P–16 education data system; and

(ii) an assurance that the State will continue to fund the statewide P–16 education data system after the end of the grant period.

(g) Supplement not supplant

Grant funds provided under this section shall be used to supplement, not supplant, other Federal, State, and local funds available to carry out the authorized activities described in subsection (e).

(h) Matching requirement

Each State that receives a grant under this section shall provide, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, in cash or in kind, to carry out the activities supported by the grant.

(i) Rule of construction

(1) No raw data requirement

Nothing in this section shall be construed to require States to provide raw data to the Secretary.

(2) Private or home schools

Nothing in this section shall be construed to affect any private school that does not receive funds or services under this Act or any home school, whether or not the home school is treated as a home school or a private school under State law, including imposing new requirements for students educated through a home school seeking admission to institutions of higher education.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section $120,000,000 for each of fiscal years 2011 and 2012.

(2) Authorization of appropriations

A prior section 6201 of Pub. L. 110–69 was classified to section 9851 of this title prior to repeal by Pub. L. 111–358.

AMENDMENTS

2011—Subsec. (j). Pub. L. 111–358, § 1003(c), amended subsec. (j) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this section $120,000,000 for fiscal year 2009 and such sums as may be necessary for fiscal year 2009.”

SUBCHAPTER V—MATHEMATICS AND SCIENCE PARTNERSHIP BONUS GRANTS


CHAPTER 79—STEM-TRAINING GRANT PROGRAM

Sec.
9901. Purpose.
9902. Program requirements.
9903. Grant program.
9904. Grant oversight and administration.
9905. Definitions.
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§ 9901. Purpose

The purpose of this chapter is to replicate and implement programs at institutions of higher education that provide integrated courses of study in science, technology, engineering, or mathematics, and teacher education, that lead to a baccalaureate degree in science, technology, engineering, or mathematics with concurrent teacher certification.
§ 9903. Grant program

(a) In general

The Director shall establish a grant program to support programs at institutions of higher education to carry out the purpose of this chapter.

(b) Geographical considerations

In the administration of this chapter, the Director shall take such steps as may be necessary to ensure that grants are equitably distributed across all regions of the United States, taking into account population density and other geographic and demographic considerations.

(c) Amount of grant

Subject to the requirements of subsection (d), the Director may award grants annually on a competitive basis to institutions of higher education in the amount of $2,000,000, per institution of which—

(1) $1,500,000 shall be used—

(A) to design, implement, and evaluate a program that meets the requirements of section 9902 of this title;

(B) to employ master teachers at the institution to oversee field experiences;

(C) to provide a stipend to mentor teachers participating in the program; and

(D) to support curriculum development and implementation strategies for science, technology, engineering, and mathematics content courses taught through the program; and

(2) up to $500,000 shall be set aside by the grantee for technical support and evaluation services from the institution whose programs will be replicated.

(d) Eligibility

To be eligible to apply for a grant under this section, an institution of higher education shall—

(1) include former secondary school science, technology, engineering, or mathematics master teachers as faculty in its science department for this program;

(2) grant terminal degrees in science, technology, engineering, and mathematics; and

(3) have a process to be used in establishing partnerships with local educational agencies for placement of participating students in their field experiences, including a process for identifying mentor teachers working in local schools to supervise classroom field experiences in cooperation with university-based master teachers;

(4) maintain policies allowing flexible entry to the program throughout the undergraduate coursework;

(5) require that master teachers employed by the institution will supervise field experiences of students in the program;

(6) require that the program complies with State certification or licensing requirements and the requirements under section 7801(28) of this title for highly qualified teachers;

(7) develop during the course of the grant a plan for long-term support and assessment of its graduates, which shall include—

(A) induction support for graduates in their first one to two years of teaching;

(B) systems to determine the teaching status of graduates and thereby determine retention rates; and

(C) methods to analyze the achievement of students taught by graduates, and methods to analyze classroom practices of graduates; and

(8) be able upon completion of the grant at the end of 5 years to fund essential program costs, including salaries of master teachers and other necessary personnel, from recurring university budgets.

(e) Application requirements

An institution of higher education seeking a grant under the program shall submit an application to the Director in such form, at such time, and containing such information and assurances as the Director may require, including—

(1) a description of the current rate at which individuals majoring in science, technology,
engineering, and mathematics become certified as elementary and secondary teachers;

(2) a description for the institution’s plan for increasing the numbers of students enrolled in and graduating from the program supported under this chapter;

(3) a description of the institution’s capacity to develop a program in which individuals majoring in science, technology, engineering, and mathematics can become certified as elementary and secondary teachers;

(4) identification of the organizational unit within the department or division of arts and sciences or the science department at the institution that will adopt teacher certification for elementary and secondary teachers as its primary mission;

(5) identification of core faculty within the department or division of arts and sciences or the science department at the institution to champion teacher preparation in their departments by teaching courses dedicated to preparing future elementary and secondary school teachers, helping create new degree plans, advising prospective students within their major, and assisting as needed with program administration;

(6) identification of core faculty in the education department or its equivalent at the institution to champion teacher preparation by creating and teaching courses specific to the preparation of science, technology, engineering, and mathematics and working closely with colleagues in the department or division of arts and sciences or the science department; and

(7) a description of involving practical, field-based experience in teaching and degree plans enabling students to graduate in 4 years with a major in science, technology, engineering, or mathematics and elementary or secondary school teacher certification.

(f) Matching requirement

An institution of higher education may not receive a grant under this section unless it provides, from non-federal sources, to carry out the activities supported by the grant, an amount that is not less than—

(1) 35 percent of the amount of the grant for the first fiscal year of the grant;

(2) 55 percent of the amount of the grant for the second and third fiscal years of the grant; and

(3) 75 percent of the amount of the grant for the fourth and fifth fiscal years of the grant.

(g) Guidance

Within 90 days after January 1, 2011, the Director shall initiate a proceeding to promulgate guidance for the administration of the grant program established under subsection (a).


§ 9904. Grant oversight and administration

(a) In general

The Director may execute a contract for program oversight and fiscal management with an organization at an institution of higher education, a non-profit organization, or other entity that demonstrates capacity for and experience in—

(1) replicating 1 or more similar programs at regional or national levels;

(2) providing programmatic and technical implementation assistance for the program;

(3) performing data collection and analysis to ensure proper implementation and continuous program improvement; and

(4) providing accountability for results by measuring and monitoring achievement of programmatic milestones.

(b) Oversight responsibilities

(1) Mandatory duties

If the Director executes a contract under subsection (a) with an organization for program oversight and fiscal management, the organization shall—

(A) ensure that a grant recipient faithfully replicates and implements the program or programs for which the grant is awarded;

(B) ensure that grant funds are used for the purposes authorized and that a grant recipient has a system in place to track and account for all Federal grant funds provided;

(C) provide technical assistance to grant recipients;

(D) collect and analyze data and report to the Director annually on the effects of the program on—

(i) the progress of participating students in achieving teaching competence and teaching certification;

(ii) the participation of students in the program by major, compared with local and State needs on secondary teachers by discipline; and

(iii) the participation of students in the program by demographic subgroup;

(E) collect and analyze data and report to the Director demonstrating compliance with the requirements of subparagraphs (A) through (E).

(2) Discretionary duties

At the request of the Director, the organization under contract under subsection (a) may assist the Director in evaluating grant applications.

(c) Reports to Congress

The Director shall submit a copy of the annual report required by subsection (b)(1)(F) to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Science and Technology, and the House of Representatives Committee on Education and Labor.


CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science,
§ 9905. Definitions

In this chapter:

(1) Field-based course

The term “field-based course” means a course of instruction offered by an institution of higher education that includes a requirement that students teach a minimum of 3 lessons or sequences of lessons to elementary or secondary students.

(2) Institution of higher education

The term “institution of higher education” has the meaning given that term by section 1001 of this title.

(3) Master teacher

The term “master teacher” means an individual—

(A) who has been awarded a master’s or doctoral degree by an institution of higher education;

(B) whose graduate coursework included courses in mathematics, science, computer science, or engineering;

(C) who has at least 3 years teaching experience in K–12 settings; and

(D) whose teaching has been recognized for exceptional accomplishments in educating students, or is demonstrated to have resulted in improved student achievement.

(4) Mentor teacher

The term “mentor teacher” means an elementary or secondary school classroom teacher who assists with the training of students participating in a field-based course.

(5) Director

The term “Director” means the Director of the National Science Foundation.


§ 9906. Authorization of appropriations

There are authorized to be appropriated to the Director to carry out this chapter $10,000,000 for each of fiscal years 2011 through 2013.