

(B) out-of-State Indian children in elementary schools and secondary schools in local educational agencies under special contracts with the Department of the Interior.

**(2) Payments**

From the amount allotted for payments to the Secretary of the Interior under subsection (a)(2) of this section, the Secretary of the Interior shall make payments to local educational agencies, on such terms as the Secretary determines will best carry out the purposes of this part, with respect to out-of-State Indian children described in paragraph (1). The amount of such payment may not exceed, for each such child, the greater of—

(A) 40 percent of the average per-pupil expenditure in the State in which the agency is located; or

(B) 48 percent of such expenditure in the United States.

(Pub. L. 89-10, title I, §1121, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1513.)

REFERENCES IN TEXT

Public Law 95-134, referred to in subsec. (b)(4), is Pub. L. 95-134, Oct. 15, 1977, 91 Stat. 1159, as amended. Provisions relating to consolidation of grants are contained in section 501 of Pub. L. 95-134 which is classified to section 1469a of Title 48, Territories and Insular Possessions.

PRIOR PROVISIONS

A prior section 6331, Pub. L. 89-10, title I, §1121, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3561, related to grants for outlying areas and the Secretary of the Interior, prior to the general amendment of this subchapter by Pub. L. 107-110.

**§ 6332. Allocations to States**

**(a) Allocation formula**

Of the amount appropriated under section 6302(a) of this title to carry out this part for each of fiscal years 2002-2007 (referred to in this subsection as the current fiscal year)—

(1) an amount equal to the amount made available to carry out section 6333 of this title for fiscal year 2001 shall be allocated in accordance with section 6333 of this title;

(2) an amount equal to the amount made available to carry out section 6334 of this title for fiscal year 2001 shall be allocated in accordance with section 6334 of this title; and

(3) an amount equal to 100 percent of the amount, if any, by which the amount made available to carry out sections 6333, 6334, and 6335 of this title for the current fiscal year for which the determination is made exceeds the amount available to carry out sections 6333 and 6334 of this title for fiscal year 2001 shall be allocated in accordance with section 6335 of this title.

**(b) Adjustments where necessitated by appropriations**

**(1) In general**

If the sums available under this subpart for any fiscal year are insufficient to pay the full amounts that all local educational agencies in States are eligible to receive under sections 6333, 6334, and 6335 of this title for such year,

the Secretary shall ratably reduce the allocations to such local educational agencies, subject to subsections (c) and (d) of this section.

**(2) Additional funds**

If additional funds become available for making payments under sections 6333, 6334, and 6335 of this title for such fiscal year, allocations that were reduced under paragraph (1) shall be increased on the same basis as they were reduced.

**(c) Hold-harmless amounts**

**(1) Amounts for sections 6333, 6334, and 6335**

For each fiscal year, the amount made available to each local educational agency under each of sections 6333, 6334, and 6335 of this title shall be—

(A) not less than 95 percent of the amount made available for the preceding fiscal year if the number of children counted for grants under section 6333 of this title is not less than 30 percent of the total number of children aged 5 to 17 years, inclusive, in the local educational agency;

(B) not less than 90 percent of the amount made available for the preceding fiscal year if the percentage described in subparagraph (A) is between 15 percent and 30 percent; and

(C) not less than 85 percent of the amount made available for the preceding fiscal year if the percentage described in subparagraph (A) is below 15 percent.

**(2) Payments**

If sufficient funds are appropriated, the amounts described in paragraph (1) shall be paid to all local educational agencies that received grants under section 6334 of this title for the preceding fiscal year, regardless of whether the local educational agency meets the minimum eligibility criteria for that fiscal year described in section 6334(a)(1)(A) of this title except that a local educational agency that does not meet such minimum eligibility criteria for 4 consecutive years shall no longer be eligible to receive a hold harmless amount referred to in paragraph (1).

**(3) Applicability**

Notwithstanding any other provision of law, the Secretary shall not take into consideration the hold-harmless provisions of this subsection for any fiscal year for purposes of calculating State or local allocations for the fiscal year under any program administered by the Secretary other than a program authorized under this part.

**(4) Population data**

For any fiscal year for which the Secretary calculates grants on the basis of population data for counties, the Secretary shall apply the hold-harmless percentages in paragraphs (1) and (2) to counties and, if the Secretary's allocation for a county is not sufficient to meet the hold-harmless requirements of this subsection for every local educational agency within that county, the State educational agency shall reallocate funds proportionately from all other local educational agencies in the State that are receiving funds in excess of

the hold-harmless amounts specified in this subsection.

**(d) Ratable reductions**

**(1) In general**

If the sums made available under this subpart for any fiscal year are insufficient to pay the full amounts that local educational agencies in all States are eligible to receive under subsection (c) of this section for such year, the Secretary shall ratably reduce such amounts for such year.

**(2) Additional funds**

If additional funds become available for making payments under subsection (c) of this section for such fiscal year, amounts that were reduced under paragraph (1) shall be increased on the same basis as such amounts were reduced.

**(e) Definition**

For the purpose of this section and sections 6333, 6334, 6335, and 6337 of this title, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 89-10, title I, §1122, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1515.)

PRIOR PROVISIONS

A prior section 6332, Pub. L. 89-10, title I, §1122, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3562, related to allocations to States, prior to the general amendment of this subchapter by Pub. L. 107-110.

**§ 6333. Basic grants to local educational agencies**

**(a) Amount of grants**

**(1) Grants for local educational agencies and Puerto Rico**

Except as provided in paragraph (4) and in section 6338 of this title, the grant that a local educational agency is eligible to receive under this section for a fiscal year is the amount determined by multiplying—

(A) the number of children counted under subsection (c) of this section; and

(B) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this subparagraph shall not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

**(2) Calculation of grants**

**(A) Allocations to local educational agencies**

The Secretary shall calculate grants under this section on the basis of the number of children counted under subsection (c) of this section for local educational agencies, unless the Secretary and the Secretary of Commerce determine that some or all of those data are unreliable or that their use would be otherwise inappropriate, in which case—

(i) the two Secretaries shall publicly disclose the reasons for their determination in detail; and

(ii) paragraph (3) shall apply.

**(B) Allocations to large and small local educational agencies**

(i) For any fiscal year to which this paragraph applies, the Secretary shall calculate

grants under this section for each local educational agency.

(ii) The amount of a grant under this section for each large local educational agency shall be the amount determined under clause (i).

(iii) For small local educational agencies, the State educational agency may either—

(I) distribute grants under this section in amounts determined by the Secretary under clause (i); or

(II) use an alternative method approved by the Secretary to distribute the portion of the State’s total grants under this section that is based on those small agencies.

(iv) An alternative method under clause (iii)(II) shall be based on population data that the State educational agency determines best reflect the current distribution of children in poor families among the State’s small local educational agencies that meet the eligibility criteria of subsection (b) of this section.

(v) If a small local educational agency is dissatisfied with the determination of its grant by the State educational agency under clause (iii)(II), it may appeal that determination to the Secretary, who shall respond not later than 45 days after receipt of such appeal.

(vi) As used in this subparagraph—

(I) the term “large local educational agency” means a local educational agency serving an area with a total population of 20,000 or more; and

(II) the term “small local educational agency” means a local educational agency serving an area with a total population of less than 20,000.

**(3) Allocations to counties**

**(A) Calculation**

For any fiscal year to which this paragraph applies, the Secretary shall calculate grants under this section on the basis of the number of children counted under subsection (c) of this section for counties, and State educational agencies shall suballocate county amounts to local educational agencies, in accordance with regulations issued by the Secretary.

**(B) Direct allocations**

In any State in which a large number of local educational agencies overlap county boundaries, or for which the State believes it has data that would better target funds than allocating them by county, the State educational agency may apply to the Secretary for authority to make the allocations under this subpart for a particular fiscal year directly to local educational agencies without regard to counties.

**(C) Allocations to local educational agencies**

If the Secretary approves the State educational agency’s application under subparagraph (B), the State educational agency shall provide the Secretary an assurance that such allocations shall be made—

(i) using precisely the same factors for determining a grant as are used under this subpart; or