

(d) Forms and standards of proof

The forms and the standards of proof (including the standard of good faith compliance) that were in use during the 1985–86 academic year to establish the eligibility of a child for entitlement under the Indian Elementary and Secondary School Assistance Act shall be the forms and standards of proof used—

- (1) to establish eligibility under this subpart; and
- (2) to meet the requirements of subsection (a) of this section.

(e) Documentation

For purposes of determining whether a child is eligible to be counted for the purpose of computing the amount of a grant award under section 7423 of this title, the membership of the child, or any parent or grandparent of the child, in a tribe or band of Indians (as so defined) may be established by proof other than an enrollment number, notwithstanding the availability of an enrollment number for a member of such tribe or band. Nothing in subsection (b) of this section shall be construed to require the furnishing of an enrollment number.

(f) Monitoring and evaluation review**(1) In general****(A) Review**

For each fiscal year, in order to provide such information as is necessary to carry out the responsibility of the Secretary to provide technical assistance under this subpart, the Secretary shall conduct a monitoring and evaluation review of a sampling of the recipients of grants under this subpart. The sampling conducted under this subparagraph shall take into account the size of and the geographic location of each local educational agency.

(B) Exception

A local educational agency may not be held liable to the United States or be subject to any penalty, by reason of the findings of an audit that relates to the date of completion, or the date of submission, of any forms used to establish, before April 28, 1988, the eligibility of a child for an entitlement under the Indian Elementary and Secondary School Assistance Act.

(2) False information

Any local educational agency that provides false information in an application for a grant under this subpart shall—

- (A) be ineligible to apply for any other grant under this subpart; and
- (B) be liable to the United States for any funds from the grant that have not been expended.

(3) Excluded children

A student who provides false information for the form required under subsection (a) of this section shall not be counted for the purpose of computing the amount of a grant under section 7423 of this title.

(g) Tribal grant and contract schools

Notwithstanding any other provision of this section, in calculating the amount of a grant

under this subpart to a tribal school that receives a grant or contract from the Bureau of Indian Affairs, the Secretary shall use only one of the following, as selected by the school:

- (1) A count of the number of students in the schools certified by the Bureau.
- (2) A count of the number of students for whom the school has eligibility forms that comply with this section.

(h) Timing of child counts

For purposes of determining the number of children to be counted in calculating the amount of a local educational agency's grant under this subpart (other than in the case described in subsection (g)(1) of this section), the local educational agency shall—

- (1) establish a date on, or a period not longer than 31 consecutive days during, which the agency counts those children, if that date or period occurs before the deadline established by the Secretary for submitting an application under section 7424 of this title; and
- (2) determine that each such child was enrolled, and receiving a free public education, in a school of the agency on that date or during that period, as the case may be.

(Pub. L. 89–10, title VII, §7117, as added Pub. L. 107–110, title VII, §701, Jan. 8, 2002, 115 Stat. 1916.)

REFERENCES IN TEXT

The Indian Elementary and Secondary School Assistance Act, referred to in subsecs. (d) and (f)(1)(B), is title III of act Sept. 30, 1950, ch. 1124, as added by Pub. L. 92–318, title IV, §411(a), June 23, 1972, 86 Stat. 335, as amended, which was classified generally to subchapter III (§241aa et seq.) of chapter 13 of this title, prior to repeal by Pub. L. 100–297, title V, §5352(1), Apr. 28, 1988, 102 Stat. 414.

PRIOR PROVISIONS

A prior section 7427, Pub. L. 89–10, title VII, §7117, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3727, related to intensified instruction for limited English proficient students, prior to the general amendment of this subchapter by Pub. L. 107–110.

§ 7428. Payments**(a) In general**

Subject to subsections (b) and (c) of this section, the Secretary shall pay to each local educational agency that submits an application that is approved by the Secretary under this subpart the amount determined under section 7423 of this title. The Secretary shall notify the local educational agency of the amount of the payment not later than June 1 of the year for which the Secretary makes the payment.

(b) Payments taken into account by the State

The Secretary may not make a grant under this subpart to a local educational agency for a fiscal year if, for such fiscal year, the State in which the local educational agency is located takes into consideration payments made under this chapter¹ in determining the eligibility of the local educational agency for State aid, or the amount of the State aid, with respect to the

¹ So in original. Probably should be “this subpart”.

free public education of children during such fiscal year or the preceding fiscal year.

(c) Reduction of payment for failure to maintain fiscal effort

(1) In general

The Secretary may not pay a local educational agency the full amount of a grant award determined under section 7423 of this title for any fiscal year unless the State educational agency notifies the Secretary, and the Secretary determines, that with respect to the provision of free public education by the local educational agency for the preceding fiscal year, the combined fiscal effort of the local educational agency and the State, computed on either a per student or aggregate expenditure basis, was not less than 90 percent of the amount of the combined fiscal effort, computed on the same basis, for the second preceding fiscal year.

(2) Failure to maintain effort

If, for the preceding fiscal year, the Secretary determines that a local educational agency and State failed to maintain the combined fiscal effort for such agency at the level specified in paragraph (1), the Secretary shall—

(A) reduce the amount of the grant that would otherwise be made to such agency under this subpart in the exact proportion of the failure to maintain the fiscal effort at such level; and

(B) not use the reduced amount of the agency and State expenditures for the preceding year to determine compliance with paragraph (1) for any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1).

(3) Waiver

(A) In general

The Secretary may waive the requirement of paragraph (1) for a local educational agency, for not more than 1 year at a time, if the Secretary determines that the failure to comply with such requirement is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the agency's financial resources.

(B) Future determinations

The Secretary shall not use the reduced amount of the agency's expenditures for the fiscal year preceding the fiscal year for which a waiver is granted to determine compliance with paragraph (1) for any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1) in the absence of the waiver.

(d) Reallocations

The Secretary may reallocate, in a manner that the Secretary determines will best carry out the purpose of this subpart, any amounts that—

(1) based on estimates made by local educational agencies or other information, the

Secretary determines will not be needed by such agencies to carry out approved programs under this subpart; or

(2) otherwise become available for reallocation under this subpart.

(Pub. L. 89-10, title VII, §7118, as added Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1918.)

PRIOR PROVISIONS

A prior section 7428, Pub. L. 89-10, title VII, §7118, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3727, related to capacity building, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 6915 of this title.

§ 7429. State educational agency review

Before submitting an application to the Secretary under section 7424 of this title, a local educational agency shall submit the application to the State educational agency, which may comment on such application. If the State educational agency comments on the application, the agency shall comment on all applications submitted by local educational agencies in the State and shall provide those comments to the respective local educational agencies, with an opportunity to respond.

(Pub. L. 89-10, title VII, §7119, as added Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1919.)

PRIOR PROVISIONS

A prior section 7429, Pub. L. 89-10, title VII, §7119, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3727, authorized subgrants, prior to the general amendment of this subchapter by Pub. L. 107-110.

Prior sections 7430 to 7434 were omitted in the general amendment of this subchapter by Pub. L. 107-110.

Section 7430, Pub. L. 89-10, title VII, §7120, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3727, related to priority on funding of programs for limited English proficient students.

Section 7431, Pub. L. 89-10, title VII, §7121, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3728, related to coordination with other programs. See section 6844 of this title.

Section 7432, Pub. L. 89-10, title VII, §7122, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3728, related to programs for Native Americans and Puerto Rico. See sections 6848 and 6916 of this title.

Section 7433, Pub. L. 89-10, title VII, §7123, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3728, related to evaluations. See sections 6841 and 6917 of this title.

Section 7434, Pub. L. 89-10, title VII, §7124, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3728, related to construction of provisions. See sections 6845 and 6918 of this title.

SUBPART 2—SPECIAL PROGRAMS AND PROJECTS TO IMPROVE EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

§ 7441. Improvement of educational opportunities for Indian children

(a) Purpose

(1) In general

It is the purpose of this section to support projects to develop, test, and demonstrate the effectiveness of services and programs to improve educational opportunities and achievement of Indian children.