

this title any child who would be eligible under such subparagraph except that the Federal property on which the child resides or on which the child's parent is employed is not in the same State in which the child attends school, if such child meets the requirements of paragraph (2).

(B) The Secretary shall treat as eligible under subparagraph (G) of section 7703(a)(1) of this title any child who would be eligible under such subparagraph except that such child does not meet the requirements of clause (ii) of such subparagraph, if such child meets the requirements of paragraph (2).

(2) Requirements

A child meets the requirements of this paragraph if—

(A) such child resides—

(i) in a State adjacent to the State in which the local educational agency serving the school such child attends is located; or

(ii) with a parent employed on Federal property in a State adjacent to the State in which such agency is located;

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

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

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

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

(d) Timely payments

(1) In general

Subject to paragraph (2), the Secretary shall pay a local educational agency the full amount that the agency is eligible to receive under this subchapter for a fiscal year not later than September 30 of the second fiscal year following the fiscal year for which such amount has been appropriated if, not later than 1 calendar year following the fiscal year in which such amount has been appropriated, such local educational agency submits to the Secretary all the data and information necessary for the Secretary to pay the full amount that the agency is eligible to receive under this subchapter for such fiscal year.

(2) Payments with respect of fiscal years in which insufficient funds are appropriated

For a fiscal year in which the amount appropriated under section 7714 of this title is insufficient to pay the full amount a local educational agency is eligible to receive under this subchapter, paragraph (1) shall be applied by substituting "is available to pay the agency" for "the agency is eligible to receive" each place the term appears.

(Pub. L. 89-10, title VIII, §8010, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3767; amended Pub. L. 106-398, §1 [[div. A], title XVIII, §1813], Oct. 30, 2000, 114 Stat. 1654, 1654A-387; Pub. L. 112-239, div. A, title V, §563(b)(3), (c)(4), Jan. 2, 2013, 126 Stat. 1747, 1748.)

AMENDMENT OF SECTION

For termination of amendment by section 563(c) of Pub. L. 112-239, see Effective and Termination Dates of 2013 Amendment note below.

AMENDMENTS

2013—Subsec. (c)(1). Pub. L. 112-239, §563(b)(3)(A), (c)(4), temporarily substituted "paragraph (2)" for "paragraph (3) of this subsection" in subpars. (A) and (B). See Effective and Termination Dates of 2013 Amendment note below.

Subsec. (d). Pub. L. 112-239, §563(b)(3)(B), (c)(4), temporarily added subsec. (d). See Effective and Termination Dates of 2013 Amendment note below.

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

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

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

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

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

EFFECTIVE AND TERMINATION DATES OF 2013
AMENDMENT

Amendment by Pub. L. 112-239 effective for a 2-year period beginning on Jan. 2, 2013, and repealed on the day after the 2-year period and this subchapter to be applied as if the amendment had never been enacted, see section 563(c) of Pub. L. 112-239 set out as a note under section 7702 of this title.

§ 7711. Administrative hearings and judicial review

(a) Administrative hearings

A local educational agency and a State that is adversely affected by any action of the Secretary under this subchapter or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994) shall be entitled to a hearing on such action in the same manner as if such agency were a person under chapter 5 of title 5 if the local educational agency or State,

as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this subchapter.

(b) Judicial review of secretarial action

(1) In general

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

(2) Findings of fact

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

(3) Review

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

(Pub. L. 89-10, title VIII, §8011, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3769; amended Pub. L. 106-398, §1 [[div. A], title XVIII, §1814(a)(1), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-387.)

REFERENCES IN TEXT

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title XVIII, §1814(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-387, provided that:

“The amendment made by paragraph (1) [amending this section] shall apply with respect to an action of the Secretary under title VIII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701 et seq.) initiated on or after the date of the enactment of this Act [Oct. 30, 2000].”

§ 7712. Forgiveness of overpayments

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

(1) the Secretary; or

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

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

AMENDMENTS

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

§ 7713. Definitions

For purposes of this subchapter:

(1) Armed Forces

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

(2) Average per-pupil expenditure

The term “average per-pupil expenditure” means—

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

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

(3) Construction

The term “construction” means—

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

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

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

(D) debt service for such activities.

(4) Current expenditures

The term “current expenditures” means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay,