

general expenditure per full-time equivalent undergraduate student of institutions of higher education that offer similar instruction, except that the Secretary may apply the waiver requirements described in section 1068a(b) of this title to this subparagraph in the same manner as the Secretary applies the waiver requirements to section 1058(b)(1)(B) of this title;

(C) has an enrollment of undergraduate students—

(i) that is at least 40 percent Black American students;

(ii) that is at least 1,000 undergraduate students;

(iii) of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals or first-generation college students (as that term is defined in section 1070a–11(h) of this title); and

(iv) of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor’s or associate’s degree that the institution is licensed to award by the State in which the institution is located;

(D) is legally authorized to provide, and provides within the State, an educational program for which the institution of higher education awards a bachelor’s degree, or in the case of a junior or community college, an associate’s degree;

(E) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or is, according to such an agency or association, making reasonable progress toward accreditation; and

(F) is not receiving assistance under—

(i) part B;

(ii) part A of subchapter V; or

(iii) an annual authorization of appropriations under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123).

(Pub. L. 89–329, title III, §371, formerly title IV, §499A, as added Pub. L. 110–84, title VIII, §802, Sept. 27, 2007, 121 Stat. 817; renumbered title III, §371, and amended Pub. L. 110–315, title III, §316(a)(3), (b), (c), Aug. 14, 2008, 122 Stat. 3185; Pub. L. 111–39, title III, §301(7), July 1, 2009, 123 Stat. 1937; Pub. L. 111–152, title II, §2103, Mar. 30, 2010, 124 Stat. 1074.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(3)(C)(i), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Part A of title I of the Act is classified generally to part A (§6311 et seq.) of subchapter I of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

The Act of March 2, 1867, referred to in subsec. (c)(9)(F)(iii), is act Mar. 2, 1867, ch. 162, 14 Stat. 438. Provisions relating to authorizations of appropriations are contained in section 8 of the Act, which is classified to section 123 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1099e of this title prior to renumbering by Pub. L. 110–315.

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–152 substituted “through 2019. The authority to award grants under this section shall expire at the end of fiscal year 2019.” for “and 2009. The authority to award grants under this section shall expire at the end of fiscal year 2009.”

2009—Subsec. (c)(3)(D), (4), (9)(C)(iii). Pub. L. 111–39, §301(7)(A)–(C)(i), substituted “1070a–11(h)” for “1070a–11(g)”.

Subsec. (c)(9)(F). Pub. L. 111–39, §301(7)(C)(ii), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “is not receiving assistance under part B of this subchapter.”

2008—Subsec. (b)(1). Pub. L. 110–315, §316(c), amended par. (1) generally. Prior to amendment, text read as follows: “There shall be available to the Secretary to carry out this section, from funds not otherwise appropriated, \$255,000,000 for each of the fiscal years 2008 and 2009. The authority to award grants under this section shall expire at the end of fiscal year 2009.”

Subsec. (b)(2)(C)(i). Pub. L. 110–315, §316(b)(1), substituted “this subchapter” for “subchapter III” in two places.

Subsec. (c)(9)(F). Pub. L. 110–315, §316(b)(2), substituted “this subchapter” for “subchapter III”.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

PART G—GENERAL PROVISIONS

CODIFICATION

Pub. L. 110–315, title III, §316(a)(1), Aug. 14, 2008, 122 Stat. 3185, redesignated part F (§1068 et seq.) of this subchapter as part G of this subchapter.

§ 1068. Applications for assistance

(a) Applications

(1) Applications required

Any institution which is eligible for assistance under this subchapter shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate the institution’s need for the assistance. Subject to the availability of appropriations to carry out this subchapter, the Secretary may approve an application for assistance under this subchapter only if the Secretary determines that—

(A) the application meets the requirements of subsection (b) of this section;

(B) the applicant is eligible for assistance in accordance with the part of this subchapter under which the assistance is sought; and

(C) the applicant’s performance goals are sufficiently rigorous as to meet the purposes of this subchapter and the performance objectives and indicators for this subchapter established by the Secretary pursuant to the Government Performance and Results Act of 1993 and the amendments made by such Act.

(2) Preliminary applications

In carrying out paragraph (1), the Secretary may develop a preliminary application for use

by eligible institutions applying under part A of this subchapter prior to the submission of the principal application.

**(b) Contents**

An institution, in its application for a grant, shall—

(1) set forth, or describe how the institution (other than an institution applying under part C, D or E of this subchapter) will develop, a comprehensive development plan to strengthen the institution's academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this subchapter);

(2) set forth policies and procedures to ensure that Federal funds made available under this subchapter for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 1057(b) or 1062 of this title, and in no case supplant those funds;

(3) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this subchapter;

(4) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this subchapter;

(5) provide (A) for making such reports, in such form and containing such information, as the Secretary may require to carry out the functions under this subchapter, including not less than one report annually setting forth the institution's progress toward achieving the objectives for which the funds were awarded, and (B) for keeping such records and affording such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports;

(6) provide that the institution will comply with the limitations set forth in section 1068e of this title, except that for purposes of section 1059c of this title, paragraphs (2) and (3) of section 1068e of this title shall not apply;

(7) describe in a comprehensive manner any proposed project for which funds are sought under the application and include—

(A) a description of the various components of the proposed project, including the estimated time required to complete each such component;

(B) in the case of any development project which consists of several components (as described by the applicant pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this subchapter in conjunction with other parts of the development project (as specified by the applicant);

(C) an evaluation by the applicant of the priority given any proposed project for

which funds are sought in relation to any other projects for which funds are sought by the applicant under this subchapter, and a similar evaluation regarding priorities among the components of any single proposed project (as described by the applicant pursuant to subparagraph (A));

(D) a detailed budget showing the manner in which funds for any proposed project would be spent by the applicant; and

(E) a detailed description of any activity which involves the expenditure of more than \$25,000, as identified in the budget referred to in subparagraph (D); and

(8) include such other information as the Secretary may prescribe.

**(c) Priority criteria publication required**

The Secretary shall publish in the Federal Register, pursuant to chapter 5 of title 5, all policies and procedures required to exercise the authority set forth in subsection (a) of this section. No other criteria, policies, or procedures shall apply.

**(d) Eligibility data**

The Secretary shall use the most recent and relevant data concerning the number and percentage of students receiving need-based assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 in making eligibility determinations under section 1058 of this title and shall advance the base-year forward following each annual grant cycle.

**(e) Technical assistance**

The Secretary, directly or by grant or contract, may provide technical assistance to eligible institutions to prepare the institutions to qualify, apply for, and maintain a grant, under this subchapter.

(Pub. L. 89-329, title III, §391, formerly §351, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1302; amended Pub. L. 100-50, §2(a)(13), June 3, 1987, 101 Stat. 336; Pub. L. 102-325, title III, §305(a), July 23, 1992, 106 Stat. 478; renumbered §391 and amended Pub. L. 105-244, title III, §§301(a)(2), (c)(11), 308(a)-(c), Oct. 7, 1998, 112 Stat. 1636, 1637, 1648, 1649; Pub. L. 110-315, title III, §§317, 320(4), Aug. 14, 2008, 122 Stat. 3185, 3188.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (a)(1)(C), is Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

CODIFICATION

Section was formerly classified to section 1066 of this title prior to renumbering by Pub. L. 105-244.

PRIOR PROVISIONS

A prior section 1068, Pub. L. 89-329, title III, §353, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1305, which related to application review process,

was renumbered section 393 of Pub. L. 89-329 by Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068b of this title.

Another prior section 1068, Pub. L. 89-329, title III, §343, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1398, related to application review process and provided for reader panels, recommendation of such panels, and notification to institutions, prior to the general amendment of this subchapter by Pub. L. 99-498.

Another prior section 1068, Pub. L. 89-329, title IV, §408, Nov. 8, 1965, 79 Stat. 1235; Pub. L. 90-575, title I, §105(a), Oct. 16, 1968, 82 Stat. 1018; Pub. L. 91-230, title VIII, §801, Apr. 13, 1970, 84 Stat. 190; Pub. L. 92-318, title I, §131(a)(1)(B), June 23, 1972, 86 Stat. 247, related to programs for identifying qualified low-income students and preparing them for post secondary education, grants or contracts for planning, developing or carrying out programs, “Talent Search” program, “Upward Bound” program, “Special Services for Disadvantaged Students” program, nature of programs, waiver of matching requirement in the “Upward Bound” program and authorization of appropriations, prior to the general amendment of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 247.

#### AMENDMENTS

2008—Subsec. (b)(7)(E). Pub. L. 110-315, §320(4), substituted “subparagraph (D)” for “subparagraph (E)”.

Subsec. (e). Pub. L. 110-315, §317, added subsec. (e).

1998—Subsec. (a). Pub. L. 105-244, §308(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Any institution which is eligible for assistance under this subchapter shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate its need for assistance. Subject to the availability of appropriations to carry out this subchapter, the Secretary may approve an application for a grant under this subchapter if the application meets the requirements of subsection (b) of this section and shows that the applicant is eligible for assistance in accordance with the part of this subchapter under which the assistance is sought.”

Subsec. (b)(1). Pub. L. 105-244, §308(b), inserted “, D or E” after “part C”.

Subsec. (b)(6). Pub. L. 105-244, §§301(c)(11), 308(c), substituted “section 1068e” for “section 1069c” and inserted “, except that for purposes of section 1059c of this title, paragraphs (2) and (3) of section 1068e of this title shall not apply” before semicolon.

1992—Subsec. (b)(7)(D) to (F). Pub. L. 102-325 redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: “information explaining the manner in which the proposed project will assist the applicant to prepare for the critical financial problems that all institutions of higher education will face during the subsequent decade as a result of declining enrollment, and other problems;”.

1987—Subsec. (b)(6). Pub. L. 100-50 substituted “section 1069c of this title” for “section 1069b of this title”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986,

Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

### § 1068a. Waiver authority and reporting requirement

#### (a) Waiver requirements; need-based assistance students

The Secretary may waive the requirements set forth in section 1058(b)(1)(A) of this title in the case of an institution—

(1) which is extensively subsidized by the State in which it is located and charges low or no tuition;

(2) which serves a substantial number of low-income students as a percentage of its total student population;

(3) which is contributing substantially to increasing higher education opportunities for educationally disadvantaged, underrepresented, or minority students, who are low-income individuals;

(4) which is substantially increasing higher educational opportunities for individuals in rural or other isolated areas which are unserved by postsecondary institutions;

(5) located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians;

(6) that is a tribally controlled college or university as defined in section 1801 of title 25; or

(7) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Black Americans, Hispanic Americans, Native Americans, Asian Americans, or Pacific Islanders, including Native Hawaiians.

#### (b) Waiver determinations; expenditures

(1) The Secretary may waive the requirements set forth in section 1058(b)(1)(B) of this title if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A of this subchapter is otherwise consistent with the purposes of such parts.<sup>1</sup>

(2) The Secretary shall submit to the Congress every other year a report concerning the institutions which, although not satisfying the criterion contained in section 1058(b)(1)(B) of this title, have been determined to be eligible institutions under part A which enroll significant numbers of Black American, Hispanic, Native American, Asian American, or Native Hawaiian students under part A, as the case may be. Such report shall—

(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with subparagraphs (A) and (B) of section 1058(b)(1) of this title; and

<sup>1</sup> So in original. Probably should be “part.”