

## 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 deter-

mination 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

(ii) using data that the State educational agency submits to the Secretary for approval that more accurately target poverty.

**(D) Appeal**

The State educational agency shall provide the Secretary an assurance that it will establish a procedure through which a local educational agency that is dissatisfied with its determinations under subparagraph (B) may appeal directly to the Secretary for a final determination.

**(4) Puerto Rico****(A) In general**

For each fiscal year, the grant that the Commonwealth of Puerto Rico shall be eligible to receive under this section shall be the amount determined by multiplying the number of children counted under subsection (c) of this section for the Commonwealth of Puerto Rico by the product of—

(i) subject to subparagraph (B), the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico

is of the lowest average per-pupil expenditure of any of the 50 States; and

(ii) 32 percent of the average per-pupil expenditure in the United States.

**(B) Minimum percentage**

The percentage in subparagraph (A)(i) shall not be less than—

- (i) for fiscal year 2002, 77.5 percent;
- (ii) for fiscal year 2003, 80.0 percent;
- (iii) for fiscal year 2004, 82.5 percent;
- (iv) for fiscal year 2005, 85.0 percent;
- (v) for fiscal year 2006, 92.5 percent; and
- (vi) for fiscal year 2007 and succeeding fiscal years, 100.0 percent.

**(C) Limitation**

If the application of subparagraph (B) would result in any of the 50 States or the District of Columbia receiving less under this subpart than it received under this subpart for the preceding fiscal year, the percentage in subparagraph (A) shall be the greater of—

- (i) the percentage in subparagraph (A)(i);
- (ii) the percentage specified in subparagraph (B) for the preceding fiscal year; or
- (iii) the percentage used for the preceding fiscal year.

**(b) Minimum number of children to qualify**

A local educational agency is eligible for a basic grant under this section for any fiscal year only if the number of children counted under subsection (c) of this section for that agency is both—

- (1) 10 or more; and
- (2) more than 2 percent of the total school-age population in the agency's jurisdiction.

**(c) Children to be counted**

**(1) Categories of children**

The number of children to be counted for purposes of this section is the aggregate of—

(A) the number of children aged 5 to 17, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2);

(B) the number of children (determined under paragraph (4) for either the preceding year as described in that paragraph, or for the second preceding year, as the Secretary finds appropriate) aged 5 to 17, inclusive, in the school district of such agency in institutions for neglected and delinquent children (other than such institutions operated by the United States), but not counted pursuant to subpart 1 of part D of this subchapter for the purposes of a grant to a State agency, or being supported in foster homes with public funds; and

(C) the number of children aged 5 to 17, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (4).

**(2) Determination of number of children**

For the purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent

satisfactory data, described in paragraph (3), available from the Department of Commerce. The District of Columbia and the Commonwealth of Puerto Rico shall be treated as individual local educational agencies. If a local educational agency contains two or more counties in their entirety, then each county will be treated as if such county were a separate local educational agency for purposes of calculating grants under this part. The total of grants for such counties shall be allocated to such a local educational agency, which local educational agency shall distribute to schools in each county within such agency a share of the local educational agency's total grant that is no less than the county's share of the population counts used to calculate the local educational agency's grant.

**(3) Population updates**

**(A) In general**

In fiscal year 2002 and each subsequent fiscal year, the Secretary shall use updated data on the number of children, aged 5 to 17, inclusive, from families below the poverty level for counties or local educational agencies, published by the Department of Commerce, unless the Secretary and the Secretary of Commerce determine that the use of the updated population data would be inappropriate or unreliable. If appropriate and reliable data are not available annually, the Secretary shall use data which are updated every 2 years.

**(B) Inappropriate or unreliable data**

If the Secretary and the Secretary of Commerce determine that some or all of the data referred to in subparagraph (A) are inappropriate or unreliable, the Secretary and the Secretary of Commerce shall publicly disclose their reasons.

**(C) Criteria of poverty**

In determining the families that are below the poverty level, the Secretary shall use the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census, as the criteria have been updated by increases in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics.

**(4) Other children to be counted**

(A) For the purpose of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]; and in making such determinations, the Secretary shall use the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census for a family of four in such form as those criteria have been updated by increases in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics.

(B) The Secretary shall determine the number of such children and the number of chil-

dren aged 5 through 17 living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to the Secretary before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to the Secretary at the time of such determination.

(C) Except for the data on children living in institutions for neglected or delinquent children, the Secretary of Health and Human Services shall collect and transmit the information required by this subparagraph to the Secretary not later than January 1 of each year.

(D) For the purpose of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

#### (5) Estimate

When requested by the Secretary, the Secretary of Commerce shall make a special updated estimate of the number of children of such ages who are from families below the poverty level (as determined under paragraph (1)(A)) in each school district, and the Secretary is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information.

#### (d) State minimum

Notwithstanding section 6332 of this title, the aggregate amount allotted for all local educational agencies within a State may not be less than the lesser of—

(1) 0.25 percent of the total amount allocated to States under this section for fiscal year 2001, plus 0.35 percent of the total amount allocated to States under this section in excess of the amount allocated for fiscal year 2001; or

(2) the average of—

(A) the amount calculated in paragraph (1), above; and

(B) the number of children in such State counted under subsection (c) of this section in the fiscal year multiplied by 150 percent of the national average per-pupil payment made with funds available under this section for that year.

(Pub. L. 89-10, title I, §1124, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1516.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### PRIOR PROVISIONS

A prior section 6333, Pub. L. 89-10, title I, §1124, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3564; amended Pub. L. 104-193, title I, §110(j)(2), Aug. 22, 1996, 110 Stat. 2172, related to basic grants to local educational agencies, prior to the general amendment of this subchapter by Pub. L. 107-110.

### § 6334. Concentration grants to local educational agencies

#### (a) Eligibility for and amount of grants

##### (1) In general

(A) Except as otherwise provided in this paragraph, each local educational agency which is eligible for a grant under section 6333 of this title for any fiscal year is eligible for an additional grant under this section for that fiscal year if the number of children counted under section 6333(c) of this title in the agency exceeds either—

(i) 6,500; or

(ii) 15 percent of the total number of children aged 5 through 17 in the agency.

(B) Notwithstanding section 6332 of this title, no State shall receive less than the lesser of—

(i) 0.25 percent of the total amount allocated to States under this section for fiscal year 2001, plus 0.35 percent of the total amount allocated to States under this section in excess of the amount allocated for fiscal year 2001; or

(ii) the average of—

(I) the amount calculated under clause (i); and

(II) the greater of—

(aa) \$340,000; or

(bb) the number of children in such State counted for purposes of this section in that fiscal year multiplied by 150 percent of the national average per-pupil payment made with funds available under this section for that year.

##### (2) Determination

For each county or local educational agency eligible to receive an additional grant under this section for any fiscal year, the Secretary shall determine the product of—

(A) the number of children counted under section 6333(c) of this title for that fiscal year; and

(B) the amount in section 6333(a)(1)(B) of this title for each State except the Commonwealth of Puerto Rico, and the amount in section 6333(a)(4) of this title for the Commonwealth of Puerto Rico.

##### (3) Amount

The amount of the additional grant for which an eligible local educational agency or county is eligible under this section for any fiscal year shall be an amount which bears the same ratio to the amount available to carry out this section for that fiscal year as the product determined under paragraph (2) for such local educational agency for that fiscal year bears to the sum of such products for all local educational agencies in the United States for that fiscal year.