

(Pub. L. 89-10, title I, §1202, as added Pub. L. 114-95, title I, §1201, Dec. 10, 2015, 129 Stat. 1881.)

#### PRIOR PROVISIONS

A prior section 6362, Pub. L. 89-10, title I, §1202, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1535; amended Pub. L. 108-7, div. G, title III, §305, Feb. 20, 2003, 117 Stat. 333, authorized formula grants to State educational agencies, prior to the general amendment of this part by Pub. L. 114-95.

Another prior section 6362, Pub. L. 89-10, title I, §1202, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3578; amended Pub. L. 105-220, title II, §251(b)(2)(A), Aug. 7, 1998, 112 Stat. 1079; Pub. L. 105-277, div. A, §101(f) [title VIII, §§201, 202], Oct. 21, 1998, 112 Stat. 2681-337, 2681-407, 2681-408; Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §§1604(c)-(e), 1606(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-329, 2763A-330, 2763A-334, authorized Even Start program, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1202 of Pub. L. 89-10 was classified to section 2782 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

#### EFFECTIVE DATE

Section effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as an Effective Date of 2015 Amendment note under section 6301 of this title.

### § 6363. Allotment of appropriated funds

#### (a) Amounts equal to or less than trigger amount

From amounts made available for each fiscal year under subsection<sup>1</sup> 6302(b) of this title that are equal to or less than the amount described in section 6311(b)(2)(I) of this title, the Secretary shall—

- (1) reserve one-half of 1 percent for the Bureau of Indian Education;
- (2) reserve one-half of 1 percent for the outlying areas;
- (3) reserve not more than 20 percent to carry out section 6362 of this title; and
- (4) from the remainder, carry out section 6361 of this title by allocating to each State an amount equal to—

(A) \$3,000,000, except for a fiscal year for which the amounts available are insufficient to allocate such amount to each State, the Secretary shall ratably reduce such amount for each State; and

(B) with respect to any amounts remaining after the allocation under subparagraph (A), an amount that bears the same relationship to such total remaining amounts as the number of students aged 5 through 17 in the State (as determined by the Secretary on the basis of the most recent satisfactory data) bears to the total number of such students in all States.

#### (b) Amounts above trigger amount

For any fiscal year for which the amount made available for a fiscal year under subsection<sup>1</sup> 6302(b) of this title exceeds the amount described in section 6311(b)(2)(I) of this title, the Secretary shall make such excess amount available as follows:

#### (1) Competitive grants

##### (A) In general

The Secretary shall first use such funds to award grants, on a competitive basis, to

State educational agencies or consortia of State educational agencies that have submitted applications described in subparagraph (B) to enable such States to carry out the activities described in subparagraphs (C), (H), (I), (J), (K), and (L) of section 6361(a)(2) of this title.

#### (B) Applications

A State, or a consortium of States, that desires a competitive grant under subparagraph (A) shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall demonstrate that the requirements of this section will be met for the uses of funds described under subparagraph (A).

#### (C) Amount of competitive grants

In determining the amount of a grant under subparagraph (A), the Secretary shall ensure that a State or consortium's grant, as the case may be, shall include an amount that bears the same relationship to the total funds available to carry out this subsection for the fiscal year as the number of students aged 5 through 17 in the State, or, in the case of a consortium, in each State that comprises the consortium, (as determined by the Secretary on the basis of the most recent satisfactory data) bears to the total number of such students in all States.

#### (2) Allotments

Any amounts remaining after the Secretary awards funds under paragraph (1) shall be allotted to each State, or consortium of States, that did not receive a grant under such paragraph, in an amount that bears the same relationship to the remaining amounts as the number of students aged 5 through 17 in the State, or, in the case of a consortium, in the States of the consortium, (as determined by the Secretary on the basis of the most recent satisfactory data) bears to the total number of such students in all States.

#### (c) State defined

In this part, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

#### (d) Prohibition

In making funds available to States under this part, the Secretary shall comply with the prohibitions described in section 7909 of this title.

(Pub. L. 89-10, title I, §1203, as added Pub. L. 114-95, title I, §1201, Dec. 10, 2015, 129 Stat. 1884.)

#### PRIOR PROVISIONS

A prior section 6363, Pub. L. 89-10, title I, §1203, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1543; amended Pub. L. 110-154, §1(c)(3), Dec. 21, 2007, 121 Stat. 1828; Pub. L. 113-128, title V, §512(i)(1), July 22, 2014, 128 Stat. 1708, related to applications for State formula grants, prior to the general amendment of this part by Pub. L. 114-95.

Another prior section 6363, Pub. L. 89-10, title I, §1203, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3579; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §204(b)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-409; Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1604(f), (g)], Dec. 21, 2000, 114 Stat. 2763, 2763A-330, related to State

<sup>1</sup> So in original. Probably should be "section".

Even Start programs, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1203 of Pub. L. 89-10 was classified to section 2783 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

#### EFFECTIVE DATE

Section effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as an Effective Date of 2015 Amendment note under section 6301 of this title.

### § 6364. Innovative assessment and accountability demonstration authority

#### (a) Innovative assessment system defined

The term “innovative assessment system” means a system of assessments that may include—

- (1) competency-based assessments, instructionally embedded assessments, interim assessments, cumulative year-end assessments, or performance-based assessments that combine into an annual summative determination for a student, which may be administered through computer adaptive assessments; and
- (2) assessments that validate when students are ready to demonstrate mastery or proficiency and allow for differentiated student support based on individual learning needs.

#### (b) Demonstration authority

##### (1) In general

The Secretary may provide a State educational agency, or a consortium of State educational agencies, in accordance with paragraph (3), with the authority to establish an innovative assessment system (referred to in this section as “demonstration authority”).

##### (2) Demonstration period

In accordance with the requirements described in subsection (e), each State educational agency, or consortium of State educational agencies, that submits an application under this section shall propose in its application the period of time over which the State educational agency or consortium desires to exercise the demonstration authority, except that such period shall not exceed 5 years.

##### (3) Initial demonstration authority and expansion

During the first 3 years that the Secretary provides State educational agencies and consortia with demonstration authority (referred to in this section as the “initial demonstration period”) the Secretary shall provide such demonstration authority to—

- (A) a total number of not more than 7 participating State educational agencies, including those participating in consortia, that have applications approved under subsection (e); and
- (B) consortia that include not more than 4 State educational agencies.

#### (c) Progress report

##### (1) In general

Not later than 180 days after the end of the initial demonstration period, and prior to pro-

viding additional State educational agencies with demonstration authority, the Director of the Institute of Education Sciences, in consultation with the Secretary, shall publish a report detailing the initial progress of innovative assessment systems carried out through demonstration authority under this section.

#### (2) Criteria

The progress report under paragraph (1) shall be based on the annual information submitted by participating States described in subsection (e)(2)(B)(ix) and examine the extent to which—

- (A) with respect to each innovative assessment system—
  - (i) the State educational agency has solicited feedback from teachers, principals, other school leaders, and parents about their satisfaction with the innovative assessment system;
  - (ii) teachers, principals, and other school leaders have demonstrated a commitment and capacity to implement or continue to implement the innovative assessment system; and
  - (iii) substantial evidence exists demonstrating that the innovative assessment system has been developed in accordance with the requirements of subsection (e); and
- (B) each State with demonstration authority has demonstrated that—
  - (i) the same innovative assessment system was used to measure the achievement of all students that participated in the innovative assessment system; and
  - (ii) of the total number of all students, and the total number of each of the subgroups of students defined in section 6311(c)(2) of this title, eligible to participate in the innovative assessment system in a given year, the State assessed in that year an equal or greater percentage of such eligible students, as measured under section 6311(c)(4)(E) of this title, as were assessed in the State in such year using the assessment system under section 6311(b)(2) of this title.

(B) each State with demonstration authority has demonstrated that—

- (i) the same innovative assessment system was used to measure the achievement of all students that participated in the innovative assessment system; and
- (ii) of the total number of all students, and the total number of each of the subgroups of students defined in section 6311(c)(2) of this title, eligible to participate in the innovative assessment system in a given year, the State assessed in that year an equal or greater percentage of such eligible students, as measured under section 6311(c)(4)(E) of this title, as were assessed in the State in such year using the assessment system under section 6311(b)(2) of this title.

#### (3) Use of report

Upon completion of the progress report, the Secretary shall provide a response to the findings of the progress report, including a description of how the findings of the report will be used—

- (A) to support State educational agencies with demonstration authority through technical assistance; and
- (B) to inform the peer-review process described in subsection (f) for advising the Secretary on the awarding of the demonstration authority to the additional State educational agencies described in subsection (d).

#### (4) Publicly available

The Secretary shall make the progress report under this subsection and the response described in paragraph (3) publicly available on the website of the Department.

#### (5) Prohibition

The Secretary shall not require States that have demonstration authority to submit any