

(Pub. L. 89-10, title I, §1301, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1571; amended Pub. L. 114-95, title I, §1301(a), Dec. 10, 2015, 129 Stat. 1893.)

PRIOR PROVISIONS

A prior section 6391, Pub. L. 89-10, title I, §1301, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3585, related to program purpose, prior to the general amendment of this subchapter by Pub. L. 107-110.

AMENDMENTS

2015—Pub. L. 114-95 amended section generally. Prior to amendment, section related to purposes of this part to assist States: (1) to support high-quality and comprehensive educational programs for migratory children; (2) to ensure that migratory children who move among the States are not penalized in any manner by disparities among the States; (3) to ensure that migratory children are provided with appropriate educational services; (4) to ensure that migratory children receive full and appropriate opportunities to meet challenging State standards; (5) to design programs to help migratory children overcome educational disruption and other factors that inhibit their ability to do well in school; and (6) to ensure that migratory children benefit from State and local systemic reforms.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 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 a note under section 6301 of this title.

§ 6392. Program authorized

In order to carry out the purpose of this part, the Secretary shall make grants to State educational agencies, or combinations of such agencies, to establish or improve, directly or through local operating agencies, programs of education for migratory children in accordance with this part.

(Pub. L. 89-10, title I, §1302, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1571.)

PRIOR PROVISIONS

A prior section 6392, Pub. L. 89-10, title I, §1302, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3585, authorized migratory children education program, prior to the general amendment of this subchapter by Pub. L. 107-110.

§ 6393. State allocations

(a) State allocations

Except as provided in subsection (c), each State (other than the Commonwealth of Puerto Rico) is entitled to receive under this part an amount equal to the product of—

(1) the sum of—

(A) the average number of identified eligible migratory children aged 3 through 21 residing in the State, based on data for the preceding 3 years; and

(B) the number of identified eligible migratory children, aged 3 through 21, who received services under this part in summer or intersession programs provided by the State during the previous year; multiplied by

(2) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall

not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States.

(b) Hold harmless

Notwithstanding subsection (a), for each of fiscal years 2017 through 2019, no State shall receive less than 90 percent of the State's allocation under this section for the preceding fiscal year.

(c) Allocation to Puerto Rico

(1) In general

For each fiscal year, the grant that the Commonwealth of Puerto Rico shall be eligible to receive under this part shall be the amount determined by multiplying the number of children who would be counted under subsection (a)(1) if such subsection applied to the Commonwealth of Puerto Rico by the product of—

(A) 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, subject to paragraphs (2) and (3); and

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

(2) Minimum percentage

The percentage described in paragraph (1)(A) shall not be less than 85 percent.

(3) Limitation

If the application of paragraph (2) for any fiscal year would result in any of the 50 States or the District of Columbia receiving less under this part than it received under this part for the preceding fiscal year, then the percentage described in paragraph (1)(A) that is used for the Commonwealth of Puerto Rico for the fiscal year for which the determination is made shall be the greater of the percentage in paragraph (1)(A) for such fiscal year or the percentage used for the preceding fiscal year.

(d) Ratable reductions; reallocations

(1) In general

(A) Ratable reductions

If, after the Secretary reserves funds under section 6398(c) of this title, the amount appropriated to carry out this part for any fiscal year is insufficient to pay in full the amounts for which all States are eligible, the Secretary shall ratably reduce each such amount.

(B) Reallocation

If additional funds become available for making such payments for any fiscal year, the Secretary shall allocate such funds to States in amounts that the Secretary determines will best carry out the purposes of this part.

(2) Special rule

(A) Further reductions

The Secretary shall further reduce the amount of any grant to a State under this part for any fiscal year if the Secretary determines, based on available information on the numbers and needs of migratory children in the State and the program proposed by

the State to address such needs, that such amount exceeds the amount required under section 6394 of this title.

(B) Reallocation

The Secretary shall reallocate such excess funds to other States whose grants under this part would otherwise be insufficient to provide an appropriate level of services to migratory children, in such amounts as the Secretary determines are appropriate.

(e) Consortium arrangements

(1) In general

In the case of a State that receives a grant of \$1,000,000 or less under this section, the Secretary shall consult with the State educational agency to determine whether consortium arrangements with another State or other appropriate entity would result in delivery of services in a more effective and efficient manner.

(2) Proposals

Any State, regardless of the amount of such State's allocation, may submit a consortium arrangement to the Secretary for approval.

(3) Approval

The Secretary shall approve a consortium arrangement under paragraph (1) or (2) if the proposal demonstrates that the arrangement will—

- (A) reduce administrative costs or program function costs for State programs; and
- (B) make more funds available for direct services to add substantially to the academic achievement of children to be served under this part.

(f) Determining numbers of eligible children

In order to determine the identified number of migratory children residing in each State for purposes of this section, the Secretary shall—

- (1) use the most recent information that most accurately reflects the actual number of migratory children;
- (2) develop and implement a procedure for monitoring the accuracy of such information;
- (3) develop and implement a procedure for more accurately reflecting cost factors for different types of summer and intersession program designs;
- (4) adjust the number of migratory children who reside in each State to take into account—
 - (A) the unique needs of those children participating in effective special programs provided under this part that operate during the summer and intersession periods; and
 - (B) the additional costs of operating such programs; and
- (5) conduct an analysis of the options for adjusting the formula so as to better direct services to migratory children, including the most at-risk migratory children.

(g) Nonparticipating States

In the case of a State desiring to receive an allocation under this part for a fiscal year that did not receive an allocation for the previous fiscal year or that has been participating for less

than 3 consecutive years, the Secretary shall calculate the State's number of identified migratory children aged 3 through 21 for purposes of subsection (a)(1)(A) by using the most recent data available that identifies the migratory children residing in the State until data is available to calculate the 3-year average number of such children in accordance with such subsection.

(Pub. L. 89-10, title I, §1303, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1571; amended Pub. L. 114-95, title I, §1301(b), Dec. 10, 2015, 129 Stat. 1894.)

PRIOR PROVISIONS

A prior section 6393, Pub. L. 89-10, title I, §1303, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3585, related to State allocations, prior to the general amendment of this subchapter by Pub. L. 107-110.

AMENDMENTS

2015—Subsecs. (a), (b). Pub. L. 114-95, §1301(b)(2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to State allocations for fiscal year 2002 and subsequent years and allocation to Puerto Rico for each fiscal year.

Subsec. (c). Pub. L. 114-95, §1301(b)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114-95, §1301(b)(1), (3), redesignated subsec. (c) as (d), in par. (1) inserted subpar. headings after subpar. (A) and (B) designations, in par. (1), subpar. (B), substituted “purposes” for “purpose”, and in par. (2) inserted subpar. headings after subpar. (A) and (B) designations. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114-95, §1301(b)(1), (4), redesignated subsec. (d) as (e) and in par. (3)(B) substituted “the academic achievement of children” for “the welfare or educational attainment of children”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 114-95, §1301(b)(1), (5)(A), redesignated subsec. (e) as (f) and in introductory provisions substituted “identified number” for “estimated number”.

Subsec. (f)(1). Pub. L. 114-95, §1301(b)(5)(B), added par. (1) and struck out former par. (1) which read as follows: “use such information as the Secretary finds most accurately reflects the actual number of migratory children;”.

Subsec. (f)(2), (3). Pub. L. 114-95, §1301(b)(5)(C), (D), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 114-95, §1301(b)(5)(C), (E), redesignated par. (3) as (4), in introductory provisions struck out “full-time equivalent” before “number”, and in subpar. (A) substituted “unique needs” for “special needs” and “effective special programs provided under this part” for “special programs provided under this part”. Former par. (4) redesignated (5).

Subsec. (f)(5). Pub. L. 114-95, §1301(b)(5)(C), (F), redesignated par. (4) as (5) and substituted “migratory children, including the most at-risk migratory children” for “the child whose education has been interrupted”.

Subsec. (g). Pub. L. 114-95, §1301(b)(6), added subsec. (g).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 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 a note under section 6301 of this title.

§ 6394. State applications; services

(a) Application required

Any State desiring to receive a grant under this part for any fiscal year shall submit an ap-