

after the date on which the Secretary sends written notice to the local educational agency pursuant to paragraph (3)(A), as the case may be,” after “subsection (c)”.

Subsec. (d)(3). Pub. L. 106-398, §1 [[div. A], title XVIII, §1809(2)], amended heading and text generally. Prior to amendment, text read as follows: “The Secretary shall not accept or approve any application that is filed more than 60 days after a deadline established under subsection (c) of this section.”

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, and effective with respect to appropriations for use under this subchapter beginning fiscal year 2017, except as otherwise provided in such amendment, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

**§ 7707. Construction**

**(a) Construction payments authorized**

**(1) In general**

From 40 percent of the amount appropriated for each fiscal year under section 7714(d) of this title, the Secretary shall make payments in accordance with this subsection to each local educational agency that receives a basic support payment under section 7703(b) of this title for that fiscal year.

**(2) Additional requirements**

A local educational agency that receives a basic support payment under section 7703(b)(1) of this title shall also meet at least one of the following requirements:

(A) The number of children determined under section 7703(a)(1)(C) of this title for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.

(B) The number of children determined under subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.

**(3) Amount of payments**

**(A) Local educational agencies impacted by military dependent children**

The amount of a payment to each local educational agency described in this subsection that is impacted by military dependent children for a fiscal year shall be equal to—

(i)(I) 20 percent of the amount appropriated under section 7714(d) of this title for such fiscal year; divided by

(II) the total number of weighted student units of children described in subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for all local educational agencies described in this subsection (as calculated under section 7703(a)(2) of this title), including the number of weighted student units of such children attending a school facility described in section 7708(a) of this title if the Secretary does not provide assistance for the school facility under that section for the prior fiscal year; multiplied by

(ii) the total number of such weighted student units for the agency.

**(B) Local educational agencies impacted by children who reside on Indian lands**

The amount of a payment to each local educational agency described in this subsection that is impacted by children who reside on Indian lands for a fiscal year shall be equal to—

(i)(I) 20 percent of the amount appropriated under section 7714(d) of this title for such fiscal year; divided by

(II) the total number of weighted student units of children described in section 7703(a)(1)(C) of this title for all local educational agencies described in this subsection (as calculated under section 7703(a)(2) of this title); multiplied by

(ii) the total number of such weighted student units for the agency.

**(4) Use of funds**

Any local educational agency that receives funds under this subsection shall use such funds for construction, as defined in section 7713(3) of this title.

**(b) School facility emergency and modernization grants authorized**

**(1) In general**

From 60 percent of the amount appropriated for each fiscal year under section 7714(d) of this title, the Secretary—

(A) shall award emergency grants in accordance with this subsection to eligible local educational agencies to enable the agencies to carry out emergency repairs of school facilities; and

(B) shall award modernization grants in accordance with this subsection to eligible local educational agencies to enable the agencies to carry out the modernization of school facilities.

**(2) Priority**

In approving applications from local educational agencies for emergency grants and modernization grants under this subsection, the Secretary shall give priority to applications in accordance with the following:

(A) The Secretary shall first give priority to applications for emergency grants from local educational agencies that meet the requirements of paragraph (3)(A) and, among such applications for emergency grants, shall give priority to those applications of local educational agencies based on the severity of the emergency, as determined by the Secretary.

(B) The Secretary shall next give priority to applications for emergency grants from local educational agencies that meet the requirements of subparagraph (C) or (D) of paragraph (3) and, among such applications for emergency grants, shall give priority to those applications of local educational agencies based on the severity of the emergency, as determined by the Secretary.

(C) The Secretary shall next give priority to applications for modernization grants from local educational agencies that meet

the requirements of paragraph (3)(B) and, among such applications for modernization grants, shall give priority to those applications of local educational agencies based on the severity of the need for modernization, as determined by the Secretary.

(D) The Secretary shall next give priority to applications for modernization grants from local educational agencies that meet the requirements of subparagraph (C) or (D) of paragraph (3) and, among such applications for modernization grants, shall give priority to those applications of local educational agencies based on the severity of the need for modernization, as determined by the Secretary.

### (3) Eligibility requirements

#### (A) Emergency grants

A local educational agency is eligible to receive an emergency grant under paragraph (2)(A) if—

(i) the agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent)—

(I) has no practical capacity to issue bonds;

(II) has minimal capacity to issue bonds and is at not less than 75 percent of the agency's limit of bonded indebtedness; or

(III) does not meet the requirements of subclauses (I) and (II) but is eligible to receive funds under section 7703(b)(2) of this title for the fiscal year; and

(ii) the agency is eligible to receive assistance under subsection (a) for the fiscal year and has a school facility emergency, as determined by the Secretary, that poses a health or safety hazard to the students and school personnel assigned to the school facility.

#### (B) Modernization grants

A local educational agency is eligible to receive a modernization grant under paragraph (2)(C) if—

(i) the agency is eligible to receive assistance under this subchapter for the fiscal year;

(ii) the agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent) meets the requirements of subclause (I), (II), or (III) of subparagraph (A)(i); and

(iii) the agency has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of tax-exempt Federal property, or an increase in enrollment due to the expansion of Federal activities, housing privatization, or the acquisition of Federal property.

#### (C) Additional eligibility for emergency and modernization grants

(i) A local educational agency is eligible to receive an emergency grant or a moderniza-

tion grant under subparagraph (B) or (D) of paragraph (2), respectively, if the agency meets the following requirements:

(I) The agency receives a basic support payment under section 7703(b) of this title for the fiscal year and the agency meets at least one of the following requirements:

(aa) The number of children determined under section 7703(a)(1)(C) of this title for the agency for the preceding school year constituted at least 40 percent of the total student enrollment in the schools of the agency during the preceding school year.

(bb) The number of children determined under subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for the agency for the preceding school year constituted at least 40 percent of the total student enrollment in the schools of the agency during the preceding school year.

(cc) Not less than 10 percent of the property acreage in the agency is exempt from State and local taxation under Federal law.

(II) The agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent) is at not less than 75 percent of the agency's limit of bonded indebtedness.

(III) The agency has an assessed value of real property per student that may be taxed for school purposes that is less than the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the local educational agency is located.

(ii) A local educational agency is also eligible to receive a modernization grant under this subparagraph if the agency is eligible to receive assistance under section 7702 of this title for the fiscal year and meets the requirements of subclauses (II) and (III) of clause (i).

#### (D) Special rule

##### (i) In general

Any school described in clause (ii) that desires to receive an emergency grant or a modernization grant under subparagraph (B) or (D) of paragraph (2), respectively, shall, except as provided in the following sentence, submit an application in accordance with paragraph (6), and shall otherwise be treated as a local educational agency for the purpose of this subsection. The school shall submit an application for the grant to the local educational agency of such school and the agency shall submit the application on behalf of the school to the Secretary.

##### (ii) School described

A school described in this clause is a school that meets the following requirements:

(I) The school is located within the geographic boundaries of a local edu-

educational agency that does not meet the applicable eligibility requirements under subparagraph (A), (B), or (C) for a grant under this subsection.

(II) The school meets at least one of the following requirements:

(aa) The number of children determined under section 7703(a)(1)(C) of this title for the school for the preceding school year constituted at least 40 percent of the total student enrollment in the school during the preceding school year.

(bb) The number of children determined under subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for the school for the preceding school year constituted at least 40 percent of the total student enrollment in the school during the preceding school year.

(III) The school is located within the geographic boundaries of a local educational agency that meets the requirements of subclauses (II) and (III) of subparagraph (C)(i).

**(E) Rule of construction**

For purposes of subparagraph (A)(i), a local educational agency—

(i) has no practical capacity to issue bonds if the total assessed value of real property that may be taxed for school purposes is less than \$25,000,000; and

(ii) has minimal capacity to issue bonds if the total assessed value of real property that may be taxed for school purposes is at least \$25,000,000 but not more than \$50,000,000.

**(4) Award criteria**

In awarding emergency grants and modernization grants under this subsection, the Secretary shall consider the following factors:

(A) The ability of the local educational agency to respond to the emergency, or to pay for the modernization project, as the case may be, as measured by—

(i) the agency's level of bonded indebtedness;

(ii) the assessed value of real property per student that may be taxed for school purposes compared to the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the agency is located;

(iii) the agency's total tax rate for school purposes (or, if applicable, for capital expenditures) compared to the average total tax rate for school purposes (or the average capital expenditure tax rate, if applicable) in the State in which the agency is located; and

(iv) funds that are available to the agency, from any other source, including subsection (a), that may be used for capital expenditures.

(B) The percentage of property in the agency that is nontaxable due to the presence of the Federal Government.

(C) The number and percentages of children described in subparagraphs (A), (B), (C),

and (D) of section 7703(a)(1) of this title served in the school facility with the emergency or served in the school facility proposed for modernization, as the case may be.

(D) In the case of an emergency grant, the severity of the emergency, as measured by the threat that the condition of the school facility poses to the health, safety, and well-being of students.

(E) In the case of a modernization grant—

(i) the severity of the need for modernization, as measured by such factors as—

(I) overcrowding, as evidenced by the use of portable classrooms, or the potential for future overcrowding because of increased enrollment; or

(II) the agency's inability to utilize technology or offer a curriculum in accordance with contemporary State standards due to the physical limitations of the current school facility; and

(ii) the age of the school facility proposed for modernization.

**(5) Other award provisions**

**(A) General provisions**

**(i) Limitations on amount of funds**

**(I) In general**

The amount of funds provided under an emergency grant or a modernization grant awarded under this subsection to a local educational agency that meets the requirements of subclause (II) or (III) of paragraph (3)(A)(i) for purposes of eligibility under subparagraph (A) or (B) of paragraph (3) or that meets the requirements of clause (i) or (ii) of paragraph (3)(C) for purposes of eligibility under such paragraph (3)(C), or to a school that is eligible under paragraph (3)(D)—

(aa) shall not exceed 50 percent of the total cost of the project to be assisted under this subsection; and

(bb) shall not exceed \$4,000,000 during any 4-year period.

**(II) In-kind contributions**

A local educational agency may use in-kind contributions to meet the matching requirement of subclause (I)(aa).

**(ii) Prohibitions on use of funds**

A local educational agency may not use funds provided under an emergency grant or modernization grant awarded under this subsection for—

(I) a project for a school facility for which the agency does not have full title or other interest;

(II) stadiums or other school facilities that are primarily used for athletic contests, exhibitions, or other events for which admission is charged to the general public; or

(III) the acquisition of real property.

**(iii) Supplement, not supplant**

A local educational agency shall use funds provided under an emergency grant or modernization grant awarded under this

subsection only to supplement the amount of funds that would, in the absence of the Federal funds provided under the grant, be made available from non-Federal sources to carry out emergency repairs of school facilities or to carry out the modernization of school facilities, as the case may be, and not to supplant such funds.

**(iv) Maintenance costs**

Nothing in this subsection shall be construed to authorize the payment of maintenance costs in connection with any school facility modernized in whole or in part with Federal funds provided under this subsection.

**(v) Environmental safeguards**

All projects carried out with Federal funds provided under this subsection shall comply with all relevant Federal, State, and local environmental laws and regulations.

**(vi) Carry-over of certain applications**

A local educational agency that applies for an emergency grant or a modernization grant under this subsection for a fiscal year and does not receive the grant for the fiscal year shall have the application for the grant considered for the following fiscal year, subject to the priority requirements of paragraph (2) and the award criteria requirements of paragraph (4).

**(B) Emergency grants; prohibition on use of funds**

A local educational agency that is awarded an emergency grant under this subsection may not use amounts under the grant for the complete or partial replacement of an existing school facility unless such replacement is less expensive or more cost-effective than correcting the identified emergency.

**(6) Application**

A local educational agency that desires to receive an emergency grant or a modernization grant under this subsection shall submit an application to the Secretary at such time and in such manner as the Secretary may require. Each application shall contain the following:

(A) A description of how the local educational agency meets the award criteria under paragraph (4), including the information described in clauses (i) through (iv) of paragraph (4)(A) and subparagraphs (B) and (C) of paragraph (4), and containing such additional information as may be necessary to meet any award criteria for a grant under this subsection as provided by any other Act.

(B) In the case of an application for an emergency grant—

(i) a description of the school facility deficiency that poses a health or safety hazard to the occupants of the facility and a description of how the deficiency will be repaired; and

(ii) a signed statement from an appropriate local official certifying that a deficiency in the school facility threatens the

health or safety of the occupants of the facility or that prevents the use of all or a portion of the building.

(C) In the case of an application for a modernization grant—

(i) an explanation of the need for the school facility modernization project;

(ii) the date on which original construction of the facility to be modernized was completed;

(iii) a listing of the school facilities to be modernized, including the number and percentage of children determined under section 7703(a)(1) of this title in average daily attendance in each school facility; and

(iv) a description of the ownership of the property on which the current school facility is located or on which the planned school facility will be located.

(D) A description of the project for which a grant under this subsection will be used, including a cost estimate for the project.

(E) A description of the interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.

(Pub. L. 89-10, title VII, §7007, formerly title VIII, §8007, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3763; amended Pub. L. 104-134, title I, §101(d) [title III, §306(b)], Apr. 26, 1996, 110 Stat. 1321-211, 1321-236; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 106-398, §1 [[div. A], title XVIII, §1811], Oct. 30, 2000, 114 Stat. 1654, 1654A-383; Pub. L. 107-110, title VIII, §803, Jan. 8, 2002, 115 Stat. 1950; Pub. L. 113-188, title V, §501, Nov. 26, 2014, 128 Stat. 2019; renumbered title VII, §7007, and amended Pub. L. 114-95, title VII, §§7001(c)(2), (d)(1), (3)-(8), (11), 7007, Dec. 10, 2015, 129 Stat. 2074, 2075, 2086.)

AMENDMENTS

2015—Pub. L. 114-95, §7001(d)(11), substituted “section 7714(d) of this title” for “section 7714(e) of this title” wherever appearing.

Pub. L. 114-95, §7001(d)(4), made technical amendment to references in original act which appear in text as references to section 7703(a)(1)(C) of this title wherever appearing.

Pub. L. 114-95, §7001(d)(3), made technical amendment to references in original act which appear in text as references to section 7703(a)(1) of this title wherever appearing.

Subsec. (a)(1). Pub. L. 114-95, §7001(d)(6), made technical amendment to reference in original act which appears in text as reference to section 7703(b) of this title.

Subsec. (a)(2). Pub. L. 114-95, §7001(d)(7), made technical amendment to reference in original act which appears in introductory provisions as reference to section 7703(b)(1) of this title.

Subsec. (a)(3)(A)(i)(I). Pub. L. 114-95, §7007(1)(A)(i), redesignated subcl. (II) relating to 20 percent of the amount appropriated as (I).

Subsec. (a)(3)(A)(i)(II). Pub. L. 114-95, §7007(1)(A)(ii), made technical amendment to reference in original act which appears in text as reference to section 7708(a) of this title.

Pub. L. 114-95, §7007(1)(A)(i), redesignated subcl. (II) relating to 20 percent of the amount appropriated as (I).

Pub. L. 114-95, §7001(d)(5), made technical amendment to reference in original act which appears in text as reference to section 7703(a)(2) of this title.

Subsec. (a)(3)(B)(i)(II). Pub. L. 114-95, §7001(d)(5), made technical amendment to reference in original act

which appears in text as reference to section 7703(a)(2) of this title.

Subsec. (a)(4). Pub. L. 114-95, §7007(1)(B), made technical amendment to reference in original act which appears in text as reference to section 7713(3) of this title.

Subsec. (b)(3)(A)(i)(III). Pub. L. 114-95, §7001(d)(8), made technical amendment to reference in original act which appears in text as reference to section 7703(b)(2) of this title.

Subsec. (b)(3)(C)(i)(I). Pub. L. 114-95, §7001(d)(6), made technical amendment to reference in original act which appears in introductory provisions as reference to section 7703(b) of this title.

Subsec. (b)(3)(C)(i)(I)(cc). Pub. L. 114-95, §7007(2)(A), added item (cc).

Subsec. (b)(3)(C)(ii). Pub. L. 114-95, §7001(d)(1), made technical amendment to reference in original act which appears in text as reference to section 7702 of this title.

Subsec. (b)(6). Pub. L. 114-95, §7007(2)(B)(i), in introductory provisions, substituted “and in such manner” for “, in such manner, and accompanied by such information”.

Subsec. (b)(6)(A). Pub. L. 114-95, §7007(2)(B)(ii), inserted before period at end “, and containing such additional information as may be necessary to meet any award criteria for a grant under this subsection as provided by any other Act”.

Subsec. (b)(6)(F). Pub. L. 114-95, §7007(2)(B)(iii), struck out subpar. (F) which read as follows: “Such other information and assurances as the Secretary may reasonably require.”

2014—Subsec. (b)(7). Pub. L. 113-188 struck out par. (7) which required annual reports containing justifications for each grant awarded under subsec. (b) for the prior fiscal year.

2002—Subsec. (b). Pub. L. 107-110 amended heading and text generally, reorganizing and revising provisions relating to emergency and modernization grants.

2000—Pub. L. 106-398 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) authorizing payments to certain local educational agencies for construction.

1996—Subsec. (a)(2)(B). Pub. L. 104-134 struck out “and in which the agency at any 2 times during the four fiscal years preceding October 20, 1994, was denied by a vote of the agency’s eligible voters a bond referendum for the purposes of school construction or renovation” before semicolon at end.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, and effective with respect to appropriations for use under this subchapter beginning fiscal year 2017, except as otherwise provided in such amendment, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

### § 7708. Facilities

#### (a) Current facilities

From the amount appropriated for any fiscal year under section 7714(e) of this title, the Secretary may continue to provide assistance for school facilities that were supported by the Secretary under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994).

#### (b) Transfer of facilities

##### (1) In general

The Secretary shall, as soon as practicable, transfer to the appropriate local educational

agency or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of the Act of September 23, 1950<sup>1</sup> (Public Law 815, 81st Congress), or under section 204 or 310 of the Act of September 30, 1950<sup>1</sup> (Public Law 874, 81st Congress) (as such Acts were in effect on January 1, 1958).

#### (2) Other requirements

Any such transfer shall be without charge to such agency or entity, and prior to such transfer, the transfer shall be consented to by the local educational agency or other appropriate entity, and may be made on such terms and conditions as the Secretary deems appropriate to carry out the purposes of this subchapter.

(Pub. L. 89-10, title VII, §7008, formerly title VIII, §8008, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3764; renumbered title VII, §7008, and amended Pub. L. 114-95, title VII, §§7001(c)(2), 7008, Dec. 10, 2015, 129 Stat. 2074, 2086.)

#### REFERENCES IN TEXT

Section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994), referred to in subsec. (a), means section 10 of act Sept. 23, 1950, ch. 995, which was classified to section 640 of this title prior to repeal by Pub. L. 103-382, title III, §331(a), Oct. 20, 1994, 108 Stat. 3965.

Section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on January 1, 1958), referred to in subsec. (b)(1), probably means section 10 of act Sept. 23, 1950, ch. 995, as added by Pub. L. 85-620, title I, §101, Aug. 12, 1958, 72 Stat. 553, as amended, which was classified to section 640 of this title prior to repeal by Pub. L. 103-382, title III, §331(a), Oct. 20, 1994, 108 Stat. 3965. The act Sept. 23, 1950, did not contain a section 10 on Jan. 1, 1958.

Sections 204 and 310 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on January 1, 1958), referred to in subsec. (b)(1), probably mean sections 204 and 310 of act Sept. 23, 1950, ch. 995, which were classified to sections 274 and 300, respectively, of this title prior to the general amendment of that Act by Pub. L. 85-620, Aug. 12, 1958, 72 Stat. 548. The act Sept. 30, 1950, did not contain a section 204 or 310 on Jan. 1, 1958.

#### AMENDMENTS

2015—Subsec. (a). Pub. L. 114-95, §7008, substituted “section 7714(e) of this title” for “section 7714(f) of this title”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, and effective with respect to appropriations for use under this subchapter beginning fiscal year 2017, except as otherwise provided in such amendment, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

### § 7709. State consideration of payments in providing State aid

#### (a) General prohibition

Except as provided in subsection (b), a State may not—

(1) consider payments under this subchapter in determining for any fiscal year—

(A) the eligibility of a local educational agency for State aid for free public education; or

<sup>1</sup> See References in Text note below.