

**(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 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 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

(B) contain a list of each institution determined to be an eligible institution under part A including a statement of the reasons for each such determination.

(3) The Secretary may waive the requirement set forth in section 1058(b)(1)(E)<sup>2</sup> of this title in the case of an institution 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.

**(c) Waiver authority with respect to institutions located in an area affected by a Gulf hurricane disaster**

**(1) Waiver authority**

Notwithstanding any other provision of law, unless enacted with specific reference to this section, for any affected institution that was receiving assistance under this subchapter at the time of a Gulf hurricane disaster, the Secretary shall, for each of the fiscal years 2009 through 2011 (and may, for each of the fiscal years 2012 and 2013)—

(A) waive—

(i) the eligibility data requirements set forth in section 1068(d) of this title;

(ii) the wait-out period set forth in section 1059(d) of this title;

(iii) the allotment requirements under section 1063 of this title; and

(iv) the use of the funding formula developed pursuant to section 1063b(f)(3) of this title;

(B) waive or modify any statutory or regulatory provision to ensure that affected institutions that were receiving assistance under this subchapter at the time of a Gulf hurricane disaster are not adversely affected by any formula calculation for fiscal year 2009 or for any of the four succeeding fiscal years, as necessary; and

(C) make available to each affected institution an amount that is not less than the amount made available to such institution under this subchapter for fiscal year 2006, except that for any fiscal year for which the funds appropriated for payments under this subchapter are less than the appropriated level for fiscal year 2006, the amount made available to such institutions shall be ratably reduced among the institutions receiving funds under this subchapter.

**(2) Definitions**

In this subsection:

**(A) Affected institution**

The term “affected institution” means an institution of higher education that—

(i) is—

(I) a part A institution (which term shall have the meaning given the term “eligible institution” under section 1058(b) of this title); or

(II) a part B institution, as such term is defined in section 1061(2) of this title, or as identified in section 1063b(e) of this title;

(ii) is located in an area affected by a Gulf hurricane disaster; and

(iii) is able to demonstrate that, as a result of the impact of a Gulf hurricane disaster, the institution—

(I) incurred physical damage;

(II) has pursued collateral source compensation from insurance, the Federal Emergency Management Agency, and the Small Business Administration, as appropriate; and

(III) was not able to fully reopen in existing facilities or to fully reopen to the pre-hurricane enrollment levels during the 30-day period beginning on August 29, 2005.

**(B) Area affected by a Gulf hurricane disaster; Gulf hurricane disaster**

The terms “area affected by a Gulf hurricane disaster” and “Gulf hurricane disaster” have the meanings given such terms in section 209 of the Higher Education Hurricane Relief Act of 2005 (Public Law 109-148, 119 Stat. 2809).

(Pub. L. 89-329, title III, §392, formerly §352, as added Pub. L. 99-498, title III, §301(a), Oct. 17,

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

<sup>2</sup> See References in Text note below.

1986, 100 Stat. 1304; amended Pub. L. 100-50, §2(a)(14), (15), June 3, 1987, 101 Stat. 336; Pub. L. 102-325, title III, §305(b), July 23, 1992, 106 Stat. 478; renumbered §392 and amended Pub. L. 105-244, title III, §§301(a)(2), 308(d), Oct. 7, 1998, 112 Stat. 1636, 1649; Pub. L. 110-315, title III, §§318, 320(5), Aug. 14, 2008, 122 Stat. 3185, 3188; Pub. L. 111-39, title III, §301(8), July 1, 2009, 123 Stat. 1938.)

#### REFERENCES IN TEXT

Section 1058(b)(1)(E) of this title, referred to in subsec. (b)(3), was repealed and section 1058(b)(1)(F) was redesignated section 1058(b)(1)(E) by Pub. L. 102-325, title III, §302(a)(1)(B), (C), July 23, 1992, 106 Stat. 472.

Section 209 of the Higher Education Hurricane Relief Act of 2005, referred to in subsec. (c)(2)(B), is section 209 of title IV of div. B of Pub. L. 109-148, Dec. 30, 2005, 119 Stat. 2808, which is not classified to the Code.

#### CODIFICATION

Section was formerly classified to section 1067 of this title prior to renumbering by Pub. L. 105-244.

#### AMENDMENTS

2009—Subsec. (a)(6). Pub. L. 111-39 made technical amendment to reference in original act which appears in text as reference to section 1801 of title 25.

2008—Subsec. (b)(2). Pub. L. 110-315, §320(5), substituted “eligible institutions under part A” for “eligible institutions under part A institutions” in introductory provisions. See Codification note above.

Subsec. (c). Pub. L. 110-315, §318, added subsec. (c).

1998—Subsec. (a)(5) to (7). Pub. L. 105-244 struck out “or” at end of par. (5), added par. (6), and redesignated former par. (6) as (7).

1992—Subsec. (a). Pub. L. 102-325 substituted “Secretary may waive” for “Secretary shall waive”.

1987—Subsec. (a)(2). Pub. L. 100-50, §2(a)(14), substituted “low-income” for “low- and middle-income”.

Subsec. (b)(3). Pub. L. 100-50, §2(a)(15), added par. (3).

#### 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 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.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the last item on page 79 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b)(2) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

### § 1068b. Application review process

#### (a) Review panel

(1) All applications submitted under this subchapter by institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary. The Secretary shall assure that no individual assigned under this section to review any application has any conflict of interest with regard to the application which might impair the impartiality with which the individual conducts the review under this section.

(2) The Secretary shall take care to assure that representatives of historically and predominantly Black colleges, Hispanic institutions, Tribal Colleges and Universities, and institutions with substantial numbers of Hispanics, Native Americans, Asian Americans, and Native American Pacific Islanders (including Native Hawaiians) are included as readers.

(3) All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this subchapter and consistent with the provisions of this subchapter, including—

(A) explanations and examples of the types of activities referred to in section 1057(b) of this title that should receive special consideration for grants awarded under part A and of the types of activities referred to in section 1062 of this title that should receive special consideration for grants awarded under part B;

(B) an enumeration of the factors to be used to determine the quality of applications submitted under this subchapter; and

(C) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this subchapter, the amount of any such grant, and the duration of any such grant.

#### (b) Recommendations of panel

In awarding grants under this subchapter, the Secretary shall take into consideration the recommendations of the panel made under sub-section (a).

#### (c) Notification

Not later than June 30 of each year, the Secretary shall notify each institution of higher education making an application under this subchapter of—

(1) the scores given the applicant by the panel pursuant to this section;

(2) the recommendations of the panel with respect to such application; and

(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this subchapter, and any modifications, if any, in the recommendations of the panel made by the Secretary.

#### (d) Exclusion

The provisions of this section shall not apply to applications submitted under part D.

(Pub. L. 89-329, title III, §393, formerly §353, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1305; renumbered §393 and amended Pub. L. 105-244, title III, §§301(a)(2), 308(e), Oct. 7, 1998, 112 Stat. 1636, 1649.)