

make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for the Secretary's decision.

**(6) Copies provided**

Upon completion of the Secretary's final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

**(7) Consolidation**

In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

**(8) Withholding**

If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is eligible under section 7703 of this title until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such moneys during the course of the school year if the Secretary determines that such withholding would substantially disrupt the educational programs of the local educational agency.

**(9) Rejection of determination**

If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Education or by contract with the Bureau of Indian Education, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 7703 of this title. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

**(f) Construction**

This section is based upon the special relationship between the Indian nations and the United States and nothing in this section shall be construed to relieve any State of any duty with respect to any citizens of that State.

(Pub. L. 89-10, title VII, §7004, formerly title VIII, §8004, as added Pub. L. 103-382, title I, §101,

Oct. 20, 1994, 108 Stat. 3759; renumbered title VII, §7004, and amended Pub. L. 114-95, title VII, §§7001(c)(1), (d)(2), 7005, Dec. 10, 2015, 129 Stat. 2074, 2086.)

REFERENCES IN TEXT

Section 1101(d) of the Education Amendments of 1978, referred to in subsec. (e)(9), is section 1101(d) of Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2315, set out below.

AMENDMENTS

2015—Pub. L. 114-95, §7001(d)(2), made technical amendments to references in original act which appear in text as references to section 7703 of this title.

Subsec. (e)(9). Pub. L. 114-95, §7005, substituted "Indian Education" for "Indian Affairs" in two places.

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.

CONTRACT AUTHORITY OF INDIAN TRIBES IF REMEDIAL ACTION IS NOT TAKEN; ELECTION TO HAVE SERVICES PROVIDED BY BUREAU SCHOOLS; SPECIAL REGULATIONS

Pub. L. 95-561, title XI, §1101(d), Nov. 1, 1978, 92 Stat. 2315, directed Secretary of Health, Education, and Welfare, in cooperation with Commissioner of Education, within one year of Nov. 1, 1978, to promulgate special regulations which would provide that where a local educational agency had not undertaken the remedial action required by the Commissioner under 20 U.S.C. 240(b)(3)(C)(vi), the affected tribes could elect for the Bureau of Indian Affairs to provide educational services provided by the local educational agency.

**§ 7705. Application for payments under sections 7702 and 7703 of this title**

**(a) In general**

A local educational agency desiring to receive a payment under section 7702 or 7703 of this title shall—

- (1) submit an application for such payment to the Secretary; and
- (2) provide a copy of such application to the State educational agency.

**(b) Contents**

Each such application shall be submitted in such form and manner as the Secretary may require, including—

- (1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and
- (2) where applicable, an assurance that such agency is in compliance with section 7704 of this title (relating to children residing on Indian lands).

**(c) Deadline for submission**

The Secretary shall establish deadlines for the submission of applications under this section.

**(d) Approval**

**(1) In general**

The Secretary shall approve an application submitted under this section that—

- (A) except as provided in paragraph (2), is filed by the deadline established under subsection (c); and

(B) otherwise meets the requirements of this subchapter.

**(2) Reduction in payment**

The Secretary shall approve an application filed not more than 60 days after a deadline established under subsection (c), or not more than 60 days 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, that otherwise meets the requirements of this subchapter, except that, notwithstanding section 7703(e) of this title, the Secretary shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid.

**(3) Late applications**

**(A) Notice**

The Secretary shall, as soon as practicable after the deadline established under subsection (c), provide to each local educational agency that applied for a payment under section 7702 or 7703 of this title for the prior fiscal year, and with respect to which the Secretary has not received an application for a payment under either such section (as the case may be) for the fiscal year in question, written notice of the failure to comply with the deadline and instruction to ensure that the application is filed not later than 60 days after the date on which the Secretary sends the notice.

**(B) Acceptance and approval of late applications**

The Secretary shall not accept or approve any application of a local educational agency that is filed more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to subparagraph (A).

**(4) State application authority**

Notwithstanding any other provision of law, a State educational agency that had been accepted as an applicant for funds under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994) in fiscal year 1994 shall be permitted to continue as an applicant under the same conditions by which such agency made application during such fiscal year only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

(Pub. L. 89–10, title VII, §7005, formerly title VIII, §8005, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3761; amended Pub. L. 106–398, §1 [[div. A], title XVIII, §1809], Oct. 30, 2000, 114 Stat. 1654, 1654A–382; renumbered title VII, §7005, and amended Pub. L. 114–95, title VII, §§7001(c)(1), (d)(1), 7006, Dec. 10, 2015, 129 Stat. 2074, 2086.)

REFERENCES IN TEXT

Section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994), referred to in subsec.

(d)(4), means section 3 of act Sept. 30, 1950, ch. 1124, which was classified to section 238 of this title prior to repeal by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965.

PRIOR PROVISIONS

A prior section 7706, Pub. L. 89–10, title VIII, §8006, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3762, related to payments for sudden and substantial increases in attendance of military dependents, prior to repeal by Pub. L. 106–398, §1 [[div. A], title XVIII, §1810], Oct. 30, 2000, 114 Stat. 1654, 1654A–383.

AMENDMENTS

2015—Pub. L. 114–95, §7006(1), made technical amendment to reference in original act which appears in section catchline as reference to sections 7702 and 7703 of this title.

Subsec. (a). Pub. L. 114–95, §7006(2), made technical amendment to reference in original act which appears in introductory provisions as reference to section 7703 of this title.

Pub. L. 114–95, §7001(d)(1), made technical amendment to reference in original act which appears in introductory provisions as reference to section 7702 of this title.

Subsec. (b). Pub. L. 114–95, §7006(3), struck out “, and shall contain such information,” after “in such form and manner” in introductory provisions.

Subsec. (b)(2). Pub. L. 114–95, §7006(3)(B), made technical amendment to reference in original act which appears in text as reference to section 7704 of this title.

Subsec. (d)(2). Pub. L. 114–95, §7006(4), made technical amendment to reference in original act which appears in text as reference to section 7703(e) of this title.

Subsec. (d)(3)(A). Pub. L. 114–95, §7006(2), made technical amendment to reference in original act which appears in text as reference to section 7703 of this title.

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.

2000—Subsec. (d)(2). Pub. L. 106–398, §1 [[div. A], title XVIII, §1809(1)], inserted “, or not more than 60 days 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.

IMPACT AID PROGRAM

Pub. L. 116–211, §2, Dec. 4, 2020, 134 Stat. 1017, provided that: “Due to the public health emergency relating to COVID–19 and notwithstanding sections 7002(j) and 7003(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702(j), 7703(c)), a local educational agency desiring to receive a payment under section 7002 or 7003 of such Act (20 U.S.C. 7702, 7703) for fiscal year 2022 that also submitted an application for such payment for fiscal year 2021 shall, in the application submitted under section 7005 of such Act (20 U.S.C. 7705) for fiscal year 2022—

“(1) with respect to a requested payment under section 7002 of such Act—

“(A) use the data described in section 7002(j) of such Act relating to calculating such payment that was submitted by the local educational agency in the application for fiscal year 2021; or

“(B) use the data relating to calculating such payment for the fiscal year required under section 7002(j) of such Act; and  
 “(2) with respect to a requested payment under section 7003 of such Act—

“(A) use the student count data relating to calculating such payment that was submitted by the local educational agency in the application for fiscal year 2021, provided that payments for fiscal year 2022 shall be calculated by the Secretary using the expenditures and rates described in clauses (i), (ii), (iii), and (iv) of section 7003(b)(1)(C) of such Act that would otherwise apply for fiscal year 2022; or

“(B) use the student count data relating to calculating such payment for the fiscal year required under section 7003(c) of such Act.”

## § 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