

5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

### § 7711. Administrative hearings and judicial review

#### (a) Administrative hearings

A local educational agency and a State that is adversely affected by any action of the Secretary under this subchapter shall be entitled to a hearing on such action in the same manner as if such agency were a person under chapter 5 of title 5 if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this subchapter.

#### (b) Judicial review of secretarial action

##### (1) In general

A local educational agency or a State aggrieved by the Secretary's final decision following an agency proceeding under subsection (a) may, within 30 working days (as determined by the local educational agency or State) after receiving notice of such decision, file with the United States court of appeals for the circuit in which such agency or State is located a petition for review of that action. The clerk of the court shall promptly transmit a copy of the petition to the Secretary. The Secretary shall then file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28.

##### (2) Findings of fact

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence. The Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

##### (3) Review

The court shall have exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 89-10, title VII, §7011, formerly title VIII, §8011, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3768; amended Pub. L. 106-398, §1 [[div. A], title XVIII, §1814(a)(1), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-387; renumbered title VII, §7011, and amended Pub. L. 114-95, title VII, §§7001(c)(2), 7011, Dec. 10, 2015, 129 Stat. 2074, 2087.)

#### AMENDMENTS

2015—Subsec. (a). Pub. L. 114-95, §7011, struck out “or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994)” after “any action of the Secretary under this subchapter”.

2000—Subsec. (a). Pub. L. 106-398, §1 [[div. A], title XVIII, §1814(a)(1)], inserted “if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this subchapter” before period at end.

Subsec. (b)(1). Pub. L. 106-398, §1 [[div. A], title XVIII, §1814(b)], substituted “30 working days (as determined by the local educational agency or State)” for “60 days”.

#### 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 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title XVIII, §1814(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-387, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to an action of the Secretary under title VIII [now VII] of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701 et seq.) initiated on or after the date of the enactment of this Act [Oct. 30, 2000].”

### § 7712. Forgiveness of overpayments

Notwithstanding any other provision of law, the Secretary may forgive the obligation of a local educational agency to repay, in whole or in part, the amount of any overpayment received under this subchapter, or under this subchapter's predecessor authorities, if the Secretary determines that the overpayment was made as a result of an error made by—

(1) the Secretary; or

(2) the local educational agency and repayment of the full amount of the overpayment will result in an undue financial hardship on the agency and seriously harm the agency's educational program.

(Pub. L. 89-10, title VII, §7012, formerly title VIII, §8012, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3769; amended Pub. L. 106-398, §1 [[div. A], title XVIII, §1815], Oct. 30, 2000, 114 Stat. 1654, 1654A-387; renumbered title VII, §7012, Pub. L. 114-95, title VII, §7001(c)(2), Dec. 10, 2015, 129 Stat. 2074.)

#### AMENDMENTS

2000—Pub. L. 106-398 substituted “under this subchapter's predecessor authorities” for “under the Act of September 30, 1950 (Public Law 874, 81st Congress) or the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Acts were in effect on the day preceding October 20, 1994)” in introductory provisions.

### § 7713. Definitions

For purposes of this subchapter:

#### (1) Armed Forces

The term “Armed Forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

#### (2) Average per-pupil expenditure

The term “average per-pupil expenditure” means—

(A) the aggregate current expenditures of all local educational agencies in the State; divided by

(B) the total number of children in average daily attendance for whom such agencies provided free public education.

**(3) Construction**

The term “construction” means—

(A) the preparation of drawings and specifications for school facilities;

(B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;

(C) inspecting and supervising the construction of school facilities; and

(D) debt service for such activities.

**(4) Current expenditures**

The term “current expenditures” means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds awarded under part A of subchapter I. The determination of whether an expenditure for the replacement of equipment is considered a current expenditure or a capital outlay shall be determined in accordance with generally accepted accounting principles as determined by the State.

**(5) Federal property**

**(A) In general**

Except as provided in subparagraphs (B) through (F), the term “Federal property” means real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law, or policy, and that is—

(i) owned by the United States or leased by the United States from another entity;

(ii)(I) held in trust by the United States for individual Indians or Indian tribes;

(II) held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States;

(III) conveyed at any time under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] to a Native individual, Native group, or village or regional corporation (including single family occupancy properties that may have been subsequently sold or leased to a third party), except that property that is conveyed under such Act—

(aa) that is not taxed is, for the purposes of this paragraph, considered tax-exempt due to Federal law; and

(bb) is considered Federal property for the purpose of this paragraph if the property is located within a Regional Educational Attendance Area that has no taxing power;

(IV) public land owned by the United States that is designated for the sole use and benefit of individual Indians or Indian tribes; or

(V) used for low-rent housing, as described in paragraph (10), that is located

on land described in subclause (I), (II), (III), or (IV) of this clause or on land that met one of those descriptions immediately before such property’s use for such housing;

(iii)(I) part of a low-rent housing project assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.];

(II) used to provide housing for homeless children at closed military installations pursuant to section 11411 of title 42; or

(III) used for affordable housing assisted under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(iv) owned by a foreign government or by an international organization.

**(B) Schools providing flight training to members of Air Force**

The term “Federal property” includes, so long as not subject to taxation by any State or any political subdivision of a State, and whether or not that tax exemption is due to Federal agreement, law, or policy, any school providing flight training to members of the Air Force under contract with the Air Force at an airport owned by a State or political subdivision of a State.

**(C) Non-Federal easements, leases, licenses, permits, improvements, and certain other real property**

The term “Federal property” includes, whether or not subject to taxation by a State or a political subdivision of a State—

(i) any non-Federal easement, lease, license, permit, or other such interest in Federal property as otherwise described in this paragraph, but not including any non-Federal fee-simple interest;

(ii) any improvement on Federal property as otherwise described in this paragraph; and

(iii) real property that, immediately before its sale or transfer to a non-Federal party, was owned by the United States and otherwise qualified as Federal property described in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.

**(D) Certain Postal Service property and pipelines and utility lines**

Notwithstanding any other provision of this paragraph, the term “Federal property” does not include—

(i) any real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal services; or

(ii) pipelines and utility lines.

**(E) Property with respect to which State or local tax revenues may not be expended, allocated, or available for free public education**

Notwithstanding any other provision of this paragraph, “Federal property” does not include any property on which children reside that is otherwise described in this paragraph if—

(i) no tax revenues of the State or of any political subdivision of the State may be expended for the free public education of children who reside on that Federal property; or

(ii) no tax revenues of the State are allocated or available for the free public education of such children.

**(F) Property located in the State of Oklahoma owned by Indian housing authority for low-income housing**

The term “Federal property” includes any real property located in the State of Oklahoma that—

(i) is owned by an Indian housing authority and used for low-income housing (including housing assisted under or authorized by the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.]); and

(ii) at any time—

(I) was designated by treaty as tribal land; or

(II) satisfied the definition of Federal property under section 403(1)(A) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994).

**(6) Free public education**

The term “free public education” means education that is provided—

(A) at public expense, under public supervision and direction, and without tuition charge; and

(B) as elementary or secondary education, as determined under State law, except that, notwithstanding State law, such term—

(i) includes preschool education; and

(ii) does not include any education provided beyond grade 12.

**(7) Indian lands**

The term “Indian lands” means any Federal property described in paragraph (5)(A)(ii) or (5)(F).

**(8) Local contribution percentage**

**(A) In general**

The term “local contribution percentage” means the percentage of current expenditures in the State derived from local and intermediate sources, as reported to and verified by the National Center for Education Statistics.

**(B) Hawaii and District of Columbia**

Notwithstanding subparagraph (A), the local contribution percentage for Hawaii and for the District of Columbia shall be the average local contribution percentage for the 50 States and the District of Columbia.

**(9) Local educational agency**

**(A) In general**

Except as provided in subparagraph (B), the term “local educational agency”—

(i) means a board of education or other legally constituted local school authority having administrative control and direc-

tion of free public education in a county, township, independent school district, or other school district; and

(ii) includes any State agency that directly operates and maintains facilities for providing free public education.

**(B) Exception**

The term “local educational agency” does not include any agency or school authority that the Secretary determines on a case-by-case basis—

(i) was constituted or reconstituted primarily for the purpose of receiving assistance under this subchapter or the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994) or increasing the amount of such assistance; or

(ii) is not constituted or reconstituted for legitimate educational purposes.

**(10) Low-rent housing**

The term “low-rent housing” means housing located on property that is described in paragraph (5)(A)(iii).

**(11) Modernization**

The term “modernization” means repair, renovation, alteration, or construction, including—

(A) the concurrent installation of equipment; and

(B) the complete or partial replacement of an existing school facility, but only if such replacement is less expensive and more cost-effective than repair, renovation, or alteration of the school facility.

**(12) Revenue derived from local sources**

The term “revenue derived from local sources” means—

(A) revenue produced within the boundaries of a local educational agency and available to such agency for such agency’s use; or

(B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.

**(13) School facilities**

The term “school facilities” includes—

(A) classrooms and related facilities; and

(B) equipment, machinery, and utilities necessary or appropriate for school purposes.

(Pub. L. 89–10, title VII, §7013, formerly title VIII, §8013, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3769; amended Pub. L. 106–398, §1 [[div. A], title XVIII, §1816], Oct. 30, 2000, 114 Stat. 1654, 1654A–387; renumbered title VII, §7013, and amended Pub. L. 114–95, title VII, §§7001(c)(2), 7012, Dec. 10, 2015, 129 Stat. 2074, 2087.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (5)(A)(ii)(III), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The United States Housing Act of 1937, referred to in par. (5)(A)(iii)(I), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in par. (5)(A)(iii)(III), (F)(i), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994), referred to in pars. (5)(F)(ii)(II) and (9)(B)(i), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, which was classified generally to chapter 13 (§236 et seq.) of this title prior to repeal by Pub. L. 103-382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965. Section 403 of the Act was classified to section 244 of this title. For complete classification of this Act to the Code, see Tables.

#### AMENDMENTS

2015—Par. (1). Pub. L. 114-95, §7012(1), substituted “Marine Corps, and Coast Guard” for “and Marine Corps”.

Par. (4). Pub. L. 114-95, §7012(2), struck out “and subchapter VI” after “part A of subchapter I”.

Par. (5)(A)(ii)(III). Pub. L. 114-95, §7012(3)(A), added subcl. (III) and struck out former subcl. (III) which read as follows: “conveyed at any time under the Alaska Native Claims Settlement Act to a Native individual, Native group, or village or regional corporation;”.

Par. (5)(A)(iii)(II). Pub. L. 114-95, §7012(3)(B)(i), made technical amendment to reference in original act which appears in text as reference to section 11411 of title 42.

Par. (5)(A)(iii)(III). Pub. L. 114-95, §7012(3)(B)(ii), added subcl. (III) and struck out former subcl. (III) which read as follows: “used for affordable housing assisted under the Native American Housing Assistance and Self-Determination Act of 1996; or”.

2000—Par. (5)(A)(iii)(III). Pub. L. 106-398, §1 [[div. A], title XVIII, §1816(1)(A)], added subcl. (III).

Par. (5)(F)(i). Pub. L. 106-398, §1 [[div. A], title XVIII, §1816(1)(B)], substituted “or authorized by the Native American Housing Assistance and Self-Determination Act of 1996” for “the mutual help ownership opportunity program under section 202 of the United States Housing Act of 1937”.

Par. (8)(B). Pub. L. 106-398, §1 [[div. A], title XVIII, §1816(2)], substituted “the 50 States and the District of Columbia” for “all States”.

Pars. (11) to (13). Pub. L. 106-398, §1 [[div. A], title XVIII, §1816(3), (4)], added par. (11) and redesignated former pars. (11) and (12) as (12) and (13), respectively.

#### 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.

### § 7713a. School facilities for children of Government employees and other residents in Indian reservations, national parks, and national monuments

In order to facilitate the providing of educational opportunities for children of Government employees and other residents in Indian reservations, the national parks and national monuments the Secretary of the Interior is

hereby authorized in his discretion to make available for elementary school purposes therein, without charge, space in Government-owned buildings, when such space may be available for such purposes without detriment to the official business of such Indian reservations, national parks and national monuments.

(July 16, 1940, ch. 629, 54 Stat. 761.)

#### CODIFICATION

Section was not enacted as part of the Elementary and Secondary Education Act of 1965, which comprises this chapter.

Section was formerly classified to section 244a of this title. Prior thereto, section was classified to section 76a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

### § 7714. Authorization of appropriations

#### (a) Payments for Federal acquisition of real property

For the purpose of making payments under section 7702 of this title, there are authorized to be appropriated \$66,813,000 for each of fiscal years 2017 through 2019, and \$71,997,917 for fiscal year 2020.

#### (b) Basic payments; payments for heavily impacted local educational agencies

For the purpose of making payments under section 7703(b) of this title, there are authorized to be appropriated \$1,151,233,000 for each of fiscal years 2017 through 2019, and \$1,240,572,618 for fiscal year 2020.

#### (c) Payments for children with disabilities

For the purpose of making payments under section 7703(d) of this title, there are authorized to be appropriated \$48,316,000 for each of fiscal years 2017 through 2019, and \$52,065,487 for fiscal year 2020.

#### (d) Construction

For the purpose of carrying out section 7707 of this title, there are authorized to be appropriated \$17,406,000 for each of fiscal years 2017 through 2019, and \$18,756,765 for fiscal year 2020.

#### (e) Facilities maintenance

For the purpose of carrying out section 7708 of this title, there are authorized to be appropriated \$4,835,000 for each of fiscal years 2017 through 2019, and \$5,210,213 for fiscal year 2020.

(Pub. L. 89-10, title VII, §7014, formerly title VIII, §8014, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3772; amended Pub. L. 105-78, title III, Nov. 13, 1997, 111 Stat. 1498; Pub. L. 106-398, §1 [[div. A], title XVIII, §1817], Oct. 30, 2000, 114 Stat. 1654, 1654A-388; Pub. L. 107-110, title VIII, §805, Jan. 8, 2002, 115 Stat. 1956; renumbered title VII, §7014, and amended Pub. L. 114-95, title VII, §§7001(c)(2), (d)(1), (6), 7013, Dec. 10, 2015, 129 Stat. 2074, 2088.)

#### AMENDMENTS

2015—Subsec. (a). Pub. L. 114-95, §7013(1), substituted “\$66,813,000 for each of fiscal years 2017 through 2019, and \$71,997,917 for fiscal year 2020” for “\$32,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years”.

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.