

**(b) Prohibition**

An institution of higher education may not use funds received under this chapter to increase its endowment.

**(c) Additional prohibition**

No funds awarded under this chapter may be used for—

- (1) the maintenance of systems, equipment, or facilities;
- (2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or
- (3) modernization, renovation, or repair of facilities—
  - (A) used for sectarian instruction or religious worship; or
  - (B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

(Pub. L. 111-5, div. A, title XIV, §14004, Feb. 17, 2009, 123 Stat. 281.)

**§ 10005. State applications****(a) In general**

The Governor of a State desiring to receive an allocation under section 10001(d) of this title shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

**(b) Application**

In such application, the Governor shall—

- (1) include the assurances described in subsection (d);
- (2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and
- (3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and, in such cases, what amount will be used to meet such requirements.

**(c) Incentive grant application**

The Governor of a State seeking a grant under section 10006 of this title shall—

- (1) submit an application for consideration;
- (2) describe the status of the State's progress in each of the areas described in subsection (d), and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II)<sup>1</sup> of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;
- (3) describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi)<sup>1</sup> of the ESEA (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to

help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies; and

(5) include a plan for evaluating the State's progress in closing achievement gaps.

**(d) Assurances**

An application under subsection (b) shall include the following assurances:

**(1) Maintenance of effort****(A) Elementary and secondary education**

The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

**(B) Higher education**

The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.

**(2) Achieving equity in teacher distribution**

The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C)<sup>1</sup> of the ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

**(3) Improving collection and use of data**

The State will establish a longitudinal data system that includes the elements described in section 9871(e)(2)(D) of this title.

**(4) Standards and assessments**

The State—

(A) will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a)<sup>1</sup> of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b)<sup>1</sup> of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with section 9871(e)(1)(A)(ii) of this title.

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

**(5) Supporting struggling schools**

The State will ensure compliance with the requirements of section 1116(b)(7)(C)(iv)<sup>1</sup> and section 1116(b)(8)(B)<sup>1</sup> of the ESEA with respect to schools identified under such sections.

**(6) Improving early childhood care and education**

The State will take actions to—

(A) increase the number and percentage of low-income and disadvantaged children in each age group of infants, toddlers, and preschoolers who are enrolled in high-quality early learning programs;

(B) design and implement an integrated system of high-quality early learning programs and services; and

(C) ensure that any use of assessments conforms with the recommendations of the National Research Council's reports on early childhood.

(Pub. L. 111–5, div. A, title XIV, §14005, Feb. 17, 2009, 123 Stat. 282; Pub. L. 111–8, div. F, title V, §523(d)–(f), Mar. 11, 2009, 123 Stat. 806; Pub. L. 112–10, div. B, title VIII, §1832(b)(1), Apr. 15, 2011, 125 Stat. 164.)

**Editorial Notes**

## REFERENCES IN TEXT

ESEA, referred to in subsec. (b)(3), is the Elementary and Secondary Education Act of 1965, Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, which is classified generally to chapter 70 (§6301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

IDEA, referred to in subsec. (b)(3), is the Individuals with Disabilities Education Act, Pub. L. 91–230, title VI, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

Section 1111 of the ESEA, referred to in subsecs. (c)(2), (3) and (d)(2), (4)(A), (B), is section 1111 of Pub. L. 89–10, which is classified to section 6311 of this title. Section 1111 was amended generally by Pub. L. 114–95, title I, §1005, Dec. 10, 2015, 129 Stat. 1820, and as so amended, does not contain a subsec. (b)(2)(C)(v), (vi), (3)(C)(ix), (6), or (8)(C).

Section 9871 of this title, referred to in subsec. (d)(3), (4)(C), was in the original “section 6401”, and was translated as meaning section 6201 of Pub. L. 110–69 to reflect the probable intent of Congress and the renumbering of section 6401 of Pub. L. 110–69 as section 6201 by Pub. L. 111–358, title X, §1002(b)(3), Jan. 4, 2011, 124 Stat. 4048.

Section 6112 of the ESEA, referred to in subsec. (d)(4)(A), is section 6112 of Pub. L. 89–10, which was classified to section 7301a of this title, prior to repeal by Pub. L. 114–95, §5, title V, §5001(b)(1), Dec. 10, 2015, 129 Stat. 1806, 2040, effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs.

Section 1116 of the ESEA, referred to in subsec. (d)(5), is section 1116 of Pub. L. 89–10, which was classified to section 6316 of this title, prior to repeal by Pub. L. 114–95, §5, title I, §1000(1), Dec. 10, 2015, 129 Stat. 1806, 1814, effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs. Section 1000(2) of Pub. L. 114–95 renumbered section 1118 of Pub. L. 89–10 as section 1116, which is classified to section 6318 of this title. Section 6318 does not contain a subsec. (b)(7) or (8).

## AMENDMENTS

2011—Subsec. (d)(6). Pub. L. 112–10 added par. (6).

2009—Subsec. (a). Pub. L. 111–8, §523(d), substituted “10001(d)” for “10001”.

Subsec. (d)(4)(C). Pub. L. 111–8, §523(e), substituted “9871(e)(1)(A)(ii)” for “9871(e)(1)(9)(A)(ii)”.

Subsec. (d)(5). Pub. L. 111–8, §523(f), substituted “1116(b)(7)(C)(iv)” for “1116(a)(7)(C)(iv)” and “1116(b)(8)(B)” for “1116(a)(8)(B)”.

**§ 10006. State incentive grants****(a) In general****(1) Reservation**

From the total amount reserved under section 10001(c) of this title that is not used for section 10007 of this title, the Secretary may reserve up to 1 percent for technical assistance to States to assist them in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 10005(d) of this title.

**(2) Remainder**

Of the remaining funds, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 10005(d) of this title.

**(b) Basis for grants**

The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 10005 of this title and such other criteria as the Secretary determines appropriate, which may include a State's need for assistance to help meet the objective of paragraphs<sup>1</sup> (2), (3), (4), (5), or (6) of section 10005(d) of this title.

**(c) Subgrants to local educational agencies****(1) In general**

Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

**(2) Exception**

Paragraph (1) does not apply to grants made by the Secretary to consortia of States to develop academic assessments that are aligned with academic standards, or to a State or States for improving early childhood care and education except that such a State may use its grant funds to make subgrants to public or private agencies and organizations for activities consistent with the purposes of the grant.

(Pub. L. 111–5, div. A, title XIV, §14006, Feb. 17, 2009, 123 Stat. 283; Pub. L. 111–117, div. D, title III, §310, Dec. 16, 2009, 123 Stat. 3272; Pub. L. 112–10, div. B, title VIII, §1832(b)(2), Apr. 15, 2011, 125 Stat. 164; Pub. L. 112–74, div. F, title III, §308, Dec. 23, 2011, 125 Stat. 1100.)

**Editorial Notes**

## REFERENCES IN TEXT

ESEA, referred to in subsec. (c)(1), is the Elementary and Secondary Education Act of 1965, Pub. L. 89–10,

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