

the full per capita costs of educating such Indian students.

(Apr. 16, 1934, ch. 147, § 6, as added Pub. L. 93-638, title II, § 202, Jan. 4, 1975, 88 Stat. 2214.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 457 of this title prior to editorial reclassification and renumbering as this section.

§ 5348. Computation of student count

(a) Definitions

For the purposes of sections 5342 to 5348 of this title, the following definitions apply:

(1) Contracting party

The term “contracting party” means an entity that has a contract through a program authorized under sections 5342 to 5348 of this title.

(2) Eligible entity

The term “eligible entity” means an entity that is eligible to apply for a contract for a supplemental or operational support program under sections 5342 to 5348 of this title, as outlined in section 5342 of this title.

(3) Existing contracting party

The term “existing contracting party” means a contracting party that has a contract under sections 5342 to 5348 of this title that is in effect on December 31, 2018.

(4) JOM Modernization Act

The term “JOM Modernization Act” means the Johnson-O’Malley Supplemental Indian Education Program Modernization Act.

(5) New contracting party

The term “new contracting party” means an entity that enters into a contract under sections 5342 to 5348 of this title after December 31, 2018.

(6) Secretary

The term “Secretary” means the Secretary of the Interior.

(b) Determination of the number of eligible Indian students

(1) Initial determinations

(A) In general

The Secretary shall make an initial determination of the number of eligible Indian students served or potentially served by each eligible entity in accordance with subparagraph (B).

(B) Process for making the initial determination

(i) Preliminary report

Not later than 180 days after December 31, 2018, the Secretary shall publish a preliminary report describing the number of eligible Indian students served or potentially served by each eligible entity, using the most applicable and accurate data (as determined by the Secretary in consultation with eligible entities) from the fiscal

year preceding the fiscal year for which the initial determination is to be made from—

(I) the Bureau of the Census;

(II) the National Center for Education Statistics; or

(III) the Office of Indian Education of the Department of Education.

(ii) Data reconciliation

To improve the accuracy of the preliminary report described in clause (i) prior to publishing, the Secretary shall reconcile the data described in the preliminary report with—

(I) each existing contracting party’s data regarding the number of eligible Indian students served by the existing contracting party for the fiscal year preceding the fiscal year for which the initial determination is made; and

(II) identifiable tribal enrollment information.

(iii) Comment period

After publishing the preliminary report under clause (i) in accordance with clause (ii), the Secretary shall establish a 60-day comment period to gain feedback about the preliminary report from eligible entities, which the Secretary shall take into consideration in preparing the final report described in clause (iv).

(iv) Final report

Not later than 120 days after concluding the consultation described in clause (iii), the Secretary shall publish a final report on the initial determination of the number of eligible Indian students served or potentially served by each eligible entity, including justification for not including any feedback gained during such consultation, if applicable.

(2) Subsequent academic years

For each academic year following the fiscal year for which an initial determination is made under paragraph (1) to determine the number of eligible Indian students served or potentially served by a contracting party, the Secretary shall determine the number of eligible Indian students served by the contracting party based on the reported eligible Indian student count numbers identified through the reporting process described in subsection (c).

(c) Contracting party student count reporting compliance

(1) In general

For each academic year following the fiscal year for which an initial determination is made under subsection (b) to determine the number of eligible Indian students served or potentially served by a contracting party, the contracting party shall submit to the Secretary a report describing the number of eligible Indian students who were served using amounts allocated to such party under sections 5342 to 5348 of this title during the previous fiscal year. The report shall also include an accounting of the amounts and purposes for which the contract funds were expended.

(2) Failure to comply

A contracting party that fails to submit a report under paragraph (1) shall receive no amounts under sections 5342 to 5348 of this title for the fiscal year following the academic year for which the report should have been submitted.

(3) Notice

The Secretary shall provide contracting parties with timely information relating to—

- (A) initial and final reporting deadlines; and
- (B) the consequences of failure to comply outlined in paragraph (2).

(4) Technical assistance

The Secretary, acting through the Director of the Bureau of Indian Education, shall provide technical assistance and training on compliance with the reporting requirements of this subsection to contracting parties.

(d) Annual report**(1) In general**

The Secretary shall prepare an annual report, including the most recent determination of the number of eligible Indian students served by each contracting party, recommendations on appropriate funding levels for the program based on such determination, and an assessment of the contracts under sections 5342 to 5348 of this title that the Secretary—

- (A) may include in the budget request of the Department of the Interior for each fiscal year;
- (B) shall submit to—
 - (i) the Committee on Indian Affairs of the Senate;
 - (ii) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate;
 - (iii) the Committee on Education and the Workforce of the House of Representatives; and
 - (iv) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives; and
- (C) shall make publicly available.

(2) Manner of preparation

The Secretary shall prepare the report under paragraph (1) in a manner so as to prevent or minimize new administrative burdens on contracting parties receiving funds under sections 5342 to 5348 of this title.

(e) Hold harmless**(1) Initial hold harmless****(A) In general**

Except as provided under subparagraph (B) and subject to subparagraphs (C) and (D), for a fiscal year, an existing contracting party shall not receive an amount under sections 5342 to 5348 of this title that is less than the amount that such existing contracting party received under sections 5342 to 5348 of this title for the fiscal year preceding December 31, 2018.

(B) Exceptions**(i) In general**

An existing contracting party shall receive an amount under sections 5342 to 5348 of this title for a fiscal year that is less than the amount that the existing contracting party received under sections 5342 to 5348 of this title for the fiscal year preceding December 31, 2018, if one or more of the following conditions is met:

(I) Failure to report

The existing contracting party failed to submit a complete report described in subsection (c) that was most recently due from the date of the determination.

(II) Violations of contract or law

The Secretary has found that the existing contracting party has violated the terms of a contract entered into under sections 5342 to 5348 of this title or has otherwise violated Federal law.

(III) Student count decrease

The number of eligible Indian students reported by such existing contracting party under subsection (c) has decreased below the number of eligible Indian students served by the existing contracting party in the fiscal year preceding December 31, 2018.

(ii) Amount of funding reduction for existing contracting parties reporting decreased student counts

A reduction in an amount pursuant to clause (i)(III) shall not be done in such a manner that the existing contracting party receives an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student such party received for the fiscal year preceding December 31, 2018.

(C) Ratable reductions in appropriations

If the funds available under sections 5342 to 5348 of this title for a fiscal year are insufficient to pay the full amounts that all existing contracting parties are eligible to receive under subparagraph (A) for the fiscal year, the Secretary shall ratably reduce those amounts for the fiscal year.

(D) Sunset

This paragraph shall cease to be effective 4 years after December 31, 2018.

(2) Maximum decrease after 4 years

Beginning 4 years after December 31, 2018, no contracting party shall receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous fiscal year.

(f) Funding allocation and reform**(1) Funding reform**

The Secretary may make recommendations for legislation to increase the amount of funds available per eligible Indian student through contracts under sections 5342 to 5348 of this title to equal to or greater than the amount of funds that were available per eligible Indian

student through contracts under sections 5342 to 5348 of this title for fiscal year 1995, and attempt to identify additional sources of funding that do not reallocate existing funds otherwise utilized by Indian students served—

- (A) by the Bureau of Indian Education; or
- (B) under title VI of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7401 et seq.).

(2) Increases in program funding

(A) In general

Subject to subsection (e) and subparagraph (B), for any fiscal year for which the amount appropriated to carry out sections 5342 to 5348 of this title exceeds the amount appropriated to carry out sections 5342 to 5348 of this title for the preceding fiscal year, the excess amounts shall—

- (i) be allocated only to those contracting parties that did not receive their full per student funding allocation for the previous fiscal year; and
- (ii) be allocated first to new contracting parties that did not receive their full per student funding allocation for the previous fiscal year.

(B) Parity in funding

Subparagraph (A) shall have no effect after the first fiscal year for which each contracting party receives their full per student funding allocation.

(g) Increased geographical and tribal participation in the Johnson-O'Malley supplementary education program

To the maximum extent practicable, the Secretary shall consult with Indian tribes and contact State educational agencies, local educational agencies, and Alaska Native organizations that have not previously entered into a contract under sections 5342 to 5348 of this title—

- (1) to determine the interest of the Indian tribes, State educational agencies, local educational agencies, and Alaska Native organizations, in entering into such contracts; and
- (2) to share information relating to the process for entering into a contract under sections 5342 to 5348 of this title.

(h) Rulemaking

(1) In general

Not later than 1 year after December 31, 2018, the Secretary, acting through the Director of the Bureau of Indian Education, shall undertake and complete a rulemaking process, following the provisions of subchapter II of chapter 5 of title 5, to—

- (A) determine how the regulatory definition of “eligible Indian student” may be revised to clarify eligibility requirements for contracting parties under sections 5342 to 5348 of this title;
- (B) determine, as necessary, how the funding formula described in section 273.31 of title 25, Code of Federal Regulations (as in effect on the day before December 31, 2018) may be clarified and revised to ensure full participation of contracting parties and provide clarity on the funding process under sections 5342 to 5348 of this title; and

- (C) otherwise reconcile and modernize the rules to comport with the activities of the contracting parties under sections 5342 to 5348 of this title as of December 31, 2018.

(2) Report

Not later than 30 days after the date the rulemaking under paragraph (1) is complete, the Secretary shall submit a report to Congress describing the results of such rulemaking and necessary recommendations to ensure the full implementation of such rulemaking.

(i) Student privacy

The Secretary shall ensure that data is collected and each report is prepared under this section in a manner that protects the rights of eligible Indian students in accordance with section 1232g of title 20 (commonly referred to as the Family Educational Rights and Privacy Act of 1974).

(j) GAO Report

Not later than 18 months after the final report described in subsection (b)(1)(B)(iv) is published, the Comptroller General shall—

- (1) conduct a review of the implementation of this section during the preceding 2-year period, including any factors impacting—
 - (A) the accuracy of the determinations of the number of eligible Indian students under this section;
 - (B) the communication between the Bureau of Indian Education and contracting parties; and
 - (C) the efforts by the Bureau of Indian Education to ensure accurate and sufficient distribution of funding for Indian students;

(2) submit a report describing the results of the review under paragraph (1) to—

- (A) the Committee on Indian Affairs of the Senate;
- (B) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate;
- (C) the Subcommittee on Indian, Insular and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives; and
- (D) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives; and

(3) make such report publicly available.

(k) Effect

Nothing in this section—

- (1) creates a new program or duplicates program activities under sections 5342 to 5348 of this title; or
- (2) replaces or diminishes the effect of regulations to carry out sections 5342 to 5348 of this title existing on the day before December 31, 2018, unless expressly provided in this section.

(Apr. 16, 1934, ch. 147, §7, as added Pub. L. 115-404, §2, Dec. 31, 2018, 132 Stat. 5349.)

Editorial Notes

REFERENCES IN TEXT

The Johnson-O'Malley Supplemental Indian Education Program Modernization Act, referred to subsec.

(a)(4), is Pub. L. 115-404, Dec. 31, 2018, 132 Stat. 5349, which enacted this section and provisions set out as a note under section 5301 of this title. For complete classification of this Act to the Code, see Short Title of 2018 Amendment note set out under section 5301 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (f)(1)(B), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Title VI of the Act is classified generally to subchapter VI (§7401 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

SUBCHAPTER III—INDIAN EDUCATION ASSISTANCE

§ 5351. School construction, acquisition, or renovation contracts

(a) Authorization; prerequisites

The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) Eligibility requirements for assistance in federally-affected areas; applicability to projects in determining maximum amount, allocation, of funds, etc.

The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this section on those projects which meet the eligibility requirements under subsections (a) and (b) of section 644¹ of title 20. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the Secretary of Education under subsections (a) and (b) of section 644¹ of title 20. The Secretary of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after January 4, 1975, a list of those projects eligible for funding under subsections (a) and (b) of section 644¹ of title 20.

(c) Eligibility of private schools to receive funds; maximum amount

The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this section on any school eligible to receive funds under section 5355 of this title.

(d) Duties of State education agencies pursuant to contracts

Any contract entered into by the Secretary pursuant to this section shall contain provisions

requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) Advisory consultations by Secretary with affected entities and governing bodies prior to contracts; applicability

The Secretary shall consult with the entity designated pursuant to section 5346 of this title, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) Evaluation and report to Congress of effectiveness of construction, etc., programs; scope and content of report

Within ninety days following the expiration of the three year period following January 4, 1975, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;¹

(2) a description of the working relationship between the Department of the Interior and the Department of Education including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 644¹ of title 20 from the Department of Education to the Department of the Interior.

(g) Authorization of appropriations

For the purpose of carrying out the provisions of this section, there is authorized to be appro-

¹ See References in Text note below.