S. 2018

To reauthorize Public Law 81-815 (School Construction), and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 14 (legislative day, APRIL 11), 1994

Mr. PRESSLER introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To reauthorize Public Law 81-815 (School Construction), and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SCHOOL CONSTRUCTION.

The Act entitled “An Act relating to the construction of school facilities in areas affected by Federal activities, and for other purposes” approved September 23, 1950 (20 U.S.C. 631 et seq.) is amended to read as follows:
"SECTION 1. STATEMENT OF PURPOSE AND AUTHORIZATION OF APPROPRIATIONS.

(a) Statement of Purpose.—It is the purpose of this Act to provide financial assistance to federally impacted school districts which are urgently in need of—

(1) school facilities in school districts—

(A) that have substantial increases in school membership as a result of new or increased Federal activities; and

(B) the membership of which includes children in need of minimum school facilities; and

(2) facility improvements or structural modifications due to the need to meet life safety codes, average daily attendance requirements, Federal laws, rules or regulations, or curriculum improvements.

(b) Authorization of Appropriations.—

(1) In General.—There are authorized to be appropriated $29,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1999, to carry out sections 5, 9, 10, and 13.

(2) Administrative Expenses.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1995 through
1999 for the administrative expenses of the Department of Education.

“(3) Availability.—Funds appropriated pursuant to the authority of paragraph (1) shall remain available until expended.

“SEC. 2. PORTION OF APPROPRIATIONS AVAILABLE FOR PAYMENTS.

“(a) In General.—For each fiscal year the Secretary shall determine the portion of the funds appropriated pursuant to the authority of section 1 which shall be available for carrying out the provisions of sections 9 and 10. The remainder of such funds shall be available for paying to local educational agencies the Federal share of the cost of projects for the construction of school facilities for which applications have been approved under section 6.

“(b) Allocation Between Sections 5 and 13.—In any fiscal year the remainder of funds described in the second sentence of subsection (a) shall be used so that—

“(1) 50 percent of such funds are used for payments under section 5 for such year; and

“(2) 50 percent of such funds are used for payments under section 13 for such year.
“(c) Allocation Within Section 5.—In any fiscal year, the amount of funds available for payments under section 5 for such year shall be used so that—

“(1) 50 percent of such funds are available for activities described in section 1(a)(1)(A); and

“(2) 50 percent of such funds are available for activities described in section 1(a)(1)(B).

“Sec. 3. Establishment of Priorities.

“(a) In General.—In the event that funds appropriated pursuant to the authority of section 1 and remaining available for payment to local educational agencies under this Act are less than the Federal share of the cost of the projects with respect to which applications have been filed prior to such date (and for which funds under section 1 have not already been obligated), the Secretary shall make payments under section 5—

“(1) in the case of activities described in section 1(a)(1)(A), on the basis of the highest percentage of children in need of minimum school facilities; and

“(2) in the case of activities described in section 1(a)(1)(B), on the basis of the highest percentage of federally connected students eligible for payment.

“(b) Special Rule.—Only applications meeting the conditions for approval under this Act (other than section
6(b)(2)(C)) shall be considered applications for purposes
of subsection (a).

“(c) Increases.—

“(1) In general.—The priorities described in
this section shall be applied so that applications for
payments based upon increases in the number of
children residing on, or residing with a parent em-
ployed on, property which is part of a low-rent hous-
ing project assisted under the United States Hous-
ing Act of 1937 shall not be approved for any fiscal
year until all other applications for payments under
paragraph (1) of section 5(a) for payments relating
to military connected children, and under sub-
sections (a) and (b) of section 13 for payments re-
lating to Indian children, have been approved for
that fiscal year.

“(2) Military connected children.—For
the purpose of paragraph (1), the term ‘military
connected children’ means children described in—

“(A) section 3(a) of Public Law 81-874
who reside on a military installation;

“(B) section 3(b)(1) of such Public Law
who reside on a military installation;
“(C) section 3(b)(2) of such Public Law who have a parent employed on a military installation; and

“(D) section 3(b)(3) of such Public Law.

“SEC. 4. FEDERAL SHARE FOR ANY PROJECT.

“(a) IN GENERAL.—Subject to section 5 (which imposes limitations on the total of the payments which may be made to any local educational agency), the Federal share of the cost of a project under this Act shall be equal to such cost, but in no case to exceed the cost, in the school district of the applicant, of constructing minimum school facilities, and in no case to exceed the cost in such district of constructing minimum school facilities for the estimated number of children who will be in the membership of the schools of such agency at the close of the second year following the increase period and who will otherwise be without such facilities at such time.

“(b) DETERMINATION.—For the purposes of subsection (a), the number of such children who will otherwise be without such facilities at such time shall be determined by reference to those facilities which as of the date the application for such project is approved, are included in a project the application for which has been approved under this Act.
SEC. 5. LIMITATION ON TOTAL PAYMENTS TO ANY LOCAL EDUCATIONAL AGENCY.

“(a) LIMITATION.—

“(1) IN GENERAL.—Subject to the limitations in subsection (c), the total of the payments to a local educational agency under this Act may not exceed the sum of the following:

“(A) The estimated increase, since the base year, in the number of children determined with respect to such agency who live on Federal property and have a parent who works on Federal property multiplied by 100 percent of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated.

“(B) The estimated increase, since the base year, in the number of children determined with respect to such agency who have a parent who lives on or works on Federal property multiplied by 50 percent of such cost.

“(2) COMPUTATION RULE.—In computing for any local educational agency the number of children in an increase under subparagraph (A) or (B) of paragraph (1), the estimated number of children described in such subparagraphs who will be in the membership of the schools of such agency at the
close of the increase period shall be compared with the estimated number of such children in average daily membership of the schools of such agency during the base year, except that the base year average daily membership shall be adjusted to exclude the number of children that formed the basis for previous payments on applications approved 30 or more years prior to the close of the increased period for the application for which the determination is made.

“(b) Election.—If both subparagraphs (A) and (B) of subsection (a)(1) apply to a child, the local educational agency shall elect which of such subparagraphs shall apply to such child, except that, notwithstanding the election of a local educational agency to have such subparagraph (B) apply to a child instead of such subparagraph (A), the determination of the maximum amount for such agency under subsection (a)(1) shall be made without regard to such election.

“(c) Minimum Increase Requirement.—A local educational agency shall not be eligible to have any amount included in its maximum by reason of subparagraph (A) or (B) of subsection (a)(1) unless the increase in children referred to in such subparagraphs is—

“(1) at least 20; and
“(2)(A) equal to at least 6 percent of the number of federally connected children who were in the average daily membership of the schools of such agency during the base year; or
“(B) at least 750, whichever is the lesser.
“(d) EXCEPTIONAL CIRCUMSTANCES.—Notwithstanding the provisions of subsection (c) of this section, whenever and to the extent that, in the Secretary’s judgment, exceptional circumstances exist which make such action necessary to avoid inequity and avoid defeating the purposes of the Act, the Secretary may waive or reduce the minimum number requirement or any percentage requirement described in subsection (c).
“(e) COUNT LIMITATION.—
“(1) IN GENERAL.—In determining under this section the total of the payments which may be made to a local educational agency on the basis of any application, the total number of children counted for purposes of subparagraph (A) or (B) of subsection (a)(1) may not exceed—
“(A) the number of children whose membership at the close of the increase period for the application is compared with average daily membership in the base period for purposes of
that paragraph (except that the base year average daily membership shall not include any children counted for purposes of a payment pursuant to an application approved 30 or more years ago), minus

"(B) the number of such children whose membership at the close of the increase period was compared with membership in the base year for purposes of such subparagraph under the last previous application, if any, of the agency on the basis of which any payment has been or may be made to that agency.

"(2) LAST PREVIOUS APPLICATION.—For the purpose of paragraph (1)(B) the term 'last previous application' means the last application for assistance under this Act that was funded within 4 fiscal years preceding the fiscal year for which the determination is made.

"SEC. 6. APPLICATIONS.

"(a) APPLICATION REQUIRED.—No payment may be made to any local educational agency under this Act except upon application therefore which is submitted through the appropriate State educational agency and is filed with the Secretary in accordance with regulations prescribed by the Secretary.
“(b) CONTENTS.—

“(1) IN GENERAL.—Each application by a local educational agency shall set forth the project for the construction of school facilities for such agency with respect to which it is filed, and shall contain or be supported by—

“(A) a description of the project and the site therefor, preliminary drawings of the school facilities to be constructed thereon, and such other information relating to the project as may reasonably be required by the Secretary;

“(B) assurance that such agency has or will have title to the site, or the right to construct upon such site school facilities as specified in the application and to maintain such school facilities on such site for a period of not less than 20 years after the completion of the construction;

“(C) assurance that such agency has legal authority to undertake the construction of the project and to finance any non-Federal share of the cost thereof as proposed, and assurance that adequate funds to defray any such non-Federal share will be available when needed;
“(D) assurance that such agency will cause work on the project to be commenced within a reasonable time and prosecuted to completion with reasonable diligence;

“(E) assurance that, except for emergency relief under section 7 of the Act of September 30, 1950 (Public Law 81-874), all laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under this Act shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5) and the Secretary of Labor shall have, with respect to the labor standards specified in this subparagraph, the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), (20 U.S.C. 1232(b));

“(F) assurance that the school facilities of such agency will be available to the children for whose education contributions are provided in
this Act on the same terms, in accordance with the laws of the State in which the school district of such agency is situated, as such facilities are available to other children in such school district; and

"(G) assurance that such agency will from time to time prior to the completion of the project submit such reports relating to the project as the Secretary may reasonably require.

"(2) APPROVAL.—Except as provided in paragraph (3), the Secretary shall approve any application if the Secretary finds—

"(A) that the requirements of paragraph (1) have been met and that approval of the project would not result in payments in excess of those permitted by sections 4 and 5;

"(B) after consultation with the State and local educational agencies, that the project is not inconsistent with overall State plans for the construction of school facilities; and

"(C) that there are sufficient Federal funds available to pay the Federal share of the cost of such project and of all other projects for which Federal funds have not already been obli-
gated and applications for which, under section 3, have a higher priority.

“(c) NOTICE AND HEARING.—No application under this Act shall be disapproved in whole or in part until the Secretary has afforded the local educational agency reasonable notice and opportunity for hearing.

“(d) SUBMISSION.—An application for a payment under this Act shall be submitted by June 30 of the fiscal year preceding the fiscal year for which payment is requested. An application submitted pursuant to the preceding sentence shall remain active for a period of 2 fiscal years following the fiscal year for which payment under this Act is requested. If a local educational agency wishes to make an application for payment under this Act after the expiration of the 2-year period described in the preceding sentence such agency shall resubmit an application in accordance with this section.

“SEC. 7. PAYMENTS.

“(a) IN GENERAL.—Upon approving the application of any local educational agency under section 6, the Secretary shall pay to such agency an amount equal to 10 percent of the Federal share of the cost of the project. After final drawings and specifications have been approved by the Secretary and the construction contract has been entered into, the Secretary, in accordance with regulations
prescribed by the Secretary and at such times and in such
installments as may be reasonable, shall pay to such agen-
cy the remainder of the Federal share of the cost of the
project.

“(b) Repayment.—Any funds paid to a local edu-
cational agency under this Act and not expended for the
purposes for which paid shall be repaid to the Treasury
of the United States.

“Sec. 8. Additional Payments.

“(a) In General.—Not to exceed 10 percent of the
funds appropriated pursuant to the authority of section
1(b)(1) for any fiscal year may be used by the Secretary,
under regulations prescribed by the Secretary, to make
grants to local educational agencies where—

“(1) the application of such agencies would be
approved under this Act but for the agencies’ inabil-
ity, unless aided by such grants, to finance the non-
Federal share of the cost of the projects set forth in
their applications; or

“(2) although the applications of such agencies
have been approved, the projects covered by such ap-
plications could not, without such grants, be com-
pleted, because of flood, fire, or similar emergency
affecting either the work on the projects or the
agencies' ability to finance the non-Federal share of the cost of the projects.

“(b) **Special Rule.**—The grants described in subsection (a) shall be in addition to the payments otherwise provided under this Act, shall be made to those local educational agencies whose need for additional aid is the most urgent and acute, and insofar as practicable shall be made in the same manner and upon the same terms and conditions as such other payments.

“(c) **Additional Appropriations Required.**—The provisions of this section shall take effect only when funds are specifically appropriated to carry out this section.

**SEC. 9. WHERE EFFECT OF FEDERAL ACTIVITIES WILL BE TEMPORARY.**

“Notwithstanding the preceding provisions of this Act, whenever the Secretary determines that the membership of some or all of the children, who may be included in computing under section 5 the maximum on the total of the payments for any local educational agency, will be of temporary duration only, such membership shall not be included in computing such maximum. Instead, the Secretary may make available to such agency such temporary school facilities as may be necessary to take care of such membership; or the Secretary may, where the local edu-
cational agency gives assurance that at least minimum
school facilities will be provided for such children, pay (on
such terms and conditions as the Secretary deems appro-
priate to carry out the purposes of this Act) to such agen-
cy for use in constructing school facilities an amount equal
to the amount which the Secretary estimates would be nec-
essary to make available such temporary facilities. In no
case may the amount so paid exceed the cost, in the school
district of such agency of constructing minimum school
facilities for such children. The Secretary may transfer to
such agency or its successor all the right, title, and inter-
est of the United States in and to any temporary facilities
made available to such agency under this section; and such
transfer shall be without charge, but may be made on such
other terms and conditions, and at such time as the Sec-
retary deems appropriate to carry out the purposes of this
Act.

“SEC. 10. CHILDREN FOR WHOM LOCAL AGENCIES ARE UN-
ABLE TO PROVIDE EDUCATION.

“(a) In General.—In the case of children who it
is estimated by the Secretary in any fiscal year will reside
on Federal property at the end of the next fiscal year—
“(1) if no tax revenues of the State or any po-
litical subdivision thereof may be expended for the
free public education of such children; or
“(2) if it is the judgment of the Secretary, after the Secretary has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children, the Secretary shall make arrangements for constructing, leasing, renovating, remodeling, or rehabilitating or otherwise providing the minimum school facilities necessary for the education of such children. In any case in which the Secretary makes arrangements under this section for constructing, leasing, renovating, remodeling, or rehabilitating or otherwise providing minimum school facilities situated on Federal property in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, the Secretary may also include minimum school facilities necessary for the education of children residing with a parent employed by the United States though not residing on Federal property, but only if the Secretary determines, after consultation with the appropriate State educational agency, (A) that the construction or provision of such facilities is appropriate to carry out the purposes of this subsection, (B) that no local educational agency is able to provide suitable free public education for such children, and (C) that English is not the primary language of instruction in schools in the locality.
Such arrangements may also be made to provide, on a temporary basis, minimum school facilities for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to such children as a result of official action by State or local governmental authority and it is the judgment of the Secretary, after the Secretary has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children.

“(b) Special Rules.—

“(1) Comparability.—To the maximum extent practicable school facilities provided under this section shall be comparable to minimum school facilities provided for children in comparable communities in the State.

“(2) Inapplicability.—This section shall not apply to—

“(A) children who reside on Federal property under the control of the Atomic Energy Commission; and

“(B) Indian children attending schools supported by the Bureau of Indian Affairs.
‘‘(3) SPECIAL RULE.—Whenever it is necessary for the Secretary to provide school facilities for children residing on Federal property under this section, the membership of such children may not be included in computing under section 5 the maximum on the total of the payments for any local educational agency.

‘‘(c) TRANSFERS.—When the Secretary determines it is in the interest of the Federal Government to do so, the Secretary may transfer, upon the written request of the local educational agency, to the appropriate local educational agency all the right, title, and interest of the United States in and to any facilities provided under this Act (or section 204 or 310 of Public Law 81–815 as such law was in effect January 1, 1958). Prior to any transfer, the facility shall meet all State and Federal building health and safety codes, regulations and laws. Any such transfer shall be without charge, but may be made on such other terms and conditions and at such time as the Secretary deems appropriate to carry out the purposes of this Act.

‘‘(d) SPECIAL RULE REGARDING TAX REVENUES.—If no tax revenues of a State or of any political subdivision of the State may be expended for the free public education of children who reside on any Federal property within the
State, or if no tax revenues of a State are allocated for
the free public education of such children, then the prop-
erty on which such children reside shall not be considered
Federal property for the purposes of section 5 of this Act.

"SEC. 11. WITHHOLDING OF PAYMENTS.

"(a) IN GENERAL.—Whenever the Secretary, after
providing reasonable notice and opportunity for hearing
to a local educational agency, finds that—

"(1) there is a substantial failure to comply
with the drawings and specifications for the project;

"(2) any funds paid to a local educational agen-
cy under this Act have been diverted from the pur-
poses for which paid; or

"(3) any assurance given in an application is
not being or cannot be carried out,

the Secretary may notify such agency that no further pay-
ment will be made under this Act with respect to such
agency until there is no longer any failure to comply or
the diversion or default has been corrected or, if compli-
ance or correction is impossible, until such agency repays
or arranges for the repayment of Federal moneys which
have been diverted or improperly expended.

"(b) JUDICIAL REVIEW.—The final refusal of the
Secretary to approve part or all of any application under
this Act, and the Secretary’s final action under subsection
(a) of this section, shall be subject to judicial review on
the record, in the United States court of appeals for the
circuit in which the local educational agency is located,
in accordance with the provisions of the Administrative
Procedure Act.

"SEC. 12. USE OF OTHER FEDERAL AGENCIES TRANSFER
AND AVAILABILITY OF APPROPRIATIONS.

"(a) Administration.—In carrying out the provi-
sions of this Act, the Secretary is authorized to utilize the
services and facilities of any agency of the Federal Govern-
ment and of any other public or nonprofit agency or insti-
tution, in accordance with appropriate agreements, and to
pay for such services either in advance or by way of reim-
bursement, as may be agreed upon.

"(b) Requests for Information.—All Federal de-
partments or agencies administering Federal property on
which children reside, and all such departments or agen-
cies principally responsible for Federal activities which
may give rise to a need for the construction of school fa-
cilities, shall to the maximum extent practicable, comply
with requests of the Secretary for information the Sec-
retary may require in carrying out the purposes of this
Act.

"(c) Special Rule.—No appropriation to any de-
partment or agency of the United States, other than an
appropriation to carry out this Act, shall be available for
the same purposes as this Act.

"SEC. 13. SCHOOL CONSTRUCTION ASSISTANCE IN OTHER
FEDERALLY AFFECTED AREAS.

"(a) Assistance Authorized for Certain Indian Children.—

"(1) In general.—If the Secretary determines
with respect to any local educational agency that—

"(A) such agency is providing or, upon
completion of the school facilities for which pro-
vision is made under this subsection, will pro-
vide free public education for children who re-
side on Indian lands, and whose membership in
the schools of such agency has not formed and
will not form the basis for payments under
other provisions of this Act, and that the total
number of such children represents a substan-
tial percentage of the total number of children
for whom such agency provides free public edu-
cation, or that such Indian lands constitute a
substantial part of the school district of such
local educational agency, or that the total num-
ber of such children who reside on Indian lands
located outside the school district of such agen-
cy equals or exceeds 100;
“(B) the immunity of such Indian lands to taxation by such agency has created a substantial and continuing impairment of such agency’s ability to finance needed school facilities;

“(C) such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance available for the purpose of this section; and

“(D) such agency does not have sufficient funds available to such agency from other Federal, State, and local sources to provide the minimum school facilities required for free public education of a substantial percentage of the children in the membership of its schools, then the Secretary may provide the additional assistance necessary to enable such agency to provide such facilities upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest, except that such additional assistance may not exceed the portion of the cost of such facilities or improvements or structural modifications which the Secretary estimates has not been, and is not to be, recovered by the local educational agency from other
sources, including payments by the United States under any provision of this Act or any other law.

“(2) Waiver.—Notwithstanding the provisions of this subsection, the Secretary may waive the percentage requirement described in paragraph (1)(A) whenever, in the Secretary’s judgment, exceptional circumstances exist which make such actions necessary to avoid inequity and avoid defeating the purposes of this section. Assistance may be furnished under this subsection without regard to paragraph (1)(B) (but subject to the other provisions of this subsection and subsection (e)) to any local educational agency which provides free public education for children who reside on Indian lands located outside its school district.

“(3) Definition.—For purposes of this subsection ‘Indian lands’ means Indian reservations or other real property referred to in the second sentence of section 14(4).

“(b) Assistance Authorized for Other Indian Children.—

“(1) In general.—If the Secretary determines with respect to any local educational agency that—

“(A) such agency is providing or, upon completion of the school facilities for which pro-
vision is made under this subsection will provide free public education for children who reside on Indian lands, and whose membership in the schools of such agency has not formed and will not form the basis for payments under other provisions of this Act, and that the total number of such children represents a substantial percentage of the total number of children for whom such agency provides free public education, or that such local educational agency, or that the total number of such children who reside on Indian lands located outside the school district of such agency equals or exceeds 100; and

"(B) the immunity of such Indian lands to taxation by such agency has created a substantial and continuing impairment of such agency's ability to finance needed school facilities,

then the Secretary may, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest, provide the additional assistance necessary to enable such agency to provide the minimum school facilities required for free public education of children in the membership of the schools
of such agency who reside on Indian lands, except
that such additional assistance may not exceed the
portion of the cost of constructing such facilities
which the Secretary estimates has not been, and is
not to be, recovered by the local educational agency
from other sources, including payments by the Unit-
ed States under any provisions of this Act or any
other law.

"(2) W AIVER.—Notwithstanding the provisions
of this subsection, the Secretary may waive the per-
centage requirement in paragraph (1)(A) whenever,
in the Secretary's judgment, exceptional cir-
cumstances exist which make such action necessary
to avoid inequity and avoid defeating the purpose of
this section. Assistance may be furnished under this
subsection without regard to paragraph (1)(B) (but
subject to the other provisions of this subsection and
subsection (e)) to any local educational agency which
provides free public education for children who re-
side on Indian lands located outside its school dis-

"(3) D EFINITION.—For purposes of this sub-
section 'Indian lands' means Indian reservations or
other real property referred to in the second sen-
tence of section 14(4).
“(c) Assistance Authorized for Inadequately Housed Children.—

“(1) In general.—If the Secretary determines with respect to any local educational agency that—

“(A) such agency is providing or, upon completion of the school facilities for which provision is made under this subsection, will provide, free public education for children who are inadequately housed by minimum school facilities and whose membership in the schools of such agency has not formed and will not form the basis for payments under other provisions of this section, and the total number of such children represents a substantial percentage of the total number of children for whom such agency provides free public education, and Federal property constitutes a substantial part of the school district of such agency;

“(B) the immunity of such Federal property from taxation by such agency has created a substantial and continuing impairment of such agency’s ability to finance needed school facilities;

“(C) such agency is making a reasonable tax effort and is exercising due diligence in
availing itself of State and other financial assistance available for the purpose of this section; and

“(D) such agency does not have sufficient funds available to such agency from other Federal, State, and local sources to provide the minimum school facilities required for free public education of a substantial percentage of the children in the membership of its schools,

then the Secretary may provide the assistance necessary to enable such agency to provide minimum school facilities for children in the membership of the schools of such agency whom the Secretary finds to be inadequately housed, upon such terms and conditions, and in such amounts (subject to the applicable provisions of this section) as the Secretary may consider to be in the public interest. Such assistance may not exceed the portion of the cost of such facilities or improvements or structural modifications which the Secretary estimates has not been, and is not to be, recovered by the local educational agency from other sources, including payments by the United States under any other provisions of this Act or any other law.
“(2) Waiver.—Notwithstanding the provisions of this subsection, the Secretary may waive the percentage requirement in paragraph (1)(A) whenever, in the Secretary’s judgment, exceptional circumstances exist which make such action necessary to avoid inequity and avoid defeating the purposes of this section.

“(d) Application.—No payment may be made to any local educational agency under subsection (a) or (b) except upon application therefor which is submitted through the appropriate State educational agency and is filed with the Secretary in accordance with regulations prescribed by the Secretary, and which meets the requirements of section 6(b)(1). In determining the order in which such applications shall be approved, the Secretary shall consider the relative educational and financial needs of the local educational agencies which have submitted approved applications and the nature and extent of the Federal responsibility. No payment may be made under subsections (a) or (b) unless the Secretary finds, after consultation with the State and local educational agencies, that the project or projects with respect to which the payment is made are not inconsistent with overall State plans for the construction of school facilities. All determinations made by the Secretary under this section shall be made
only after consultation with the appropriate State educational agency and the local educational agency.

“(e) Payments.—Amounts paid by the Secretary to local educational agencies under subsections (a) or (b) may be paid in advance of, or by way of reimbursement for, work performed or purchases made pursuant to the agreement with the Secretary under this section, and may be paid in such installments as the Secretary may determine. Any funds paid to a local educational agency under this section and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States.

“(f) Inapplicability of Certain Provisions.—None of the provisions of sections 1 through 10, other than section 6(2)(A) shall apply with respect to determinations made under this section.

“SEC. 14. DEFINITIONS AND DETERMINATIONS.

“(a) Definitions.—As used in this section:

“(1) Base Year.—The term ‘base year’ means the third or fourth regular school year preceding the fiscal year in which an application was filed under section 6, as may be designated in the application.

“(2) Child.—The term ‘child’ means any child who is within the age limits for which the applicable State provides free public education.
"(3) CONSTRUCT; CONSTRUCTING; AND CONSTRUCTION.—The terms ‘construct’, ‘constructing’, and ‘construction’ include the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, modifying, or extending school facilities; and the inspection and supervision of the construction of school facilities.

"(4) FEDERAL PROPERTY.—(A) The term ‘Federal property’ means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Except for purposes of sections 5, 10, and 13(c), such term includes—

"(i) real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States;

"(ii) any low-rent housing (whether or not owned by the United States) which is part of a low-rent housing project assisted under the United States Housing Act of 1937; and
“(iii) any interest in Federal property (as defined in the provisions of clauses (i) and (ii)) under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature (other than pipelines or utility lines) on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia.

“(B) Notwithstanding the provisions of subparagraph (A), such term does not include—

“(i) any real property used for a labor supply center, labor home, or labor camp for migratory farm workers; and

“(ii) any real property under the jurisdiction of the United States Postal Service and used primarily for the provision of postal services.

“(5) FREE PUBLIC EDUCATION.—The term ‘free public education’ means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.
“(6) Increased period.—The term ‘increased period’ means the period of 4 consecutive regular school years immediately following such base year.

“(7) Local educational agency.—The term ‘local educational agency’ means a board of education of any public school or other legally constituted local public school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education or which has responsibility for the provision of such facilities.

“(8) Parent.—The term ‘parent’ includes a legal guardian or other person standing in loco parentis.

“(9) School facilities.—The term ‘school facilities’ includes classroom and related facilities; and initial equipment, machinery, and utilities necessary or appropriate for school purposes. Such term does not include athletic stadiums, or structures or facilities intended primarily for athletic exhibitions, contests, or games or other events for which admission is to be charged to the general public. Except as
used in sections 9 and 10 such term does not include interests in land and offsite improvements.

“(10) Secretary.—The term ‘Secretary’, unless otherwise specified, means the Secretary of Education.

“(11) State.—The term ‘State’ means a State, the Commonwealth of Puerto Rico, Guam, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, or Wake Island.

“(12) State educational agency.—The term ‘State educational agency’ means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

“(b) Determinations.—

“(1) Membership of schools.—(A) The membership of schools shall be determined in accordance with State law or, in the absence of State law governing such a determination, in accordance with regulations of the Secretary, except that, notwithstanding any other provisions of this section, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another
school district, for purposes of this section the membership of such child, shall be held and considered—

“(i) if the 2 local educational agencies concerned so agree, and if such agreement is approved by the Secretary, as membership of a school of the local educational agency receiving such tuition payment; and

“(ii) in the absence of any such approved agreement, as membership of a school of the local educational agency so making or contracting to make such tuition payment.

“(B) In any determination of membership of schools, children who are not provided free public education (as defined in subsection (a)(5)) shall not be counted.

“(2) AVERAGE PER PUPIL COST.—The average per pupil cost of constructing minimum school facilities in the State in which the school district of a local educational agency is situated shall be determined by the Secretary on the basis of the average State per pupil construction cost in the year previous to the year of funding (including costs of minimum site improvements, minimum initial equipment, and applicable architectural, engineering, and legal fees). The cost of constructing minimum school fa-
cilities in the school district of a local educational
agency shall be determined by the Secretary, after
consultation with the State and local educational
agencies, on the basis of such information as may be
contained in the application of such local educational
agency and such other information as the Secretary
may obtain.

“(3) **Timing and Information Requirement.**—Estimates of membership, and all other de-
terminations with respect to eligibility and maximum
amount of payment, shall be made as of the time of
the approval of the applications for which made, and
shall be made on the basis of the best information
available at the time of such approval.

“(4) **Minimum School Facilities.**—Whether
or not school facilities are minimum school facilities
shall be determined by the Secretary, after consulta-
tion with the State and local educational agencies, in
accordance with regulations prescribed by the Sec-
retary. Such regulations shall—

“(A) require the local educational agency
concerned to give due consideration to excel-
ience of architecture and design;

“(B) provide that no facility shall be dis-
qualified as a minimum school facility because
of the inclusion of works of art in the plans therefor if the cost of such works of art does not exceed 1 percent of the cost of the project; and

“(C) require compliance with such standards as the Secretary may prescribe or approve in order to ensure that facilities constructed with the use of Federal funds under this Act shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by individuals with disabilities.”.