

cation shall be made available to such students, except that” and “5 percent of the total financial need” for “5 percent of the need”.

1992—Subsec. (a)(2). Pub. L. 102-325, § 403(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “agrees that the Federal share of awards under this subpart will not exceed—

“(A) 95 percent of such awards in fiscal year 1989,

“(B) 90 percent of such awards in fiscal year 1990, and

“(C) 85 percent of such awards in fiscal year 1991, except that the Federal share may be exceeded if the Secretary determines, pursuant to regulations establishing objective criteria for such determinations, that a larger Federal share is required to further the purpose of this subpart; and”.

Subsec. (d). Pub. L. 102-325, § 403(e), inserted “who are independent students or” after “demonstrated by students” and inserted before period at end “, except that if the total financial need of all such students attending the institution exceeds 5 percent of the need of all students attending such institution, then at least 5 percent of such allotment shall be made available to such students”.

Subsec. (e). Pub. L. 102-325, § 403(f), struck out before period at end “, and may transfer such funds in accordance with the provisions of section 1095 of this title”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective on and after July 1, 1994, see section 5(b)(6) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective July 23, 1992, except that changes in subsec. (a)(2) of this section, relating to Federal share for supplemental educational opportunity grant program, applicable to funds provided for such program for award years beginning on or after July 1, 1993, see section 410 of Pub. L. 102-325, set out as a note under section 1070a of this title.

#### EFFECTIVE DATE

Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub. L. 99-498, set out as a note under section 1001 of this title.

Section 401(b)(5) of Pub. L. 99-498 provided that: “Section 413C(c)(2) of the Act [20 U.S.C. 1070b-2(c)(2)] as amended by this section shall apply to the awarding of grants under subpart 2 of part A of title IV of the Act [this subpart] for periods of enrollment beginning on or after July 1, 1987.”

### § 1070b-3. Allocation of funds

#### (a) Allocation based on previous allocation

(1) From the amount appropriated pursuant to section 1070b(b) of this title for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to 100 percent of the amount such institution received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year).

(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1999 but is not a first or second time participant, an amount equal to the greater of—

(i) \$5,000; or

(ii) 90 percent of the amount received and used under this subpart for the first year it participated in the program.

(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1999 and is a first or second time participant, an amount equal to the greatest of—

(i) \$5,000;

(ii) an amount equal to (I) 90 percent of the amount received and used under this subpart in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

(iii) 90 percent of the institution’s allocation under this part for the preceding fiscal year.

(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

(i) was a first-time participant in the program in fiscal year 2000 or any subsequent fiscal year, and

(ii) received a larger amount under this subsection in the second year of participation,

an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

(4)(A) Notwithstanding any other provision of this section, the Secretary may allocate an amount equal to not more than 10 percent of the amount by which the amount appropriated in any fiscal year to carry out this part exceeds \$700,000,000 among eligible institutions described in subparagraph (B).

(B) In order to receive an allocation pursuant to subparagraph (A) an institution shall be an eligible institution from which 50 percent or more of the Pell Grant recipients attending such eligible institution graduate from or transfer to a 4-year institution of higher education.

**(b) Allocation of excess based on fair share**

(1) From the remainder of the amount appropriated pursuant to section 1070b(b) of this title for each year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

(A)(i) the amount of that institution's need (as determined under subsection (c) of this section), divided by (ii) the sum of the need of all institutions (as so determined), multiplied by (iii) the amount appropriated pursuant to section 1070b(b) of this title of the fiscal year; exceeds

(B) the amount required to be allocated to that institution under subsection (a) of this section.

**(c) Determination of institution's need**

(1) The amount of an institution's need is equal to—

(A) the sum of the need of the institution's eligible undergraduate students; minus

(B) the sum of grant aid received by students under subparts 1 and 3<sup>1</sup> of this part.

(2) To determine the need of an institution's eligible undergraduate students, the Secretary shall—

(A) establish various income categories for dependent and independent undergraduate students;

(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected family contribution (computed in accordance with part E of this subchapter) of a representative sample within each income category for the second preceding fiscal year;

(C) compute 75 percent of the average cost of attendance for all undergraduate students;

(D) multiply the number of eligible dependent students in each income category by 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C), minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

(E) add the amounts determined under subparagraph (D) for each income category of dependent students;

(F) multiply the number of eligible independent students in each income category by 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C), minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

(H) add the amounts determined under subparagraphs (E) and (G).

(3)(A) For purposes of paragraph (2), the term "average cost of attendance" means the average of the attendance costs for undergraduate students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

(B) The average undergraduate tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution's enrollment for such second preceding year.

(C) The standard living expense described in subparagraph (A)(ii) is equal to 150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college for a single independent student.

(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to \$600.

**(d) Reallocation of excess allocations**

(1) If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall, in accordance with regulations, reallocate such excess to other institutions.

(2) If under paragraph (1) of this subsection an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing this paragraph would be contrary to the interest of the program.

**(e) Filing deadlines**

The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

(Pub. L. 89-329, title IV, §413D, as added Pub. L. 99-498, title IV, §401(a), Oct. 17, 1986, 100 Stat. 1330; amended Pub. L. 100-50, §4, June 3, 1987, 101 Stat. 340; Pub. L. 102-325, title IV, §403(g), (h), July 23, 1992, 106 Stat. 506; Pub. L. 103-208, §2(b)(26), Dec. 20, 1993, 107 Stat. 2459; Pub. L. 105-244, title IV, §406(c)(1), (2), Oct. 7, 1998, 112 Stat. 1665; Pub. L. 110-315, title IV, §406(b), (c), Aug. 14, 2008, 122 Stat. 3215.)

## REFERENCES IN TEXT

Subpart 3 of this part, referred to in subsec. (c)(1)(B), was redesignated subpart 4 by Pub. L. 102-325, title IV, §402(a)(2), July 23, 1992, 106 Stat. 482, and former subpart 2 [this subpart] was redesignated as subpart 3.

## PRIOR PROVISIONS

A prior section 1070b-3, Pub. L. 89-329, title IV, §413D, as added Pub. L. 92-318, title I, §131(b)(1), June 23, 1972,

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

86 Stat. 254; amended Pub. L. 96-374, title IV, §403(e), (f), title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1405, 1406, 1503, related to apportionment and allocation of funds for supplemental educational opportunity grants, prior to the general revision of this part by Pub. L. 99-498.

#### AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-315, §406(c), substituted “such institution received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year)” for “such institution received and used under this subpart for fiscal year 1985”.

Subsec. (c)(3)(D). Pub. L. 110-315, §406(b), substituted “\$600” for “\$450”.

1998—Subsec. (a)(1). Pub. L. 105-244, §406(c)(1)(A), which directed substitution of “received under subsections (a) and (b) of this section for fiscal year 1999 (as such subsections were in effect with respect to allocations for such fiscal year)” for “received and used under this part for fiscal year 1985”, could not be executed because the phrase “received and used under this part for fiscal year 1985” did not appear in text.

Subsec. (a)(2)(A), (B). Pub. L. 105-244, §406(c)(1)(B)(i), substituted “1999” for “1985” in introductory provisions.

Subsec. (a)(2)(C)(i). Pub. L. 105-244, §406(c)(1)(B)(ii), substituted “2000” for “1986”.

Subsec. (b). Pub. L. 105-244, §406(c)(2)(A), (D), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “From one-quarter of the remainder of the amount appropriated pursuant to section 1070b(b) of this title for any fiscal year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as the amount the eligible institution receives for such fiscal year under subsection (a) of this section bears to the amount all such institutions receive under such subsection (a) of this section.”

Subsec. (c). Pub. L. 105-244, §406(c)(2)(D), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 105-244, §406(c)(2)(B), substituted “the remainder” for “three-quarters of the remainder”.

Subsec. (c)(2)(A)(i). Pub. L. 105-244, §406(c)(2)(C), substituted “subsection (c)” for “subsection (d)”.

Subsecs. (d) to (f). Pub. L. 105-244, §406(c)(2)(D), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d) redesignated (c).

1993—Subsec. (d)(3)(C). Pub. L. 103-208 substituted “150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college” for “three-fourths in the Pell Grant family size offset”.

1992—Subsec. (a)(4). Pub. L. 102-325, §403(g), added par. (4).

Subsec. (e). Pub. L. 102-325, §403(h), designated existing provisions as par. (1) and added par. (2).

1987—Subsec. (d)(2)(D). Pub. L. 100-50, §4(a)(1), added subpar. (D) and struck out former subpar. (D) which read as follows: “multiply the number of eligible dependent students in each income category by the lesser of—

“(i) 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

“(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;”.

Subsec. (d)(2)(F). Pub. L. 100-50, §4(a)(2), added subpar. (F) and struck out former subpar. (F) which read as follows: “multiply the number of eligible independent students in each income category by the lesser of—

“(i) 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

“(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;”.

Subsec. (d)(3)(A). Pub. L. 100-50, §4(b)(1), struck out “and for graduate and professional students” after “undergraduate students”.

Subsec. (d)(3)(B). Pub. L. 100-50, §4(b)(2), struck out “and graduate and professional” after “average undergraduate” and struck out “and graduate” after “from undergraduate”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-244, title IV, §406(c)(3), Oct. 7, 1998, 112 Stat. 1665, provided that: “The amendments made by this subsection [amending this section] shall apply with respect to allocations of amounts appropriated pursuant to section 413A(b) of the Higher Education Act of 1965 [20 U.S.C. 1070b(b)] for fiscal year 2000 or any succeeding fiscal year.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE

Section 401(b)(6) of Pub. L. 99-498, as added by Pub. L. 100-50, §22(a)(2), June 3, 1987, 101 Stat. 361, provided that: “The changes made in section 413D of the Act [this section] shall apply with respect to the allocation of funds for the academic year 1988-1989 and succeeding academic years.”

### § 1070b-4. Carryover and carryback authority

#### (a) Carryover authority

Of the sums made available to an eligible institution under this subpart for a fiscal year, not more than 10 percent may, at the discretion of the institution, remain available for expenditure during the succeeding fiscal year to carry out the program under this subpart.

#### (b) Carryback authority

##### (1) In general

Of the sums made available to an eligible institution under this subpart for a fiscal year, not more than 10 percent may, at the discretion of the institution, be used by the institution for expenditure for the fiscal year preceding the fiscal year for which the sums were appropriated.

##### (2) Use of carried-back funds

An eligible institution may make grants to students after the end of the academic year, but prior to the beginning of the succeeding fiscal year, from such succeeding fiscal year's appropriations.

(Pub. L. 89-329, title IV, §413E, as added Pub. L. 105-244, title IV, §406(d), Oct. 7, 1998, 112 Stat. 1665.)

#### EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244,