

participate in the program under this subpart until he is satisfied that there is no longer any such failure to comply.

(b) Review of decisions

(1) If any State is dissatisfied with the Secretary's final action with respect to the approval of its State program submitted under this subpart or with his final action under subsection (a), such State may appeal to the United States court of appeals for the circuit in which such State is located. The summons and notice of appeal may be served at any place in the United States. The Commissioner shall forthwith certify and file in the court the transcript of the proceedings and the record on which he based his action.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

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

(Pub. L. 89-329, title IV, §415D, as added Pub. L. 99-498, title IV, §401(a), Oct. 17, 1986, 100 Stat. 1335.)

PRIOR PROVISIONS

A prior section 1070c-3, Pub. L. 89-329, title IV, §415D, as added Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 257; amended Pub. L. 96-374, title XIII, §1391(a)(1), (2), Oct. 3, 1980, 94 Stat. 1503, related to administration of State programs and judicial review, prior to the general revision of this part by Pub. L. 99-498.

§ 1070c-3a. Grants for access and persistence

(a) Purpose

It is the purpose of this section to expand college access and increase college persistence by making allotments to States to enable the States to—

(1) expand and enhance partnerships with institutions of higher education, early information and intervention, mentoring, or outreach programs, private corporations, philanthropic organizations, and other interested parties, including community-based organizations, in order to—

(A) carry out activities under this section; and

(B) provide coordination and cohesion among Federal, State, and local governmental and private efforts that provide financial assistance to help low-income students attend an institution of higher education;

(2) provide need-based grants for access and persistence to eligible low-income students;

(3) provide early notification to low-income students of the students' eligibility for financial aid; and—

(4) encourage increased participation in early information and intervention, mentoring, or outreach programs.

(b) Allotments to States

(1) In general

(A) Authorization

From sums reserved under section 1070c(b)(2) of this title for each fiscal year, the Secretary shall make an allotment to each State that submits an application for an allotment in accordance with subsection (c) to enable the State to pay the Federal share, as described in paragraph (2), of the cost of carrying out the activities under subsection (d).

(B) Determination of allotment

In making allotments under subparagraph (A), the Secretary shall consider the following:

(i) Continuation of award

Except as provided in clause (ii), if a State continues to meet the specifications established in such State's application under subsection (c), the Secretary shall make an allotment to such State that is not less than the allotment made to such State for the previous fiscal year.

(ii) Special continuation and transition rule

If a State that applied for and received an allotment under this section for fiscal year 2010 pursuant to subsection (j) meets the specifications established in the State's application under subsection (c) for fiscal year 2011, then the Secretary shall make an allotment to such State for fiscal year 2011 that is not less than the allotment made pursuant to subsection (j) to such State for fiscal year 2010 under this section (as this section was in effect on the day before August 14, 2008).

(iii) Priority

The Secretary shall give priority in making allotments to States that meet the requirements described in paragraph (2)(B)(ii).

(2) Federal share

(A) In general

The Federal share of the cost of carrying out the activities under subsection (d) for any fiscal year shall not exceed 66.66 percent.

(B) Different percentages

The Federal share under this section shall be determined in accordance with the following:

(i) The Federal share of the cost of carrying out the activities under subsection (d) shall be 57 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, and—

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(ii) The Federal share of the cost of carrying out the activities under subsection (d) shall be 66.66 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State, and—

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(C) Non-Federal share

(i) In general

The non-Federal share under this section may be provided in cash or in kind, fairly evaluated.

(ii) In-kind contribution

For the purpose of calculating the non-Federal share under this subparagraph, an in-kind contribution is a non-cash contribution that—

(I) has monetary value, such as the provision of—

(aa) room and board; or

(bb) transportation passes; and

(II) helps a student meet the cost of attendance at an institution of higher education.

(iii) Effect on need analysis

For the purpose of calculating a student's need in accordance with part F, an in-kind contribution described in clause (ii) shall not be considered an asset or income of the student or the student's parent.

(c) Application for allotment

(1) In general

(A) Submission

A State that desires to receive an allotment under this section on behalf of a partnership described in paragraph (3) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(B) Content

An application submitted under subparagraph (A) shall include the following:

(i) A description of the State's plan for using the allotted funds.

(ii) An assurance that the State will provide matching funds, in cash or in kind, from State, institutional, philanthropic, or private funds, of not less than 33.33 percent of the cost of carrying out the activities under subsection (d). The State shall

specify the methods by which matching funds will be paid. A State that uses non-Federal funds to create or expand partnerships with entities described in subsection (a)(1), in which such entities match State funds for student scholarships, may apply such matching funds from such entities toward fulfilling the State's matching obligation under this clause.

(iii) An assurance that the State will use funds provided under this section to supplement, and not supplant, Federal and State funds available for carrying out the activities under this subchapter.

(iv) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make such programs widely available.

(v) A description of the organizational structure that the State has in place to administer the activities under subsection (d), including a description of how the State will compile information on degree completion of students receiving grants under this section.

(vi) A description of the steps the State will take to ensure that students who receive grants under this section persist to degree completion.

(vii) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution determination described in section 1087ss(c) of this title, to identify eligible low-income students and award State grant aid to such students.

(viii) An assurance that the State will provide notification to eligible low-income students that grants under this section are—

(I) Leveraging Educational Assistance Partnership Grants; and

(II) funded by the Federal Government and the State, and, where applicable, other contributing partners.

(2) State agency

The State agency that submits an application for a State under section 1070c-2(a) of this title shall be the same State agency that submits an application under paragraph (1) for such State.

(3) Partnership

In applying for an allotment under this section, the State agency shall apply for the allotment in partnership with—

(A) not less than one public and one private degree-granting institution of higher education that are located in the State, if applicable;

(B) new or existing early information and intervention, mentoring, or outreach programs located in the State; and

(C) not less than one—

(i) philanthropic organization located in, or that provides funding in, the State; or

(ii) private corporation located in, or that does business in, the State.

(4) Roles of partners**(A) State agency**

A State agency that is in a partnership receiving an allotment under this section—

(i) shall—

(I) serve as the primary administrative unit for the partnership;

(II) provide or coordinate non-Federal share funds, and coordinate activities among partners;

(III) encourage each institution of higher education in the State to participate in the partnership;

(IV) make determinations and early notifications of assistance as described under subsection (d)(2); and

(V) annually report to the Secretary on the partnership's progress in meeting the purpose of this section; and

(ii) may provide early information and intervention, mentoring, or outreach programs.

(B) Degree-granting institutions of higher education

A degree-granting institution of higher education that is in a partnership receiving an allotment under this section—

(i) shall—

(I) recruit and admit participating qualified students and provide such additional institutional grant aid to participating students as agreed to with the State agency;

(II) provide support services to students who receive grants for access and persistence under this section and are enrolled at such institution; and

(III) assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

(ii) may provide funding for early information and intervention, mentoring, or outreach programs or provide such services directly.

(C) Programs

An early information and intervention, mentoring, or outreach program that is in a partnership receiving an allotment under this section shall provide direct services, support, and information to participating students.

(D) Philanthropic organization or private corporation

A philanthropic organization or private corporation that is in a partnership receiving an allotment under this section shall provide funds for grants for access and persistence for participating students, or provide funds or support for early information and intervention, mentoring, or outreach programs.

(d) Authorized activities**(1) In general****(A) Establishment of partnership**

Each State receiving an allotment under this section shall use the funds to establish

a partnership to award grants for access and persistence to eligible low-income students in order to increase the amount of financial assistance such students receive under this subpart for undergraduate education expenses.

(B) Amount of grants

The amount of a grant for access and persistence awarded by a State to a student under this section shall be not less than—

(i) the average undergraduate tuition and mandatory fees at the public institutions of higher education in the State where the student resides that are of the same type of institution as the institution of higher education the student attends; minus

(ii) other Federal and State aid the student receives.

(C) Special rules**(i) Partnership institutions**

A State receiving an allotment under this section may restrict the use of grants for access and persistence under this section by awarding the grants only to students attending institutions of higher education that are participating in the partnership.

(ii) Out-of-State institutions

If a State provides grants through another program under this subpart to students attending institutions of higher education located in another State, grants awarded under this section may be used at institutions of higher education located in another State.

(2) Early notification**(A) In general**

Each State receiving an allotment under this section shall annually notify low-income students in grades seven through 12 in the State, and their families, of their potential eligibility for student financial assistance, including an access and persistence grant, to attend an institution of higher education.

(B) Content of notice

The notice under subparagraph (A)—

(i) shall include—

(I) information about early information and intervention, mentoring, or outreach programs available to the student;

(II) information that a student's eligibility for a grant for access and persistence is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(III) an explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a grant for access and persistence and other student aid programs;

(IV) a nonbinding estimate of the total amount of financial aid that a low-income student with a similar income level may expect to receive, including an

estimate of the amount of a grant for access and persistence and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(V) an explanation that in order to be eligible for a grant for access and persistence, at a minimum, a student shall—

(aa) meet the requirement under paragraph (3);

(bb) graduate from secondary school; and

(cc) enroll at an institution of higher education—

(AA) that is a partner in the partnership; or

(BB) with respect to which attendance is permitted under subsection (d)(1)(C)(ii);

(VI) information on any additional requirements (such as a student pledge detailing student responsibilities) that the State may impose for receipt of a grant for access and persistence under this section; and

(VII) instructions on how to apply for a grant for access and persistence and an explanation that a student is required to file a Free Application for Federal Student Aid authorized under section 1090(a) of this title to be eligible for such grant and assistance from other Federal and State financial aid programs; and

(ii) may include a disclaimer that grant awards for access and persistence are contingent on—

(I) a determination of the student's financial eligibility at the time of the student's enrollment at an institution of higher education that is a partner in the partnership or qualifies under subsection (d)(1)(C)(ii);

(II) annual Federal and State spending for higher education; and

(III) other aid received by the student at the time of the student's enrollment at such institution of higher education.

(3) Eligibility

In determining which students are eligible to receive grants for access and persistence, the State shall ensure that each such student complies with the following subparagraph (A) or (B):

(A) Meets not less than two of the following criteria, with priority given to students meeting all of the following criteria:

(i) Has an expected family contribution equal to zero, as determined under part F, or a comparable alternative based upon the State's approved criteria in section 1070c-2(b)(4) of this title.

(ii) Qualifies for the State's maximum undergraduate award, as authorized under section 1070c-2(b) of this title.

(iii) Is participating in, or has participated in, a Federal, State, institutional, or community early information and inter-

vention, mentoring, or outreach program, as recognized by the State agency administering activities under this section.

(B) Is receiving, or has received, a grant for access and persistence under this section, in accordance with paragraph (5).

(4) Grant award

Once a student, including those students who have received early notification under paragraph (2) from the State, applies for admission to an institution that is a partner in the partnership, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State under paragraph (3), the State shall—

(A) issue the student a preliminary award certificate for a grant for access and persistence with estimated award amounts; and

(B) inform the student that payment of the grant for access and persistence award amounts is subject to certification of enrollment and award eligibility by the institution of higher education.

(5) Duration of award

An eligible student who receives a grant for access and persistence under this section shall receive such grant award for each year of such student's undergraduate education in which the student remains eligible for assistance under this subchapter, including pursuant to section 1091(c) of this title, and remains financially eligible as determined by the State, except that the State may impose reasonable time limits to degree completion.

(e) Administrative cost allowance

A State that receives an allotment under this section may reserve not more than two percent of the funds made available annually through the allotment for State administrative functions required to carry out this section.

(f) Statutory and regulatory relief for institutions of higher education

The Secretary may grant, upon the request of an institution of higher education that is in a partnership described in subsection (b)(2)(B)(ii) and that receives an allotment under this section, a waiver for such institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(g) Applicability rule

The provisions of this subpart that are not inconsistent with this section shall apply to the program authorized by this section.

(h) Maintenance of effort requirement

Each State receiving an allotment under this section for a fiscal year shall provide the Secretary with an assurance that the aggregate amount expended per student or the aggregate expenditures by the State, from funds derived from non-Federal sources, for the authorized activities described in subsection (d) for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditure by the State for the activities for the second preceding fiscal year.

(i) Special rule

Notwithstanding subsection (h), for purposes of determining a State's share of the cost of the authorized activities described in subsection (d), the State shall consider only those expenditures from non-Federal sources that exceed the State's total expenditures for need-based grants, scholarships, and work-study assistance for fiscal year 1999 (including any such assistance provided under this subpart).

(j) Continuation and transition

For the two-year period that begins on August 14, 2008, the Secretary shall continue to award grants under section 1070c-3a of this title as such section existed on the day before August 14, 2008, to States that choose to apply for grants under such predecessor section.

(k) Reports

Not later than three years after August 14, 2008, and annually thereafter, the Secretary shall submit a report describing the activities and the impact of the partnerships under this section to the authorizing committees.

(Pub. L. 89-329, title IV, §415E, as added Pub. L. 105-244, title IV, §407(c)(2), Oct. 7, 1998, 112 Stat. 1666; amended Pub. L. 106-554, §1(a)(1) [title III, §316(2), (3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-47; Pub. L. 110-315, title IV, §407(c), Aug. 14, 2008, 122 Stat. 3216; Pub. L. 111-39, title IV, §401(a)(6), July 1, 2009, 123 Stat. 1938.)

PRIOR PROVISIONS

A prior section 415E of Pub. L. 89-329 was renumbered section 415F and is classified to section 1070c-4 of this title.

Another prior section 415E of Pub. L. 89-329 was classified to section 1070c-4 of this title prior to repeal by Pub. L. 96-374.

AMENDMENTS

2009—Subsec. (b)(1)(B). Pub. L. 111-39 substituted “Except as provided in clause (ii), if a” for “If a” in cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

2008—Pub. L. 110-315 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (g) relating to a special leveraging educational assistance partnership program.

2000—Subsec. (c). Pub. L. 106-554, §1(a)(1) [title III, §316(2)], which directed amendment of section 415 of the Higher Education Act of 1965 in section 415E by adding subsec. (c) and striking out former subsec. (c), was executed to this section, which is section 415E of the Higher Education Act of 1965, to reflect the probable intent of Congress. Prior to amendment, subsec. (c) listed the activities for which States receiving a grant under this section were authorized to use the grant funds.

Subsecs. (f), (g). Pub. L. 106-554, §1(a)(1) [title III, §316(3)], which directed amendment of section 415 of the Higher Education Act of 1965 in section 415E by adding subsecs. (f) and (g), was executed by adding subsecs. (f) and (g) to this section, which is section 415E of the Higher Education Act of 1965, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

EFFECTIVE DATE

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

set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

§ 1070c-4. “Community service” defined

For the purpose of this subpart, the term “community service” means services, including direct service, planning, and applied research which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, and which—

(1) are designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to the needs of such residents, including but not limited to, such fields as health care, child care, education, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement; and

(2) provide participating students with work-learning opportunities related to their educational or vocational programs or goals.

(Pub. L. 89-329, title IV, §415F, formerly §415E, as added Pub. L. 99-498, title IV, §401(a), Oct. 17, 1986, 100 Stat. 1336; amended Pub. L. 100-50, §5, June 3, 1987, 101 Stat. 340; renumbered §415F, Pub. L. 105-244, title IV, §407(c)(1), Oct. 7, 1998, 112 Stat. 1666.)

PRIOR PROVISIONS

A prior section 1070c-4, Pub. L. 89-329, title IV, §415E, as added Pub. L. 94-482, title I, §123(c)(3), Oct. 12, 1976, 90 Stat. 2094; amended Pub. L. 95-43, §1(a)(7), June 15, 1977, 91 Stat. 213, related to a program of bonus allotments, prior to repeal by Pub. L. 96-374, title IV, §404(d), Oct. 3, 1980, 94 Stat. 1407, eff. Oct. 1, 1980.

AMENDMENTS

1987—Par. (1). Pub. L. 100-50 substituted “literacy” for “literary”.

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.

§§ 1070d to 1070d-1d. Repealed. Pub. L. 102-325, title IV, § 402(a)(1), July 23, 1992, 106 Stat. 482

Section 1070d, Pub. L. 89-329, title IV, §417A, as added Pub. L. 99-498, title IV, §401(a), Oct. 17, 1986, 100 Stat. 1336, related to program authority and authorization of appropriations.

A prior section 1070d, Pub. L. 89-329, title IV, §417A, as added Pub. L. 96-374, title IV, §405, Oct. 3, 1980, 94 Stat. 1407, authorized a program of grants and contracts to assist students from disadvantaged backgrounds, prior to the general revision of this part by Pub. L. 99-498.

Another prior section 1070d, Pub. L. 89-329, title IV, §417A, as added Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 258; amended Pub. L. 94-482, title I, §124(a), Oct. 12, 1976, 90 Stat. 2094; Pub. L. 96-49, §5(a)(5), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96-374, title XIII, §1391(a)(1), Oct. 3, 1980, 94 Stat. 1503, authorized the Secretary of Education to carry out special programs for students from disadvantaged backgrounds and authorized appropriations for such programs, prior to the general revision of this subpart by Pub. L. 96-374.

Section 1070d-1, Pub. L. 89-329, title IV, §417B, as added Pub. L. 99-498, title IV, §401(a), Oct. 17, 1986, 100 Stat. 1337, authorized a talent search program.