

Section 6381, Pub. L. 89-10, title I, §1231, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1555, stated purpose of former subpart 3 of this part.

Section 6381a, Pub. L. 89-10, title I, §1232, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1556, authorized reservation of funds for migrant programs, outlying areas, and Indian tribes.

Section 6381b, Pub. L. 89-10, title I, §1233, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1558, related to use of funds for State educational agency level activities and local programs.

Section 6381c, Pub. L. 89-10, title I, §1234, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1559, related to use of funds by recipients of funds.

Section 6381d, Pub. L. 89-10, title I, §1235, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1560; amended Pub. L. 113-128, title V, §512(i)(2), July 22, 2014, 128 Stat. 1708, set forth elements of each program assisted.

Section 6381e, Pub. L. 89-10, title I, §1236, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1562, related to eligibility for participation in an Even Start program.

Section 6381f, Pub. L. 89-10, title I, §1237, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1563, related to application for subgrant under former subpart 3 of this part.

Section 6381g, Pub. L. 89-10, title I, §1238, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1564, related to award of subgrants.

Section 6381h, Pub. L. 89-10, title I, §1239, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1566, related to evaluation of programs.

Section 6381i, Pub. L. 89-10, title I, §1240, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1566, related to development of indicators of program quality.

Section 6381j, Pub. L. 89-10, title I, §1241, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1566, related to research into components of successful family literacy services.

Section 6381k, Pub. L. 89-10, title I, §1242, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1567, related to construction of provisions.

Section 6383, Pub. L. 89-10, title I, §1251, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1567, related to improvement of literacy through school libraries.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as an Effective Date of 2015 Amendment note under section 6301 of this title.

#### PART C—EDUCATION OF MIGRATORY CHILDREN

### § 6391. Program purposes

The purposes of this part are as follows:

(1) To assist States in supporting high-quality and comprehensive educational programs and services during the school year and, as applicable, during summer or intersession periods, that address the unique educational needs of migratory children.

(2) To ensure that migratory children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and challenging State academic standards.

(3) To ensure that migratory children receive full and appropriate opportunities to meet the same challenging State academic standards that all children are expected to meet.

(4) To help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to succeed in school.

(5) To help migratory children benefit from State and local systemic reforms.

(Pub. L. 89-10, title I, §1301, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1571; amended Pub. L. 114-95, title I, §1301(a), Dec. 10, 2015, 129 Stat. 1893.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 6391, Pub. L. 89-10, title I, §1301, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3585, related to program purpose, prior to the general amendment of this subchapter by Pub. L. 107-110.

##### AMENDMENTS

2015—Pub. L. 114-95 amended section generally. Prior to amendment, section related to purposes of this part to assist States: (1) to support high-quality and comprehensive educational programs for migratory children; (2) to ensure that migratory children who move among the States are not penalized in any manner by disparities among the States; (3) to ensure that migratory children are provided with appropriate educational services; (4) to ensure that migratory children receive full and appropriate opportunities to meet challenging State standards; (5) to design programs to help migratory children overcome educational disruption and other factors that inhibit their ability to do well in school; and (6) to ensure that migratory children benefit from State and local systemic reforms.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

### § 6392. Program authorized

In order to carry out the purpose of this part, the Secretary shall make grants to State educational agencies, or combinations of such agencies, to establish or improve, directly or through local operating agencies, programs of education for migratory children in accordance with this part.

(Pub. L. 89-10, title I, §1302, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1571.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 6392, Pub. L. 89-10, title I, §1302, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3585, authorized migratory children education program, prior to the general amendment of this subchapter by Pub. L. 107-110.

### § 6393. State allocations

#### (a) State allocations

Except as provided in subsection (c), each State (other than the Commonwealth of Puerto Rico) is entitled to receive under this part an amount equal to the product of—

(1) the sum of—

(A) the average number of identified eligible migratory children aged 3 through 21 residing in the State, based on data for the preceding 3 years; and

(B) the number of identified eligible migratory children, aged 3 through 21, who received services under this part in summer or intersession programs provided by the State during the previous year; multiplied by

(2) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States.

**(b) Hold harmless**

Notwithstanding subsection (a), for each of fiscal years 2017 through 2019, no State shall receive less than 90 percent of the State's allocation under this section for the preceding fiscal year.

**(c) Allocation to Puerto Rico**

**(1) In general**

For each fiscal year, the grant that the Commonwealth of Puerto Rico shall be eligible to receive under this part shall be the amount determined by multiplying the number of children who would be counted under subsection (a)(1) if such subsection applied to the Commonwealth of Puerto Rico by the product of—

(A) the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States, subject to paragraphs (2) and (3); and

(B) 32 percent of the average per-pupil expenditure in the United States.

**(2) Minimum percentage**

The percentage described in paragraph (1)(A) shall not be less than 85 percent.

**(3) Limitation**

If the application of paragraph (2) for any fiscal year would result in any of the 50 States or the District of Columbia receiving less under this part than it received under this part for the preceding fiscal year, then the percentage described in paragraph (1)(A) that is used for the Commonwealth of Puerto Rico for the fiscal year for which the determination is made shall be the greater of the percentage in paragraph (1)(A) for such fiscal year or the percentage used for the preceding fiscal year.

**(d) Ratable reductions; reallocations**

**(1) In general**

**(A) Ratable reductions**

If, after the Secretary reserves funds under section 6398(c) of this title, the amount appropriated to carry out this part for any fiscal year is insufficient to pay in full the amounts for which all States are eligible, the Secretary shall ratably reduce each such amount.

**(B) Reallocation**

If additional funds become available for making such payments for any fiscal year,

the Secretary shall allocate such funds to States in amounts that the Secretary determines will best carry out the purposes of this part.

**(2) Special rule**

**(A) Further reductions**

The Secretary shall further reduce the amount of any grant to a State under this part for any fiscal year if the Secretary determines, based on available information on the numbers and needs of migratory children in the State and the program proposed by the State to address such needs, that such amount exceeds the amount required under section 6394 of this title.

**(B) Reallocation**

The Secretary shall reallocate such excess funds to other States whose grants under this part would otherwise be insufficient to provide an appropriate level of services to migratory children, in such amounts as the Secretary determines are appropriate.

**(e) Consortium arrangements**

**(1) In general**

In the case of a State that receives a grant of \$1,000,000 or less under this section, the Secretary shall consult with the State educational agency to determine whether consortium arrangements with another State or other appropriate entity would result in delivery of services in a more effective and efficient manner.

**(2) Proposals**

Any State, regardless of the amount of such State's allocation, may submit a consortium arrangement to the Secretary for approval.

**(3) Approval**

The Secretary shall approve a consortium arrangement under paragraph (1) or (2) if the proposal demonstrates that the arrangement will—

(A) reduce administrative costs or program function costs for State programs; and

(B) make more funds available for direct services to add substantially to the academic achievement of children to be served under this part.

**(f) Determining numbers of eligible children**

In order to determine the identified number of migratory children residing in each State for purposes of this section, the Secretary shall—

(1) use the most recent information that most accurately reflects the actual number of migratory children;

(2) develop and implement a procedure for monitoring the accuracy of such information;

(3) develop and implement a procedure for more accurately reflecting cost factors for different types of summer and intersession program designs;

(4) adjust the number of migratory children who reside in each State to take into account—

(A) the unique needs of those children participating in effective special programs provided under this part that operate during the summer and intersession periods; and

(B) the additional costs of operating such programs; and

(5) conduct an analysis of the options for adjusting the formula so as to better direct services to migratory children, including the most at-risk migratory children.

**(g) Nonparticipating States**

In the case of a State desiring to receive an allocation under this part for a fiscal year that did not receive an allocation for the previous fiscal year or that has been participating for less than 3 consecutive years, the Secretary shall calculate the State's number of identified migratory children aged 3 through 21 for purposes of subsection (a)(1)(A) by using the most recent data available that identifies the migratory children residing in the State until data is available to calculate the 3-year average number of such children in accordance with such subsection.

(Pub. L. 89-10, title I, §1303, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1571; amended Pub. L. 114-95, title I, §1301(b), Dec. 10, 2015, 129 Stat. 1894.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 6393, Pub. L. 89-10, title I, §1303, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3585, related to State allocations, prior to the general amendment of this subchapter by Pub. L. 107-110.

**AMENDMENTS**

2015—Subsecs. (a), (b). Pub. L. 114-95, §1301(b)(2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to State allocations for fiscal year 2002 and subsequent years and allocation to Puerto Rico for each fiscal year.

Subsec. (c). Pub. L. 114-95, §1301(b)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114-95, §1301(b)(1), (3), redesignated subsec. (c) as (d), in par. (1) inserted subpar. headings after subpar. (A) and (B) designations, in par. (1), subpar. (B), substituted “purposes” for “purpose”, and in par. (2) inserted subpar. headings after subpar. (A) and (B) designations. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114-95, §1301(b)(1), (4), redesignated subsec. (d) as (e) and in par. (3)(B) substituted “the academic achievement of children” for “the welfare or educational attainment of children”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 114-95, §1301(b)(1), (5)(A), redesignated subsec. (e) as (f) and in introductory provisions substituted “identified number” for “estimated number”.

Subsec. (f)(1). Pub. L. 114-95, §1301(b)(5)(B), added par. (1) and struck out former par. (1) which read as follows: “use such information as the Secretary finds most accurately reflects the actual number of migratory children.”

Subsec. (f)(2), (3). Pub. L. 114-95, §1301(b)(5)(C), (D), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 114-95, §1301(b)(5)(C), (E), redesignated par. (3) as (4), in introductory provisions struck out “full-time equivalent” before “number”, and in subpar. (A) substituted “unique needs” for “special needs” and “effective special programs provided under this part” for “special programs provided under this part”. Former par. (4) redesignated (5).

Subsec. (f)(5). Pub. L. 114-95, §1301(b)(5)(C), (F), redesignated par. (4) as (5) and substituted “migratory chil-

dren, including the most at-risk migratory children” for “the child whose education has been interrupted”.

Subsec. (g). Pub. L. 114-95, §1301(b)(6), added subsec. (g).

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2015 AMENDMENT**

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

**MIGRANT EDUCATION PROGRAM**

Pub. L. 116-211, §3, Dec. 4, 2020, 134 Stat. 1018, provided that: “Due to the public health emergency relating to COVID-19 and notwithstanding subsections (a)(1) and (f)(1) of section 1303 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6393), for the purposes of making determinations under subsections (a)(1) and (f) of such section 1303 for fiscal year 2021 and all subsequent fiscal years for which school year 2019-2020 data would be used in the calculations under section 1303(a)(1) of such Act, the Secretary of Education shall use school year 2018-2019 data or school year 2019-2020 data, whichever data are greater, wherever school year 2019-2020 data would otherwise be required.”

**§ 6394. State applications; services**

**(a) Application required**

Any State desiring to receive a grant under this part for any fiscal year shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

**(b) Program information**

Each such application shall include—

(1) a description of how, in planning, implementing, and evaluating programs and projects assisted under this part, the State and its local operating agencies will ensure that the unique educational needs of migratory children and migratory children who have dropped out of school, are identified and addressed through—

(A) the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs;

(B) joint planning among local, State, and Federal educational programs serving migratory children, including language instruction educational programs under part A of subchapter III;

(C) the integration of services available under this part with services provided by those other programs; and

(D) measurable program objectives and outcomes;

(2) a description of the steps the State is taking to provide all migratory students with the opportunity to meet the same challenging State academic standards that all children are expected to meet;

(3) a description of how the State will use funds received under this part to promote interstate and intrastate coordination of services for migratory children, including how the State will provide for educational continuity through the timely transfer of pertinent school records, including information on