

(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, including preschool 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

health, when children move from one school to another, whether or not such move occurs during the regular school year;

(4) a description of the State's priorities for the use of funds received under this part, and how such priorities relate to the State's assessment of needs for services in the State;

(5) a description of how the State will determine the amount of any subgrants the State will award to local operating agencies, taking into account the numbers and needs of migratory children, the requirements of subsection (d), and the availability of funds from other Federal, State, and local programs; and

(6) a description of how the State will encourage programs and projects assisted under this part to offer family literacy services if the program or project serves a substantial number of migratory children whose parents do not have a high school diploma or its recognized equivalent or who have low levels of literacy.

### (c) Assurances

Each such application shall also include assurances that—

(1) funds received under this part will be used only—

(A) for programs and projects, including the acquisition of equipment, in accordance with section 6396 of this title; and

(B) to coordinate such programs and projects with similar programs and projects within the State and in other States, as well as with other Federal programs that can benefit migratory children and their families;

(2) such programs and projects will be carried out in a manner consistent with the objectives of section 6314 of this title, subsections (b) and (d) of section 6315 of this title, subsections (b) and (c) of section 6321 of this title, and part F;

(3) in the planning and operation of programs and projects at both the State and local agency operating level, there is consultation with parents of migratory children, including parent advisory councils, for programs not less than 1 school year in duration, and that all such programs and projects are carried out—

(A) in a manner that provides for the same parental involvement as is required for programs and projects under section 6318 of this title, unless extraordinary circumstances make such provision impractical; and

(B) in a format and language understandable to the parents;

(4) in planning and carrying out such programs and projects, there has been, and will be, adequate provision for addressing the unmet education needs of preschool migratory children and migratory children who have dropped out of school;

(5) the effectiveness of such programs and projects will be determined, where feasible, using the same approaches and standards that will be used to assess the performance of students, schools, and local educational agencies under part A;

(6) such programs and projects will provide for outreach activities for migratory children and their families to inform such children and families of other education, health, nutrition, and social services to help connect them to such services;

(7) to the extent feasible, such programs and projects will provide for—

(A) advocacy and other outreach activities for migratory children and their families, including helping such children and families gain access to other education, health, nutrition, and social services;

(B) professional development programs, including mentoring, for teachers and other program personnel;

(C) family literacy programs;

(D) the integration of information technology into educational and related programs; and

(E) programs to facilitate the transition of secondary school students to postsecondary education or employment; and

(8) the State will assist the Secretary in determining the number of migratory children under section 6393(a)(1) of this title.

### (d) Priority for services

In providing services with funds received under this part, each recipient of such funds shall give priority to migratory children who have made a qualifying move within the previous 1-year period and who—

(1) are failing, or most at risk of failing, to meet the challenging State academic standards; or

(2) have dropped out of school.

### (e) Continuation of services

Notwithstanding any other provision of this part—

(1) a child who ceases to be a migratory child during a school term shall be eligible for services until the end of such term;

(2) a child who is no longer a migratory child may continue to receive services for 1 additional school year, but only if comparable services are not available through other programs; and

(3) students who were eligible for services in secondary school may continue to be served through credit accrual programs until graduation.

(Pub. L. 89-10, title I, §1304, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1574; amended Pub. L. 114-95, title I, §1301(c), Dec. 10, 2015, 129 Stat. 1896.)

### Editorial Notes

#### PRIOR PROVISIONS

A prior section 6394, Pub. L. 89-10, title I, §1304, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3587; amended Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1605], Dec. 21, 2000, 114 Stat. 2763, 2763A-334, related to State applications and services, prior to the general amendment of this subchapter by Pub. L. 107-110.

#### AMENDMENTS

2015—Subsec. (b)(1). Pub. L. 114-95, §1301(c)(1)(A)(i), in introductory provisions substituted “unique educational needs” for “special educational needs” and in-

serted “and migratory children who have dropped out of school” after “preschool migratory children”.

Subsec. (b)(1)(B). Pub. L. 114-95, §1301(c)(1)(A)(ii), substituted “migratory children” for “migrant children” and “part A of subchapter III” for “part A or B of subchapter III”.

Subsec. (b)(1)(D). Pub. L. 114-95, §1301(c)(1)(A)(iii), added subpar. (D) and struck out former subpar. (D) which read as follows: “measurable program goals and outcomes”.

Subsec. (b)(2). Pub. L. 114-95, §1301(c)(1)(B), substituted “challenging State academic standards” for “challenging State academic content standards and challenging State student academic achievement standards”.

Subsec. (b)(3). Pub. L. 114-95, §1301(c)(1)(C), struck out “, consistent with procedures the Secretary may require,” after “including how”.

Subsec. (b)(5). Pub. L. 114-95, §1301(c)(1)(D), inserted “and” after semicolon at end.

Subsec. (b)(6), (7). Pub. L. 114-95, §1301(c)(1)(E)–(G), redesignated par. (7) as (6), substituted “migratory children whose parents do not have a high school diploma” for “migratory children who have parents who do not have a high school diploma”, and struck out former par. (6) which read as follows: “such budgetary and other information as the Secretary may require; and”.

Subsec. (c). Pub. L. 114-95, §1301(c)(2)(A), struck out “, satisfactory to the Secretary,” after “assurances” in introductory provisions.

Subsec. (c)(2). Pub. L. 114-95, §1301(c)(2)(B), made technical amendment to reference in original act which appears in text as reference to subsections (b) and (c) of section 6321 of this title and substituted “part F” for “part I”.

Subsec. (c)(3). Pub. L. 114-95, §1301(c)(2)(C)(i), in introductory provisions substituted “parents of migratory children, including parent advisory councils,” for “parent advisory councils” and “not less than 1 school year in duration” for “of 1 school year in duration”.

Subsec. (c)(3)(A). Pub. L. 114-95, §1301(c)(2)(C)(ii), made technical amendment to reference in original act which appears in text as reference to section 6318 of this title.

Subsec. (c)(4). Pub. L. 114-95, §1301(c)(2)(D), inserted “and migratory children who have dropped out of school” after “preschool migratory children”.

Subsec. (c)(6) to (8). Pub. L. 114-95, §1301(c)(2)(E)–(G), added pars. (6) and (7), redesignated former par. (7) as (8), in par. (8) substituted “section 6393(a)(1) of this title” for “paragraphs (1)(A) and (2)(B)(i) of section 6393(a) of this title, through such procedures as the Secretary may require”, and struck out former par. (6) which related to assurances that, to the extent feasible, programs would provide for advocacy and outreach activities, professional development programs, family literacy programs, the integration of information technology into programs, and programs to facilitate the transition to postsecondary education or employment.

Subsec. (d). Pub. L. 114-95, §1301(c)(3), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “In providing services with funds received under this part, each recipient of such funds shall give priority to migratory children who are failing, or most at risk of failing, to meet the State’s challenging State academic content standards and challenging State student academic achievement standards, and whose education has been interrupted during the regular school year.”

Subsec. (e)(3). Pub. L. 114-95, §1301(c)(4), substituted “students” for “secondary school students”.

#### 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.

#### § 6395. Secretarial approval; peer review

The Secretary shall approve each State application that meets the requirements of this part, and may review any such application with the assistance and advice of State officials and other officials with relevant expertise.

(Pub. L. 89-10, title I, §1305, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1576; amended Pub. L. 114-95, title I, §1301(d), Dec. 10, 2015, 129 Stat. 1897.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 6395, Pub. L. 89-10, title I, §1305, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3588, related to Secretarial approval and peer review, 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 consisted of subsections. (a) and (b) relating to Secretarial approval and peer review, respectively.

#### 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.

#### § 6396. Comprehensive needs assessment and service-delivery plan; authorized activities

##### (a) Comprehensive plan

###### (1) In general

Each State that receives assistance under this part shall ensure that the State and its local operating agencies identify and address the unique educational needs of migratory children in accordance with a comprehensive State plan that—

(A) is integrated with other programs under this chapter or other Acts, as appropriate;

(B) may be submitted as a part of a consolidated application under section 7842 of this title, if—

(i) the unique needs of migratory children are specifically addressed in the comprehensive State plan;

(ii) the comprehensive State plan is developed in collaboration with parents of migratory children; and

(iii) the comprehensive State plan is not used to supplant State efforts regarding, or administrative funding for, this part;

(C) provides that migratory children will have an opportunity to meet the same challenging State academic standards that all children are expected to meet;

(D) specifies measurable program goals and outcomes;

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