

“(4) demonstrates to the satisfaction of the Secretary that such agency’s per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.” Subsec. (j). Pub. L. 105–78 added subsec. (j). 1996—Subsecs. (g), (h). Pub. L. 104–195, §1, added subsecs. (g) and (h). Subsec. (i). Pub. L. 104–195, §6, added subsec. (i).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, and effective with respect to appropriations for use under this subchapter beginning fiscal year 2017, except as otherwise provided in such amendment, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title V, §563(c), Jan. 2, 2013, 126 Stat. 1748, as amended by Pub. L. 113–291, div. A, title V, §563, Dec. 19, 2014, 128 Stat. 3384; Pub. L. 114–95, title VII, §7001(a), title IX, §9215(pp), Dec. 10, 2015, 129 Stat. 2074, 2180, provided that:

“(1) EFFECTIVE DATE.—With respect to applications submitted under section 8002 [now 7002] of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7702], as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act [Dec. 10, 2015], for fiscal year 2010, title VIII [now VII] of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.] (including the amendments made by subsection (b)(1) [amending this section]), as in effect on such date, and subsection (b)(1) shall take effect with respect to such applications, notwithstanding section 8005(d) [now 7005(d)] of such Act [20 U.S.C. 7705(d)], as in effect on such date.

“(2) IMPLEMENTATION.—The Secretary of Education shall carry out the amendments made by this section [amending this section and sections 7703 and 7710 of this title] without regard to the rulemaking procedures under section 553 of title 5, United States Code.

“(3) Redesignated (2).”

“(4) Repealed. Pub. L. 114–95, title VII, §7001(a)(1), Dec. 10, 2015, 129 Stat. 2074.]”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

CONSOLIDATIONS

Pub. L. 113–76, div. H, title III, §309, Jan. 17, 2014, 128 Stat. 400, allowed a local educational agency formed by the consolidation of 2 or more former school districts to elect to have the Secretary of Education determine its eligibility for fiscal year 2006 and any succeeding fiscal year on the basis of 1 or more of such former districts, prior to repeal by Pub. L. 114–95, title VII, §7001(b), Dec. 10, 2015, 129 Stat. 2074.

§ 7703. Payments for eligible federally connected children

(a) Computation of payment

(1) In general

For the purpose of computing the amount that a local educational agency is eligible to receive under subsection (b) or (d) for any fiscal year, the Secretary shall determine the number of children who were in average daily attendance in the schools of such agency, and for whom such agency provided free public education, during the preceding school year and who, while in attendance at such schools—

(A)(i) resided on Federal property with a parent employed on Federal property situated in whole or in part within the boundaries of the school district of such agency; or
(ii) resided on Federal property with a parent who is an official of, and accredited by, a foreign government and is a foreign military officer;

(B) resided on Federal property and had a parent on active duty in the uniformed services (as defined in section 101 of title 37);

(C) resided on Indian lands;

(D)(i) had a parent on active duty in the uniformed services (as defined by section 101 of title 37) but did not reside on Federal property; or

(ii) had a parent who is an official of, and has been accredited by, a foreign government and is a foreign military officer but did not reside on Federal property;

(E) resided in low-rent housing;

(F) resided on Federal property and is not described in subparagraph (A) or (B); or

(G) resided with a parent employed on Federal property situated—

(i) in whole or in part in the county in which such agency is located, or in whole or in part in such agency if such agency is located in more than one county; or

(ii) if not in such county, in whole or in part in the same State as such agency.

(2) Determination of weighted student units

For the purpose of computing the basic support payment under subsection (b), the Secretary shall calculate the total number of weighted student units for a local educational agency by adding together the results obtained by the following computations:

(A) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of 1.0.

(B) Multiply the number of children described in paragraph (1)(C) by a factor of 1.25.

(C) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of .35 if the local educational agency has—

(i) a number of such children described in such subparagraphs which exceeds 5,000; and

(ii) an average daily attendance for all children which exceeds 100,000.

(D) Multiply the number of children described in subparagraph (D) of paragraph (1) by a factor of .20.

(E) Multiply the number of children described in subparagraph (E) of paragraph (1) by a factor of .10.

(F) Multiply the number of children described in subparagraphs (F) and (G) of paragraph (1) by a factor of .05.

(3) Special rule

The Secretary shall only compute a payment for a local educational agency for children described in subparagraph (F) or (G) of paragraph (1) if the number of such children equals or exceeds 1,000 or such number equals or exceeds 10 percent of the total number of

students in average daily attendance in the schools of such agency.

(4) Military installation and Indian housing undergoing renovation or rebuilding

(A) Military installation housing

Beginning in fiscal year 2014, in determining the amount of a payment for a local educational agency for children described in paragraph (1)(D)(i), the Secretary shall consider those children as if they were children described in paragraph (1)(B) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of Defense, that those children would have resided in housing on Federal property if the housing was not undergoing renovation or rebuilding. The total number of children treated as children described in paragraph (1)(B) shall not exceed the lesser of—

(i) the total number of children eligible under paragraph (1)(B) for the year prior to the initiation of the housing project on Federal property undergoing renovation or rebuilding; or

(ii) the total number of Federally connected children enrolled at the local educational agency as stated in the application filed for the payment for the year for which the determination is made.

(B) Indian lands

Beginning in fiscal year 2014, in determining the amount of a payment for a local educational agency that received a payment for children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application, the Secretary shall consider those children to be children described in paragraph (1)(C) if the Secretary determines on the basis of a certification provided to the Secretary by a designated representative of the Secretary of the Interior or the Secretary of Housing and Urban Development that those children would have resided in housing on Indian lands if the housing was not undergoing renovation or rebuilding. The total number of children treated as children described in paragraph (1)(C) shall not exceed the lesser of—

(i) the total number of children eligible under paragraph (1)(C) for the year prior to the initiation of the housing project on Indian lands undergoing renovation or rebuilding; or

(ii) the total number of Federally connected children enrolled at the local educational agency as stated in the application filed for the payment for the year for which the determination is made.

(C) Eligible housing

Renovation or rebuilding shall be defined as projects considered as capitalization, modernization, or restoration, as defined by the Secretary of Defense or the Secretary of the Interior (as the case may be) and are projects that last more than 30 days, but do not include “sustainment projects” such as painting, carpeting, or minor repairs.

(5) Military “Build to Lease” program housing

(A) In general

For purposes of computing the amount of payment for a local educational agency for children identified under paragraph (1), the Secretary shall consider children residing in housing initially acquired or constructed under the former section 2828(g) of title 10 (commonly known as the “Build to Lease” program), as added by section 801 of the Military Construction Authorization Act, 1984, or under lease of off-base property under subchapter IV of chapter 169 of title 10, to be children described under paragraph (1)(B), if the property described is—

(i) within the fenced security perimeter of the military facility; or

(ii) attached to, and under any type of force protection agreement with, the military installation upon which such housing is situated.

(B) Additional requirements

If the property described in subparagraph (A) is not owned by the Federal Government, is subject to taxation by a State or political subdivision of a State, and thereby generates revenues for a local educational agency that is applying to receive a payment under this section, then the Secretary—

(i) shall require the local educational agency to provide certification from an appropriate official of the Department of Defense that the property is being used to provide military housing; and

(ii) shall reduce the amount of the payment under this section by an amount equal to the amount of revenue from such taxation received in the second preceding fiscal year by such local educational agency, unless the amount of such revenue was taken into account by the State for such second preceding fiscal year and already resulted in a reduction in the amount of State aid paid to such local educational agency.

(b) Basic support payments; insufficient appropriations; State with only one local educational agency

(1) Basic support payments

(A) In general

From the amount appropriated under section 7714(b) of this title for a fiscal year, the Secretary is authorized to make basic support payments to eligible local educational agencies with children described in subsection (a).

(B) Eligibility

A local educational agency is eligible to receive a basic support payment under subparagraph (A) for a fiscal year with respect to a number of children determined under subsection (a)(1) only if the number of children so determined with respect to such agency amounts to the lesser of—

(i) at least 400 such children; or

(ii) a number of such children which equals at least 3 percent of the total number of children who were in average daily

attendance, during such year, at the schools of such agency and for whom such agency provided free public education.

(C) Maximum amount

The maximum amount that a local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2), multiplied by the greater of—

(i) one-half of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made;

(ii) one-half of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made;

(iii) the comparable local contribution rate certified by the State, as determined under regulations prescribed to carry out the Act of September 30, 1950 (Public Law 874, 81st Congress), as such regulations were in effect on January 1, 1994; or

(iv) the average per-pupil expenditure of the State in which the local educational agency is located, multiplied by the local contribution percentage.

(D) Data

If satisfactory data from the third preceding fiscal year are not available for any of the expenditures described in clause (i) or (ii) of subparagraph (C), the Secretary shall use data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.

(E) Increase in local contribution rate due to unusual geographic factors

If the current expenditures in those local educational agencies which the Secretary has determined to be generally comparable to the local educational agency for which a computation is made under subparagraph (C) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in such agency, a level of education equivalent to that maintained in such other agencies, then the Secretary shall increase the local contribution rate for such agency under subparagraph (C)(iii) by such an amount which the Secretary determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per-pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographic factors.

(F) Beginning with fiscal year 2002, for the purpose of calculating a payment under this paragraph for a local educational agency whose local contribution rate was computed under subparagraph (C)(iii) for the previous year, the Secretary shall use a local contribution rate that is not less than 95 per-

cent of the rate that the LEA received for the preceding year.

(2) Basic support payments for heavily impacted local educational agencies

(A) In general

(i) From the amount appropriated under section 7714(b) of this title for a fiscal year, the Secretary is authorized to make basic support payments to eligible heavily impacted local educational agencies with children described in subsection (a).

(ii) A local educational agency that receives a basic support payment under this paragraph for a fiscal year shall not be eligible to receive a basic support payment under paragraph (1) for that fiscal year.

(B) Eligibility for heavily impacted local educational agencies

(i) In general

A heavily impacted local educational agency is eligible to receive a basic support payment under subparagraph (A) with respect to a number of children determined under subsection (a)(1) if the agency—

(I) is a local educational agency—

(aa) whose boundaries are the same as a Federal military installation; or

(bb)(AA) whose boundaries are the same as an island property designated by the Secretary of the Interior to be property that is held in trust by the Federal Government; and

(BB) that has no taxing authority;

(II) is a local educational agency that—

(aa) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency that is not less than 45 percent;

(bb) has a per-pupil expenditure that is less than—

(AA) for an agency that has a total student enrollment of 500 or more students, 125 percent of the average per-pupil expenditure of the State in which the agency is located; or

(BB) for any agency that has a total student enrollment of less than 500 students, 150 percent of the average per-pupil expenditure of the State in which the agency is located or the average per-pupil expenditure of 3 or more comparable local educational agencies in the State in which the agency is located; and

(cc) is an agency that has a tax rate for general fund purposes that is not less than 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State;

(III) is a local educational agency that—

(aa) has a tax rate for general fund purposes which is not less than 125 percent of the average tax rate for general

fund purposes for comparable local educational agencies in the State;

(bb)(AA) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency that is not less than 30 percent; or

(BB) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency that is not less than 20 percent, and for the 3 fiscal years preceding the fiscal year for which the determination is made, the average enrollment of children who are not described in subsection (a)(1) and who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] constitutes a percentage of the total student enrollment of the agency that is not less than 65 percent and received assistance for fiscal year 2017 pursuant to subparagraph (G); and

(cc) received assistance under subparagraph (A) of section 7703(b)(2) of this title,¹ as such section was in effect on the day before December 10, 2015, for a fiscal year prior to fiscal year 2017;

(IV) is a local educational agency that received a payment for fiscal year 2015 under section 7703(b)(2)(E)¹ of this title (as such section was in effect for such fiscal year) and has a total student enrollment of not less than 25,000 students, of which—

(aa) not less than 35 percent are children described in subsection (a)(1); and

(bb)(AA) not less than 3,500 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1); or

(BB) not less than 7,000 of such children are children described in subparagraph (D) of subsection (a)(1);

(V) is a local educational agency that—

(aa) has an enrollment of children described in subsection (a)(1) including, for purposes of determining eligibility, those children described in subparagraphs (F) and (G) of such subsection, that is not less than 35 percent of the total student enrollment of the agency;

(bb) has a per-pupil expenditure described in subclause (II)(bb) (except that a local educational agency with a total student enrollment of less than 350 students shall be deemed to have satisfied such per-pupil expenditure requirement) and has a tax rate for general fund purposes which is not less than 95 percent of the average tax rate for general fund purposes for comparable local educational agencies in the State; and

(cc) was eligible to receive assistance under subparagraph (A) for fiscal year 2001.

(ii) Loss of eligibility

(I) In general

Subject to subclause (II), a heavily impacted local educational agency that met the requirements of clause (i) for a fiscal year shall be ineligible to receive a basic support payment under subparagraph (A) if the agency fails to meet the requirements of clause (i) for a subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.

(II) Loss of eligibility due to falling below 95 percent of the average tax rate for general fund purposes

In the case of a heavily impacted local educational agency described in subclause (II) or (V) of clause (i) that is eligible to receive a basic support payment under subparagraph (A), but that has had, for 2 consecutive fiscal years, a tax rate for general fund purposes that falls below 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State, such agency shall be determined to be ineligible under clause (i) and ineligible to receive a basic support payment under subparagraph (A) for each fiscal year succeeding such 2 consecutive fiscal years for which the agency has such a tax rate for general fund purposes, and until the fiscal year for which the agency resumes such eligibility in accordance with clause (iii).

(III) Taken over by State board of education

In the case of a heavily impacted local educational agency that is eligible to receive a basic support payment under subparagraph (A), but that has been taken over by a State board of education in any 2 previous years, such agency shall be deemed to maintain heavily impacted status for 2 fiscal years following December 10, 2015.

(iii) Eligibility

(I) First time

A local educational agency seeking a payment under this paragraph for the first time shall apply for and be determined eligible under clause (i) for 2 consecutive years before receiving such a payment, and shall not receive such a payment for the first year of eligibility.

(II) Resumption of eligibility

A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal

¹ See References in Text note below.

year only if the agency meets the requirements of clause (i) for that subsequent fiscal year, except that such agency shall not receive a basic support payment under this paragraph until the fiscal year succeeding the fiscal year for which the eligibility determination is made.

(C) Maximum amount for heavily impacted local educational agencies

(i) In general

Except as provided in subparagraph (D), the maximum amount that a heavily impacted local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2) and subject to clause (ii), multiplied by the greater of—

(I) four-fifths of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made; or

(II) four-fifths of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made.

(ii) Calculation of weighted student units

(I) In general

(aa) Percentage enrollment

For a local educational agency in which 35 percent or more of the total student enrollment of the schools of the agency are children described in subparagraph (D) or (E) (or a combination thereof) of subsection (a)(1), and that has an enrollment of children described in subparagraph (A), (B), or (C) of such subsection equal to at least 10 percent of the agency's total enrollment, the Secretary shall calculate the weighted student units of those children described in subparagraph (D) or (E) of such subsection by multiplying the number of such children by a factor of 0.55.

(bb) Exception

Notwithstanding item (aa), a local educational agency that received a payment under this paragraph for fiscal year 2013 shall not be required to have an enrollment of children described in subparagraph (A), (B), or (C) of subsection (a)(1) equal to at least 10 percent of the agency's total enrollment and shall be eligible for the student weight as provided for in item (aa).

(II) Enrollment of 100 or fewer children

For a local educational agency that has an enrollment of 100 or fewer children described in subsection (a)(1), the Secretary shall calculate the total number of weighted student units for pur-

poses of subsection (a)(2) by multiplying the number of such children by a factor of 1.75.

(III) Enrollment of more than 100 children but less than 1000

For a local educational agency that is not described under subparagraph (B)(i)(I) and has an enrollment of more than 100 but not more than 1,000 children described in subsection (a)(1), the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 1.25.

(D) Maximum amount for large heavily impacted local educational agencies

(i) In general

(I) Formula

Subject to clauses (ii), (iii), and (iv), the maximum amount that a heavily impacted local educational agency described in subclause (II) is eligible to receive under this paragraph for any fiscal year shall be determined in accordance with the formula described in paragraph (1)(C).

(II) Heavily impacted local educational agency

A heavily impacted local educational agency described in this subclause is a local educational agency that received a payment for fiscal year 2015 under section 7703(b)(2)(E)¹ of this title (as such section was in effect for such fiscal year) and has a total student enrollment of not less than 25,000 students, of which not less than 35 percent are children described in subsection (a)(1) and—

(aa) not less than 3,500 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1); or

(bb) not less than 7,000 of such children are children described in subparagraph (D) of subsection (a)(1).

(ii) Factor

For purposes of calculating the maximum amount described in clause (i), the factor used in determining the weighted student units under subsection (a)(2) with respect to children described in subparagraphs (A) and (B) of subsection (a)(1) shall be—

(I) for fiscal year 2016, 1.35;

(II) for each of fiscal years 2017 and 2018, 1.38;

(III) for fiscal year 2019, 1.40;

(IV) for fiscal year 2020, 1.42; and

(V) for fiscal year 2021 and each fiscal year thereafter, 1.45.

(iii) Factor for children who live off base

For purposes of calculating the maximum amount described in clause (i), the factor used in determining the weighted student units under subsection (a)(2) with respect to children described in subsection (a)(1)(D) shall be—

- (I) for fiscal year 2016, .20;
- (II) for each of fiscal years 2017 and 2018, .22;
- (III) for each of fiscal years 2019 and 2020, .25; and
- (IV) for fiscal year 2021 and each fiscal year thereafter—
 - (aa) .30 with respect to each of the first 7,000 children; and
 - (bb) .25 with respect to the number of children that exceeds 7,000.

(iv) Special rule

Notwithstanding clauses (ii) and (iii), for fiscal year 2020 or any succeeding fiscal year, if the number of students who are children described in subparagraphs (A) and (B) of subsection (a)(1) for a local educational agency subject to this subparagraph exceeds 7,000 for such year or the number of students who are children described in subsection (a)(1)(D) for such local educational agency exceeds 12,750 for such year, then—

- (I) the factor used, for the fiscal year for which the determination is being made, to determine the weighted student units under subsection (a)(2) with respect to children described in subparagraphs (A) and (B) of subsection (a)(1) shall be 1.40; and
- (II) the factor used, for such fiscal year, to determine the weighted student units under subsection (a)(2) with respect to children described in subsection (a)(1)(D) shall be .20.

(E) Data

For purposes of providing assistance under this paragraph, the Secretary shall use student, revenue, expenditure, and tax data from the third fiscal year preceding the fiscal year for which the local educational agency is applying for assistance under this paragraph.

(F) Determination of average tax rates for general fund purposes

(i) In general

Except as provided in clause (ii), for the purpose of determining the average tax rates for general fund purposes for local educational agencies in a State under this paragraph, the Secretary shall use either—

- (I) the average tax rate for general fund purposes for comparable local educational agencies, as determined by the Secretary in regulations; or
- (II) the average tax rate of all the local educational agencies in the State.

(ii) Fiscal years 2010–2015

(I) In general

For fiscal years 2010 through 2015, any local educational agency that was found ineligible to receive a payment under subparagraph (A) because the Secretary determined that it failed to meet the average tax rate requirement for general fund purposes in subparagraph (B)(i)(II)(cc), shall be considered to have met that requirement, if its State deter-

mined, through an alternate calculation of average tax rates for general fund purposes, that such local educational agency met that requirement.

(II) Subsequent fiscal years after 2015

For any succeeding fiscal year after 2015, any local educational agency identified in subclause (I) may continue to have its State use that alternate methodology to calculate whether the average tax rate requirement for general fund purposes under subparagraph (B)(i)(II)(cc) is met.

(III) Availability of funds

Notwithstanding any other provision of law limiting the period during which the Secretary may obligate funds appropriated for any fiscal year after 2012, the Secretary shall reserve a total of \$14,000,000 from funds that remain unobligated under this section from fiscal years 2015 or 2016 in order to make payments under this clause for fiscal years 2011 through 2014.

(G) Eligibility for heavily impacted local educational agencies affected by privatization of military housing

(i) Eligibility

For any fiscal year, a heavily impacted local educational agency that received a basic support payment under this paragraph for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B) due to the conversion of military housing units to private housing described in clause (iii), or as the direct result of base realignment and closure or modularization as determined by the Secretary of Defense and force structure change or force relocation, shall be deemed to meet the eligibility requirements under subparagraph (B) for the period during which the housing units are undergoing such conversion or during such time as activities associated with base closure and realignment, modularization, force structure change, or force relocation are ongoing.

(ii) Amount of payment

The amount of a payment to a heavily impacted local educational agency for a fiscal year by reason of the application of clause (i), and calculated in accordance with subparagraph (C) or (D), as the case may be, shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year and under the same provisions of subparagraph (C) or (D) under which the agency was paid during the prior fiscal year.

(iii) Conversion of military housing units to private housing described

For purposes of clause (i), “conversion of military housing units to private housing” means the conversion of military housing units to private housing units pursuant to subchapter IV of chapter 169 of title 10 or

pursuant to any other related provision of law.

(3) Payments with respect to fiscal years in which insufficient funds are appropriated

(A) In general

For any fiscal year in which the sums appropriated under section 7714(b) of this title are insufficient to pay to each local educational agency the full amount computed under paragraphs (1) and (2), the Secretary shall make payments in accordance with this paragraph.

(B) Learning opportunity threshold payments in lieu of payments under paragraph (1)

(i) For fiscal years described in subparagraph (A), the Secretary shall compute a learning opportunity threshold payment (hereafter in this subchapter referred to as the “threshold payment”) in lieu of basic support payments under paragraph (1) by multiplying the amount obtained under paragraph (1)(C) by the total percentage obtained by adding—

(I) the percentage of federally connected children for each local educational agency determined by calculating the fraction, the numerator of which is the total number of children described under subsection (a)(1) and the denominator of which is the total number of children in average daily attendance at the schools served by such agency; and

(II) the percentage that funds under paragraph (1)(C) represent of the total budget of the local educational agency, determined by calculating the fraction, the numerator of which is the total amount of funds calculated for each local educational agency under this paragraph, and the denominator of which is the total current expenditures for such agency in the second preceding fiscal year for which the determination is made.

(ii) Such total percentage used to calculate threshold payments under paragraph (1) shall not exceed 100.

(iii) In the case of a local educational agency providing a free public education to students enrolled in kindergarten through grade 12, that enrolls students described in subparagraphs (A), (B), and (D) of subsection (a)(1) only in grades 9 through 12, and that received a final payment for fiscal year 2009 calculated under section 7703(b)(3) of this title (as such section was in effect on the day before December 10, 2015) for students in grades 9 through 12, the Secretary shall, in calculating the agency’s payment, consider only that portion of such agency’s total enrollment of students in grades 9 through 12 when calculating the percentage under clause (i)(I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under clause (i)(II).

(iv) In the case of a local educational agency that has a total student enrollment of

fewer than 1,000 students and that has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or less than the average per-pupil expenditure of all the States, the total percentage used to calculate threshold payments under clause (i) shall not be less than 40 percent.

(C) Learning opportunity threshold payments in lieu of payments under paragraph (2)

For fiscal years described in subparagraph (A), the learning opportunity threshold payment in lieu of basic support payments under paragraph (2) shall be equal to the amount obtained under subparagraph (C) or (D) of paragraph (2), as the case may be.

(D) Ratable distribution

For fiscal years described in subparagraph (A), for which the sums available exceed the amount required to pay each local educational agency 100 percent of its threshold payment, the Secretary shall distribute the excess sums to each eligible local educational agency that has not received its full amount computed under paragraphs (1) or (2) (as the case may be) by multiplying—

(i) a percentage, the denominator of which is the difference between the full amount computed under paragraph (1) or (2) (as the case may be) for all local educational agencies and the amount of the threshold payment (as calculated under subparagraphs (B) and (C)) of all local educational agencies, and the numerator of which is the aggregate of the excess sums, by

(ii) the difference between the full amount computed under paragraph (1) or (2) (as the case may be) for the agency and the amount of the threshold payment (as calculated under subparagraphs (B) or (C)) of the agency, except that no local educational agency shall receive more than 100 percent of the maximum payment calculated under subparagraph (C) or (D) of paragraph (2).

(E) Insufficient payments

For each fiscal year described in subparagraph (A) for which the sums appropriated are insufficient to pay each local educational agency all of the local educational agency’s threshold payment described in subparagraph (B), the Secretary shall ratably reduce the payment to each local educational agency under this paragraph.

(F) Increases

(i) Increases based on insufficient funds

If additional funds become available under 7714(b) of this title for making payments under paragraphs (1) and (2) and those funds are not sufficient to increase each local educational agency’s threshold payment above 100 percent of its threshold payment described in subparagraph (B), payments that were reduced under subparagraph (E) shall be increased by the Secretary on the same basis as such payments were reduced.

(ii) Increases based on sufficient funds

If additional funds become available under section 7714(b) of this title for making payments under paragraphs (1) and (2) and those funds are sufficient to increase each local educational agency's threshold payment above 100 percent of its threshold payment described in subparagraph (B), the payment for each local educational agency shall be 100 percent of its threshold payment. The Secretary shall then distribute the excess sums to each eligible local educational agency in accordance with subparagraph (D).

(G) Provision of tax rate and resulting percentage

As soon as practicable following the payment of funds under paragraph (2) to an eligible local educational agency, the Secretary shall provide the local educational agency with a description of—

- (i) the tax rate of the local educational agency; and
- (ii) the percentage such tax rate represents of the average tax rate for general fund purposes of comparable local educational agencies in the State as determined under subclauses (II)(cc), III(aa), or (V)(bb) of paragraph (2)(B)(i) (as the case may be).

(4) States with only one local educational agency**(A) In general**

In any of the 50 States of the United States in which there is only one local educational agency, the Secretary shall, for purposes of subparagraphs (B) and (C) of paragraph (1) or subparagraphs (B) and (C) of paragraph (2), as the case may be, paragraph (3) of this subsection, and subsection (e), consider each administrative school district in the State to be a separate local educational agency.

(B) Computation of maximum amount of basic support payment and threshold payment

In computing the maximum payment amount under paragraph (1)(C) or subparagraph (C) or (D) of paragraph (2), as the case may be, and the learning opportunity threshold payment under subparagraph (B) or (C) of paragraph (3), as the case may be, for an administrative school district described in subparagraph (A)—

- (i) the Secretary shall first determine the maximum payment amount and the total current expenditures for the State as a whole; and
- (ii) the Secretary shall then—
 - (I) proportionately allocate such maximum payment amount among the administrative school districts on the basis of the respective weighted student units of such districts; and
 - (II) proportionately allocate such total current expenditures among the administrative school districts on the basis of the respective number of students in average daily attendance at such districts.

(5) Local educational agencies affected by removal of Federal property**(A) In general**

In computing the amount of a basic support payment under this subsection for a fiscal year for a local educational agency described in subparagraph (B), the Secretary shall meet the additional requirements described in subparagraph (C).

(B) Local educational agency described

A local educational agency described in this subparagraph is a local educational agency with respect to which Federal property (i) located within the boundaries of the agency, and (ii) on which one or more children reside who are receiving a free public education at a school of the agency, is transferred by the Federal Government to another entity in any fiscal year beginning on or after October 30, 2000, so that the property is subject to taxation by the State or a political subdivision of the State.

(C) Additional requirements

The additional requirements described in this subparagraph are the following:

- (i) For each fiscal year beginning after the date on which the Federal property is transferred, a child described in subparagraph (B) who continues to reside on such property and who continues to receive a free public education at a school of the agency shall be deemed to be a child who resides on Federal property for purposes of computing under the applicable subparagraph of subsection (a)(1) the amount that the agency is eligible to receive under this subsection.

(ii)(I) For the third fiscal year beginning after the date on which the Federal property is transferred, and for each fiscal year thereafter, the Secretary shall, after computing the amount that the agency is otherwise eligible to receive under this subsection for the fiscal year involved, deduct from such amount an amount equal to the revenue received by the agency for the immediately preceding fiscal year as a result of the taxable status of the former Federal property.

(II) For purposes of determining the amount of revenue to be deducted in accordance with subclause (I), the local educational agency—

- (aa) shall provide for a review and certification of such amount by an appropriate local tax authority; and
- (bb) shall submit to the Secretary a report containing the amount certified under item (aa).

(c) Prior year data**(1) In general**

Except as provided in subsections (b)(1)(D), (b)(2), and paragraph (2), all calculations under this section shall be based on data for each local educational agency from not later than the fiscal year preceding the fiscal year for which the agency is making application for payment.

(2) Exception

Calculation of payments for a local educational agency shall be based on data from the fiscal year for which the agency is making an application for payment if such agency—

(A) is newly established by a State, for the first year of operation of such agency only;

(B) was eligible to receive a payment under this section for the previous fiscal year and has had an overall increase in enrollment (as determined by the Secretary in consultation with the Secretary of Defense, the Secretary of the Interior, or the heads of other Federal agencies)—

(i) (I) of not less than 10 percent of children described in—

(aa) subparagraph (A), (B), (C), or (D) of subsection (a)(1); or

(bb) subparagraphs (F) and (G) of subsection (a)(1), but only to the extent that such children are civilian dependents of employees of the Department of Defense or the Department of the Interior; or

(II) of not less than 100 of such children; and

(ii) that is the direct result of closure or realignment of military installations under the base closure process or the relocation of members of the Armed Forces and civilian employees of the Department of Defense as part of the force structure changes or movements of units or personnel between military installations or because of actions initiated by the Secretary of the Interior or the head of another Federal agency; or

(C) was eligible to receive a payment under this section for the previous fiscal year and has had an increase in enrollment (as determined by the Secretary)—

(i) of not less than 10 percent of children described in subsection (a)(1) or not less than 100 of such children; and

(ii) that is the direct result of the closure of a local educational agency that received a payment under subsection (b)(1) or (b)(2) for the previous fiscal year.

(d) Children with disabilities**(1) In general**

From the amount appropriated under section 7714(c) of this title for a fiscal year, the Secretary shall pay to each eligible local educational agency, on a pro rata basis, the amounts determined by—

(A) multiplying the number of children described in subparagraphs (A)(ii), (B) and (C) of subsection (a)(1) who are eligible to receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) by a factor of 1.0; and

(B) multiplying the number of children described in subparagraph (D) of subsection (a)(1) who are eligible to receive services under such Act by a factor of 0.5.

(2) Use of funds

A local educational agency that receives funds under paragraph (1) shall use such funds to provide a free appropriate public education

to children described in paragraph (1) in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(e) Hold harmless**(1) In general**

In the case of any local educational agency eligible to receive a payment under subsection (b) whose calculated payment amount for a fiscal year is reduced by 20 percent, as compared to the amount received for the previous fiscal year, the Secretary shall pay the local educational agency, for the year of the reduction and the following 2 years, the amount determined under paragraph (2).

(2) Amount of reduction

Subject to paragraph (3), A local educational agency described in paragraph (1) shall receive—

(A) for the first year for which the reduced payment is determined, an amount that is not less than 90 percent of the total amount that the local educational agency received under subsection (b) for the previous fiscal year;

(B) for the second year following such reduction, an amount that is not less than 85 percent of the total amount that the local educational agency received under subparagraph (A); and

(C) for the third year following such reduction, an amount that is not less than 80 percent of the total amount that the local educational agency received under subparagraph (B).

(3) Special rule

For any fiscal year for which a local educational agency would receive a payment under subsection (b) in excess of the amount determined under paragraph (2), the payment received by the local educational agency for such fiscal year shall be calculated under paragraph (1) or (2) of subsection (b).

(4) Ratable reductions**(A) In general**

If the sums made available under this subchapter for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) for such year, then the Secretary shall ratably reduce the payments to all such agencies for such year.

(B) Additional funds

If additional funds become available for making payments under paragraph (1) for such fiscal year, payments that were reduced under subparagraph (A) shall be increased on the same basis as such payments were reduced.

(f) Other funds

Notwithstanding any other provision of law, a local educational agency receiving funds under this section may also receive funds under section 386 of the National Defense Authorization Act for Fiscal Year 1993 or such section's successor authority.

(Pub. L. 89-10, title VII, §7003, formerly title VIII, §8003, as added Pub. L. 103-382, title I, §101,

Oct. 20, 1994, 108 Stat. 3752; amended Pub. L. 104-106, div. A, title X, §1074(f), (g), Feb. 10, 1996, 110 Stat. 448, 449; Pub. L. 104-195, §§3(a), 4(a), 5(a), (b), Sept. 16, 1996, 110 Stat. 2380-2382; Pub. L. 104-201, div. A, title III, §376, Sept. 23, 1996, 110 Stat. 2503; Pub. L. 104-208, div. A, title I, §101(e) [title III, §307(a)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-262; Pub. L. 105-18, title VI, §60005(a), June 12, 1997, 111 Stat. 214; Pub. L. 105-78, title III, Nov. 13, 1997, 111 Stat. 1497; Pub. L. 106-398, §1 [[div. A], title XVIII, §§1804(a), (b)(1), (c), 1805-1808(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-372, 1654A-374 to 1654A-382; Pub. L. 106-554, §1(a)(1) [title III, §323], Dec. 21, 2000, 114 Stat. 2763, 2763A-61; Pub. L. 107-20, title II, §2703(a), July 24, 2001, 115 Stat. 182; Pub. L. 107-110, title VIII, §802(a)(1), Jan. 8, 2002, 115 Stat. 1949; Pub. L. 107-206, title I, §§801, 802, Aug. 2, 2002, 116 Stat. 874; Pub. L. 107-279, title IV, §406(a), Nov. 5, 2002, 116 Stat. 1986; Pub. L. 107-314, div. A, title III, §344, Dec. 2, 2002, 116 Stat. 2515; Pub. L. 108-136, div. A, title V, §537(a), Nov. 24, 2003, 117 Stat. 1475; Pub. L. 111-84, div. A, title V, §536, Oct. 28, 2009, 123 Stat. 2293; Pub. L. 112-239, div. A, title V, §563(b)(2), (c)(4), Jan. 2, 2013, 126 Stat. 1746, 1748; renumbered title VII, §7003, and amended Pub. L. 114-95, title VII, §§7001(a)(1), (c)(1), (d)(10), 7004, Dec. 10, 2015, 129 Stat. 2074, 2075, 2077; Pub. L. 114-328, div. A, title V, §579(b)(1), (d)(1), Dec. 23, 2016, 130 Stat. 2145, 2146; Pub. L. 115-141, div. H, title III, §311(d), Mar. 23, 2018, 132 Stat. 750.)

Editorial Notes

REFERENCES IN TEXT

Section 2828(g) of title 10 (commonly known as the “Build to Lease” program), as added by section 801 of the Military Construction Authorization Act, 1984, referred to in subsec. (a)(5)(A), means the subsection (g) added to section 2828 of Title 10, Armed Forces, by section 801 of Pub. L. 98-115, which was repealed by Pub. L. 102-190, div. B, title XXVIII, §2806(b), Dec. 5, 1991, 105 Stat. 1540.

Act of September 30, 1950, referred to in subsec. (b)(1)(C)(iii), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, which was classified generally to chapter 13 (§236 et seq.) of this title, prior to repeal by Pub. L. 103-382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(2)(B)(i)(III)(bb)(BB), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

Section 7703(b)(2) of this title, as such section was in effect on the day before December 10, 2015, referred to in subsec. (b)(2)(B)(i)(III)(cc), was in the original “section 8003(b)(2), as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1802)”, meaning former section 8003(b)(2) of Pub. L. 89-10, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3752, as such section was in effect prior to the date of enactment of Pub. L. 114-95, which was approved Dec. 10, 2015. Former section 8003 of Pub. L. 89-10 was renumbered section 7003 by Pub. L. 114-95, title VII, §7001(c)(1), Dec. 10, 2015, 129 Stat. 2074, and is classified to this section.

Section 7703(b)(2)(E) of this title (as such section was in effect for such fiscal year), referred to in subsec. (b)(2)(B)(i)(IV), (D)(i)(II), was in the original “8003(b)(2)(E) (as such section was in effect for such fis-

cal year)”, meaning former section 8003(b)(2)(E) of Pub. L. 89-10, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3752, as such section was in effect for fiscal year 2015. Former section 8003 of Pub. L. 89-10 was renumbered section 7003 by Pub. L. 114-95, title VII, §7001(c)(1), Dec. 10, 2015, 129 Stat. 2074, and is classified to this section.

The Individuals with Disabilities Education Act, referred to in subsec. (d), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

Section 386 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (f), is section 386 of Pub. L. 102-484, which is set out as a note below.

PRIOR PROVISIONS

A prior section 7003 of Pub. L. 89-10 was classified to section 3283 of this title prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

AMENDMENTS

2018—Subsec. (b)(2)(B)(i)(III)(bb)(BB). Pub. L. 115-141, §311(d)(1)(B)(i), inserted “and received assistance for fiscal year 2017 pursuant to subparagraph (G)” after “not less than 65 percent”.

Subsec. (b)(2)(B)(i)(III)(cc). Pub. L. 115-141, §311(d)(1)(A), (B)(ii), (C), added item (cc).

Subsec. (b)(2)(B)(iii). Pub. L. 115-141, §311(d)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: “In the case of a local educational agency providing a free public education to students enrolled in kindergarten through grade 12, that enrolls students described in subparagraphs (A), (B), and (D) of subsection (a)(1) only in grades 9 through 12, and that received a final payment for fiscal year 2009 calculated under section 7703(b)(3) of this title (as such section was in effect on the day before December 10, 2015) for students in grades 9 through 12, the Secretary shall, in calculating the agency’s payment, consider only that portion of such agency’s total enrollment of students in grades 9 through 12 when calculating the percentage under clause (i)(I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under clause (i)(II).”

2016—Subsec. (b)(2)(B)(i)(I). Pub. L. 114-328, §579(b)(1), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “is a local educational agency—

“(aa) whose boundaries are the same as a Federal military installation or an island property designated by the Secretary of the Interior to be property that is held in trust by the Federal Government; and

“(bb) that has no taxing authority;”.

Subsec. (b)(2)(B)(i)(IV). Pub. L. 114-328, §579(d)(1)(A)(i), inserted “received a payment for fiscal year 2015 under section 7703(b)(2)(E) of this title (as such section was in effect for such fiscal year) and” before “has” in introductory provisions.

Subsec. (b)(2)(B)(i)(IV)(aa). Pub. L. 114-328, §579(d)(1)(A)(ii), substituted “35” for “50”.

Subsec. (b)(2)(B)(i)(IV)(bb). Pub. L. 114-328, §579(d)(1)(A)(iii), added item (bb) and struck out former item (bb) which read as follows: “not less than 5,000 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1); or”.

Subsec. (b)(2)(D)(i)(I). Pub. L. 114-328, §579(d)(1)(B)(i)(I), substituted “clauses (ii), (iii), and (iv)” for “clause (ii)”.

Subsec. (b)(2)(D)(i)(II). Pub. L. 114-328, §579(d)(1)(B)(i)(II), inserted “received a payment for fiscal year 2015 under section 7703(b)(2)(E) of this title (as such section was in effect for such fiscal year) and” after “agency that” and substituted “35 percent” for “50 percent”, “subsection (a)(1) and—” and item (aa) for “subsection (a)(1) and not less than 5,000”, and “subsection (a)(1); or” and item (bb) for “subsection (a)(1).”

Subsec. (b)(2)(D)(ii). Pub. L. 114-328, § 579(d)(1)(B)(ii), substituted “shall be—” for “shall be 1.35.” and added subcls. (I) to (V).

Subsec. (b)(2)(D)(iii), (iv). Pub. L. 114-328, § 579(d)(1)(B)(iii), added cls. (iii) and (iv).

2015—Pub. L. 114-95, § 7001(a)(1), repealed Pub. L. 112-239, § 563(c)(4). See 2013 Amendment notes below.

Subsec. (a)(5)(A). Pub. L. 114-95, § 7004(1), substituted “or under lease of off-base property under subchapter IV of chapter 169 of title 10, to be children described under paragraph (1)(B), if the property described is—” for “to be children described under paragraph (1)(B) if the property described is within the fenced security perimeter of the military facility upon which such housing is situated.” and added cls. (i) and (ii).

Subsec. (b). Pub. L. 114-95, § 7001(d)(10), made technical amendment to references in original act which appear in text as references to section 7714(b) of this title in pars. (1)(A), (2)(A)(i), and (3)(A).

Subsec. (b)(1)(E) to (G). Pub. L. 114-95, § 7004(2)(A), redesignated subpars. (F) and (G) as (E) and (F), respectively, and struck out former subpar. (E) which provided special rule for determining comparable local contribution rate.

Subsec. (b)(2)(B) to (H). Pub. L. 114-95, § 7004(2)(B), added subpars. (B) to (G) and struck out former subpars. (B) to (H), which related to eligibility for receipt of basic support payments by continuing and new heavily impacted local educational agencies, maximum amounts for regular and large heavily impacted local educational agencies, data to be used by the Secretary, determination of average tax rates for general fund purposes, and eligibility as affected by privatization of military housing.

Subsec. (b)(3)(B)(iii). Pub. L. 114-95, § 7004(2)(C)(i), added cl. (iii) and struck out former cl. (iii) which read as follows: “For the purpose of determining the percentages described in subclauses (I) and (II) of clause (i) that are applicable to the local educational agency providing free public education to students in grades 9 through 12 residing on Hanscom Air Force Base, Massachusetts, the Secretary shall consider only that portion of such agency’s total enrollment of students in grades 9 through 12 when calculating the percentage under such subclause (I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under subclause (II).”

Subsec. (b)(3)(C). Pub. L. 114-95, § 7004(2)(C)(ii), substituted “subparagraph (C) or (D) of paragraph (2), as the case may be” for “subparagraph (D) or (E) of paragraph (2), as the case may be”.

Subsec. (b)(3)(D) to (G). Pub. L. 114-95, § 7004(2)(C)(iii), added subpars. (D) to (G) and struck out former subpar. (D). Prior to amendment, text of subpar. (D) read as follows: “For fiscal years described in subparagraph (A), the Secretary shall make payments as a ratable distribution based upon the computations made under subparagraphs (B) and (C).”

Subsec. (b)(4)(A). Pub. L. 114-95, § 7004(2)(D)(i), substituted “and (C) of paragraph (2)” for “through (D) of paragraph (2)”.

Subsec. (b)(4)(B). Pub. L. 114-95, § 7004(2)(D)(ii), substituted “subparagraph (C) or (D)” for “subparagraph (D) or (E)” in introductory provisions.

Subsec. (c)(2). Pub. L. 114-95, § 7004(3), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “Calculations for a local educational agency that is newly established by a State shall, for the first year of operation of such agency, be based on data from the fiscal year for which the agency is making application for payment.”

Subsec. (d)(1). Pub. L. 114-95, § 7004(4), made technical amendment to reference in original act which appears in introductory provisions as reference to section 7714(c) of this title.

Subsec. (e). Pub. L. 114-95, § 7004(5), added pars. (1) to (3), redesignated former par. (3) as (4), and struck out former pars. (1) and (2) which related to amounts payable to a local educational agency for fiscal years 2001 and 2002.

Subsec. (g). Pub. L. 114-95, § 7004(6), struck out subsec. (g). Text read as follows: “A local educational agency may receive funds under subsection (b) of this section and section 7702 of this title for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.”

2013—Pub. L. 112-239, § 563(c)(4), which directed repeal of the amendment by Pub. L. 112-239, § 563(b)(2), on the day after the 5-year period that began on Jan. 3, 2013, was itself repealed by Pub. L. 114-95, § 7001(a)(1).

Subsec. (a)(4). Pub. L. 112-239, § 563(b)(2), added par. (4) and struck out former par. (4) which related to military installation and Indian housing undergoing renovation or rebuilding.

2009—Subsec. (a)(2)(C)(i). Pub. L. 111-84 substituted “5,000” for “6,500”.

2003—Subsec. (b)(2)(H)(i), (ii). Pub. L. 108-136 added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) ELIGIBILITY.—For any fiscal year beginning with fiscal year 2003, a heavily impacted local educational agency that received a basic support payment under subparagraph (A) for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B) or (C), as the case may be, by reason of the conversion of military housing units to private housing described in clause (iii), shall be deemed to meet the eligibility requirements under subparagraph (B) or (C), as the case may be, for the period during which the housing units are undergoing such conversion.

“(ii) AMOUNT OF PAYMENT.—The amount of a payment to a heavily impacted local educational agency for a fiscal year by reason of the application of clause (i), and calculated in accordance with subparagraph (D) or (E) (as the case may be), shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year.”

2002—Subsec. (b)(1)(G). Pub. L. 107-206, § 802, added subpar. (G).

Subsec. (b)(2)(C)(i). Pub. L. 107-110, § 802(a)(1)(A), inserted “(or if the agency is a qualified local educational agency as described in clause (iv))” after “Federal military installation” in introductory provisions.

Subsec. (b)(2)(C)(i)(II)(bb). Pub. L. 107-279 amended item (bb) generally. Prior to amendment, item (bb) read as follows: “for a local educational agency that has a total student enrollment of less than 350 students, has a per-pupil expenditure that is less than the average per-pupil expenditure of a comparable local educational agency in the State in which the agency is located; and”.

Subsec. (b)(2)(C)(ii). Pub. L. 107-110, § 802(a)(1)(A), inserted “(or if the agency is a qualified local educational agency as described in clause (iv))” after “Federal military installation”.

Subsec. (b)(2)(C)(iv). Pub. L. 107-110, § 802(a)(1)(B), added cl. (iv).

Subsec. (b)(2)(D)(ii)(III). Pub. L. 107-206, § 801, amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: “For a local educational agency that has an enrollment of more than 100 but not more than 750 children described in subsection (a)(1) of this section, the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) of this section by multiplying the number of such children by a factor of 1.25.”

Subsec. (b)(2)(H). Pub. L. 107-314 added subpar. (H).

Subsec. (b)(3)(B)(iv). Pub. L. 107-20 inserted “or less than the average per-pupil expenditure of all the States” after “of the State in which the agency is located”.

2000—Subsec. (a)(1). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1806(c)(1)], substituted “subsection (b) or (d)” for “subsection (b), (d), or (f)” in introductory provisions.

Subsec. (a)(2)(D). Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(a)(1)(B)], substituted “subparagraph (D) of paragraph (1) by a factor of .20” for “subparagraphs (D) and (E) of paragraph (1) by a factor of .10”.

Subsec. (a)(2)(E), (F). Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(a)(1)(A), (C)], added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (a)(4). Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(b)(1)], inserted “and Indian” after “Military installation” and “or rebuilding” after “renovation” in par. heading, designated existing provisions as subpar. (A)(i), inserted subpar. (A) heading, inserted “or rebuilding” after “undergoing renovation”, added cl. (ii) to subpar. (A) and added subpar. (B).

Subsec. (a)(5). Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(c)], added par. (5).

Subsec. (b)(1)(C). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(2)(A)], substituted “this paragraph” for “this subsection” in introductory provisions.

Subsec. (b)(1)(D), (E). Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(a)(2)], added subpars. (D) and (E).

Subsec. (b)(1)(F). Pub. L. 106-398, §1 [[div. A], title XVIII, §1805], added subpar. (F).

Subsec. (b)(2). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(a)(2)], added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(2)(F). Pub. L. 106-554, §1(a)(1) [title III, §323(a)], substituted “the Secretary—” for “the Secretary”, designated remaining provisions as cl. (i), and added cl. (ii).

Subsec. (b)(2)(G). Pub. L. 106-554, §1(a)(1) [title III, §323(b)], added subpar. (G).

Subsec. (b)(3). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(a)(1)], redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(3)(A). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(1)], substituted “paragraphs (1) and (2)” for “paragraph (1)”.

Subsec. (b)(3)(B). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(2)(A)], inserted “in lieu of payments under paragraph (1)” after “payments” in heading.

Subsec. (b)(3)(B)(i). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(2)(B)], inserted “in lieu of basic support payments under paragraph (1)” before “by multiplying” in introductory provisions and struck out “(not including amounts received under subsection (f) of this section)” after “under this paragraph” in subcl. (II).

Subsec. (b)(3)(B)(iv). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(2)(C)], added cl. (iv).

Subsec. (b)(3)(C). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(4)], added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(3), (5)], redesignated subpar. (C) as (D) and substituted “computations made under subparagraphs (B) and (C)” for “computation made under subparagraph (B)”.

Subsec. (b)(4). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(a)(1)], redesignated par. (3) as (4).

Subsec. (b)(4)(A). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(2)(B)(i)], substituted “subparagraphs (B) and (C) of paragraph (1) or subparagraphs (B) through (D) of paragraph (2), as the case may be, paragraph (3) of this subsection” for “paragraphs (1)(B), (1)(C), and (2) of this subsection”.

Subsec. (b)(4)(B). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(2)(B)(ii)], in introductory provisions, inserted “or subparagraph (D) or (E) of paragraph (2), as the case may be,” after “paragraph (1)(C)” and substituted “subparagraph (B) or (C) of paragraph (3), as the case may be,” for “paragraph (2)(B)”.

Subsec. (b)(5). Pub. L. 106-398, §1 [[div. A], title XVIII, §1807], added par. (5).

Subsec. (c)(1). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(3)], substituted “subsections (b)(1)(D), (b)(2), and paragraph (2)” for “paragraph (2) and subsection (f) of this section”.

Subsec. (e). Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(a)(3)], amended heading and text of subsec. (e)

generally. Prior to amendment, subsec. (e) required the Secretary to pay local education agencies under subsec. (b) of this section certain minimum amounts for fiscal years 1995 to 1999.

Subsec. (f). Pub. L. 106-398, §1 [[div. A], title XVIII, §§1806(c)(4), 1808(b)(1)], redesignated subsec. (h) as (f) and struck out heading and text of former subsec. (f) which required the Secretary to provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under this section.

Subsec. (g). Pub. L. 106-398, §1 [[div. A], title XVIII, §1808(a), (b)(1)], redesignated subsec. (i) as (g) and struck out heading and text of former subsec. (g) which related to additional payments for local educational agencies with high concentrations of children with severe disabilities.

Subsec. (h). Pub. L. 106-398, §1 [[div. A], title XVIII, §1808(b)(1)], redesignated subsec. (h) as (f).

Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(5)], substituted “section 386 of the National Defense Authorization Act for Fiscal Year 1993” for “section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994)”.

Subsec. (i). Pub. L. 106-398, §1 [[div. A], title XVIII, §1808(b)(1)], redesignated subsec. (i) as (g).

1997—Subsec. (f)(2)(A)(ii)(I). Pub. L. 105-78, which directed the amendment of section 8003(f)(2)(ii)(I) of the Elementary and Secondary Education Act of 1965 by substituting “25 percent of the total student enrollment of such agency. For purposes of this subclause, all students described in subsection (a)(1) of this section are used to determine eligibility, regardless of whether or not a local educational agency receives funds for these children from subsection (b) of this section;” for “35 percent” and all that follows through the semicolon, was executed by making the substitution for “35 percent of the total student enrollment of such agency;” in subsection (f)(2)(A)(ii)(I) of this section, to reflect the probable intent of Congress.

Subsec. (f)(4). Pub. L. 105-18 struck out hyphen after “Secretary” in introductory provisions, redesignated subpar. (A) as entire par. (4), inserted “expenditure,” after “revenue,” substituted period for semicolon after “assistance under this subsection”, and struck out subpar. (B) which read as follows: “shall derive the per pupil expenditure amount for the fiscal year for which the local educational agency is applying for assistance under this subsection for the local educational agency’s comparable school districts by increasing or decreasing the per pupil expenditure data for the second fiscal year preceding the fiscal year for which the determination is made by the same percentage increase or decrease reflected between the per pupil expenditure data for the fourth fiscal year preceding the fiscal year for which the determination is made and the per pupil expenditure data for such second year.”

1996—Subsec. (a)(3). Pub. L. 104-201 substituted “1,000 or such number equals or exceeds 10 percent” for “2,000 and such number equals or exceeds 15 percent”.

Subsec. (a)(4). Pub. L. 104-195, §3(a), added par. (4).

Subsec. (b)(3). Pub. L. 104-195, §4(a), added par. (3).

Subsec. (f)(2)(A). Pub. L. 104-106, §1074(f)(1)(A), substituted “if such agency is eligible for a supplementary payment in accordance with subparagraph (B) or such agency” for “only if such agency” in introductory provisions.

Subsec. (f)(2)(D). Pub. L. 104-106, §1074(f)(1)(B), added subpar. (D).

Subsec. (f)(3)(A). Pub. L. 104-106, §1074(f)(2)(A)(i), inserted “(other than any amount received under paragraph (2)(B))” after “subsection” in introductory provisions.

Subsec. (f)(3)(A)(i). Pub. L. 104-208, §101(e) [title III, §307(a)(1), (5)], substituted in introductory provisions, “The Secretary, in conjunction with the local educational agency, shall first determine each of the following:” for “The Secretary shall first determine the greater of—” and inserted concluding provisions.

Subsec. (f)(3)(A)(i)(I). Pub. L. 104-208, §101(e) [title III, §307(a)(2), (3)], substituted “The average” for “the average” before “of the State” and substituted period for semicolon at end.

Pub. L. 104-106, §1074(f)(2)(A)(ii), struck out “or the average per-pupil expenditure of all the States” after “is located”.

Subsec. (f)(3)(A)(i)(II). Pub. L. 104-208, §101(e) [title III, §307(a)(2)], substituted “The average” for “the average”.

Pub. L. 104-208, §101(e) [title III, §307(a)(4)], which directed substitution of period for “; or”, was executed by making substitution for “; or” to reflect the probable intent of Congress.

Subsec. (f)(3)(A)(i)(III). Pub. L. 104-208, §101(e) [title III, §307(a)(2)], substituted “The average” for “the average”.

Subsec. (f)(3)(A)(ii). Pub. L. 104-106, §1074(f)(2)(A)(iii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “The Secretary shall next subtract from the amount determined under clause (i) the average amount of State aid per pupil received by the local educational agency.”

Subsec. (f)(3)(A)(iii). Pub. L. 104-195, §5(b)(1), inserted “, except as provided in subparagraph (C),” after “but” in introductory provisions.

Pub. L. 104-106, §1074(f)(2)(A)(iv), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “The Secretary shall next multiply the amount determined under clause (ii) by the total number of students in average daily attendance at the schools of the local educational agency as determined by the Secretary under subsection (a)(1) of this section.”

Subsec. (f)(3)(B). Pub. L. 104-106, §1074(f)(2)(B), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “With respect to payments under this subsection for a local educational agency described in clause (ii) or (iii) of paragraph (2)(A), the maximum amount of such payments shall be computed by taking the product of the average per-pupil expenditure in all States multiplied by 0.7, except that such amount may not exceed 125 percent of the average per-pupil expenditure in all local educational agencies in the State.”

Subsec. (f)(3)(C). Pub. L. 104-195, §5(b)(2), added subpar. (C).

Subsec. (f)(4). Pub. L. 104-195, §5(a), substituted “Data” for “Current year data” in heading, amended subpar. (A) generally, substituting present provisions for provisions which read “shall use student and revenue data from the fiscal year for which the local educational agency is applying for assistance under this subsection; and”, and in subpar. (B) substituted “the fiscal year for which the local educational agency is applying for assistance under this subsection” for “such year”.

Pub. L. 104-106, §1074(g), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: “The Secretary shall, for purposes of providing assistance under this subsection, use—

“(A) student and revenue data from the fiscal year for which the local educational agency is applying for assistance under this subsection; and

“(B) the most recent data available which is adjusted to such fiscal year.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. A, title V, §579(b)(2), Dec. 23, 2016, 130 Stat. 2145, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect with respect to appropriations for use under title VII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.], as amended by the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1802), beginning with fiscal year 2017 and as if enacted as part of title VII of the Every Student Succeeds Act [129 Stat. 2074].”

Pub. L. 114-328, div. A, title V, §579(d)(2), Dec. 23, 2016, 130 Stat. 2148, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect with respect to appropriations for use under title VII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.] beginning with fiscal year 2017 and as if enacted as part of title VII of the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 2074).”

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, and effective with respect to appropriations for use under this subchapter beginning fiscal year 2017, except as otherwise provided in such amendment, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title V, §537(b), Nov. 24, 2003, 117 Stat. 1475, provided that: “The amendment made by subsection (a) [amending this section] shall take effect beginning with basic support payments under section 8003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)) for fiscal year 2003.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-279, title IV, §406(b), Nov. 5, 2002, 116 Stat. 1987, provided that: “The amendment made by section 406(a) [amending this section] shall be effective on September 30, 2001, and shall apply with respect to fiscal year 2001, and all subsequent fiscal years.”

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-375, provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to payments to a local educational agency for fiscal years beginning before, on, or after the date of the enactment of this Act [Oct. 30, 2000].”

EFFECTIVE DATE OF 1997 AMENDMENT

Title III of Pub. L. 105-78, Nov. 13, 1997, 111 Stat. 1497, provided in part that: “The amendment made by this proviso [amending this section] shall apply with respect to fiscal years beginning with fiscal year 1996”.

Pub. L. 105-18, title VI, §60005(b), June 12, 1997, 111 Stat. 215, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to fiscal years after fiscal year 1997.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(e) [title III, §307(b)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-262, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning with fiscal year 1995.”

Pub. L. 104-195, §3(b), Sept. 16, 1996, 110 Stat. 2381, provided that: “Paragraph (4) of section 8003(a) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(a)(4)], as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1995.”

Pub. L. 104-195, §4(b), Sept. 16, 1996, 110 Stat. 2381, provided that: “Paragraph (3) of section 8003(b) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(b)(3)], as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1994.”

Pub. L. 104-195, §5(c), Sept. 16, 1996, 110 Stat. 2382, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to fiscal years after fiscal year 1996.”

CALCULATION OF BASIC SUPPORT PAYMENTS

Pub. L. 115-245, div. B, title III, §315, Sept. 28, 2018, 132 Stat. 3108, provided that:

“(a) For any local educational agency that for fiscal year 2018, had an enrollment of eligible Federally connected children that was at least 35 percent of the agency’s total student enrollment and a per-pupil expenditure that was less than the average per-pupil expenditure of the State or of all the States, and was determined ineligible to receive a payment under section 7003(b)(2)(A) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(b)(2)(A)] for failing to meet the average tax rate requirement for general fund purposes in section 7003(b)(2)(B)(i)(V)(bb), and whose calculated payment amount under section 7003(b) for the three years following fiscal year 2019 is less than 80 percent of the amount received for fiscal year 2019, the Secretary [of Education] shall pay the local educational agency for the following three years not less than 90 percent of the total amount the local educational agency received under section 7003(b)(2) for fiscal year 2017 if such local educational agency—

“(1) previously received a payment under section 7003(b)(2)(A) but did not receive a payment under section 7003(b)(2)(B)(ii) (or any predecessor of such provision) for each of fiscal years 2015 through 2017; and

“(2) was considered a local educational agency described in section 7003(b)(2)(B)(i)(V) (or any predecessor of such provision) for each such fiscal year.

“(b) For fiscal year 2020 and succeeding fiscal years, if a local educational agency described in subsection (a) is eligible to receive a basic support payment pursuant to section 7003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)), the payment received by the local educational agency shall be calculated under section 7003(b)(2) of such Act and not under subsection (a).”

Pub. L. 115-141, div. H, title III, §311(a)–(c), Mar. 23, 2018, 132 Stat. 750, provided that:

“(a) Notwithstanding any other provision of law except as provided under subsection (c), with respect to a local educational agency that was notified by the Secretary [of Education] in fiscal year 2017 of the agency’s eligibility to receive a basic support payment pursuant to section 7003(b)(2)(B)(i)(III) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)(B)(i)(III)) for fiscal year 2017 but did not receive a payment under section 7003(b)(2) of such Act [20 U.S.C. 7703(b)(2)] for fiscal year 2017, in addition to payments received by the local educational agency under section 7003(b)(1) of such Act [20 U.S.C. 7703(b)(1)], the Secretary shall reserve from funds appropriated to carry out section 7003(b) [20 U.S.C. 7703(b)] of such Act and make payments from such funds to such local educational agency for fiscal years 2017, 2018, 2019, and 2020 in the following amounts:

“(1) \$3,000,000 for fiscal year 2017.

“(2) \$5,000,000 for fiscal year 2018.

“(3) \$4,000,000 for fiscal year 2019.

“(4) \$4,000,000 for fiscal year 2020.

“(b) For fiscal year 2017, a local educational agency described in subsection (a) shall not be eligible for a basic support payment pursuant to section 7003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)).

“(c) For fiscal year 2018 and succeeding fiscal years, if a local educational agency described in subsection (a) is eligible to receive a basic support payment pursuant to section 7003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)), the payment received by the local educational agency shall be calculated under section 7003(b)(2) of such Act and not under subsection (a).”

IMPACT AID AMENDMENTS

Pub. L. 114-328, div. A, title V, §579(a), Dec. 23, 2016, 130 Stat. 2145, provided that:

“(a) MILITARY ‘BUILD TO LEASE’ PROGRAM HOUSING.—Notwithstanding section 5(d) of the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1806), the amendment made by section 7004(1) of such Act (Public Law 114-95; 129 Stat. 2077) [amending this section]—

“(1) for fiscal year 2016—

“(A) shall be applied as if amending section 8003(a)(5)(A) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(a)(5)(A)], as in effect on the day before the date of enactment of the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1802) [Dec. 10, 2015]; and

“(B) shall be applicable with respect to appropriations for use under title VIII of the Elementary and Secondary Education Act of 1965 (Public Law 114-95; 129 Stat. 1802) [20 U.S.C. 7801 et seq.]; and

“(2) for fiscal year 2017 and each succeeding fiscal year, shall be in effect with respect to appropriations for use under title VII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.], as amended by the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1802).”

SPECIAL RULE REGARDING THE PER-PUPIL EXPENDITURE REQUIREMENT

Pub. L. 114-328, div. A, title V, §579(c), Dec. 23, 2016, 130 Stat. 2145, as amended by Pub. L. 115-141, div. H, title III, §311(e), Mar. 23, 2018, 132 Stat. 751, provided that:

“(1) REFERENCES.—Except as otherwise expressly provided, any reference in this subsection to a section or other provision of title VII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.] shall be considered to be a reference to the section or other provision of such title VII as amended by the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1802).

“(2) IN GENERAL.—Notwithstanding section 5(d) of the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1806) or section 7003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)), with respect to any application submitted under section 7005 of such Act (20 U.S.C. 7705) for eligibility consideration under subclause (II) or (V) of section 7003(b)(2)(B)(i) of such Act [20 U.S.C. 7703(b)(2)(B)(i)] for fiscal year 2017 and any succeeding fiscal year, the Secretary of Education shall determine that a local educational agency meets the per-pupil expenditure requirement for purposes of such subclause (II) or (V), as applicable, only if—

“(A) in the case of a local educational agency that received a basic support payment for fiscal year 2001 under section 8003(b)(2)(B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)(B)) (as such section was in effect for such fiscal year), the agency, for the year for which the application is submitted, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or the average per-pupil expenditure of all States (whichever average per-pupil expenditure is greater), except that a local educational agency with a total student enrollment of less than 350 students shall be deemed to have satisfied such per-pupil expenditure requirement; or

“(B) in the case of a local educational agency that did not receive a basic support payment for fiscal year 2015 under such section 8003(b)(2)(B), as so in effect, the agency, for the year for which the application is submitted—

“(i) has a total student enrollment of 350 or more students and a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located; or

“(ii) has a total student enrollment of less than 350 students and a per-pupil expenditure that is less than the average per-pupil expenditure of a comparable local educational agency or 3 comparable local educational agencies (whichever average per-pupil expenditure is greater), in the State in which the agency is located.”

SPECIAL RULES

Pub. L. 114-328, div. A, title V, §579(d)(3), Dec. 23, 2016, 130 Stat. 2148, provided that:

“(A) APPLICABILITY FOR FISCAL YEAR 2016.—Notwithstanding any other provision of law, in making basic

support payments under section 8003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)) for fiscal year 2016, the Secretary of Education shall carry out subparagraphs (B)(i) and (E) of such section as if the amendments made to subparagraphs (B)(i)(IV) and (D) of section 7003(b)(2) of such Act [20 U.S.C. 7703(b)(2)] (as amended and redesignated by this subsection and the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1802)) had also been made to the corresponding provisions of section 8003(b)(2) of the Elementary and Secondary Education Act of 1965, as in effect on the day before the date of enactment of the Every Student Succeeds Act [Dec. 10, 2015].

“(B) LOSS OF ELIGIBILITY.—For fiscal year 2016 or any succeeding fiscal year, if a local educational agency is eligible for a basic support payment under subclause (IV) of section 7003(b)(2)(B)(i) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(b)(2)(B)(i)] (as amended by this section and the Every Student Succeeds Act (Public Law 114-95; 129 Stat. 1802)) or through a corresponding provision under subparagraph (A), such local educational agency shall be ineligible to apply for a payment for such fiscal year under any other subclause of such section (or, for fiscal year 2016, any other item of section 8003(b)(2)(B)(i)(II) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(b)(2)(B)(i)(II)]).

“(C) PAYMENT AMOUNTS.—If, before the date of enactment of this Act [Dec. 23, 2016], a local educational agency receives 1 or more payments under section 8003(b)(2)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)(E)) for fiscal year 2016, the sum of which is greater than the amount the Secretary of Education determines the local educational agency is entitled to receive under such section in accordance with subparagraph (A)—

“(i) the Secretary shall allow the local educational agency to retain the larger amount; and

“(ii) such local educational agency shall not be eligible to receive any additional payment under such section for fiscal year 2016.”

TRANSITION PROVISIONS

Pub. L. 107-110, title VIII, § 802(a)(2), Jan. 8, 2002, 115 Stat. 1949, provided that: “The Secretary shall consider an application for a payment under section 8003(b)(2) [20 U.S.C. 7703(b)(2)] for fiscal year 2002 from a qualified local educational agency described in section 8003(b)(2)(C)(iv), as added by paragraph (1), as meeting the requirements of section 8003(b)(2)(C)(iii), and shall provide a payment under section 8003(b)(2) for fiscal year 2002, if the agency submits to the Secretary an application for payment under such section not later than 30 days after the date of enactment of this Act [Jan. 8, 2002].”

ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

Pub. L. 102-484, div. A, title III, § 386, Oct. 23, 1992, 106 Stat. 2394, as amended by Pub. L. 103-160, div. A, title III, § 373(a), (b), Nov. 30, 1993, 107 Stat. 1635, 1636; Pub. L. 103-382, title III, § 391(d), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 104-106, div. A, title X, § 1074(c)-(e), (h), Feb. 10, 1996, 110 Stat. 448, 449; Pub. L. 105-85, div. A, title III, § 381(e), Nov. 18, 1997, 111 Stat. 1709; Pub. L. 106-65, div. A, title III, § 351(e), Oct. 5, 1999, 113 Stat. 572, which required the Secretary of Defense, in consultation with the Secretary of Education, to provide financial assistance to certain local educational agencies in States, was repealed by Pub. L. 109-163, div. A, title V, § 572(g), Jan. 6, 2006, 119 Stat. 3273. See section 7703b of this title.

NOTICE TO LOCAL AND STATE EDUCATIONAL AGENCIES OF ENROLLMENT CHANGES DUE TO BASE CLOSURES AND REALIGNMENTS

For provisions requiring Secretary of Defense to identify local educational agencies that will experience at

least a 5-percent increase or 10-percent reduction in enrollment in number of dependent children of members of Armed Forces and of civilian employees of Department of Defense enrolled in schools under jurisdiction of such agencies during next academic year as a result of closure or realignment of a military installation, and to transmit notice of schedule of such closure or realignment to affected local and State educational agencies, see section 2833 of Pub. L. 101-189, set out as a note under section 2687 of Title 10, Armed Forces.

§ 7703a. Impact aid for children with severe disabilities

(a) Payments

Subject to subsection (f), the Secretary of Defense shall make a payment for fiscal years after fiscal year 2001, to each local educational agency eligible to receive a payment for a child described in subparagraph (A)(ii) or (B), or clause (i) or (ii) of subparagraph (D), of section 7703(a)(1)¹ of this title that serves two or more such children with severe disabilities, for costs incurred in providing a free appropriate public education to each such child.

(b) Payment amount

The amount of the payment under subsection (a) to a local educational agency for a fiscal year for each child referred to in such subsection with a severe disability shall be—

(1) the payment made on behalf of the child with a severe disability that is in excess of the average per pupil expenditure in the State in which the local educational agency is located; less

(2) the sum of the funds received by the local educational agency—

(A) from the State in which the child resides to defray the educational and related services for such child;

(B) under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) to defray the educational and related services for such child; and

(C) from any other source to defray the costs of providing educational and related services to the child which are received due to the presence of a severe disabling condition of such child.

(c) Exclusions

No payment shall be made under subsection (a) on behalf of a child with a severe disability whose individual cost of educational and related services does not exceed—

(1) five times the national or State average per pupil expenditure (whichever is lower), for a child who is provided educational and related services under a program that is located outside the boundaries of the school district of the local educational agency that pays for the free appropriate public education of the student; or

(2) three times the State average per pupil expenditure, for a child who is provided educational and related services under a program offered by the local educational agency, or within the boundaries of the school district served by the local educational agency.

¹ See References in Text note below.