LanguAge Recomendations

For Senate Bill 1262

“Native Class Bill”

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1. Centers for Innovation in Tribally-Directed Education

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**Title V**

**Promoting Informed Parental Choice**

**and Innovative Programs**

Centers for Innovation in Tribally-Directed Education

*Insert the following new subpart:*

***Subpart \_\_\_ Centers for Innovation in Tribally-Directed Education***

Sec. \_\_\_. Purpose. In order to carry out the United States' unique and continuing trust responsibility to the Indian people for the education of Indian children and to meet the unique educational and cultural needs of those children, it is the purpose of this subpart is provide technical and professional expertise to Indian tribes to enable such tribes to build and maintain the capacity to effectively exercise their right and authority to direct the delivery of educational services to Indian children.

Sec. \_\_\_. Requirements for Centers.

 (a) Establishment of Centers. Through grants authorized in this subpart, the Secretary shall establish 2 Centers for Innovation and Excellence in Tribally-Directed Education (hereinafter "Centers") to provide technical and professional assistance as described in subsection (e) to Indian tribes and tribal education agencies, as designated by Indian tribes, to enable those entities to build and maintain the capacity to carry out their authorities and responsibilities for directing and overseeing the education of their tribal children.

 (b) Grants authorized.

 (1) The Secretary is authorized to award grants to or enter into contracts with two eligible entities to carry out activities that meet the purposes of this subpart.

 (2) For purposes of this subpart, an "eligible entity" means –

 (A) an Indian tribe;

 (B) an institution of higher education, including a tribally controlled college or university as defined in 25 U.S.C. §1801;

 (C) an Indian organization as defined in 34 C.F.R. 263.20;

 (D) a public or private non-profit organization; or

 (E) a consortium of any such entities.

 (3) In awarding grants or entering into contracts under this subpart, the Secretary shall give preference to eligible entities that are tribally controlled colleges or universities, or consortia which include one or more tribally controlled colleges or universities.

 (c) Applications.

 (1) Each eligible entity desiring a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, in addition to the information described in paragraph (2), as the Secretary may reasonably require.

 (2) An eligible entity shall include the following information in its application for a grant under this subpart –

 (A) a description of the extent of its knowledge of the structures of Indian tribal governments and any experience in working with or for tribal governments or tribal governmental agencies;

 (B) a description of the extent of its experience working with Indian tribes, schools funded by the Bureau of Indian Education, and local educational agencies with high concentrations of Indian children;

 (C) a description of the extent of its knowledge of or experience with culturally based education programs and language immersion programs; and

 (D) an assurance that the entity will, if awarded a grant under this subpart, establish an advisory board to guide the entity's performance of the grant which shall be comprised of the following –

 (i) tribal governmental officials;

 (ii) tribal education officials;

 (iii) individuals experienced in teaching or leadership positions in schools funded by the Bureau of Indian Education or local educational agency schools with high concentrations of Indian children;

 (iv) education researchers with expertise in teaching and learning strategies for Indian children; and

 (v) parents of Indian children enrolled in an elementary or secondary school program.

 (d) Grant duration. Each grant awarded or contract entered into under this subpart shall be for a period of not less than 4 years and not more than 6 years. Grants and contracts shall be eligible for renewal.

 (e) Use of funds. Funds provided to eligible entities under this subpart may be used for –

 (1) programs designed to build capacity within Indian tribal governments to exercise policymaking, operational and oversight authority over educational programs serving the children of such tribes, to establish effective consultation procedures with State educational agencies and local educational agencies, and to collaborate with federal, state, and local agencies;

 (2) activities to assist Indian tribes in establishing tribal education agencies and developing operational and organizational protocols compatible with tribal structures and responsive to tribal objectives;

 (3) strategies to enhance and maintain effective involvement of parents of Indian children in their children's educational program;

 (4) assistance with development or review of curriculum and assessments that are culturally appropriate and effective for Indian students;

 (5) development of professional development programs for teachers of Indian children;

 (6) collection and dissemination of best practices regarding culturally appropriate curriculum and teaching techniques;

 (7) development of programs to assist teachers of Indian children in use of achievement data to improve the effectiveness of educational programs;

 (8) assist tribes in developing programs to address behavioral issues in elementary and secondary schools such as truancy, bullying, gangs and violence;

 (9) assist tribes in development of tribe-specific academic achievement standards, assessments, and remedial requirements; and

 (10) such other activities consistent with the purposes of this subpart.

Sec. \_\_\_\_. Authorization of Appropriations. For the purpose of carrying out this subpart, there are authorized to be appropriated $3,000,000 for fiscal year 2012 and such sums as may be necessary for each of the 5 succeeding fiscal years.

**Title VII**

**Indian, Native Hawaiian, and Alaska Native Education**

### SEC. 7115. AUTHORIZED SERVICES AND ACTIVITIES.

(b) PARTICULAR ACTIVITIES- The services and activities referred to in subsection (a) may include —

(13) dropout prevention and recovery activities.

### SEC. 7121. IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN.

(c) GRANTS AUTHORIZED-

(1) IN GENERAL- The Secretary shall award grants to eligible entities to enable such entities to carry out activities that meet the purpose of this section, including —

(L) activities that recognize and support the unique cultural and educational needs of Indian children, including activities that support Native American language programs and Native American language restoration programs, which may be taught by traditional leaders; ;

(M) fellowships to enable Indian students to obtain graduate or professional degrees;

(N) the establishment of programs to provide challenging education activities and experiences for Indian students in and out of school, and that provide support services to families of the students served to enable those students to benefit from the projects; and(O) other services that meet the purpose described in this section.

(d) GRANT REQUIREMENTS AND APPLICATIONS-

(1) GRANT REQUIREMENTS-

(C) PROGRESS- The Secretary shall award grants for an initial period of not more than three years, and may renew them for up to an additional two years if the Secretary finds that the grantee is achieving the objectives of the grants and the Secretary determines that the eligible entity has made substantial progress in carrying out the activities assisted under the grant in accordance with the application submitted under paragraph (3) and any subsequent modifications to such application.

(3) APPLICATION-

(B) CONTENTS

(i) a description of how families of Indian children and official designated by the Indian tribes have been, and will be, involved in developing and implementing the activities for which assistance is sought;

### SEC. 7122. PROFESSIONAL DEVELOPMENT FOR TEACHERS AND EDUCATION PROFESSIONALS.

### PURPOSES- The purposes of this section are —

### (2) to recruit and provide training and support to qualified Indian individuals to enable such individuals to become teachers administrators, teacher aides, social workers, and ancillary educational personnel; and

(e) APPLICATION- Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require. At a minimum, the application shall describe how the eligible entity will,

 (1) recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers or administrators in local educational agencies that serve a high proportion of Indian students;

 (2) use funds made available under the grant to support the recruitment, preparation, and training of Indian teachers and administrates in local educational agencies that serve a high proposition of Indian students, and

### SEC. 7135. GRANTS TO TRIBES FOR EDUCATION ADMINISTRATIVE PLANNING AND DEVELOPMENT.

### IN GENERAL

1. coordinate all education programs operated by the tribe or within the territorial jurisdiction of the tribe, which may include facilitating the development of agreements with the appropriate State educational agency, and facilitating the transfer of the authority for some or all of the State-level activities covered by the agreement;

(2) develop tribal standards and assessments;

(3) provide support services and technical assistance to schools serving children of the tribe; and

(4) perform child-find screening services for the infants, toddlers, and preschool-aged children of the tribe to —

### SEC. 7141. TRIBAL ADVISORY COUNCIL ON INDIAN EDUCATION.

(a) MEMBERSHIP- There is established a Tribal Advisory Council on Indian Education (hereafter in this section referred to as the Council'), which shall —

(1) TRIBAL MEMBERS. The Council shall consist of 15 elected or appointed tribal officials (or their designated employees with authority to act on their behalf) to act as principle members who shall be appointed by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations;

(2) National Tribal Organization Member. Consistent with the instructions for implementation of Sec. 204(b) of the Unfunded Mandates Reform Act, the Secretary shall appoint as a member of the Council a representative from a national organization comprised of Indian tribes, and an alternate to such member, both of whom shall be elected or appointed tribal officials (or designated employees of such officials with authority to act on such officials' behalf).

(3) Federal members. The Secretary, the WHITCU Director, and the Director of Indian Education shall be ex-officio members of the Council and attend all Council meetings.

(4) GEOGRAPHIC DIVERSITY. The Council shall represent different geographic areas of the United States.

(b) DUTIES- The Secretary shall —

(1) consult with the Council prior to proposing any regulation, establishing or changing any policies, and submitting any budget proposal that may be applicable to Indian children or adults;

(2) include in the proposed budget developed annually for the Department information on the recommendations made by the Council;

 (3) consult with the Council for recommendations for filling the position of Director of Indian Education whenever a vacancy occurs; and

(c) Meetings. The Secretary shall assure that the Council meets face-to-face not less than 3 times per fiscal year and may hold additional meetings by telephone conference call.

(D) Nonapplication. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

**Title VIII**

**Impact Aid**

**Section 8001. Purpose.**

 In order to fulfill the Federal responsibility to assist with the provision of

 educational services to federally connected children in a manner that promotes

 control by local educational agencies with little or no Federal or State

 involvement, because certain activities of the Federal Government, such as

 activities to fulfill a responsibility of the Federal government, with respect to

 Indian tribes and activities under section 511 of the Service members Civil Relief Act, place a financial burden on the local educational agencies serving areas

 where such activities are carried out, and to help such children meet challenging

 State standards, it is the purpose of this title to provide financial assistance to

 local educational agencies that –

 (1) experience a substantial and continuing financial burden due to the

 acquisition of real property by the United States;

 (2) educate children who reside on Federal property and whose parents are

 employed on Federal property;

 (3) educate children of parents who are in the military services and children who live in low-rent housing;

 (4) educate heavy concentrations of children whose parents are civilian

 employees of the Federal Government and do not reside on Federal property; or

 (5) need special assistance with capital expenditures for construction activities

 because of the substantial enrollment numbers of children who reside on Federal

 lands and because of the difficulty of raising local revenue through bond

 referendums for capital projects due to the inability to tax Federal property.

 **Section 8002. Payments Relating to Federal Acquisition of Real Property.**

 (a) IN GENERAL.- Where the Secretary, after consultation with any local

 educational agency and with the appropriate State educational agency, determines for a fiscal year ending prior to October 1, \_.

 (1) that the United States owns Federal property in the local educational agency,

 and that such property—

 (A) has been acquired by the United States since 1938;

 (B) was not acquired by exchange for other Federal property in the local

 educational agency which the United States owned before 1939; and

 (C) had an assessed value **according to original records (including**

 **facsimiles or other reproductions of those records) or other records that the**

 **Secretary determines to be appropriate and reliable, including Federal**

 **agency records or local historical records** aggregating 10 percent or more of the assessed value of—

 (i) all real property in the local educational agency (similarly determined

 as of the time or times when such Federal property was so acquired); or

 (ii) all real property in the local educational agency as assessed in the first year preceding or succeeding acquisition, whichever is greater, only if—

 (I) the assessment of all real property in the local educational agency is

 not made at the same time or times that such Federal property was so acquired

 and assessed; and

 (II) State law requires an assessment be made of property so acquired;

 and

 (2) that such agency is not being substantially compensated for the loss in

 revenue resulting from such ownership by increases in revenue accruing to the

 agency from the conduct of Federal activities with respect to such Federal

 property, then such agency shall be eligible to receive the amount described in

 subsection (b).

 (b) AMOUNT.—

 (1) IN GENERAL.-(A)(i)(I) Subject to subclauses (II) and (III), the

 amount that a local educational agency shall be paid under sub­section (a) for a

 fiscal year shall be calculated in ac­cordance with paragraph (2).

 (II) Except as provided in subclause (III), the Secretary may not reduce the amount of a payment under this section to a local educational agency for a fiscal

 year by (aa) the amount equal to the amount of revenue, if any, the agency

 received during the previous fiscal year from activities conducted on Federal

 property eligible under this section and located in a school district served by the agency, including amounts received from any Federal department or agency

 (other than the Department of Education) from such activities, by reason of

 receipt of such revenue, or (bb) any other amount by reason of such revenue.

 (III) If the amount equal to the sum of (aa) the proposed payment under

 this section to a local educational agency for a fiscal year and (bb) the amount of revenue described in subclause (II) (aa) received by the agency during the

 previous fiscal year, exceeds the maximum amount the agency is eligible to

 receive under this section for the fiscal year involved, then the Secretary shall

 reduce the amount of the proposed payment under this section by an amount equal to such excess amount.

 (ii) For purposes of clause (i), the amount of revenue that a local

 educational agency receives dur­ing the previous fiscal year from activities

 conducted on Federal property shall not include payments re­ceived by the agency from the Secretary of Defense to support—

 (I) the operation of a domestic dependent elementary or secondary school;

 or

 (II) the provision of a free public edu­cation to dependents of members of

 the Armed Forces residing on or near a military installa­tion.

 (B) If funds appropriated under section 8014(a) are insufficient to pay the amount deter­mined under sub-paragraph (A), the Secretary shall calculate the

 payment for each eligible local educational agency in accordance with subsection (h).

 (C) Notwithstanding any other provision of this subsection, a local

 educational agency may not be paid an amount under this section that, when

 added to the amount such agency receives under sec­tion 8003(b), exceeds the

 maximum amount that such agency is eligible to receive for such fiscal year under section 8003(b)(1)(C), or the maximum amount that such agency is eligible to

 receive for such fiscal year under this section, whichever is greater.

 (D) Notwithstanding any other provision of this subsection, a local

 educational agency may not be paid an amount under this section that exceeds the

 total current expenditures of the agency in the second prior fiscal year.

 (2) DETERMINATION OF **ESTIMATED ASSESSED** VALUE

 **FOR ELIGIBLE FEDERAL PROPERTY.**

 **“(A) In General. – Subject to subparagraph (B), in**

 **determining the estimated taxable value of eligible Federal property located within the boundaries of a local education agency for fiscal year 2010 and each succeeding fiscal year the Secretary shall:**

 **(i) determine the total taxable value for the**

 **purpose of levying a property tax for school purposes for current expenditures of real property located within the boundaries of such local educational agency;**

 **(ii) determine the per acre value of the**

 **eligible federal property by dividing –**

 (I) **the total taxable value as determined in clause (i), by**

 (II) **the total acres located within the boundaries of the local education agency minus the number of Federal acres eligible under this section; and**

 **(iii) multiply the per acre value as calculated under clause (ii) by the number of Federal acres eligible under this section.**

 **“(B) SPECIAL RULE.– In a case in which a local educational** **agency shares eligible Federal property with 2 or more local** **educational agencies the local educational agency may ask the Secretar to –**

 **(i) calculate the per acre value of each such local**

 **educational agency in accordance with subparagraph (A); and**

 **(ii) apply the average of the per acre values to the acres of the Federal property in that agency.**

 (3) APPLICATION OF CURRENT LEVIED REAL PROPERTY TAX

 RATE.-In calculating the amount that a local educational agency is eligible to

 receive for a fiscal year, the Secretary shall apply the **current levied** real property tax rate for current expenditures levied by fiscally independent local educational

 agencies, or imputed for fiscally dependent local edu­cational agencies, to the

 **current** annually deter­mined **estimated taxable value of such acquired Federal**

  **property as provided for in paragraph (2).**

 (c) APPLICABILITY TO TENNESSEE VALLEY AUTHORITY ACT.-For the

 purpose of this section, any real property with respect to which payments are

 being made under section 13 of the Tennessee Valley Authority Act of 1933 shall not be regarded as Federal property.

 (d) OWNERSHIP BY UNITED STATES.-The United States shall be deemed to

 own Federal property for the purposes of this Act, where-

 (1) prior to the transfer of Federal property, the United States owned Federal

 property meeting the requirements of subparagraph (A), (B) and (C) of subsection (a) (1); and

 (2) the United States transfers a portion of the property referred to in paragraph

 (1) to another non-taxable entity, and the United States—

 (A) restricts some or any construction on such property;

 (B) requires that the property be used in perpetuity for the public purposes for which the property was conveyed;

 (C) requires the grantee of the property to report to the Federal

 Government (or its agent) regarding information on the use of the property;

 (D) except with the approval of the Federal Government (or its agent),

 prohibits the sale, lease, assignment, or other disposal of the property unless such sale, lease, assignment, or other disposal is to another eligible government

 agency; and

 (E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

 (e) LOCAL EDUCATIONAL AGENCY CONTAINING FOREST SERVICE

 LAND AND SERVING CERTAIN COUNTIES.-Beginning with fiscal year

 1995, a local educational agency shall be deemed to meet the requirements of

 subsection (a)(1)(C) if such local educational agency meets the following

 requirements:

 (1) ACREAGE ANDACQUISITION BY THE FORESTSERVICE.-The local

 educational agency serves a school district that contains between 20,000 and

 60,000 acres of land that has been acquired by the Forest Service of the

 Department of Agriculture between 1915 and 1990, as demonstrated by written

 evidence from the Forest Service satisfactory to the Secretary.

 (2) COUNTY CHARTER.-The local educational agency serves a county

 chartered under State law in 1875 or 1890.

 (f) SPECIAL RULE.- (1) Beginning with fiscal year 1994 and notwithstanding

 any other provision of law limiting the period during which fiscal year 1994 funds may be obligated, the Secretary shall treat the local educational agency serving

 the Wheatland R-II School District, Wheatland, Missouri, as meeting the

 eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950

 (Public Law 874, 81st Congress) (as such section was in effect on the day

 preceding the date of enactment of the Improving America’s Schools Act of 1994) (20 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C).

 (2) For each fiscal year beginning with fiscal year 1999, the Secretary shall treat the Webster School District, Day County, South Dakota as meeting the eligibility requirements of subsection (a)(1)(C) of this section.

 (3) For each fiscal year beginning with fiscal year 2000, the Secretary shall treat

 the Central Union, California; Island, California; Hill City, South Dakota; and

 Wall, South Dakota local educational agencies as meeting the eligibility

 requirements of subsection (a)(1)(c) of this section.

 (g) FORMER DISTRICTS. –

 **(1) CONSOLIDATIONS. – For fiscal year 2006 and all**

 **succeeding fiscal years, if a local educational agency described in**

 **paragraph (2) is formed at any time after 1938 by the consolidation of 2**

  **or more former school districts, the local educational agency may elect to**

  **have the Secretary determine its eligibility and any amount for which the**

 **local educational agency is eligible under this section for any fiscal year on**

 **the basis of 1 or more of those former districts as designated by the local**

  **educational agency**

 **(2) ELIGIBLE LOCAL EDUCATIONAL AGENCIES. –**

 **A local educational ~~agency referred to in subparagraph (A)~~**

 **described in ths paragraph is –**

 **(A) any local educational agency that, for fiscal**

 **year 1994 or any preceding fiscal year, applied for,**

 **and was determined to be eligible under, Section 2 (c)**

 **of the Act of September 20, 1950 (Public Law 874,**

 **81st Congress) as that section was in effect for that**

 **fiscal year; or**

 **(B) a local educational agency formed by the**

 **consolidation of 2 or more districts, at least 1 of**

 **which was eligible for assistance under this section for**

 **the fiscal year preceding the year of the consolidation,**

  **if –**

 **(i) for fiscal years 2006 through 2011, the local**

 **local educational agency notifies the Secretary of the**

 **designation made by the agency in the election**

 **described in paragraph (1) not later than 30 days**

 **after the date of enactment of the Local Taxpayer Relief**

 **Act of 2011; and**

 **(ii) for fiscal year 2012 and any subsequent fiscal year,the local educational agency includes the designation in its application under Section 8005 or any timely amendment to such application.**

 **(3) 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 2005, the Secretary may obligate funds remaining after final payments have been made from any of such fiscal years to carry out this subsection.**

 (h) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH

 INSUFFICIENT FUNDS ARE APPROPRIATED – For any fiscal year for which the amount appropriated under section 8014(a) is insufficient to pay to each

 eligible local educational agency the full amount determined under subsection (b), the Secretary shall make payments to each local educational agency under this

 section as follows:

  **“(1) FOUNDATION PAYMENTS.–**

 **‘‘(A) IN GENERAL.— From the amount appropriated**

 **under Section 8014(a) the Secretary shall first make a**

 **payment to the following local education agenies:**

 **(i) Each each local educational agency that**

 **received** **a payment under this section for fiscal year**

 **2006; and that was eligible for a payment under**

 **this section for fiscal year 2006.**

 **(ii) Each local educational agency that did**

 **not receive a payment under this section for fiscal**

 **year 2006 but was newly eligible for a payment under**

 **this section after fiscal year 2006.**

 **‘‘(B) AMOUNT.—The amount of payment under**

 **subparagraph (A) for a local educational agency shall be**

 **determined as follows:**

 **(i) For a local educational agency described in**

 **subpargraph (A) (i), the amount of payment shall be**

 **equal to 90 percent of the amount received by such**

 **local educational agency under subsection (b) for**

 **fiscal year 2006.**

 **(ii) For a local educational agency described in**

 **subparagraph (A) (ii) the amount of payment shall be**

 **determined by –**

 **“(I) calculating a payment estimate for fiscal**

  **year 2006 under the same provisions and in the same**

  **manner as payments were determined for those local**

 **educational agencies eligible for and receiving**

 **payments for fiscal year 2006; and**

 **“(II) multiplying the amount determined**

 **under subclause (i) by 90 percent,**

 **(C) FOUNDATION PAYMENT. – The amount of payments**

 **calculated under clauses (i) and (ii) of subparagraph (B) shall be**

 **considered the agencies foundation payments for each succeeding**

 **fiscal year.**

 **‘‘(D) INSUFFICIENT APPROPRIATIONS.—If the amount**

 **appropriated under section 8014(a) is insufficient to pay the**

 **full amount determined under this paragraph for all eligible**

 **local educational agencies for the fiscal year, the Secretary shall**

 **ratably reduce the payment to each local educational agency under**

 **this paragraph for such fiscal year.**

 **‘‘(2) REMAINING FUNDS. – From any funds remaining after making**

 **payments under paragraph (1) for a fiscal year, the Secretary**

 **shall –**

 **(A) sum the amounts determined for all eligible local**

 **educational agencies under paragraph (b) (2) for all eligible local**

 **educational agencies;**

  **(B) determine each eligible local educational agency’s**

 **proportional share of the amount calculated under subparagraph (A);**

  **and**

 **(C) pay each eligible local educational agency its**

 **share of the remaining funds based on the proportion**

 **calculated under subparagraph (B).**

 **(i)** PRIOR YEAR DATA.- Notwithstanding any other provision of this section, in

 determining the eligibility of a local educational agency for a payment under

 subsection (b) or (h)**(2)** of this section for a fiscal year, and in calculating

 the amount of such payment, the Secretary-

 (1) shall use data from the prior fiscal year with respect to the Federal property

 involved, including data with respect to the assessed value of the property and the

 real property tax rate for current expenditures levied against or imputed to the

 property; and

 (2) shall use data from the second prior fiscal year with respect to determining the amount of revenue referred to in subsection (b)(1)(A)(i).

 **(j)**LOSS OF ELIGIBILITY-

 (1) IN GENERAL – Notwithstanding any other provision of this section, the

 Secretary shall make a minimum payment to a local educational agency described in paragraph (2), for the first fiscal year that the agency loses eligibility for

 assistance under this section as a result of property located within the school

 district served by the agency failing to meet the definition of Federal property

 under section 8013(5)(C)(iii), in an amount equal to 90 percent of the amount

 received by the agency under this section for the preceding year.

 (2) LOCAL EDUCATIONAL AGENCY DESCRIBED- A local educational

 agency described in this paragraph is an agency that—

 (A) was eligible for, and received, a payment under this section for fiscal

 year 2002; and

 (B) beginning in fiscal year 2003 or a subsequent fiscal year, is no longer eligible for payments under this section as provided for in subsection (a)(1)(C) as a result of the transfer of the Federal property involved to a non-Federal entity.

 **“(b) EFFECTIVE DATE – Notwithstanding the date of enactment of this**

 **Act, the amendments made by this section shall apply to applications** **submitted for fiscal year 2010 and all succeeding fiscal years.**

 **Section 8003. 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 **including those children enrolled**  **in a state which has a state open enrollment policy (but not including**

 **children enrolled in a distance learning program not residing within the**

 **defined boundaries of the 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, United States Code);

 (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, United States Code) 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 sub-paragraph (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) anf

 (B) of paragraph (1) by a factor of 1.35 if the local educational agency has—

 (i) a number of such children described in such subparagraphs which

 exceeds 6,500; 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, **REBUILDING OR AUTHORIZED FOR DEMOLITION. –**

 (A) IN GENERAL. – (i) For purposes of computing the amount of a

 payment for a local educational agency for children described in paragraph

 (1)(D)(i), the Secretary shall consider such children to be 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 such children would have resided in housing on Federal property in

 accordance with paragraph (1)(B) except that such housing was undergoing

 renovation, **rebuilding or authorized for demolition** on the date for which the

 Secretary determines the number of children under paragraph (1).

 (ii) For purposes of computing 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 such 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 such children would have

 resided in housing on Indian lands in accordance with paragraph (1)(C) except

 that such housing was undergoing renovation, **rebuilding or authorized for**

 **demolition** on the date for which the Secretary determines the number of

 children under subparagraph (1).

 (B) LIMITATIONS- (i)(I) Children described in paragraph (1)(D)(i) may

 be deemed to be children described in paragraph (1)(B) with respect to housing on Federal property undergoing renovation, **rebuilding or authorized for**

 **demolition** in accordance with subparagraph (A)(i) for a period not to exceed

 4 fiscal years **(which are not required to run consecutively).**

 (II) The number of children described in paragraph (1)(D)(i) who are deemed to be children described in paragraph (1)(B) with respect to housing on Federal

 property undergoing renovation, **rebuilding or authorized for demolition** in

 accordance with subparagraph (A)(i) for any fiscal year may not exceed the

 maximum number of children who are expected to occupy that housing upon

 completion of the renovation, **rebuilding or authorized for demolition.**

 (ii)(I) 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 may be deemed to be children described in

 paragraph (1)(C) with respect to housing on Indian lands undergoing renovation

 **rebuilding, or authorized for demolition** in accordance with subparagraph

 (A)(ii) for a period not to exceed 4 fiscal years **( which are not required to run consecutively).**

 (II) The number of 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 who are deemed to be children

 described in paragraph (1)(C) with respect to housing on Indian lands undergoing renovation, **rebuilding or authorized for demolition** in accordance with

 subparagraph (A)(ii) for any fiscal year may not exceed the maximum number of

 children who are expected to occupy that housing upon completion of the

 renovation, **rebuilding or authorized for demolition**.

 (C) EFFECTIVE DATE- The amendments made by paragraph (1) 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.

 (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, United States Code

 (commonly known as the `Build to Lease' program), as added by section 801 of

 the Military Construction Authorization Act of 1984 **or under lease of off base** **property under subchapter IV of chapter 169 of Part IV of subtitle A of title**

  **10, United States Code (10 U.S.C. 2871 et. seq.),** 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.

 (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 AND PAYMENTS WITH RESPECT TO

 FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—

 (1) BASIC SUPPORT PAYMENTS.—

 (A) IN GENERAL.-From the amount appropriated under ­section 8014(b)

 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 the

 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 subsection 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 deter­-

 mined 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 edu-­

 cational 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) SPECIAL RULE.—For purposes of determining the comparable local

 contribution rate under subparagraph (C)(iii) for a local educational agency

 described in section 222.39(C) (3) of title 34, Code of Federal Regulations, that

 had its comparable local contribution rate for fiscal year 1998 calculated pursuant

 to section 222.39 of title 34, Code of Federal Regulations, the Secretary shall

 determine such comparable local contribution rate as the rate upon which

 payments under this subsection for fiscal year 2000 were made to the local

 educational agency adjusted by the percentage increase or decrease in the per

 pupil expenditure in the State serving the local educational agency calculated on

 the basis of the second most recent preceding school year compared to the third

 most recent preceding school year for which school year data are available

 (F) 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.

 (G) 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 percent of

 the rate that the local educational agency 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

 8014(b) 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) ~~only~~ if the agency –

 (I) local educational agency whose boundaries are the same as a

 Federal military installation or the boundaries are the same as island property

 designated by the Secretary of the Interior to be property that is held in trust

 by the Federal Government and the agency has no taxing authority;

 (II) is a long educational agency —

 (aa) that 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) that has a per pupil expenditure that is less than**—**

 (AA) for a local educational agency that has a total

student nrollment 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 a local educational agency that has a total

student enrollment less than **500, 150** percent of the average per pupil

expenditure of the State in which the agency is located, or the average

per pupil expenditure of three **or more comparable** local educational

agencies in the State in which the agency is located; or

 (cc) that is an agency that –

 (AA) has a tax rate for general fund purposes that is at least 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State; or

 (BB) **was eligible to receive a payment under this subsection for fiscal year 2008 and is located in a State**

 **that by State law has eliminated ad valorem tax as a revenue source for local educational agencies;**

 (III)) is a local educational agency that has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) and notless than **5,500** of such children are children described in subparagraphs (A) and (B) of subsection (a)(1); or

 (IV) is a local educational agency that—

 (aa) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of thetotal student enrollment of the agency which is not less than **20 percent**:

 **(bb) 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 constitutes a percentage of the total student enrollment of the agency that is not less than 65 percent; and**

 (cc) 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.” and

 (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 subpargraph (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) EXCEPTION . – For a local educational agency that is eligible**

 **under subparagraph (A) but whose tax rate for general fund purposes falls**

 **below 95 percent of the average tax rate for geneal fund purposes of local**

 **educational agencies in the State for two consecutive years shall lose its**

 **eligibility and be subject to subclause (I).**

 (iii) 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 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.

 (iv) SPECIAL RULE. – Notwithstanding clause (i)(II) a local educational agency

 shall be considered eligible to receive a basic support payment under

 subparagraph (A) with respect to the number of children determined under

 subsection (a)(1) if the agency-

 “(I) 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

 constitutes a percentage of the total student enrollment of the agency

 that is not less than 35 percent; and

 “(II) was eligible to receive assistance under subsection

 (b)(2) for fiscal year 2001.

 **(C)** MAXIMUM AMOUNT FOR HEAVILY IMPACTED LOCAL

 EDUCATIONAL AGENCIES –

 (i) IN GENERAL.— 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) **SPECIAL RULE.**– (I)**(aa)** For a local educational agency

 with respect to 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 has an**

  **enrollment of children described in subparagraphs (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~~

 ~~such children for purposes of subsection (a)(2)~~ of those children

 described in subparagraphs (D) or (E) of such subsection by

 multiplying the number of such children by a factor 0.55.

 **(bb) For any local educational agency that received a**

  **payment under this clause in fiscal year 2006 shall not be**

 **required to have 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.**

 (II) 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

 purposes of subsection (a)(2) by multiplying the number of such

 children by a factor of 1.75.

 (III) For a local educational agency that does not qualify under

 subparagraph (B)(i)(I) of this subsection and has an enrollment of

 more than 100 but not more than 1000 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)(I) Subject to clause (ii), 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) A heavily impacted local educational agency described in this

 subclause is a local educational agency that has a total student enrollment

 of not less than 25,000 students, of which not less than 50 percent are

 children described in subsection (a)(1) and not less than **5,500** of

 such children are children described in subparagraphs (A) and (B) of

 subsection (a)(1).

 (ii) 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 1.35.

 **(E) D**ATA- 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.—For the purpose of determining average tax rates for

 general fund purposes for local educational agencies in a State under this

 paragraph (except under subparagraph **(B)(i)(II)(bb))** 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.

 **(G) ELIGIBILITY FOR HEAVILY IMPACTED LOCAL**

 **EDUCATIONAL AGENCIES AFFECTED BY PRIVATIZATION OF**

 **MILITARY HOUSING.—**

 (i) ELIGIBILITY. – For any fiscal year beginning with fiscal year 2003, 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), (C), **or (D)**, as the case

 may be, **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) or (C), as the case may be, 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 is on-going.**

 (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 ofclause (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,

 United States Code, 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 8014(b) are insufficient to pay to each local educational agency the full amount computed under paragraph (1), the Secretary shall make payments in accordance with this paragraph.

 (B) LEARNING OPPORTUNITY THRESH­OLD PAYMENTS.-(i) For

 fiscal years described in subparagraph (A), the Secretary shall com­pute a learning opportunity threshold payment (hereafter in this title referred to as the ‘threshold payment’) 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 (not including

 amounts received under subsection (f)), 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) 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).

 **(iv) For any local educational agency that is providing a program of**

 **distant learning to children not residing within the legally defined bound-**

 **aries of the agency, the Secretary shall disregard such children from such**

 **agency’s total enrollment when calculating the percentage under subclause**

 **(I) of clause (i) and shall disregard any funds received for such children**

 **when calculating the** **total current expenditures attributed to the operation of**

 **such agency when**  **calculating the percentage under subclause (II) of clause**

 **(i).**

 (v) 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 (D) of paragraph (2).

 (D) RATABLE DISTRIBUTION**.**For any fiscal year described in subparagraph (A) for which the sums available exceed the amount required to pay each local educational agency **110 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 paragraph (1) or (2) (as the case may be) by multiplying –

 (i) a percentage, the numerator 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 denominator of which is the aggregate amount 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) and (C) of the

 agency.

 (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) through (D) 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 (D) or (E) 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 receptive 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 the date of

 the enactment of the Impact Aid Reauthorization Act of 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 first year of operation

 of such agency only;

 or

 (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 of Education in consultation with the

 Secretary of Defense, the Secretary of Interior or the heads of other

 Federal agencies) –

(i) of not less than 10 percent, or 100 students, of

 children described in **–**

(I) subparagraph (A), (B), (C), or (D) of

 subsection (a) (1); or

 (II) subparagraph (F) and (G) of subsection

 (a)(1) but only to the extent such children are civilian

dependents of employees of the Department of Defense

or the Department of Interior; 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 force

structure changes or movements of units or personnel between

 military installations or because of actions initiated by the

 Secretary of 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 over increase in enrollment (as determined by the Secretary) –

 (i) of not less than 10 percent, or 100 students, of children described in subsection (a) (1); 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) in the previous fiscal year.

(d) CHILDREN WITH DISABILITIES.—

 (1) IN GENERAL.-From the amount appro­priated under section 8014(c) 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 AMOUNTS.—

 (1) IN GENERAL.- Subject to paragraph (2) the total amount the

 Secretary shall pay a local educational agency under subsection (b) –

 (A) for fiscal year 2012 shall not be less than 95 percent of the

 total amount that the local educational agency received under

 subsection(b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal year 2011;

 ~~(~~B) for fiscal year 2013 shall not be less than 90 percent of the total

 amount that the local educational agency received under subsections

 (b)(1), (b)(2) or (b)(2)(B)(ii) for fiscal year 2011; and

 (C) for fiscal year 2014 shall not be less than 85 percent of the total

 amount hat the local educational agency received under subsections (b)(1),

 (b)(2) or (b)(2)(B)(ii) for fiscal year 2011.

 (2) MAXIMUM AMOUNT.—The total amount provided to a local

 educational agency under subparagraph (A), (B), or (C) of paragraph 1 for a fiscal

 year shall not exceed the maximum basic support payment amount for such

 agency determined under paragraph (1) or (2) of subsection (b), as the case may

 be.

 (3) RATABLE REDUCTIONS.—

 (A) IN GENERAL. – If the sums made available under this title

 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.

 **Section 8004. Policies and Procedures Relating to Children**

 **Residing on Indian Lands.**

 (a) IN GENERAL.-A local educational agency that claims children residing on

 Indian lands for the purpose of receiving funds under section 8003 shall establish

 policies and procedures to ensure that—

 (1) such children participate in programs and activities supported by such funds

 on an equal basis with all other children;

 (2) parents of such children and Indian tribes are afforded an opportunity to

 present their views on such programs and activities, including an opportunity to

 make recommendations on the needs of those children and how the local

 educational agency may help such children realize the benefits of such programs

 and activities;

 (3) parents and Indian tribes are consulted and involved in planning and

 developing such programs and activities;

 (4) relevant applications, evaluations, and program plans are disseminated to the

 parents and Indian tribes; and

 (5) parents and Indian tribes are afforded an opportunity to present their views

 to such agency regarding such agency’s general educational program.

 (b) RECORDS.-A local educational agency that claims children residing on Indian

 lands for the purpose of receiving funds under section 8003 shall maintain records

 demonstrating such agency’s compliance with the requirements contained in

 subsection (a).

 (c) WAIVER.-A local educational agency that claims children residing on Indian

 lands for the purpose of receiving funds under section 8003 shall not be required

 to comply with the requirements of subsections (a) and (b) for any fiscal year with respect to any Indian tribe from which such agency has received a written

 statement that the agency need not comply with those subsections because the

 tribe is satisfied with the provision of educational services by such agency to such children.

 (d) TECHNICAL ASSISTANCE ENFORCEMENT.-The Secretary shall—

 (1) provide technical assistance to local educational agencies, parents, an tribes to enable such agencies, parents, and tribes to carry out this section; and

 (2) enforce this section through such actions, which may include the withholding of funds, as the Secretary determines to be appropriate, after affording the

 affected local educational agency, parents, and Indian tribe an opportunity to

 present their views.

 (e) COMPLAINTS.—

 (1) IN GENERAL.-(A) Any tribe, or its designee, which has students in

 attendance at a local educational agency may, in its discretion and without regard

 to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or

 relevant to,the requirements of this section.

 (B) Within ten working days from receipt of a complaint, the

 Secretary shall—

 (i) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local edu­cational agency

 involved or, if the Secretary de­termines there is good cause, at some other lo­-

 cation convenient to both the tribe, or its des­ignee, and the local educational

 agency;

 (ii) designate a hearing examiner to con­duct the hearing; and

 (iii) notify the affected tribe or tribes and the local educational

 agency involved of the time, place, and nature of the hearing and send copies of

 the complaint to the local educational agency and the affected tribe or tribes.

 (2) HEARING.-The hearing shall be held within 30 days of the designation of a

 hearing exam­iner and shall be open to the public. A record of the proceedings

 shall be established and maintained.

 (3) EVIDENCE; RECOMMENDATIONS; COST.-­The complaining tribe, or its

 designee, and the local educational agency shall be entitled to present evi­dence on matters relevant to the complaint and to make recommendations concerning, the

 appropriate remedial actions. Each party to the hearing shall bear only its own

 costs in the proceedings.

 (4) FINDINGS AND RECOMMENDATIONS.-Within 30 days of the

 completion of the hearing, the hearing examiner shall, on the basis of the record,

 make written findings of fact and recommendations concerning appropriate

 remedial action, if any, which should be taken. The hearing examiner’s find­ings

 and recommendations, along with the hearing record, shall be forwarded to the

 Secretary.

 (5) WRITTEN DETERMINATION.-Within 30 days of the Secretary’s receipt of the findings, rec­ommendations, and record, the Secretary shall, on the basis of the

 record, make a written determina­tion of the appropriate remedial action, if any, to

 be taken by the local educational agency, the schedule for completion of the

 remedial action, and the rea­sons for the Secretary’s decision.

 (6) COPIES PROVIDED.-Upon completion of the Secretary’s final

 determination, the Secretary shall provide the complaining tribe, or its designee,

 and the local educational agency with copies of the hearing record, the hearing

 examiner’s findings and recommendations, and the Secretary’s final deter­

 mination. The final determination of the Secretary shall be subject to judicial

 review.

 (7) CONSOLIDATION.-In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local

 educational agency.

 (8) WITHHOLDING.-If the local educational agency rejects the determination

 of the Secretary, or if the remedy required is not undertaken within the time

 established and the Secretary determines that an extension of the time established

 will not effec­tively encourage the remedy required, the Secretary shall withhold

 payment of all moneys to which such local agency is eligible under section 8003

 until such time as the remedy required is undertaken, except where the

 complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such

 moneys during the course of the school year if the Secretary determines that such withholding would substantially disrupt the edu­cational programs of the local

 educational agency.

 (9) REJECTION OF DETERMINATION.-If the local educational agency

 rejects the determination of the Secretary and a tribe exercises the option under

 section 1101(d) of the Education Amendments of 1978 to have education services

 provided either di­rectly by the Bureau of Indian Affairs or by contract with the

 Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint

 which led to the tribal action under such subsection (d) was lodged may be

 counted with respect to that local educational agency for the purpose of receiving

 funds under section 8003. In such event, funds under such section shall not be

 withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

 (f) CONSTRUCTION.-This section is based ~~upon~~ **on** the special relationship between

 the Indian nations and the United States and nothing in this section shall be

 construed to relieve any State of any duty with respect to any citizens of that

 State.

 **Section 8005. Application for Payments Under Sections 8002 and 8003.**

 (a) IN GENERAL.-A local educational agency desiring to receive a payment under

 section 8002 or 8003 shall—

(1) submit an application for such payment to the Secretary; and

(2) provide a copy of such application to the State educational agency—

(b) CONTENTS.-Each such application shall be submitted in such form and manner,

 and shall contain such information, as the Secretary may require, including—

(1) information to determine the eligibility of the local educational agency for a

 payment and the amount of such payment; and

(2) where applicable, an assurance that such agency is in compliance with

 section 8004 (relating to children residing on Indian lands).

 (c) DEADLINE FOR SUBMISSION.-The Secretary shall establish deadlines for

 the submission of applications under this section.

 (d) APPROVAL.—

 (1) IN GENERAL.-The Secretary shall approve an application submitted under this section that—

 (A) except as provided in paragraph (2), is filed by the deadline

 established under subsection (c); and

 (B) otherwise meets the requirements of this title.

 (2) REDUCTION IN PAYMENT.-The Secretary shall approve an application

 filed not more than 60 days after a deadline established under subsection (c) or

 not more than 60 days after the date on which the Secretary sends written notice

 to the local educational agency pursuant to paragraph (3)(A), as the case may be, that otherwise meets the requirements of this title, except that, notwithstanding

 section 8003(e), the Secretary shall reduce the payment based on such late

 application by 10 percent of the amount that would otherwise be paid.

 (3) LATE APPLICATIONS-

 (A) NOTICE- The Secretary shall, as soon as practicable after the

 deadline established under subsection (c), provide to each local educational

 agency that applied for a payment under section 8002 or 8003 for the prior fiscal year, and with respect to which the Secretary has not received an application for a payment under either such section (as the case may be) for the fiscal year in

 question, written notice of the failure to comply with the deadline and instruction to ensure that the application is filed not later than 60 days after the date on which

 the Secretary sends the notice.

 (B) ACCEPTANCE AND APPROVAL OF LATE APPLICATIONS- The Secretary shall not accept or approve any application of a local educational

 agency that is filed more than 60 days after the date on which the Secretary sends

 written notice to the local educational agency pursuant to subparagraph (A).

 (4) STATE APPLICATION AUTHORITY.-Not­withstanding any other

 provision of law, a State educational agency that had been accepted as an

 applicant for funds under section 3 of the Act of Sep­tember 30, 1950 (Public Law

 874, 81st Congress) (as such section was in effect on the day preceding the date of

 enactment of the Improving America’s Schools Act of 1994) in fiscal year 1994

 shall be permitted to continue as an applicant under the same conditions by which such agency made applica­tion during such fiscal year only if such State

 edu­cational agency distributes all funds received for the students for which

 application is being made by such State educational agencyto the local

 educational agencies providing educational services to such stu­dents.

‘‘(e) For the purpose of meeting the requirements of section 222.35 of

 the Code of Federal Regulations, the Secretary shall establish a

 third option for an applicant when counting its federally

connected children by using the date established by the applicant

 to register the students of such applicant for the fiscal year for

 which the application is filed.’’.

 Section 8006. Payments for Sudden and Substantial Increases in Attendance of

 Military Dependent (REPEALED).

 **Section 8007. Construction.**

 (a) CONSTRUCTION PAYMENTS AUTHORIZED.-

 (1) In GENERAL.—From **80** percent of the amount appropriated

 for each fiscal year under section 8014(e), the Secretary shall make payments in

 accordance with this subsection to each local educational agency that receives a

 basic support payment under section 8003(b) for that fiscal year.

 (2) ADDITIONAL REQUIREMENTS.— A local educational agency that

 receives a basic support payment under section 8003(b)(1) shall also meet at least one of the following requirements:

 (A) The number of children determined under section

 8003(a)(1)(C) for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the

 preceding school year.

 (B) The number of children determined under subparagraphs (B)

 and (D)(i) of section 8003(a)(1) for the agency for the preceding school year

 constituted at least 50 percent of the total student enrollment in the schools of

 the agency during the preceding school year

 “(C) The agency is eligible under Section 8003(b)(2) or is receiving a basic support payment under circumstances described in Section8003 (b)(2)(B)(ii).

 (3) AMOUNT OF PAYMENTS. –

 (A) LOCAL EDUCATIONAL AGENCIES IMPACTED BY MILITARY

 DEPENDENT CHILDREN. – The amount of a payment to each local

 educational agency described in this subsection that is impacted by military

 children for a fiscal year shall be equal to –

 (i)(I) 40 percent of the amount appropriated under section 8014(e) for

 such fiscal year; divided by

 (II) the number of children described in subparagraphs (B)

 and (D)(i) of section 8003(a)(1) who were in average daily attendance for all local educational agencies described in paragraph (2),

 including the number of children attending a school facility described

 in section 8008(a) if the Secretary does not provide assistance for the

 school facility under that section for the fiscal year; multiplied by –

 (ii) the number of children determined for such agency;

 (I) but not less than $25,000, except that this subparagraph

shall not apply if the amount available to carry out paragraph (1) for

such fiscal year is less than $32,000,000; and

 (II) not more than $4,000,000.

 (B) LOCAL EDUCATIONAL AGENCIES IMPACTED BY CHILDREN

 WHO RESIDE ON INDIAN LANDS. – The amount of a payment to each local

 educational agency described in this subsection that is impacted by children who

 reside on Indian lands for a fiscal year shall be equal to –

 (i)(I) 40 percent of the amount appropriated under section 8014(e) for

 such fiscal year; divided by

 (II) the number of children described in section 8003(a)(1)(C)

 who were in average daily attendance for all local educational

 agencies described in paragraph (2) multiplied by –

 (ii) the number of children determined for such agency;

 (I) but not less than $25,000, except that this subparagraph

 shall not apply if the amount available to carry out paragraph (1) for

such fiscal year is less than $32,000,000 and

 (II) not more than $4,000,000.

 (4)USE OF FUNDS.-Any local educational agency that receives funds under

 this section shall use such funds for construction, as defined in section 8013(3).

 (b) SCHOOL FACILITY EMERGENCY AND MODERNIZATION GRANTS

 AUTHORIZED-

 (1) IN GENERAL- From **20** percent of the amount appropriated for each

 fiscal year under section 8014(e), the Secretary—

 (A) shall award emergency grants in accordance with this

 subsection to eligible local educational agencies to enable the agencies to carry

 out emergency repairs of school facilities; and

 (B) shall award modernization grants in accordance with

 this subsection to eligible local educational agencies to enable the agencies to

 carry out the modernization of school facilities.

 (2) PRIORITY- In approving applications from local educational agencies for

 emergency grants and modernization grants under this subsection, the Secretary

 shall give priority to applications in accordance with the following:

 (A) The Secretary shall first give priority to applications

 for emergency grants from local educational agencies that meet the requirements of paragraph (3)(A) and, among such applications for emergency grants, shall

 give priority to those applications of local educational agencies based on the

 severity of the emergency, as determined by the Secretary.

 (B) The Secretary shall next give priority to applications for

 emergency grants from local educational agencies that meet the requirements of

 subparagraph (C) or (D) of paragraph (3) and, among such applications for

 emergency grants, shall give priority to those applications of local educational

 agencies based on the severity of the emergency, as determined by the Secretary. (C) The Secretary shall next give priority to applications for

 modernization grants from local educational agencies that meet the requirements of paragraph (3)(B) and, among such applications for modernization grants, shall give priority to those applications of local educational agencies based on the

 severity of the need for modernization, as determined by the Secretary.

 (D) The Secretary shall next give priority to applications for

 modernization grants from local educational agencies that meet the requirements of subparagraph (C) or (D) of paragraph (3) and, among such applications for

 modernization grants, shall give priority to those applications of local educational agencies based on the severity of the need for modernization, as determined by

 the Secretary.

 (3) ELIGIBILITY REQUIREMENTS-

 (A) EMERGENCY GRANTS- A local educational agency is eligible to

 receive an emergency grant under paragraph (2)(A) if the agency is covered by

 paragraph (7) or **—**

 (i) the agency (or in the case of a local educational agency that

 does not have the authority to tax or issue bonds, the agency's fiscal agent)--

 (I) has no practical capacity to issue bonds;

 (II) has minimal capacity to issue bonds and is at not less

 than 75 percent of the agency's limit of bonded indebtedness; or

 (III) does not meet the requirements of subclauses (I) and (II) but is eligible to receive funds under section 8003(b)(2) for the fiscal year; and

 (ii) the agency is eligible to receive assistance under subsection (a)

 for the fiscal year and has a school facility emergency, as determined by the

 Secretary, that poses a health or safety hazard to the students and school personnel assigned to the school facility.

 (B) MODERNIZATION GRANTS- A local educational agency is

 eligible to receive a modernization grant under paragraph (2)(C) if—

 (i) the agency is eligible to receive assistance under this title for the fiscal year;

 (ii) the agency (or in the case of a local educational agency that

 does not have the authority to tax or issue bonds, the agency's fiscal agent) meets the requirements of subclause (I), (II), or (III) of subparagraph (A)(i); and

 (iii) the agency has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the

 presence of tax-exempt Federal property, or an increase in enrollment due to the

 expansion of Federal activities, housing privatization, or the acquisition of Federal property.

 (C) ADDITIONAL ELIGIBILITY FOR EMERGENCY AND

 MODERNIZATION GRANTS- (i) A local educational agency is eligible to

 receive an emergency grant or a modernization grant under subparagraph (B) or

 (D) of paragraph (2), respectively, if the agency meets the following

 requirements:

 (I) The agency receives a basic support payment under section 8003(b) for the fiscal year andthe number of children determined under section

 8003(a)(1)(C) for the agency for the preceding school year constituted at

 least 40 percent of the total student enrollment in the schools of the agency

 during the preceding school year.

 (II) The agency (or in the case of a local educational agency that does not have authority to tax or issue bonds, the agency's fiscal agent) is at not less than 75

 percent of the agency's limit of bonded indebtedness.

 (III) The agency has an assessed value of real property per student that may be

 taxed for school purposes that is less than the average of the assessed value of real property per student that may be taxed for school purposes in the State in which

 the local educational agency is located.

 (ii) A local educational agency is also eligible to receive a

 modernization grant under this subparagraph if the agency is eligible to receive

 assistance under section 8002 for the fiscal year and meets the requirements of

 subclauses (II) and (III) of clause (i).

 (D) SPECIAL RULE-

 i) IN GENERAL- Any school described in clause (ii) that desires to

 receive an emergency grant or a modernization grant under subparagraph (B) or

 (D) of paragraph (2), respectively, shall, except as provided in the following

 sentence, submit an application in accordance with paragraph (6), and shall

 otherwise be treated as a local educational agency for the purpose of this

 subsection. The school shall submit an application for the grant to the local

 educational agency of such school and the agency shall submit the application on behalf of the school to the Secretary.

 (ii) SCHOOL DESCRIBED- A school described in this clause is a

 school that meets the following requirements:

 (I) The school is located within the geographic boundaries of a local educational agency that does not meet the applicable eligibility requirements under

 subparagraph (A), (B), or (C) for a grant under this subsection.

 “(II) The number of children determined under section8003(a)(1)(C) for the school for the preceding school year constituted at least 40 percent of the

 total student enrollment in the school during the precedingschool year.

 (III) The school is located within the geographic boundaries of a local

 educational agency that meets the requirements of subclauses (II) and (III) of

 subparagraph (C)(i).

 (E) RULE OF CONSTRUCTION- For purposes of subparagraph (A)(i), a local

 educational agency—

 (i) has no practical capacity to issue bonds if the total assessed

 value of real property that may be taxed for school purposes is less than

 $25,000,000; and

 (ii) has minimal capacity to issue bonds if the total assessed value

 of real property that may be taxed for school purposes is at least $25,000,000 but not more than $50,000,000.

 (4) AWARD CRITERIA- In awarding emergency grants and modernization

 grants under this subsection, the Secretary shall consider the following factors:

 (A) The ability of the local educational agency to respond to the

 emergency, or to pay for the modernization project, as the case may be, as

 measured by--

 (i) the agency's level of bonded indebtedness;

 (ii) the assessed value of real property per student that may be

 taxed for school purposes compared to the average of the assessed value of real

 property per student that may be taxed for school purposes in the State in which

 the agency is located;

 (iii) the agency's total tax rate for school purposes (or, if

 applicable, for capital expenditures) compared to the average total tax rate for

 school purposes (or the average capital expenditure tax rate, if applicable) in the

 State in which the agency is located; and

 (iv) funds that are available to the agency, from any other source,

 including subsection (a), that may be used for capital expenditures.

 (B) The percentage of property in the agency that is nontaxable

 due to the presence of the Federal Government.

 (C) The number and percentages of children described in sub-

 paragraphs   **A and C**  of section 8003(a)(1) served in the school facility with the emergency or served in the school facility proposed for modernization, as the case may be.

 (D) In the case of an emergency grant, the severity of the

 emergency, as measured by the threat that the condition of the school facility

 poses to the health, safety, and well-being of students.

 (E) In the case of a modernization grant--

 (i) the severity of the need for modernization, as measured by such

 factors as—

 (I) overcrowding, as evidenced by the use of portable classrooms, or the

 potential for future overcrowding because of increased enrollment; or

 (II) the agency's inability to utilize technology or offer a curriculum in

 accordance with contemporary State standards due to the physical limitations of

 the current school facility; and

 (ii) the age of the school facility proposed for modernization.

 (5) OTHER AWARD PROVISIONS-

 (A) GENERAL PROVISIONS-

 (i) LIMITATIONS ON AMOUNT OF FUNDS-

 (I) IN GENERAL- The amount of funds provided under an emergency grant or a modernization grant awarded under this subsection to a local educational agency that meets the requirements of subclause (II) or (III) of paragraph (3)(A)(i) for

 purposes of eligibility under subparagraph (A) or (B) of paragraph (3) or that

 meets the requirements of clause (i) or (ii) of paragraph (3)(C) for purposes of

 eligibility under such paragraph (3)(C), or to a school that is eligible under

 paragraph (3)(D)—

 (aa) shall not exceed 50 percent of the total cost of the project to be

 assisted under this subsection; and

 (bb) shall not exceed $4,000,000 during any 4-year period.

 (II) IN-KIND CONTRIBUTIONS- A local educational agency may use in-kind

 contributions to meet the matching requirement of subclause (I)(aa).

 (ii) PROHIBITIONS ON USE OF FUNDS- A local educational

 agency may not use funds provided under an emergency grant or modernization

 grant awarded under this subsection for--

 (I) a project for a school facility for which the agency does not have full title or

 other interest;

 (II) stadiums or other school facilities that are primarily used for athletic

 contests, exhibitions, or other events for which admission is charged to the

 general public; or

 (III) the acquisition of real property.

 (iii) SUPPLEMENT, NOT SUPPLANT- A local educational

 agency shall use funds provided under an emergency grant or modernization grant awarded under this subsection only to supplement the amount of funds that

 would, in the absence of the Federal funds provided under the grant, be made

 available from non-Federal sources to carry out emergency repairs of school

 facilities or to carry out the modernization of school facilities, as the case may be, and not to supplant such funds.

 (iv) MAINTENANCE COSTS- Nothing in this subsection shall be

 construed to authorize the payment of maintenance costs in connection

 with any school facility modernized in whole or in part with Federal funds

 provided under this subsection.

 (v) ENVIRONMENTAL SAFEGUARDS- All projects carried out with

 Federal funds provided under this subsection shall comply with all relevant

 Federal, State, and local environmental laws and regulations.

 (vi) CARRY-OVER OF CERTAIN APPLICATIONS- A local

 educational agency that applies for an emergency grant or a modernization

 grant under this subsection for a fiscal year and does not receive the grant for the fiscal year shall have the application for the grant considered for the following

 fiscal year, subject to the priority requirements of paragraph (2) and the award

 criteria requirements of paragraph (4).

 (B) EMERGENCY GRANTS; PROHIBITION ON USE OF

 FUNDS- A local educational agency that is awarded an emergency grant under

 this subsection may not use amounts under the grant for the complete or partial

 replacement of an existing school facility unless such replacement is less

 expensive or more cost-effective than correcting the identified emergency.

 (6) APPLICATION- A local educational agency that desires to receive an

 emergency grant or a modernization grant under this subsection shall submit an

 application to the Secretary at such time, in such manner, and accompanied by

 such information as the Secretary may require. Each application shall contain the following:

 (A) A description of how the local educational agency meets the

 award criteria under paragraph (4), including the information described in clauses (i) through (iv) of paragraph (4)(A) and subparagraphs (B) and (C) of paragraph

 (4).

 (B) In the case of an application for an emergency grant--

 (i) a description of the school facility deficiency that poses a health

 or safety hazard to the occupants of the facility and a description of how the

 deficiency will be repaired; and

 (ii) a signed statement from an appropriate local official certifying

 that a deficiency in the school facility threatens the health or safety of the

 occupants of the facility or that prevents the use of all or a portion of the building.

 (C) In the case of an application for a modernization grant--

 (i) an explanation of the need for the school facility modernization

 project;

 (ii) the date on which original construction of the facility to be

 modernized was completed;

 (iii) a listing of the school facilities to be modernized, including the

 number and percentage of children determined under section 8003(a)(1) in

 average daily attendance in each school facility; and

 (iv) a description of the ownership of the property on which the

 current school facility is located or on which the planned school facility will be

 located.

 (D) A description of the project for which a grant under this

 subsection will be used, including a cost estimate for the project.

 (E) A description of the interest in, or authority over, the school

 facility involved, such as an ownership interest or a lease arrangement.

 (F) Such other information and assurances as the Secretary may

 reasonably require.

 (7) SPECIAL RULE. – Notwithstanding paragraph’s (3)(C)(i)(I) and

 3(D)(ii)(II) a local educational agency is eligible to receive a grant under this

subsection not to exceed $4,000,000 in any one fiscal year if such agency –

 (A) was eligible to receive a payment under Section 8003 in the

 fiscal year prior to the year for which the application is made; and

 (B) has had an overall increase in enrollment –

 (i) during the period between the end of the school year preceding thefiscal year for which the application is being made and the beginning of theschool year immediately preceding that school year;

 (ii) of not less than 250 students or 10% (whichever is lower), are

 children described in –

 (I) subparagraphs (A), (B), (C) or (D) of section 8003(a)(1), or

 (II) subparagraphs (F) or (G) of section 8003(a)(1), but only tothe extent such children are civilian dependents of employees of theDepartment of Defense; and

 (iii) that is the direct result of one or more of the following:

 (I) Base realignment and closure or global rebasing, as

 determined by the Secretary of Defense.

 (II) Force structure changes or force reductions.

 (III) An action initiated by the Secretary of the Interior or

 head of another Federal agency.

 (8)REPORTS-

 (A) IN GENERAL- Not later than January 1 of each year, the

 Secretary shall prepare and submit to the appropriate congressional committees a report that contains a justification for each grant awarded under this subsection for the prior fiscal year.

 (B) DEFINITION- In this paragraph, the term `appropriate

 congressional committees' means—

 (i) the Committee on Appropriations and the Committee on

 Education and the Workforce of the House of Representatives; and

 (ii) the Committee on Appropriations and the Committee on

 Health, Education, Labor, and Pensions of the Senate.'.

 **Section 8008. Facilities.**

 (a) CURRENT FACILITIES.-From the amount appropriated for any fiscal year under section **8014(e)** the Secretary may continue to provide assistance for school

 facilities that were supported by the Secretary under section 10 of the Act

 of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in

 effect on the day preceding the date of the enactment of the Improving America’s

 Schools Act of 1994).

 (b) TRANSFER OF FACILITIES.—

 (1) IN GENERAL.-The Secretary shall, as soon as practicable, transfer to the

 appropriate local educational agency or another appropriate entity all the right,

 title, and interest of the United States in and to each facility provided under

 section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress), or

 under section 204 or 310 of the Act of September 30, 1950 (Public Law 874, 81st

 Congress) (as such Acts were in effect on January 1, 1958).

 (2) OTHER REQUIREMENTS.-Any such transfer shall be without charge to

 such agency or entity, and prior to such transfer, the transfer shall be consented to

 by the local educational agency or other appropriate entity, and may be made on

 such terms and conditions as the Secretary deems appropriate to carry out the

 purposes of this title.

 **Section 8009. State Consideration of Payments in Providing State Aid.**

 (a) GENERAL PROHIBITION.-Except as provided in subsection (b), a State may not –

 (1) consider payments under this title in determining for any fiscal year—

 (A) the eligibility of a local educational agency for State aid for free

 public education; or

 (B) the amount of such aid; or

 (2) make such aid available to local educational agencies in a manner that results in less State aid to any local educational agency that is eligible for such payment

 than such agency would receive if such agency were not so eligible.

 (b) STATE EQUALIZATION PLANS.—

 (1) IN GENERAL.-A State may reduce State aid to a local educational agency

 that receives a payment under section 8002 or 8003(b) (except the amount

 calculated in excess of 1.0 under section 8003(a)(2)(B)) and with respect to a

 local educational agency that receives a payment under section 8003(b)(2), the

 amount in excess of the amount that the agency would receive if the agency were deemed to be an agency eligible to receive a payment under section 8003(b)(1)

 and not section 8003(b)(2) for any fiscal year if the Sec­retary determines, and

 certifies under subsection (c)(3)(A), that such State has in effect a program of

 State aid that equalizes expenditures for free pub­lic education among local

 educational agencies in such State~~.~~ and for which the average per pupil

 expenditure is equal to or greater than the average per pupil expenditure of

 all the states in the third fiscal year preceding the fiscal year for which the

 state is applying for **equalization under this section.**

 **(2) STATES CURRENTLY QUALIFYING. —**

 **(i)** IN GENERAL~~.-~~For purposes of para­graph (1), a program of State aid

 for any State qualifying under this section for fiscal year 2006 equalizes

 expenditures among local educational agencies if,in the second fiscal year

 preceding the fiscal year for which the determination is made, the amount of per-

 pupil expenditures made by, or per-pupil revenues available to, the local edu­-

 cational agency in the State with the highest such per-pupil expenditures or

 revenues did not exceed the amount of such per-pupil expendi­tures made by, or

 per-pupil revenues available to, the local educational agency in the State

 with the lowest such expenditures or revenues by more than 25 percent **as**

 **calculated under clause (ii)**

 “(ii) OTHER FACTORS.- Notwithstanding regulations in effect prior

 to the date of enactment of this subparagraph shall – on

 “(I) arrange all local educational agencies in the State by per-

 pupil expenditures or revenues in descending order from the highest

 to the lowest;

 (II) using per pupil expenditures or revenues as the only

 criteria disregard those local educational agencies that are spending

 above the 95th percentile and those spending below the 5th percentile;

 (III) identify the local educational agency at the 95th percentile

 and the local educational agency at the 5th percentile;

 (IV) subtract the amount of per-pupil expenditures or revenues

 of the local educational agency at the 5th percentile from the amount

 of per-pupil expenditures or revenues of the local educational agency

 at the 95th percentile and divide the difference by the per-pupilexpenditures or revenues of the local educational agency at the 5th

 percentile; and

 **(V)** take into account the extent to which a program of State aid

 reflects the additional cost of providing free public education in particular

 types of local educational agencies, such as those that are geographically

 isolated, or to particular types of students, such as children with

 disabilities.

 “(B) New States Applicants.—

 “(i) IN GENERAL. – for purposes of paragraph (1) a

 program of State aid for any state qualifying under this section after fiscal

 year 2006 equalizes expenditures among local educational agencies if, in the

 second fiscal year preceding the fiscal year for which the determination is

 made, the amount of per-pupil expenditures made by, or per pupil revenues

 available to, the local educational agency in the State with the highest such

 per-pupil expenditures or revenues did not exceed the amount of such per-

 pupil expenditures made by, or per-pupil revenues available to, the local

 educational agency in the State with the lowest such expenditures or

 revenues by more than 10 percent as calculated under clause (ii).

 “(ii) OTHER FACTORS. – Notwithstanding regulations in effect

 prior to the date of enactment of this subparagraph, the Secretary shall –

 “(I) arrange all local educational agencies in the state by per

 pupil expenditures or revenues in descending order from the highest

 to the lowest;

 “(II) using per-pupil expenditures or revenues as the only

 criteria disregard those local educational agencies that are spending

 above the 95th percentile and those spending below the 5th percentile**;**

 “(III) identify the local educational agency at the 95th

 percentile and the local educational agency at the 5th percentile;

 “(IV) subtract the amount of per-pupil expenditures or

 revenues of the local educational agency at the 5th percentile from the

 amount of per-pupil expenditures or revenues of the local educational

 agency at the 95th percentile and divide the difference by the per-

 pupil expenditures or revenues of the local educational agency at the

 5th percentile; and

 “**(V)** take into account the extent to which a program of State aid

 reflects the additional cost of providing free public education in particular

 types of local educational agencies, such as those that are geographically

 isolated, or to particular types of students, such as children with

 disabilities.

 (3) EXCEPTION.-Notwithstanding paragraph (2), if the Secretary determines

 that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—

 (A)the Secretary determines, on the basis of projected data, that

 the State’s program will meet the disparity standard described in paragraph (2) for the fiscal year for which the determination is made; and

 (B) the State provides an assurance to the Secretary that, if final

 data do not demonstrate that the State’s program met such standard for the fiscal

 year for which the determination is made, the State will pay to each affected local

 educational agency the amount by which the State reduced State aid to the local

 educational agency.

 (c) PROCEDURES FOR REVIEW OF STATE EQUALIZATION PLANS.—

 (1) WRITTEN NOTICE.—

 (A) IN GENERAL.-Any State that wishes to consider payments

 described in subsection (b)(1) in providing State aid to local educational agencies shall submit to the Secretary, not later than 120 days before the beginning of the

 State’s fiscal year, a written notice of such State’s intention to do so.

 (B) CONTENTS.-Such notice shall be in the form and contain the

 information the Sec­retary requires, including evidence that the State has notified

 each local educational agency in the State of such State’s intention to con­sider

 such payments in providing State aid.

 (2) OPPORTUNITY TO PRESENTVIEWS.-Be­fore making a determination

 under subsection (b), the Secretary shall afford the State, and local edu­cational

 agencies in the State, an opportunity to present their views.

 (3)QUALIFICATION PROCEDURES.-If the Secretary determines that a

 program of State aid qualifies under subsection (b), the Secretary shall­—

 (A)certify the program and so notify the State; and

 (B) afford an opportunity for a hearing, in accordance with section

 8011(a), to any local educational agency adversely affected by such certification.

 (4) NON-QUALIFICATIONPROCEDURES.-If the Secretary determines that a

 program of State aid does not qualify under subsection (b), the Sec­retary shall—

 (A) so notify the State; and

 (B) afford an opportunity for a hearing, in accordance with section

 8011(a), to the State, and to any local educational agency ad­versely affected by

 such determination.

 (d) TREATMENT OF STATE AID.—

 (1) IN GENERAL.-If a State has in effect a program of State aid for free public

 education for any fiscal year, which is designed to equalize expenditures for free

 public education among the local edu­cational agencies of that State, payments

 under this title for any fiscal year may be taken into consideration by such State in determining the relative—

 (A) financial resources available to local educational agencies in

 that State; and

 (B) financial need of such agencies for the provision of free public

 education for chil­dren served by such agency, except that a State may consider as

 local resources funds received under this title only in proportion to the share that

 local tax revenues covered under a State equalization program are of total local

 tax revenues.

 (2) PROHIBITION.- ~~A State~~

 “(A) IN GENERAL . – A State may not take into consideration

 payments under this title before such State’s program of State aid has been

 certified by the Secretary under subsection (c)(3).

 **“(B) STATES THAT ARE NOT EQUALIZED STATES. – A State**

 that has not been approved as an equalized state under subsection (b)

 shall not consider funds received under Section 8002 or Section 8003 of this

 title in any State formula or place a limit or direct the use of such funds.

 (e) REMEDIES FOR STATE VIOLATIONS.—

 (1) IN GENERAL.-The Secretary or any aggrieved local educational agency

 may, not earlier than 150 days after an adverse determination by the Secretary

 against a State for violation of subsections (a) or (d)(2) or for failure to carry out

 an assurance under subsection (b)(3)(B), and if an administrative proceeding has

 not been concluded, within such time, bring an action in a United States district

 court against such State for such violations or failure.

 (2) IMMUNITY.-A State shall not be immune under the llth amendment to the

 Constitution of the United States from an action described in paragraph (1).

 (3) RELIEF.-The court shall grant such relief as the court determines is

 appropriate.

 **Section 8010. Federal Administration.**

 (a) PAYMENTS IN WHOLE DOLLAR AMOUNTS.-The Secretary shall round any

 payments under this title to the nearest whole dollar amount.

 (b) OTHER AGENCIES.-Each Federal agency administering Federal property on

 which children reside, and each agency principally responsible for an activity that

 may occasion assistance under this title, shall, to the maximum extent practicable,

 comply with requests of the Secretary for information the Secretary may need

 to carry out this title.

 (c) SPECIAL RULES.—

 (1) CERTAIN CHILDREN ELIGIBLE UNDER SUBPARAGRAPHS (A) AND

 (G)(ii) OF SECTION 8003(a)(1).- (A) The Secretary shall treat as eligible under

 subparagraph (A) of section 8003(a)(1) any child who would be eligible under

 such subparagraph except that the Federal property on which the child resides or

 on which the child’s parent is employed is not in the same State in which the child attends school, if such child meets the requirements of paragraph (2) of this

 subsection.

 (B) The Secretary shall treat as eligible under subparagraph (G) of

 section 8003(a)(1) any child who would be eligible under such subparagraph

 except that such child does not meet the requirements of clause (ii) of such

 subparagraph, if such child meets the requirements of paragraph (2) of this sub­

 section.

 (2) REQUIREMENTS.-A child meets the re­quirements of this paragraph if-

 (A) such child resides-

 (i) in a State adjacent to the State in which the local educational

 agency serv­ing the school such child attends is located; or

 (ii) with a parent employed on Fed­eral property in a State adjacent

 to the State in which such agency is located;

 (B) the schools of such agency are within a more reasonable commuting

 distance of such child’s home than the schools of the local edu­cational agency

 that serves the school attend­ance area where such child resides;

 (C) attending the schools of the local edu­cational agency that serves the

 school attend­ance area where such child resides will impose a substantial hardship on such child;

 (D) the State in which such child attends school provides funds for the

 education of such child on the same basis as all other public school children in the State, unless otherwise permitted under section 8009(b) of this title; and

 (E) such agency received a payment for fiscal year 1999 under section

 8003(b) on behalf of children described in paragraph (1).

 (d) Timely Payments. –

 (1) In General. – Subject to paragraph (2), the Secretary shall pay a local

 educational agency the full amount that the agency is eligible to receive under this

 title for a fiscal year not later than September 30 of the second fiscal year following

 the fiscal year in which such amount has been appropriated if, not later than 1

 calendar year following the fiscal year in which such amount has been appropriated,

 each local educational agency that is eligible to receive funds under this title for such

 fiscal year submits to the Secretary all the data and information necessary for the

 Secretary to pay the full amount that the agency is eligible to receive under this

 title for such fiscal year.

 (2) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH

 INSUFFICIENT FUNDS ARE APPROPRIATED. – For a fiscal year in which

 the amount appropriated under section 8014 is insufficient to pay the full amount a

 local educational agency is eligible to receive under this title, paragraph (1) shall be

 applied by substituting ‘is available to pay the agency’ for ‘the agency is eligible to

 receive’ each place it appears.

 **Section 8011. Administrative Hearings and Judicial Review.**

(a) ADMINISTRATIVE HEARINGS.-A local educational agency and a State that is

 adversely affected by any action of the Secretary under this title  shall be entitled to a hearing, on such action in the same manner as if such agency were a person under chapter 5 of title 5, United States Code if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this title.

 (b) JUDICIAL REVIEW OF SECRETARY ACTION.—

 (1) IN GENERAL.-A local educational agency or a State aggrieved by the

 Secretary’s final decision following an agency proceeding under subsection (a)

 may, within 30 working days (as determined by the local educational agency or

 State) after receiving notice of such decision, file with the United States court of

 appeals for the circuit in which such agency or State is lo­cated a petition for

 review of that action. The clerk of the court shall promptly transmit a copy of the

 petition to the Secretary. The Secretary shall then file in the court the record of

 the proceedings on which the Secretary’s action was based, as provided in section

 2112 of title 28, United States Code.

 (2) FINDINGS OF FACT.-The findings of fact by the Secretary, if supported by

 substantial evi­dence, shall be conclusive, but the court, for good cause shown,

 may remand the case to the Secretary to take further evidence. The Secretary may there­upon make new or modified findings of fact and may modify the Secretary’s previous action, and shall file in the court the record of the farther proceedings.

 Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

 (3) REVIEW.-The court shall have exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court

 shall be subject to review by the Supreme Court of the United States upon

 certiorari or certification as provided in section 1254 of title 28, United States

 Code.

 **Section 8012. Forgiveness of Overpayments.**

 Notwithstanding any other provision of law, the Sec­retary may forgive the

 obligation of a local educational agency to repay, in whole or in part, the amount of any overpayment received under this title, or under the Act of September 30,

 1950 (Public Law 874, 81st Congress) or the Act of September 23, 1950 (Public

 Law 815, 8lst Congress) (as such Acts were in effect on the day preced­ing the

 date of enactment of the Improving America’s Schools Act of 1994), if the

 Secretary determines that the overpayment was made as a result of an error made by­—

 (1) the Secretary; or

 (2) the local educational agency and repay­ment of the full amount of the

 overpayment will re­sult in an undue financial hardship on the agency and

 seriously harm the agency’s educational pro­gram.

 **Section 8013. Definitions.**

 For purposes of this title:

 (1) ARMED FORCES.-The term ‘Armed Forces’ means the Army, Navy, Air

 Force, Ma­rine Corps, **and Coast Guard.**

 (2) AVERAGE PER-PUPIL EXPENDITURE.-The term ‘average per-pupil

 expenditure’ means-
 (A) the aggregate current expenditures of all local educational

 agencies in the State; divided by

 (B) the total number of children in average daily attendance for

 whom such agencies provided free public education.
 (3) CONSTRUCTION.-The term ‘construction’ means—

 (A)the preparation of drawings and specifications for school

 facilities;

 (B)erecting, building, acquiring, altering, remodeling, repairing, or

 extending school facilities;

 (C) inspecting and supervising the construction of school facilities;

 and

 (D) debt service for such activities.

 (4) CURRENT EXPENDITURES.-The term ‘current expenditures’ means

 expenditures for free public education, including expenditures for administration,

 instruction, attendance and health services, pupil transportation services,

 operation and maintenance of plant, fixed charges, and net expenditures to cover

 deficits for food services and student body activities, but does not include

 expenditures for com­munity services, capital outlay, and debt service, or any

 expenditures made from funds awarded under title I and Part A of title V. The determination of whether an expenditure for the replacement of equipment is considered a current expenditure or a capital outlay shall be made in accordance with generally accepted accounting principles as determined by the State.

 (5) FEDERAL PROPERTY.—

 (A) IN GENERAL.-Except as provided in subparagraphs (B)

 through (F), the term ‘Fed­eral property’ means real property that is not subject to taxation by any State or an political subdivision of a State due to Federal agree­-

 ment, law, or policy, and that is—

 (i) owned by the United States or leased by the United States from

 another entity;

 (ii)(I) held in trust by the United States for individual Indians or

 Indian tribes;

 (II) held by individual Indians or In­dian tribes subject to restrictions on

 alienation imposed by the United States;

 (III) conveyed at any time under the Alaska Native Claims Settlement Act to a

 Native individual, Native group, or village or regional corporation;

 (IV) public land owned by the Unit­ed States that is designated for the sole use

 and benefit of individual Indians or In­dian tribes; or

 (V) used for low-rent housing, as de­scribed in paragraph (10), that is located on

 land described in subclause (I), (II), (iii) or (IV) of this clause or on land that met
 one of those descriptions immediately before such property’s use for such

 housing;

 (VI) exempt from taxation of real property and personal property identified

 by a local governmental entity including State government if upon such

 property resides a child whose parents or guardians are certified to live

 on such property is considered to meet the eligibility requirements of section

151.4 of part 150 of sub chapter H of title 25 of the Code of Federal

 Regulations,

 (iii)(I) part of a low-rent housing project assisted under the United

 States Housing Act of 1937; or

 (II) used to provide housing for homeless children at closed

 military instal­lations pursuant to section 501 of the **McKinney-**

 Vento Homeless Assistance Act (42 U.S.C. 11411);

 (III) used for affordable housing assisted under the Native

 American Housing Assistance and Self-Determination Act of 1996 (26

 U.S.C. 4101 et seq.); or

 (iv) owned by a foreign government or by an international

 organization.

 (B) SCHOOLS PROVIDING FLIGHT TRAINING TO

 MEMBERS OF AIR FORCE.-The term ‘Federal property’ includes, so long as

 not sub­ject to taxation by any State or any political subdivision of a State, and

 whether or not that tax exemption is due to Federal agreement, law, or policy, any school providing flight training to members of the Air Force under contract with

 the Air Force at an airport owned by a State or political subdivision of a State.

 (C) NON-FEDERAL EASEMENTS, LEASES, LICENSES,

 PERMITS, IMPROVEMENTS, AND CER­TAIN OTHER REAL PROPERTY.-

 The term ‘Fed­eral property’ includes, whether or not subject to taxation by a State or a political subdivision of a State—

 (i) any non-Federal easement, lease, license, permit, or other such

 interest in Federal property as otherwise described in this paragraph, but not

 including any non-­Federal fee-simple interest;

 (ii) any improvement on Federal property as otherwise described in

 this paragraph; and

 (iii) real property that, immediately before its sale or transfer to a

 non-Federal party, was owned by the United States and otherwise qualified as

 Federal property de­scribed in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.

 (D) CERTAIN POSTAL SERVICE PROPERTY AND

 PIPELINES AND UTILITY LINES.—Notwithstanding any other provision of

 this paragraph, the term ‘Federal property’ does not include-

 (i) any real property under the juris­diction of the United States

 Postal Service that is used primarily for the provision of postal services; or

 (ii) pipelines and utility lines.

 (E) PROPERTY WITH RESPECT TO WHICH STATE OR

 LOCAL TAX REVENUES MAY NOT BE EXPENDED, ALLOCATED,OR

 AVAILABLE FOR FREE PUBLIC EDUCATION.—Notwithstanding any other provision of this paragraph, ‘Federal property’ does not include any property on

 which children reside that is otherwise de­scribed in this paragraph if—

 (i) no tax revenues of the State or of any political subdivision of

 the State may be expended for the free public education of children who reside on that Federal property; or

 (ii) no tax revenues of the State are allocated or available for the

 free public education of such children.

 (F) PROPERTY LOCATED IN THE STATE OF OKLAHOMA

 OWNEDBY INDIAN HOUSING AU­THORITY FOR LOW-INCOME

 HOUSING.-The term ‘Federal property’ includes any real prop­erty located in the State of Oklahoma that—

 (i) is owned by an Indian housing authority and used for low-

 income housing (including housing assisted under or authorized by the Native

 American Housing Assistance and Self-Determination Act of 1996); and

 (ii) at any time—

 (I) was designated by treaty as tribal land; or

 (II) satisfied the definition of Federal property under section 403(l)(A) of the Act of September 30, 1950 (Public Law 874, 81st Con­gress) (as such Act was in

 effect on the day preceding the date of enact­ment of the Improving America’s

 Schools Act of 1994).

 (6) FREE PUBLIC EDUCATION.-The term ‘free public education’

 means education that is provided-

 (A) at public expense, under public super­vision and direction, and

 without tuition charge; and

 (B) as elementary or secondary edu­cation, as determined under

 State law, except that, notwithstanding State law, such term—

 (i) includes preschool education; and

 (ii) does not include any education provided beyond grade 12.

 (7) INDIAN LANDS.-The term ‘Indian lands’ means any Federal property

 described in paragraph (5)(A)(ii) or (5)(F).

 (8) LOCAL CONTRIBUTION PERCENTAGE.-

 (A) IN GENERAL.-The term ‘local contribution percentage’

 means the percentage of current expenditures in the State derived from local and

 intermediate sources, as reported to and verified by, the National Center for

 Education Statistics.

 (B) HAWAII AND DISTRICT OF COLUM­BIA.-Notwithstanding

 subparagraph (A), the local contribution percentage for Hawaii and for the

 District of Columbia shall be the average local contribution percentage for 50

 States and the District of Columbia.

 (9) LOCAL EDUCATIONAL AGENCY.-

 (A) IN GENERAL.-Except as provided in subparagraph **(C)**, the

 term ‘local educational agency’—

 (i) means a board of education or other legally constituted local

 school au­thority having administrative control and direction of free public

 education in a county, township, independent school dis­trict, or other school

 district; and

 (ii) includes any State agency that directly operates and maintains facilities for providing free public education; that, except for those local

 educational agencies determined to be eligible to receive a payment under section

 8003 prior to the date of the enactment of the Local Taxpayer Relief Act of

 2011,when submitting an application under this title on or after the date of

 enactment of such Act has the authority to tax and has boundaries as defined by

 applicable State law for the purposes of levying such taxes or has been granted

 **the** authority to receive an inputed tax from a city, county, townhip, or other

 general-purpose political subdivision of a State.”

 (C) EXCEPTION.-The term ‘local edu­cational agency’ does not

 include any agency or school authority that the Secretary determines, on a

 case-by-case basis—

 (i) was constituted or reconstituted primarily for the purpose of

 receiving assistance under this title or the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of

 enactment of the Improving America’s Schools Act of 1994) or increasing the

 amount of such assistance; or

 (ii) is not constituted or reconstituted for legitimate educational

 purposes.

 (10) LOW-RENT HOUSING.-The term ‘low-rent housing’ means housing

 located on property that is described in paragraph (5)(A)(iii).

 (11) MODERNIZATION. – The term “modernization” means, repair,

 renovation, alternation, or construction, including--

 (A) the concurrent installation of equipment; and

 (B) the complete or partial replacement of an existing school

 facility, but only if such replacement is less expensive and more cost-effective

 than repair, renovation, or alteration of the school facility.

 (12) REVENUE DERIVED FROM LOCAL SOURCES.-The term ‘revenue

 derived from local sources’ means—

 (A) revenue produced within the boundaries of a local educational

 agency and available to such agency for such agency’s use; or

 (B) funds collected by another governmental unit, but distributed

 back to a local educational agency in the same proportion as such funds were

 collected as a local revenue source.

 (13) SCHOOL FACILITIES.-The term ‘school facilities’ includes—

 (A) classrooms and related facilities; and

 (B) equipment, machinery, and utilities necessary or appropriate

 for school purposes.

 **Section 8014. Authorization of Appropriations.**

 (a) PAYMENTS FOR FEDERAL ACQUISITION OF REAL PROPERTY.-For the

 purpose of making payments under section 8002, there are authorized to be

 appropriated $67,208,000 for fiscal year 2012;

 (b) BASIC PAYMENTS; PAYMENTS FOR HEAVILY IMPACTED LOCAL

 EDUCATIONAL AGENCIES.-For the purpose of making payments under

 section 8003(b), there are authorized to be appropriated $1,138,000,000 for fiscal year **2012;**

 (c) PAYMENTS FOR CHILDREN WITH DISABILITIES.-For the purpose of

 making payments under section 8003(d), there are authorized to be appropriated

 $48,602,000 for fiscal year 2012;

 **(d)** CONSTRUCTION.-For the purpose of carrying out section 8007, there are

 authorized to be appropriated $17,509,000 for fiscal year 2012.

 (e) FACILITIES MAINTENANCE.-For the purpose of carrying out section

 8008, there are authorized to be appropriated $4,864,000 for fiscal

 year 2012; and

 “(f) ALLOCATION OF DOLLARS FROM PREVIOUS FISCAL YEARS.–

 When final payments are made for a fiscal year the Secretary shall add any

 remaining funds to those funds appropriated for such section for the next

fiscal year for the purpose of making payments subject to the provisions of

the applicable section.”

 **ADDITIONAL AND CONFORMING AMENDMENTS.**

 (a) Subpart 20 of Part D of Title V. – Subpart 20 (20 U.S.C. 7281 et seq.) of part D of title V of that Act (relating to additional assistance for certain local

 educational agencies impacted by Federal property acquisition) is repealed.

 (b) Title VIII. – Title VIII of Elementary and Secondary Education Act (20

 U.S.C. 7701 et seq.) is further amended—

 (1) in section 8004 (20 U.S.C. 7704)—

 (A) in subsection (e)(1)(B)(i), by striking ‘‘involved, or

 if’’ and inserting ‘‘involved or, if’’;

 (B) in subsection (f), by striking ‘‘upon’’ and inserting

 ‘‘on’’;

 (2) in section 8008(a) (20 U.S.C. 7708(a)), by striking

 ‘‘section 8014(f)’’ and inserting ‘‘section 8014(e)’’;

 (3) in section 8010 (20 U.S.C. 7710)—

 (A) in subsection (b), by striking out ‘‘require’’ and

 inserting in lieu thereof ‘‘need’’; and

 (B) in subsection (c)(1)—

 (i) in subparagraph (A), by striking ‘‘paragraph

 (3)’’ and inserting ‘‘paragraph (2)’’; and

 (ii) in subparagraph (B), by striking ‘‘paragraph

 (3)’’ and inserting ‘‘paragraph (2)’’; and

 (4) in section 8011(a) (20 U.S.C. 7711 (a)), by striking ‘‘or

 under’’ and all that follows through ‘‘of 1994)’’.

Repeals, Redesignations, And Amendments To Other Statutes

Sec. 1061 Student Privacy, Parental Access to Information, and Administration of Certain Physical Examination to Minors.

Section \_\_\_\_, of the General Education Provisions Act (20 U.S.C. 1232g(b)) is amended–

 “(1)(C)(i)(IV) Indian tribes.

Sec. 1128. Administrative cost grants.

\*\*\*\*

*Revise subsection (l) to read as follows:*

 (*l*) Administrative Cost Grant Budget Requests. –

 (1) In general. – Beginning with President's annual budget request under section 1105 of title 31, United States Code for fiscal year 2013, and with respect to each succeeding budget request, the Secretary shall submit to the appropriate committees of Congress information and funding requests for the full funding of administrative cost grants required to be paid under this section.