

part of the regular curriculum of a school, in considering the number of eligible Indian students served by such school.

(B) The adjustment required under subparagraph (A) shall be used for such school after—

(i) the certification of the Indian or Native language curriculum by the school board of such school to the Secretary, together with an estimate of the number of full-time students expected to be enrolled in the curriculum in the second school year following the school year for which the certification is made; and

(ii) the funds appropriated for allotment under this section are designated by the appropriations Act appropriating such funds as the amount necessary to implement such adjustment at such school without reducing allotments made under this section to any school by virtue of such adjustment.

(d) Reservation of amount for emergencies

The Secretary shall reserve from the funds available for distribution for each fiscal year under this section an amount which, in the aggregate, shall equal 1 percent of the funds available for such purpose for that fiscal year. Such funds shall be used, at the discretion of the Director of the Office, to meet emergencies and unforeseen contingencies affecting the education programs funded under this section. Funds reserved under this subsection may only be expended for education services or programs at a schoolsite (as defined in section 2503(c)(2) of this title). Funds reserved under this subsection shall remain available without fiscal year limitation until expended. However, the aggregate amount available from all fiscal years may not exceed 1 percent of the current year funds. Whenever the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress within the annual budget submission.

(e) Supplemental appropriations

Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

(f) “Eligible Indian student” defined

For the purpose of this section, the term “eligible Indian student” means a student who—

(1) is a member of or is at least a ¼ degree Indian blood descendant of a member of an Indian tribe which is eligible for the special programs and services provided by the United States through the Bureau to Indians because of their status as Indians, and

(2) resides on or near an Indian reservation or meets the criteria for attendance at a Bureau off-reservation boarding school.

(g) Tuition

(1) An eligible Indian student may not be charged tuition for attendance at a Bureau school or contract or grant school. A student attending a Bureau school under paragraph (2)(C) may not be charged tuition.

(2) The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

(A) the Secretary determines that the student’s attendance will not adversely affect the

school’s program for eligible Indian students because of cost, overcrowding, or violation of standards,

(B) the school board consents,

(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government, employee who lives on or near the school site, or

(D) a tuition is paid for the student that is not more than that charged by the nearest public school district for out-of-district students, is² in addition to the school’s allocation under this section.

(3) The school board of a contract or grant school may permit students who are not eligible Indian students under this subsection to attend its contract school or grant school and any tuition collected for those students is in addition to funding under this section.

(h) Funds available without fiscal year limitation

Notwithstanding any other provision of law, at the election of the school board of a Bureau school made at any time during the fiscal year, a portion equal to not more than 15 percent of the funds allocated with respect to a school under this section for any fiscal year shall remain available to the school for expenditure without fiscal year limitation. The Assistant Secretary shall take steps as may be necessary to implement this provision immediately.

(i) Students boarding at Richfield Dormitory, Richfield, Utah

Beginning with academic year 1994-1995, tuition for the out-of-State students boarding at the Richfield Dormitory in Richfield, Utah, who attend Sevier County high schools in Richfield, Utah, shall be paid from the Indian school equalization program funds authorized in this section and section 2010 of this title at a rate not to exceed the amount per weighted student unit for that year for the instruction of such students. No additional administrative cost funds shall be added to the grant.

(Pub. L. 95-561, title XI, §1127, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3989.)

REFERENCES IN TEXT

Section 2019 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105-362, title VIII, §801(c)(5), Nov. 10, 1998, 112 Stat. 3288.

PRIOR PROVISIONS

A prior section 2007, Pub. L. 95-561, title XI, §1127, Nov. 1, 1978, 92 Stat. 2320, related to policies and procedures for implementation of transferred administrative functions, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2010 of this title.

§ 2008. Administrative cost grants

(a) Purpose; effect upon appropriated amounts

(1) The Secretary shall, subject to the availability of appropriated funds, provide grants to

²So in original. Probably should be “students. The tuition collected is”.

each tribe or tribal organization operating a contract school or grant school in the amount determined under this section with respect to the tribe or tribal organization for the purpose of paying the administrative and indirect costs incurred in operating contract or grant schools in order to—

(A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice, and

(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

(2) Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract or grant school.

(b) Determination of amount; reduction for Federal education program payments; reimbursement by Federal departments or agencies

(1) The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate of the tribe or tribal organization to the aggregate of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau. The administrative cost percentage rate determined under subsection (c) of this section does not apply to other programs operated by the tribe or tribal organization.

(2) The Secretary shall—

(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by an Indian tribe or tribal organization under any Federal education program included in the direct cost base of the tribe or tribal organization, and

(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

(c) Administrative cost percentage rate

(1) For purposes of this section, the administrative cost percentage rate for a contract or grant school for a fiscal year is equal to the percentage determined by dividing—

(A) the sum of—

(i) the amount equal to—

(I) the direct cost base of the tribe or tribal organization for the fiscal year, multiplied by

(II) the minimum base rate, plus

(ii) the amount equal to—

(I) the standard direct cost base, multiplied by

(II) the maximum base rate, by

(B) the sum of—

(i) the direct cost base of the tribe or tribal organization for the fiscal year, plus

(ii) the standard direct cost base.

(2) The administrative cost percentage rate shall be determined to the $\frac{1}{100}$ of a decimal point.

(d) Administrative cost account; availability of funds; effect upon indirect cost recovery determinations

(1)(A) Funds received by a tribe or contract or grant school as grants under this section for tribal elementary or secondary educational programs may be combined by the tribe or contract or grant school into a single administrative cost account without the necessity of maintaining separate funding source accounting.

(B) Indirect cost funds for programs at the school which share common administrative services with tribal elementary or secondary educational programs may be included in the administrative cost account described in subparagraph (A).

(2) Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain available to the contract or grant school without fiscal year limitation and without diminishing the amount of any grants otherwise payable to the school under this section for any fiscal year beginning after the fiscal year for which the grant is provided.

(3) Funds received as grants under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

(4) In applying this section and section 105 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450j] with respect to an Indian tribe or tribal organization that—

(A) receives funds under this section for administrative costs incurred in operating a contract or grant school or a school operated under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], and

(B) operates 1 or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.],

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs, and of the indirect costs, that are associated with operating the contract or grant school, a school operated under the Tribally Controlled Schools Act of 1988, and all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

(e) Definitions

For purposes of this section:

(1)(A) The term “administrative cost” means the costs of necessary administrative functions which—

(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program,

(ii) are not customarily paid by comparable Bureau operated programs out of direct program funds, and

(iii) are either—

(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds, or

(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

(B) The term “administrative cost” may include—

(i) contract or grant (or other agreement) administration;

(ii) executive, policy, and corporate leadership and decisionmaking;

(iii) program planning, development, and management;

(iv) fiscal, personnel, property, and procurement management;

(v) related office services and record keeping; and

(vi) costs of necessary insurance, auditing, legal, safety and security services.

(2) The term “Bureau elementary and secondary functions” means—

(A) all functions funded at Bureau schools by the Office;

(B) all programs—

(i) funds for which are appropriated to other agencies of the Federal Government, and

(ii) which are administered for the benefit of Indians through Bureau schools; and

(C) all operation, maintenance, and repair funds for facilities and government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

(3)(A) Except as otherwise provided in this subparagraph (B), the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

(i) the second fiscal year preceding such fiscal year, or

(ii) if such programs have not been operated by the tribe or tribal organization during the 2 preceding fiscal years, the first fiscal year preceding such fiscal year.

(B) In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract, grant, or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

(4) The term “maximum base rate” means 50 percent.

(5) The term “minimum base rate” means 11 percent.

(6) The term “standard direct cost base” means \$600,000.

(7) The term “tribal elementary or secondary educational programs” means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are expended through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract, grant, or agreement with the Bureau.

(f) Studies for determination of factors affecting costs, minimum and maximum base rates, and standard direct cost base; report to Congress

(1) Upon April 28, 1988, the Secretary shall—

(A) conduct such studies as may be needed to establish an empirical basis for determining relevant factors substantially affecting the required administrative costs of tribal elementary and secondary educational programs, using the formula set forth in subsection (c) of this section, and

(B) conduct a study to determine—

(i) a maximum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the smallest tribal elementary or secondary educational programs,

(ii) a minimum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the largest tribal elementary or secondary educational programs, and

(iii) a standard direct cost base which is the aggregate direct cost funding level for which the percentage determined under subsection (c) of this section will—

(I) be equal to the median between the maximum base rate and the minimum base rate, and

(II) ensure that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of tribal elementary or secondary educational programs closest to the size of the program.

(2) The studies required under paragraph (1) shall—

(A) be conducted in full consultation (in accordance with section 2011 of this title) with—

(i) the tribes and tribal organizations that are affected by the application of the formula set forth in subsection (c) of this section, and

(ii) all national and regional Indian organizations of which such tribes and tribal organizations are typically members;

(B) be conducted onsite with a representative statistical sample of the tribal elemen-

tary or secondary educational programs under a contract entered into with a nationally reputable public accounting and business consulting firm;

(C) take into account the availability of skilled labor, commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found substantially to affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to assure that all required administrative activities can reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such formula;

(D) identify, and quantify in terms of percentages of direct program costs, any general factors arising from geographic isolation, or numbers of programs administered, independent of program size factors used to compute a base administrative cost percentage in such formula; and

(E) identify any other incremental cost factors substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied and determine whether the factors are of general applicability to other such programs, and (if so) how the factors may effectively be incorporated into such formula.

(3) In carrying out the studies required under this subsection, the Secretary shall obtain the input of, and afford an opportunity to participate to, the Inspector General of the Department of the Interior.

(4) Determinations described in paragraph (2)(C) shall be based on what is pragmatically possible to do at each location studied, given prudent management practice, irrespective of whether required administrative services were actually or fully delivered at these sites, or other services were delivered instead, during the period of the study.

(5) Upon completion of the studies conducted under paragraph (1), but in no case later than October 1, 1989, the Secretary shall submit to the Congress a report on the findings of the studies, together with determinations based upon such findings that would affect the definitions of terms used in the formula that is set forth in subsection (c) of this section.

(6) The Secretary shall include in the Bureau's justification for each appropriations request for each fiscal year beginning after fiscal year 1989, a projection of the overall costs associated with the formula set forth in subsection (c) of this section for all tribal elementary or secondary educational programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

(7) For purposes of this subsection, the size of tribal elementary or secondary educational programs is determined by the aggregate direct cost program funding level for all Bureau funded programs which share common administrative cost functions.

(g) Authorization of appropriations; procedure where amount of funds necessary exceeds appropriated amount

(1) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this section.

(2) If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under subsection (b) of this section for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under subsection (b) of this section for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grant determined under subsection (b) of this section bears to the total of all grants determined under subsection (b) of this section for all tribes and tribal organizations for such fiscal year.

(h) Amounts for fiscal years 1989, 1990, and 1991

(1) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1989 shall—

(A) in lieu of being determined under subsection (b) of this section, be determined for each tribal elementary or secondary educational program on the same basis that indirect costs were determined for such programs for fiscal year 1988, and

(B) be subject to the provisions of subsection (d) of this section.

(2) Notwithstanding any other provision of this section, the amount of the grant provided under this section for fiscal year 1990 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

(A) if the amount of the grant determined under subsection (b) of this section for fiscal year 1990 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1988 (or fiscal year 1989 if such program was not operated by the tribe or tribal organization during fiscal year 1988), the sum of—

(i) such amount received, plus

(ii) $\frac{1}{3}$ of the excess of—

(I) such amount determined under subsection (b) of this section, over

(II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b) of this section, the excess of—

(i) such amount received, over

(ii) an amount equal to $\frac{1}{3}$ of the excess of—

(I) such amount received, over

(II) such amount determined under subsection (b) of this section.

(3) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1991 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

(A) if the amount of the grant determined under subsection (b) of this section for fiscal year 1991 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1990, the sum of—

- (i) such amount received, plus
- (ii) ½ of the excess of—
 - (I) such amount determined under subsection (b) of this section, over
 - (II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b) of this section, the excess of—

- (i) such amount received, over
- (ii) an amount equal to ½ of the excess of—
 - (I) such amount received over,
 - (II) such amount determined under subsection (b) of this section.

(i) Application of section to certain tribally controlled schools

The provisions of this section shall also apply to those schools operating under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(Pub. L. 95-561, title XI, §1128, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3993.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (d)(4) and (i), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d)(4)(B), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to part A (§450 et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

Prior sections 2008 and 2008a were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2008, Pub. L. 95-561, title XI, §1128, Nov. 1, 1978, 92 Stat. 2320; Pub. L. 96-46, §2(b)(7), (8), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §505, Oct. 19, 1984, 98 Stat. 2394; Pub. L. 99-89, §5, Aug. 15, 1985, 99 Stat. 381; Pub. L. 99-228, §1, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 100-297, title V, §§5107(a), 5108(b), (c), Apr. 28, 1988, 102 Stat. 368, 375; Pub. L. 100-427, §§2(a), (b)(1), (c), 3, 5, Sept. 9, 1988, 102 Stat. 1604, 1605; Pub. L. 101-301, §5(d)(1), May 24, 1990, 104 Stat. 208; Pub. L. 103-382, title III, §393(b), Oct. 20, 1994, 108 Stat. 4026, related to allotment formula.

Section 2008a, Pub. L. 95-561, title XI, §1128A, as added Pub. L. 100-297, title V, §5108(a), Apr. 28, 1988, 102 Stat. 369; amended Pub. L. 100-427, §4, Sept. 9, 1988, 102 Stat. 1604; Pub. L. 101-301, §5(f), May 24, 1990, 104 Stat. 208, related to administrative cost grants.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 458cc, 2503, 2504, 2511 of this title.

§ 2009. Division of Budget Analysis

(a) Establishment

Within 24 months of October 20, 1994, the Secretary shall establish within the Office a Division

of Budget Analysis (hereinafter referred to as the "Division"). Such Division shall be under the direct supervision and control of the Director of the Office.

(b) Functions

The Division shall have the capacity to conduct such studies, surveys, or other activities as are necessary to gather demographic information on Bureau-funded schools (current and future) and project the amount necessary to provide Indian students in such schools the educational program set forth in this chapter.

(c) Annual reports

The Division shall prepare projections on such amounts, along with such other information as the Director of the Office shall require, for each fiscal year beginning after October 1, 1996. The Director of the Office and the Assistant Secretary for Indian Affairs shall use such reports when preparing their annual budget submissions.

(Pub. L. 95-561, title XI, §1129, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3998.)

PRIOR PROVISIONS

A prior section 2009, Pub. L. 95-561, title XI, §1129, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 98-511, title V, §§506, 507(a), Oct. 19, 1984, 98 Stat. 2395, 2396; Pub. L. 99-89, §6, Aug. 15, 1985, 99 Stat. 382; Pub. L. 99-570, title IV, §4133(b)(4), Oct. 27, 1986, 100 Stat. 3207-134; Pub. L. 100-297, title V, §§5109, 5110, 5118, Apr. 28, 1988, 102 Stat. 375, 376, 382; Pub. L. 100-427, §§6, 9(d), Sept. 9, 1988, 102 Stat. 1605, 1607, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2006 of this title.

§ 2010. Uniform direct funding and support

(a) Establishment of system

(1) Within six months after October 20, 1994, the Secretary shall establish, by regulation adopted in accordance with section 2019¹ of this title, a system for the direct funding and support of all Bureau funded schools. Such system shall allot funds, in accordance with section 2007 of this title. All amounts appropriated for distribution under this section may be made available under paragraph (2).

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 2007 of this title, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on July 1 of the fiscal year in which such amounts are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

- (i) publish, on July 1 of the fiscal year for which the funds are appropriated, allotments to each affected school made under section 2007 of this title of 85 percent of such appropriation; and

¹ See References in Text note below.