



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF MANAGEMENT AND BUDGET / CHIEF FINANCIAL OFFICER

July 13, 1993

Note to Mike Smith

Attached are responses to the OMB questions and comments on the Impact Aid reauthorization proposal, prepared by the Impact Aid Satellite Team.

A handwritten signature in black ink that reads "TOM".

Tom Corwin

Attachment

7/13/93

RESPONSE TO OMB COMMENTS ON IMPACT AID SPECIFICATIONS

New Payments for Capital Improvements Authority

OMB objects to the creation of this authority because of anticipated continued tight budget resources. We agree that additional funds (beyond current appropriations for construction) are unlikely to be available in the next few years to provide increased funding for this new authority, but we believe that it is important to propose this authority as a rational alternative to the current construction program. If the Administration fails to propose something like this, we can expect Congress simply to reauthorize the current, badly flawed construction authorities in P.L. 81-815, and continue to appropriate a few million dollars every year, enough for us to build a couple of schools at a time and tie up significant administrative resources.

The current construction program is a morass of overlapping program authorities, confusing eligibility requirements, and cumbersome administrative procedures. The authorized funding level is far outstripped by applications for assistance; current priority lists for sections 5 and 14 include hundreds of unfunded construction applications totalling \$200 million in originally estimated need, while annual appropriations have provided only enough for two or three new construction projects a year. A recent review of applicants on our priority lists confirmed the continuing need for facilities and an ongoing Federal impact in applicant districts. Some qualifying applicants still report need after having been on the priority lists since 1967. The current approach does almost nothing to address these hundreds of districts' need for construction assistance.

We designed the proposed capital assistance authority as a simple and equitable means of distributing a small amount of money (perhaps \$8 to \$12 million annually, comparable to the amounts recently appropriated for sections 5 and 14) to each school district that has a reasonable claim to some Federal construction assistance because of the attendance of federally connected children. Our approach would acknowledge the need for capital improvements that P.L. 81-815 was designed to address but, at the same time, would recognize current budget realities. Providing capital improvement funding on an equal, annual per-pupil basis would allow all eligible LEAs to accumulate and manage their own capital funds and meet their highest priority capital improvement needs (which could be small-scale renovations and repairs instead of new construction) within the constraints of the current annual appropriation for Impact Aid.

The GAO recommended an approach similar to this proposal in its 1990 report to Congress on the Construction program, and while we objected to the GAO recommendation at that time, we have since

come to believe it is the only viable approach to addressing widespread Impact Aid construction needs in an equitable manner.

We concede that the individual payments to most school districts will be quite small, and the large number of existing, immediate construction needs would likely not be adequately addressed, but school districts could save for several years (or contribute substantial State and local funding) to amass sufficient funds to undertake major construction projects. For this reason, we would object to requiring LEAs to use these funds within ten years. We would agree to a requirement that accrued interest be used for the same purpose, however.

Finally, the administrative burden on the Department must be considered in evaluating alternative approaches. We currently devote up to 4.5 FTE per year to the construction program, a disproportionate drain on our limited FTE considering the small number of dollars being administered. The proposed Capital Improvements authority could be administered as part of the regular Basic Support payment system, at a considerable savings in staff time.

As to OMB's suggestion that we address school construction needs through an expanded Connie Lee insurance and reinsurance authority, we intend to propose such an authority and agree that some of the school districts that would be eligible for assistance under our proposed authority could take advantage of it. In these instances, the small Capital Improvement payments these LEAs would receive under our proposed authority could be used for debt service. The fiscal characteristics of many other LEAs targeted by the Impact Aid construction program make them unlikely to be able to benefit from a loan program, however. Many LEAs serving children living on Indian lands currently turn to Impact Aid for construction assistance precisely because they cannot raise funds locally to service capital debt. These LEAs have few sources of capital for construction, aside from Impact Aid and State aid, and little tax base to draw from. There have been repeated calls from the Indian community for additional Federal efforts to address the dismal condition of many schools serving Indian students. A proposal to address this need through a loan program would be regarded as no solution at all.

Payments for Sudden and Substantial Increases in Military Dependents

OMB asked for data on the extent of the problem we propose to address through this new authority. As you may know, DOD has been unable to provide us with any estimates of the future effects of the defense realignment on the communities surrounding the military bases being consolidated, including projected increases in the numbers of military dependents enrolling in the schools. In many instances, DOD has not even been able to tell

in advance which bases will be consolidated. For this reason, we have no useful data on which to base projections of the numbers of LEAs that may apply for funding under this new authority, or the numbers of children that may generate payments.

Impact Aid payment records show that, between 1991 and 1992, 66 LEAs reported increases of at least 100 military dependent ADA, for a total increase in these districts of 19,510 military dependent children. The two most heavily affected LEAs, Lawton, Oklahoma and Clarksville-Montgomery County, Tennessee, each reported enrollment increases of more than 900 military "b" children. Two other small LEAs reported increases of fewer than 100 military dependents (a total of 39 children in the two districts) that amounted to more than 10 percent of their ADA. We can assume that many of these LEAs would have been eligible for payments under our proposed new authority had it been in place for FY 1992. Actual numbers of children that could be claimed would be contingent on whether the LEA reports an increase in total ADA equal to the increase in military ADA certified by the base commander (this test is spelled out in the bill language); therefore, we expect that the number that could have been claimed for FY 1992 would be reduced somewhat below 19,000. This does not help us to project future eligibility and payments, however, in the absence of data from DOD. For the purposes of budgeting this proposal, we are using \$2 to \$4 million per year as a place-holder, depending on the pace of the defense realignment.

The absence of data on which to base budget projections does not absolve us of the responsibility to address the needs of LEAs that will be affected by the defense realignment. A basic assumption of the Impact Aid program is that the Federal Government has a responsibility to assist local school districts with the costs of educating the children of our armed forces. In this instance only, we believe that our responsibility extends to those children currently categorized as military "b's". We have made, and will continue to make, the argument that military "b" children, like other "b" children, do not normally place a significant claim on our assistance. During the military draw-down, however, school districts serving certain military bases will be enrolling increasing numbers of these military dependents. Because on-base housing will not be available for the vast majority of these families, virtually all of these new enrollments will be "b" children; since our reauthorization proposal would exclude these children from regular Impact Aid payments, this new authority would provide some relief for LEAs that are suddenly burdened by substantial increases in military enrollments and must hire additional teachers. While the payments would be quite small, they would be comparable to the amounts that LEAs currently receive for each "b" child.

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KEY ISSUES IN IMPACT AID

PURPOSE AND PRINCIPLE REFORMS

Purpose:

The presence of Federal activities in certain communities has an adverse impact on local school districts because they must educate concentrations of federally connected children and have a diminished property tax base. Impact Aid fulfills an important Federal responsibility by ensuring that these local school districts have adequate resources to educate federally connected children.

Principle Reforms:

Impact Aid, as authorized by the current statutes, is riddled with inequities and crippled by administrative complexity. The Administration's proposal includes the following elements:

- o a more equitable distribution formula that takes into account the cost of education and the actual local share of education costs in each State;
- o separate categorical assistance for federally connected children with disabilities;
- o supplemental payments for school districts experiencing substantial increases in military-dependent students due to Defense realignment activities;
- o a single, revised standard to determine whether a State is equalized, which, if passed, would allow States to take deductions for Impact Aid in proportion to the degree to which they are equalized;
- o elimination of the section 2 program, which makes payments solely for Federal property;
- o a new capital improvement authority, in lieu of P.L. 81-815, to provide formula assistance, based on Federal membership, to districts with at least 20 percent federally connected children.

This proposal would, at minimal budget cost, send an important signal to the LEAs serving the military community that we recognize their needs and are attempting to provide a coordinated policy of assistance to communities affected by the military realignment. We believe that the proposal could also be helpful in easing opposition to the elimination of "b" payments, which will be one of our toughest battles during the reauthorization.

Supplemental Payments for Children with Disabilities

OMB raises several issues related to the provision of Supplemental Payments for Children with Disabilities, the most basic of which seems to be whether we should even provide such payments. OMB's argument is that since such children are targeted by the IDEA, no separate Impact Aid supplement is necessary.

The purpose of Impact Aid is to compensate LEAs, at least partially, for the local share of the cost of educating federally connected children. To the extent that federally connected children with disabilities cost more to educate than other federally connected children (and we assume they do, although we do not have comprehensive data demonstrating this), we have a responsibility to provide supplemental payments to meet these additional costs. If funding for the IDEA were sufficient to provide a substantial share of the cost of educating these children with disabilities, then OMB's argument might sway us. We understand that funding for the IDEA provides only a tiny share of these costs, however. In the absence of any special supplemental payment through Impact Aid, therefore, local school districts serving federally connected children with disabilities would be unreasonably burdened by the presence of these children. This is especially true for those LEAs that, because they have a reputation for providing better services for children with disabilities, become popular duty stations for military families with severely handicapped children.

As to the relationship of Supplemental Payments for Children with Disabilities to payments provided under the IDEA, the bill spells out that an LEA must use these supplemental payments to provide a free appropriate public education in accordance with Part B of the IDEA.

We propose to separate the Supplemental Payments from the Basic Support Payments in order to gain increased control of these funds and provoke better analysis of this whole issue. Under the current statute, certain federally connected children with disabilities (those eligible for services under the IDEA) are eligible to be counted for supplemental funding under the formula. These children generate an additional 50 percent of the local contribution rate, which is paid in full off the top of the appropriation, without consideration of the amount of the

appropriation, while all other payments are ratably reduced if appropriations are insufficient to pay full entitlement. Consequently, as "full entitlement" has increased (with the national cost of education) but appropriations have remained relatively constant in recent years, the cost of the supplemental payments for children with disabilities has gradually increased as a percent of the total section 3 program, diverting funds from regular payments for other federally connected students. Because these increased payments are buried within the exceedingly complex payment formula, however, no one questions how much is being provided and whether it is insufficient or excessive.

By providing separate categorical supplemental assistance for federally connected children with disabilities, we intend to bring the distribution of these funds into line with the rest of the Basic Support Payments, which will take into consideration the local cost of education and the percentage of educational costs provided from local resources. Further, we hope that by separating these payments we can generate some analysis and discussion of how much funding is appropriate.

State Formula Equalization Provisions

OMB suggests that Supplemental Payments for Children with Disabilities should not be excluded from consideration by States that are determined to be equalized. This proposed exclusion reflects our understanding of Congress' intent that these supplemental payments be used to pay for the special educational services provided to children with disabilities. Current law requires that LEAs account for the use of these funds for the special needs of the targeted children. We implement this by requiring that an LEA demonstrate that the costs of providing additional services for a federally connected child with disabilities equal or exceed the supplemental amount provided on behalf of that child. We plan to continue this treatment under the proposed new law, and therefore believe it would be inappropriate to allow States to take deductions from these supplemental payments.

In response to OMB's question about whether a State formula calculation can change annually and needs to be reviewed annually, our experience has been that even in States that infrequently revise their State aid formulas, the very minor revisions that are generally made in each state legislative session can disqualify a State that was previously only marginally compliant under one of the current tests. Other factors that change annually, such as State appropriations and local spending for education, can also influence whether a State "passes" one of the equalization tests. We recently found that Maine, which had previously been determined to be equalized under our regulations, became disequalized in FY 1992 primarily because

State appropriations for education decreased. Therefore, we believe an annual review process is appropriate.

Indian Policies and Procedures

The bill would require an LEA to establish policies and procedures to ensure that Indian lands children participate in the educational programs supported by Impact Aid on an equal basis with other children, and that their parents are consulted in planning the educational programs. The language does not speak to any particular pot of funds. This is made more clear in the bill language than in the specs.

Declining Hold-Harmless Provisions

The purpose of the declining hold-harmless is to provide a smooth but quick (3-year) transition to the new payment levels that will be provided under the proposed formula. We excluded "b" payments from the hold-harmless because the Administration's budget proposal would phase out "b" payments in three years through the appropriations process. We are sending to you under separate cover tables showing the winners and losers under our proposed formula. In general, LEAs in States with very strong State funding programs (Alaska, New Mexico, and Washington) will lose the most in "a" payments. Several States whose LEAs have very few "a" children will lose substantially due to the elimination of "b" payments.

Hearing Requirements

OMB questions why we need a separate hearing provision under Impact Aid, rather than applying the GEPA hearing procedures. We continued this approach because the appeals and requests for hearings that arise under the Impact Aid program generally are of a very different nature than those in programs to which the hearing procedures in Part E of GEPA currently apply.

Part E of GEPA is designed primarily to provide hearings regarding the misexpenditure of funds that are identified through audits, the outcomes of which are issued in the form of program determination letters (PDLs). Further, the GEPA procedures include requirements for rapid hearing timelines and other special provisions such as for the grantback of funds. These procedures are appropriate for most of the Department's grant programs.

In contrast, in the Impact Aid program every payment transaction is potentially an adverse action, which may be appealed, since an LEA may believe that it is entitled to a different amount. If Impact Aid were subject to Part E of GEPA, each payment action would have to be made through a PDL, resulting in a far more complex payment system and delayed payments.

Further, the rapid hearing timelines and other special provisions under Part E of GEPA simply are not designed to address the number and variety of appealable actions that occur in the Impact Aid program, which include appeals of payment transactions and general program eligibility, in addition to appeals by States or LEAs relating to equalization determinations under sections 5(d)(1) and (2) of P.L. 81-874. Therefore, separate hearing procedures, such as those in current law, are needed.

Finally, many Impact Aid hearing requests are resolved through the reconsideration process, prior to the assignment of an administrative law judge. Requiring these appeals to proceed rapidly to the administrative law judge stage, as would occur under Part E of GEPA, would unnecessarily overburden the hearing process with a large number of complex Impact Aid issues that could be resolved administratively.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

July 20, 1993

NOTE TO: Tom Corwin, M&B/CFO
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SUBJECT: Draft Impact Aid bill

Attached, for your information, is the Department's draft legislative proposal for reauthorization of the Impact Aid program, as given to the Under Secretary's office for informal transmittal to OMB. This bill and section-by-section analysis is only slightly different from the June 17 version on which you commented.

Thanks for your help in getting us to this point. Stay tuned!

Paul Riddle

Attachment

Outline for revised Impact Aid Act (P.L. 81-874)

<u>Section</u>	<u>Heading</u>
1	Short title.
2	Findings and purpose.
3	Payments for eligible children.
4	Policies and procedures for children residing on Indian lands.
5	Applications for section 3 payments.
6	Sudden and substantial increases in attendance of military dependents.
7	Capital improvements.
8	Minimum school facilities assisted by the Secretary.
9	State consideration of payments in providing State aid.
10	Federal administration.
11	Administrative hearings and judicial review.
12	Definitions.
13	Authorization of appropriations.

JUL 20 1993

A BILL

To amend the Act of September 30, 1950 (Public Law 874, Eighty-first Congress); to repeal the Act of September 23, 1950 (Public Law 815, Eighty-first Congress); and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Impact Aid Amendments of 1993".

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IMPACT AID--PUBLIC LAW 81-874

SEC. 2. The Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended to read as follows:

*

"SHORT TITLE

"SEC. 1. This Act may be cited as the 'Impact Aid Act'.

"FINDINGS AND PURPOSE

"SEC. 2. (a) FINDINGS. The Congress finds that--

"(1) certain activities of the Federal Government place a financial burden on the local educational agencies serving areas where such activities are carried out; and

"(2) it is the shared responsibility of the Federal Government, the States, and local educational agencies to provide for the education of children connected to those activities.

"(b) PURPOSE. It is the purpose of this Act to provide financial assistance to local educational agencies that--

"(1) educate children who reside on Federal property and whose parents are employed on Federal property;

"(2) experience sudden and substantial increases in enrollments because of military realignments; or

"(3) need special assistance with capital expenditures for construction activities because of the enrollments of

* We currently expect to recast this as a separate title of the ESEA

1 children who reside on Federal property and whose parents are
employed on Federal property.

3 "PAYMENTS FOR ELIGIBLE CHILDREN

4 "SEC. 3. (a) ELIGIBLE CHILDREN. For the purpose of
5 computing the amount that a local educational agency is eligible
6 to receive under subsection (b) or (c) of this section for any
7 fiscal year, the Secretary shall determine the number of children
8 who were in average daily attendance in the schools of such
9 agency, and for whom such agency provided free public education,
10 during the preceding school year and who, while in attendance at
11 such schools--

12 "(1) resided on Federal property with a parent employed
13 on Federal property located, in whole or in part, within the
boundaries of the school district of such agency;

14 "(2) resided on Federal property and had a parent on
15 active duty in the uniformed services (as defined in section 101
16 of title 37, United States Code); or

17 "(3) resided on Indian lands, as defined in
18 section 12(9) of this Act.

19 "(b) BASIC SUPPORT PAYMENTS.--(1) From the amount
20 appropriated under section 13(a) for any fiscal year, the
21 Secretary shall make payments to local educational agencies with
22 children described in subsection (a).

23 "(2) The maximum amount that a local educational agency
24 is eligible to receive under this subsection for any fiscal year
25 is--
26

1 "(A) the total number of children determined under
2 subsection (a)(1) and (2), plus 1.25 times the number of children
3 determined under subsection (a)(3), for such agency; multiplied
4 by

5 "(B) the average per-pupil expenditure of local
6 educational agencies in such agency's State for the third
7 preceding fiscal year, as determined by the Secretary; multiplied
8 by

9 "(C) the local contribution percentage for the
10 third preceding fiscal year, as determined by the Secretary.

11 "(3) If the amount appropriated under section 13(a) for
12 any fiscal year is insufficient to pay to each local educational
13 agency the amount determined under paragraph (2), the Secretary
14 shall ratably reduce each such payment.

15 "(c) SUPPLEMENTAL PAYMENTS FOR CERTAIN CHILDREN WITH
16 DISABILITIES.--(1) From the amount appropriated under
17 section 13(b) for any fiscal year, the Secretary shall make
18 supplemental payments to local educational agencies that receive
19 basic support payments under subsection (b).

20 "(2) The maximum amount that a local educational agency
21 is eligible to receive under this subsection for any fiscal year
22 is--

23 "(A) the number of children with disabilities, as
24 defined in section 602(a)(1) of the Individuals with Disabilities
25 Education Act, described in paragraphs (2) and (3) of
26 subsection (a), to whom the local educational agency provided a

1 free appropriate public education in accordance with such Act in
the preceding school year; multiplied by

2 "(B) 50 percent of the average per-pupil
3 expenditure determined under subsection (b)(2)(B); multiplied by

4 "(C) the local contribution percentage determined
5 by the Secretary under subsection (b)(2)(C).

6 "(3) If the amount appropriated under section 13(b) for
7 any fiscal year is insufficient to pay to each local educational
8 agency the amount determined under paragraph (2), the Secretary
9 shall ratably reduce each such payment.

10 "(4) A local educational agency shall use any funds it
11 receives under this subsection to provide a free appropriate
12 public education to children described in paragraph (2), in
13 accordance with part B of the Individuals with Disabilities
14 Education Act.

15 "(d) HOLD-HARMLESS AMOUNTS.--(1) Notwithstanding any other
16 provision of this section, the total amount that the Secretary
17 shall pay a local educational agency under subsections (b) and
18 (c) of this section--

19 "(A) for fiscal year 1995, shall not be less than
20 80 percent of the payment such agency received for fiscal
21 year 1994 under section 3(a) of this Act, as in effect for fiscal
22 year 1994;

23 "(B) for fiscal year 1996, shall not be less than
24 60 percent of such fiscal year 1994 payment; and
25

1 "(C) for fiscal year 1997, shall not be less than
40 percent of such fiscal year 1994 payment.

2 "(2) If necessary in order to make payments to local
4 educational agencies in accordance with paragraph (1), the
5 Secretary shall reduce payments to other local educational
6 agencies determined under subsection (b).

7 "POLICIES AND PROCEDURES FOR
8 CHILDREN RESIDING ON INDIAN LANDS

9 "SEC. 4. (a) POLICIES AND PROCEDURES REQUIRED. Any local
10 educational agency that claims children residing on Indian lands
11 for the purpose of receiving funds under section 3 of this Act
12 shall establish policies and procedures to ensure that--

13 "(1) such children participate in programs and
14 activities supported by such funds on an equal basis with all
other children;

15 "(2) parents of such children and Indian tribes are
16 afforded an opportunity to present their views on such programs
17 and activities, including an opportunity to make recommendations
18 on the needs of those children and how they may help those
19 children realize the benefits of those programs and activities;

20 "(3) parents and Indian tribes are consulted and
21 involved in planning and developing such programs and activities;

22 "(4) relevant applications, evaluations, and program
23 plans are disseminated to the parents and Indian tribes; and
24

1 "(5) parents and Indian tribes are afforded an
2 opportunity to present their views on the agency's general
3 educational program.

4 "(b) RECORDS. Each such agency shall maintain records
5 demonstrating its compliance with subsection (a).

6 "(c) WAIVER. Any such agency is excused from the
7 requirements of subsections (a) and (b) for any year with respect
8 to any Indian tribe from which it has received a written
9 statement that the agency need not comply with those subsections
10 because the tribe is satisfied with the agency's provision of
11 educational services to such children.

12 "(d) TECHNICAL ASSISTANCE AND ENFORCEMENT. The Secretary
13 shall--

14 "(1) provide technical assistance to local educational
15 agencies, parents, and Indian tribes to enable them to carry out
16 this section; and

17 "(2) enforce this section through such actions, which
18 may include the withholding of funds, as the Secretary finds
19 appropriate, after affording the local educational agency,
20 parents, and affected Indian tribes an opportunity to present
21 their views.

22 "APPLICATIONS FOR SECTION 3 PAYMENTS

23 "SEC. 5. (a) APPLICATIONS REQUIRED. Any local educational
24 agency wishing to receive a payment under section 3 of this Act
25 shall--

26 "(1) file an application therefor with the Secretary; and

1 "(2) provide a copy of its application to the State
educational agency.

2 "(b) APPLICATION CONTENTS. Each such application shall be
4 submitted in such form and manner, and shall contain such
5 information, as the Secretary may require, including--

6 "(1) information to determine such agency's eligibility
7 for a payment and the amount of any such payment; and

8 "(2) where applicable, an assurance that such agency is
9 in compliance with section 4 of this Act, relating to children
10 residing on Indian lands.

11 "(c) DEADLINE FOR SUBMITTING; APPROVAL.--(1) The Secretary
12 shall establish deadlines for the filing of applications under
13 this section.

14 "(2) The Secretary shall approve each application
submitted under this section that is filed by the deadline
established under paragraph (1) and otherwise meets the
17 requirements of this Act.

18 "(3) The Secretary shall approve an application filed
19 up to 60 days after a deadline established under subsection (c)
20 that otherwise meets the requirements of this Act, except that,
21 notwithstanding section 3(d) or any other provision of this Act,
22 the Secretary shall reduce the payment based on such late
23 application by ten percent of the amount that would otherwise be
24 paid.

1 "(4) The Secretary shall not accept or approve any
2 application filed more than 60 days after a deadline established
3 under paragraph (1).

4 "SUDDEN AND SUBSTANTIAL INCREASES IN
5 ATTENDANCE OF MILITARY DEPENDENTS

6 "SEC. 6. (a) ELIGIBILITY. A local educational agency is
7 eligible for a payment under this section if--

8 "(1) the number of children in average daily attendance
9 during the current school year is at least ten percent or 100
10 more than the number of children in average daily attendance in
11 the preceding school year; and

12 "(2) the number of children in average daily attendance
13 with a parent on active duty (as defined in section 101(18) of
14 title 37, United States Code) in the Armed Forces who are in
15 attendance at such agency because of the assignment of their
16 parent to a new duty station between July 1 and September 30,
17 inclusive, of the current year, as certified by an appropriate
18 local official of the Department of Defense, is at least ten
19 percent or 100 more than the number of children in average daily
20 attendance in the preceding school year.

21 "(b) APPLICATION. Any local educational agency that wishes
22 to receive a payment under this section shall file an application
23 therefor with the Secretary by October 15 of the current school
24 year, in such manner and containing such information as the
25 Secretary may prescribe, including information demonstrating that
26 it is eligible for such a payment.

1 "(b) AMOUNT OF PAYMENTS. The amount of a payment to each
2 such agency shall be equal to--

 "(1) the amount so appropriated under section 13(d);
divided by

5 "(2) the number of children determined under
6 section 3(a) for all such agencies, but not including any
7 children attending a school assisted or provided by the Secretary
8 under section 8 of this Act or section 10 of Public Law 81-815,
9 as in effect prior to the repeal of such statute; multiplied by

10 "(3) the number of such children determined for such
11 agency.

12 "(c) USE OF FUNDS. Any local educational agency that
13 receives funds under this section shall use such funds, and any
14 interest accrued thereon, to provide school facilities.

15 "(d) AVAILABILITY OF FUNDS. Such funds, and any interest
16 accrued thereon, shall remain available to each such agency until
17 expended.

18 "MINIMUM SCHOOL FACILITIES ASSISTED BY THE SECRETARY

19 "SEC. 8. (a) CURRENT FACILITIES. The Secretary may continue
20 to provide assistance for school facilities that were supported
21 by the Secretary under section 10 of Public Law 81-815 as in
22 effect prior to the repeal of such statute.

23 "(b) TRANSFER OF FACILITIES.--(1) The Secretary shall, as
24 soon as practicable, transfer to the appropriate local
25 educational agency or another appropriate entity all the right,
26 title, and interest of the United States in and to each facility

1 provided under section 10 of Public Law 81-815, or under
sections 204 or 310 of Public Law 81-874 as in effect on
January 1, 1958.

4 "(2) Any such transfer shall be without charge to such
5 agency or entity and shall be subject to such terms and
6 conditions as the Secretary finds appropriate.

7 "STATE CONSIDERATION OF PAYMENTS IN PROVIDING STATE AID

8 "SEC. 9. (a) GENERAL PROHIBITION ON STATE CONSIDERATION.

9 Except as provided in subsection (b), no State shall--

10 "(1) consider payments under this Act in determining,
11 for any fiscal year--

12 "(A) the eligibility of any local educational
13 agency for State aid for free public education; or

"(B) the amount of such aid; or

14 "(2) make such aid available to local educational
15 agencies in a manner that results in less State aid to any local
16 educational agency that is eligible for such payment than it
17 would receive if it were not so eligible.
18

19 "(b) STATE EQUALIZATION PLANS.--(1) Notwithstanding
20 subsection (a), a State may reduce State aid to a local
21 educational agency that receives a payment under section 3(b) of
22 this Act for any fiscal year if the Secretary determines, and
23 certifies under subsection (c)(3)(A), that the State has in
24 effect a program of State aid that equalizes expenditures for
25 free public education among local educational agencies in the
26 State.

1 "(2)(A) For the purpose of paragraph (1), a program of
2 State aid equalizes expenditures among local educational agencies
3 if, in the second preceding fiscal year, the amount of per-pupil
4 expenditures made by, or per-pupil revenues available to, the
5 local educational agency in the State with the highest such
6 per-pupil expenditures or revenues did not exceed the amount of
7 such per-pupil expenditures made by, or per-pupil revenues
8 available to, the local educational agency in the State with the
9 lowest such expenditures or revenues by more than 25 percent.

10 "(B) In making a determination under this
11 subsection, the Secretary shall--

12 "(i) disregard local educational agencies
13 with per-pupil expenditures or revenues above the 95th percentile
14 of such expenditures or revenues in the State; and

15 "(ii) take into account the extent to which a
16 program of State aid reflects the additional cost of providing
17 free public education in particular types of local educational
18 agencies, such as those that are geographically isolated; or to
19 particular types of students, such as children with disabilities.

20 "(3) Notwithstanding paragraph (2), if the Secretary
21 determines that the State has substantially revised its program
22 of State aid, the Secretary may certify such program for any
23 fiscal year only if--

24 "(A) the Secretary determines, on the basis of
25 projected data, that the State's program will meet the 25 percent

1 disparity standard described in paragraph (2) in that fiscal
year; and

"(B) the State provides an assurance to the
4 Secretary that, if final data do not demonstrate that the State's
5 program met such standard for that year (or that it met such
6 standard with a greater percentage of disparity than
7 anticipated), the State will pay to each affected local
8 educational agency the amount by which it reduced State aid to
9 the local educational agency on the basis of such certification;
10 or a proportionate share thereof, as the case may be.

11 "(c) PROCEDURES FOR REVIEW OF STATE EQUALIZATION PLANS.--

12 (1)(A) Any State that wishes to consider payments under
13 section 3(b) of this Act in providing State aid to local
14 educational agencies shall submit to the Secretary, not later
15 than 120 days before the beginning of the State's fiscal year, a
16 written notice of its intention to do so.

17 "(B) Such notice shall be in the form and contain
18 the information the Secretary requires, including evidence that
19 the State has notified each local educational agency in the State
20 of its intention to consider payments under this Act in providing
21 State aid.

22 "(2) Before making a determination under
23 subsection (b), the Secretary shall afford the State, and local
24 educational agencies in the State, an opportunity to present
25 their views.

* THIS ISSUE CURRENTLY UNDER DISCUSSION
at E.

1 "(3)(A) If the Secretary determines that a program of
State aid qualifies under subsection (b), the Secretary shall--

2 "(i) certify the program [for two years?] and
3 so notify the State; and

4 "(ii) afford an opportunity for a hearing, in
5 accordance with section 11(a), to any local educational agency
6 adversely affected by such certification.

7 "(B) If the Secretary determines that a program of
8 State aid does not qualify under subsection (b), the Secretary
9 shall--

10 "(i) so notify the State; and

11 "(ii) afford an opportunity for a hearing, in
12 accordance with section 11(a), to the State, and to any local
13 educational agency adversely affected by such determination.

14 "(d) REDUCTIONS OF STATE AID.--(1) A State whose program of
15 State aid has been certified by the Secretary under
16 subsection (c)(3)(A) may reduce the amount of such aid provided
17 to a local educational agency that receives a payment under
18 section 3(b) of this Act by any amount up to--

19 "(A) the amount of such payment; multiplied by,

20 "(B) 100 percent minus the percentage of disparity
21 determined under subsection (b).

22 "(2) No State may make such reductions before its
23 program of State aid has been certified by the Secretary under
24 subsection (c)(3)(A).
25

1 assistance under this Act, shall, to the maximum extent
2 practicable, comply with requests of the Secretary for
3 information the Secretary may need to carry out this Act.

4 "ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

5 "SEC. 11. (a) ADMINISTRATIVE HEARINGS. Any local
6 educational agency and any State that is adversely affected by
7 any action of the Secretary under this Act shall be entitled to a
8 hearing on such action in the same manner as if such agency were
9 a person under chapter 5 of title 5, U. S. Code.

10 "(b) JUDICIAL REVIEW OF SECRETARIAL ACTION.--(1) Any local
11 educational agency or any State aggrieved by the Secretary's
12 final decision following an agency proceeding under
13 subsection (a) may, within 60 days after receiving notice of such
14 decision, file with the United States court of appeals for the
15 circuit in which such agency or State is located a petition for
16 review of that action. The clerk of the court shall promptly
17 transmit a copy of the petition to the Secretary. The Secretary
18 shall then file in the court the record of the proceedings on
19 which the Secretary's action was based, as provided in
20 section 2112 of title 28, United States Code.

21 "(2) The findings of fact by the Secretary, if
22 supported by substantial evidence, shall be conclusive, but the
23 court, for good cause shown, may remand the case to the Secretary
24 to take further evidence. The Secretary may thereupon make new
25 or modified findings of fact and may modify the Secretary's
26 previous action, and shall file in the court the record of the

1 further proceedings. Such new or modified findings of fact shall
2 likewise be conclusive if supported by substantial evidence.

3 "(3) The court shall have exclusive jurisdiction to
4 affirm the action of the Secretary or to set it aside, in whole
5 or in part. The judgment of the court shall be subject to review
6 by the Supreme Court of the United States upon certiorari or
7 certification as provided in section 1254 of title 28, United
8 States Code.

9 "DEFINITIONS

10 "SEC. 12. As used in this Act--

11 "(1) ARMED FORCES. 'Armed Forces' means the Army,
12 Navy, Air Force, and Marine Corps.

13 "(2) AVERAGE DAILY ATTENDANCE. [pending possible
14 revision to Chapter 1 definition] (A) Except as provided
15 otherwise by State law or this paragraph, 'average daily
16 attendance' means--

17 "(i) the aggregate number of days of
18 attendance of all students during a school year; divided by

19 "(ii) the number of days school is in session
20 during such school year.

21 "(B) The Secretary shall permit the conversion of
22 average daily membership (or other similar data) to average daily
23 attendance for local educational agencies in States that provide
24 State aid to local educational agencies on the basis of average
25 daily membership or such other data.

1 "(C) If the local educational agency in which a
2 child resides makes a tuition or other payment for the free
3 public education of the child in a school located in another
4 school district, the Secretary shall, for purposes of this Act--

5 "(i) consider the child to be in attendance
6 at a school of the agency making such payment; and

7 "(ii) not consider the child to be in
8 attendance at a school of the agency receiving such payment.

9 "(D) If a local educational agency makes a tuition
10 payment to a private school or to a public school of another
11 local educational agency for a child with disabilities, as
12 defined in section 602(a)(1) of the Individuals with Disabilities
13 Education Act, the Secretary shall, for the purposes of this Act,
14 consider such child to be in attendance at a school of the agency
15 making such payment.

16 "(3) AVERAGE PER-PUPIL EXPENDITURE. [Pending possible
17 change to Chapter 1 definition] 'Average per-pupil expenditure'
18 means---

19 "(A) the aggregate current expenditures of all
20 local educational agencies in the State; divided by

21 "(B) the total number of children in average daily
22 attendance for whom such agencies provided free public education.

23 "(4) CHILD. 'Child' means any child within the age
24 limits for which the applicable State provides free public
25 education.

1 "(5) CONSTRUCTION. [pending ESEA change?]

'Construction' means--

2 "(A) the preparation of drawings and
3 specifications for school facilities;

4 "(B) erecting, building, acquiring, altering,
5 remodeling, repairing, or extending school facilities;

6 "(C) inspecting and supervising the construction
7 of school facilities; and

8 "(D) debt service for such activities.

9 "(6) CURRENT EXPENDITURES. [Revise if we revise the
10 Chapter 1 definition] 'Current expenditures' means expenditures
11 for free public education--
12

13 "(A) including expenditures for administration,
14 instruction, attendance and health services, pupil transportation
15 services, operation and maintenance of plant, fixed charges, and
16 net expenditures to cover deficits for food services and student
17 body activities; but

18 "(B) not including expenditures for community
19 services, capital outlay, and debt service, or any expenditures
20 made from funds received under chapters 1 or 2 of title I of the
21 Elementary and Secondary Education Act of 1965.

22 "(7) FEDERAL PROPERTY.--(A) Except as otherwise
23 described in paragraphs (B) through (E) of this paragraph,
24 'Federal property' means real property that is not subject to
25 taxation by any State or any political subdivision of a State due
26 to Federal agreement, law, or policy, and that is--

1 "(i) owned by the United States or leased by
2 the United States from another entity;

 "(ii)(I) held in trust by the United States
for individual Indians or Indian tribes;

5 "(II) held by individual Indians or
6 Indian tribes subject to restrictions on alienation imposed by
7 the United States;

8 "(III) conveyed at any time under the
9 Alaska Native Claims Settlement Act (Public Law 92-203, 43 U.S.C.
10 1601 et seq.) to a Native individual, Native group, or Village or
11 Regional corporation;

12 "(IV) public land owned by the United
13 States that is designated for the sole use and benefit of
14 individual Indians or Indian tribes;

15 "(V) used for low-rent housing, as
16 otherwise described in this paragraph, that is located on land
17 described in clauses (I), (II), (III), or (IV) of this
18 subparagraph or on land that met one of those descriptions
19 immediately before its use for such housing;

20 "(iii) part of a low-rent housing project
21 assisted under the United States Housing Act of 1937; or

22 "(iv) owned by a foreign government or by an
23 international organization.

24 "(B) 'Federal property' includes, so long as not
25 subject to taxation by any State or any political subdivision of

1 a State, and whether or not that tax exemption is due to Federal
agreement, law, or policy--

2 "(i) any school providing flight training to
3 members of the Air Force under contract with the Air Force at an
4 airport owned by a State or political subdivision of a State; and
5

6 "(ii) real property that is part of a
7 low-rent housing project assisted under--

8 "(I) section 516 of the Housing Act
9 of 1949, 42 U.S.C. § 1486 (domestic farm labor low-rent housing);
10 or

11 "(II) part B of title III of the
12 Economic Opportunity Act of 1964, formerly 42 U.S.C. § 2861 et
13 seq. (migrant and other seasonally employed farmworker low-rent
14 housing).

15 "(C) 'Federal property' includes, whether or not
16 subject to taxation by a State or a political subdivision of a
17 State--

18 "(i) any non-Federal easement, lease,
19 license, permit, or other such interest in Federal property as
20 otherwise described in this paragraph, but not including any non-
21 Federal fee-simple interest;

22 "(ii) any improvement on Federal property as
23 otherwise described in this paragraph; and

24 "(iii) real property that, immediately before
25 its sale or transfer to a non-Federal party, was owned by the
26 United States and otherwise qualified as Federal property

1 described in this paragraph, but only for one year beyond the end
of the fiscal year of such sale or transfer.

2 "(D) Notwithstanding any other provision of this
3 paragraph, 'federal property' does not include--

4 "(i) any real property under the jurisdiction
5 of the United States Postal Service that is used primarily for
6 the provision of postal services; or

7 "(ii) pipelines and utility lines.

8 "(E) Notwithstanding any other provision of this
9 paragraph, 'Federal property' does not include any property on
10 which children reside that is otherwise described in this
11 paragraph if--

12 "(i) no tax revenues of the State or of any
13 political subdivision of the State may be expended for the free
14 public education of children who reside on that Federal property;
15 or

16 "(ii) no tax revenues of the State are
17 allocated or available for the free public education of such
18 children.

19 "(8) FREE PUBLIC EDUCATION. [pending ESEA changes?]

20 'Free public education' means elementary (which may include
21 preschool and kindergarten) or secondary education, as determined
22 under State law, provided at public expense, under public
23 supervision and direction, and without tuition charge.

24 "(9) INDIAN LANDS. 'Indian lands' means any Federal
25 property described in paragraph (7)(A)(ii) of this section.
26

1 "(10) LOCAL CONTRIBUTION PERCENTAGE.--(A) 'Local
2 contribution percentage' means the percentage of current
3 expenditures in the State derived from local and intermediate
4 sources, as reported to and verified by the National Center for
5 Education Statistics for the National Public Education Financial
6 Survey.

7 "(B) Notwithstanding subparagraph (A), the local
8 contribution percentage for Hawaii and for the District of
9 Columbia shall be the local contribution percentage computed for
10 the Nation as a whole.

11 "(11) LOCAL EDUCATIONAL AGENCY. [ESEA?] (A) 'Local
12 educational agency' means a board of education or other legally
13 constituted local school authority having administrative control
14 and direction of free public education through grade 12 in a
15 county, township, independent school district, or other school
16 district.

17 "(B) 'Local educational agency' includes any State
18 agency that directly operates and maintains facilities for
19 providing free public education.

20 "(C) 'Local educational agency' does not include
21 any agency or school authority that the Secretary determines, on
22 a case-by-case basis--

23 "(i) was constituted or reconstituted
24 primarily for the purpose of receiving assistance under this Act
25 of increasing the amount of such assistance; or

"(ii) is not constituted or reconstituted for legitimate educational purposes.

"(12) PARENT. 'Parent' includes a legal guardian or other person standing in loco parentis.

"(13) SCHOOL FACILITIES. 'School facilities' includes classrooms and related facilities, and equipment, machinery, and utilities necessary or appropriate for school purposes.

"(14) SECRETARY. 'Secretary' means the Secretary of Education.

"(15) STATE. 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau (until the effective date of the Compact of Free Association with the Government of Palau).

"(16) STATE EDUCATIONAL AGENCY. [ESEA?] 'State educational agency' means the agency primarily responsible for the State supervision of public elementary and secondary schools.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 13. (a) BASIC PAYMENTS. For the purpose of making payments under section 3(b), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1995 through 1999.

"(b) SUPPLEMENTAL PAYMENTS FOR CHILDREN WITH DISABILITIES. For the purpose of making payments under section 3(c), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1995 through 1999.

1 "(c) PAYMENTS FOR INCREASES IN MILITARY CHILDREN. For the
2 purpose of making payments under section 6, there are authorized
3 to be appropriated such sums as may be necessary for each of the
4 fiscal years 1995 through 1999. Such sums shall remain available
5 until expended.

6 "(d) CAPITAL IMPROVEMENTS. For the purpose of making
7 payments under section 7, there are authorized to be appropriated
8 such sums as may be necessary for each of the fiscal years 1995
9 through 1999.

10 "(e) FACILITIES MAINTENANCE. For the purpose of carrying
11 out section 8, there are authorized to be appropriated such sums
12 as may be necessary for each of the fiscal years 1995 through
13 1999. Such sums shall remain available until expended.

REPEAL OF PUBLIC LAW 81-815

14 SEC. 3. The Act of September 23, 1950 (Public Law 815,
15 Eighty-first Congress) is repealed.

16 ADDITIONAL REPEALS; TECHNICAL AND CONFORMING AMENDMENTS

17 SEC. 4. (a) ADDITIONAL REPEALS.--(1) Section 505(c) of the
18 Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) is
19 repealed.
20

21 (2) Section 302 of the Education Amendments of 1984
22 (Public Law 98-511) is repealed.

23 (3) Section 306 of the Department of Education
24 Appropriations Act, 1991 (title III of Public Law 101-517) is
25 repealed.

1 (4) Section 3(a)(2) of the 1992 National Assessment of
Chapter 1 Act (Public Law 101-305) is repealed.

3 (5) Section 2 of Public Law 92-277 (86 Stat. 124) is
4 repealed.

5 (b) TECHNICAL AND CONFORMING AMENDMENTS.--(1) Section 182 of
6 the Elementary and Secondary Education Amendments of 1966 is
7 amended by striking out "by the Act of September 23, 1950 (Public
8 Law 815, Eighty-first Congress),".

9 (2) The General Education Provisions Act is amended--

10 (A) in section 420--

11 (i) by striking out "title I of"; and

12 (ii) by striking out "subparagraph (C) of
13 section 3(d)(2) or section 403(1)(C)" and inserting in lieu
14 thereof "sections 3(c) or residing on property described in
section 12(7)(B)(ii)"; and

16 (B) in section 433, by striking out "Except for
17 emergency relief" and all that follows through "all laborers" and
18 inserting in lieu thereof "All laborers".

19 "(3) Section 302(1)(C) of the Toxic Substances Control
20 Act is amended by inserting "as in effect before enactment of the
21 Impact Aid Amendments of 1993," after "section 6 of the Act of
22 September 30, 1950 (64 Stat. 1107),".

#

IMPACT AID AMENDMENTS OF 1993

Section-by-Section Analysis

Section 2. Section 2 of the bill would amend, in its entirety, the Act of September 30, 1950 (Public Law 81-874) ("the Act"), which authorizes maintenance and operations assistance to local educational agencies (LEAs) serving federally connected children or affected by various Federal activities. A complete restatement of the Act is appropriate because the current Act is needlessly complex, contains numerous obsolete provisions, and authorizes certain types of financial assistance that are no longer warranted. The bill would substantially simplify the Act, while retaining its basic features and structure.

Section 1 of the Act. Section 1 of the Act would provide that the Act may be cited as the "Impact Aid Act". The Act has not previously had a short title, and has thus not been easy to cite.

Section 2 of the Act. Section 2(a) of the Act would state the congressional findings that: (1) certain activities of the Federal Government place a financial burden on the LEAs serving areas where such activities are carried out; and (2) it is the shared responsibility of the Federal Government, the States, and LEAs to provide for the education of children connected to those activities. These findings clarify and otherwise improve on language in section 1(a) of the current Act.

Section 2(b) of the Act would state that it is the purpose of the Act to provide financial assistance to LEAs that: (1) educate children who reside on Federal property and whose parents are employed on Federal property; (2) experience sudden and substantial increases in enrollments because of military realignments; or (3) need assistance with capital expenditures for construction activities because of the enrollments of children who reside on Federal property and whose parents are employed on Federal property.

This statement of purpose replaces language in section 1(a)(1) through (4) of the current Act and reflects such significant features of the bill as the termination of payments under current section 2 (Federal property) and section 3(b) (children who either live on Federal property or whose parents work on Federal property, but not both); new authority to make payments for substantially increased enrollments caused by consolidation of military bases; and the replacement of the school construction program under Public Law 81-815 with a formula grant program for the support of construction activities in Public Law 81-874.

Section 3 of the Act. Section 3(a) of the Act would describe the federally connected children on behalf of whom the Secretary of Education ("the Secretary") would make payments to

LEAs. For each fiscal year, the Secretary would determine the number of children who were in average daily attendance (ADA) in the schools of those LEAs, and for whom those LEAs provided free public education, during the preceding school year and who, while in attendance at those schools: (1) resided on Federal property with a parent employed on Federal property located, in whole or in part, within the boundaries of the school district of such agency; (2) resided on Federal property and had a parent on active duty in the uniformed services (defined in section 101 of title 37, United States Code, to include each of the Armed Forces, the National Oceanic and Atmospheric Administration, and the Public Health Service); or (3) resided on Indian lands, as defined in section 12(9) of the Act.

The revised Act would not authorize payments to LEAs on behalf of children who either reside on, or whose parents are employed on, Federal property, but not both; or who have a parent on active duty in the military, but do not reside on Federal property. These so-called "b" children are not a significant burden to the districts that educate them. The revised section 3(a) would also exclude from eligibility children whose parents cross LEA lines to work on Federal property elsewhere in the same State. The presence of these children has no greater adverse impact on the local tax base than the employment of a child's parent on private property outside the LEA, and does not warrant Federal assistance.

The revised section 3(a) would base the count of federally connected children, from which an LEA's payment is computed, on the ADA of those children in the year preceding the year for which the Secretary makes the payment. The Act currently bases the child count on the current fiscal year. This change will enhance LEA planning and will enable the Secretary to make full payments to LEAs earlier in the school year than is possible under the current Act. Conforming language would be included in other provisions of the Act.

Section 3(b) of the Act would establish a formula for determining the amount of Impact Aid funds for which each LEA would be eligible. This simplified formula would be a major improvement over the extremely complex approach, involving special payment provisions for numerous categories of children and LEAs, in the current Act.

Under section 3(b)(1), the amount for which an LEA would be eligible would be determined by multiplying the following three figures: (1) the total number of federally connected children determined under section 3(a) for the LEA, with each child residing on Indian lands counted as 1.25 children; (2) the average per-pupil expenditure (APPE) of LEAs in the State for the third preceding fiscal year; and (3) the local contribution percentage for the third preceding fiscal year. The

Secretary would determine the APPE and the local contribution percentage in accordance with the definitions of those terms in sections 12(3) and 12(10), respectively, of the Act. The additional weight attached to children residing on Indian lands, which is comparable to the treatment of these children under the current Act, recognizes the generally high costs incurred by, and the scarce fiscal resources available to, LEAs serving those children.

The Act would not retain the current LEA eligibility threshold of 400 federally connected children or three percent of the LEA's ADA. This will allow any LEA with federally connected children (i.e., "a" children) to receive a payment, and will ensure that the many LEAs that currently rely on a combination of "a" and "b" children to meet that threshold will continue to be compensated for their "a" children.

Section 3(b)(3) would direct the Secretary to ratably reduce the annual payment to each LEA if the amount appropriated for those payments is insufficient to pay each LEA the full amount for which it is eligible. This would be a significant simplification of the current statutory scheme for adjustments to payments in cases of insufficient appropriations.

Section 3(c) of the Act would authorize supplemental payments to those LEAs whose federally connected children include children with disabilities who either have a parent on active duty in the uniformed services or reside on Indian lands. In addition to counting these children for the purpose of making basic payments under section 3(b), paragraphs (1) and (2) of section 3(c) would direct the Secretary to make supplemental payments to these LEAs using the same formula as used for basic payments, but counting only those children with disabilities, disregarding the extra weighting for children residing on Indian lands, and using a factor of 50, rather than 100, percent of average per-pupil expenditure. Funds for these supplemental payments would be separately appropriated under section 13(b). Paragraph (3) would direct the Secretary to ratably reduce the annual payment to each LEA if the amount appropriated for those payments is insufficient to pay each LEA the full amount for which it is eligible. Paragraph (4) would require an LEA to use any supplemental funds it receives under this subsection to provide a free appropriate public education to children with disabilities described above, in accordance with Part B of the Individuals with Disabilities Education Act. This requirement is taken from section 5(f) of the current Act.

Section 3(d) of the Act would provide for an equitable transition to the revised Act for those LEAs that remain eligible for payments, but whose payments would sharply decrease under the new payment provisions. Subsection (d)(1) would afford some protection to such an LEA by guaranteeing it a combined basic and

supplemental payment for fiscal year 1995 that is at least 80 percent of the amount it received for "a" children for fiscal year 1994. This percentage would decrease to 60 percent for fiscal year 1996 and to 40 percent for fiscal year 1997. Subsection (d)(2) would direct the Secretary to reduce basic payments to other LEAs, if necessary in order to pay these "hold-harmless" amounts.

Section 4 of the Act. Section 4(a) of the Act would require any LEA that claims children residing on Indian lands for the purpose of receiving funds under section 3 of the Act to establish policies and procedures to ensure that: (1) those children participate in programs and activities supported by such funds on an equal basis with all other children; (2) parents of those children and Indian tribes are afforded an opportunity to present their views on those programs and activities, including an opportunity to make recommendations on the needs of those children and how they may help those children realize the benefits of those 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 on the agency's general educational program. The requirement to establish these policies and procedures is very similar to the requirements of current section 5(b)(3)(A) and (B) of the Act.

Section 4(b) would require each such agency to maintain records demonstrating its compliance with subsection (a).

Section 4(c) would excuse any such agency from the requirements of subsections (a) and (b) for any year with respect to any Indian tribe from which it has received a written statement that the agency need not comply with those subsections because the tribe is satisfied with the agency's provision of educational services to those children.

Section 4(d)(1) would require the Secretary to provide technical assistance to LEAs, parents, and Indian tribes to enable them to carry out section 4. Section 4(d)(2) would direct the Secretary to enforce section 4 through whatever actions, which could include the withholding of funds, the Secretary finds appropriate, after providing the LEA, parents, and affected Indian tribes an opportunity to present their views. This flexible approach would replace the excessively detailed and prescriptive requirements described in section 5(b)(3)(C) through (E) of the current Act.

Section 5 of the Act. Section 5 of the Act would establish requirements for filing and acting on applications for

section 3 payments that are very similar to the provisions in current section 5(a).

Section 5(a) would require any LEA wishing to receive a payment under section 3 to file an application with the Secretary and provide a copy of its application to the State educational agency.

Section 5(b) would require that each such application be submitted in such form and manner, and contain such information, as the Secretary may require, including information to determine the LEA's eligibility for a payment and the amount of any such payment; and, where applicable, an assurance that the LEA is in compliance with section 4 of the Act, relating to children residing on Indian lands.

Section 5(c)(1) would require the Secretary to establish deadlines for the filing of applications under this section. Section 5(c)(2) would require the Secretary to approve each application that is filed by the applicable deadline and that otherwise meets the requirements of the Act. Section 5(c)(3) would require the Secretary to approve an application, filed up to 60 days after a deadline, that otherwise meets the requirements of the Act, except that, notwithstanding any other provision of the Act (including the "hold harmless" language in section 3(d)), the Secretary would reduce the payment based on a late application by ten percent of the amount that would otherwise be paid. Finally, section 5(c)(4) would bar the Secretary from accepting or approving any application filed more than 60 days after a deadline established under paragraph (1).

Section 6 of the Act. Section 6 of the Act would create a new authority to help relieve the burden on LEAs caused by the consolidation of military bases. Funds to carry out this section would be separately authorized by section 13(c).

Under section 6(a), an LEA would be eligible for a payment under the revised section 6 if it has experienced both: (1) an increase in average daily attendance (ADA) of at least ten percent or 100 students over the previous year; and (2) an increase of at least ten percent or 100 students in ADA of military dependents resulting from the assignment of their parent to a new duty station between July 1 and September 30 of the current year, as certified by an appropriate local official, such as a base commander, of the Department of Defense.

Section 6(b) would require any LEA that wishes to receive a payment under this section to file an application with the Secretary by October 15 of the current school year, in such manner and containing such information as the Secretary may prescribe, including information demonstrating that the LEA is eligible for such a payment.

Section 6(c) would base each eligible LEA's payment on whichever increase in ADA from the previous to the current year is smaller: the increase for all students, as described in section 6(a)(1), or the increase in military dependents, as described in section 6(a)(2).

Under section 6(d), the Secretary would determine the amount of eligible LEAs' payments under section 6 by allocating available funds among them in accordance with their respective ADA increases determined under subsection (c). The funds available would include any funds that were available to, but not used by, the Secretary under this section for previous years. The maximum payment for any fiscal year, however, could not be more than \$200 for each eligible child included in the ADA increase.

Section 7 of the Act. Section 7 of the Act would create a new authority, replacing Public Law 81-815, to assist LEAs with significant enrollments of federally connected children to meet the costs of school construction. Unlike the current system, eligible LEAs would not need to apply for funding for a specific project or compete with other LEAs for assistance. Funds for this purpose would be separately authorized by section 13(d) of the Act.

Under section 7(a), an LEA would be eligible for construction assistance if it receives a basic payment under section 3(b) of the Act and if federally connected children (as determined under section 3(a) of the Act) constituted at least 20 percent of the LEA's ADA during the preceding school year.

Under section 7(b), each eligible LEA would receive a proportionate share of the appropriations available for that fiscal year, based solely on its number of federally connected children. In order to avoid duplicate funding, however, the Secretary would disregard any children attending a school that is provided or assisted by the Secretary under current section 10 of Public Law 81-815 or section 8 of the revised Act (discussed below).

Section 7(c) would permit an LEA that receives funds under section 7 to use those funds, and any accrued interest, for the construction of school facilities. The term "construction" would be defined by section 12(5) of the Act to mean: (1) the preparation of drawings and specifications for school facilities; (2) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (3) inspecting and supervising the construction of school facilities; and (4) debt service for any of these activities.

Section 7(d) would provide that funds received by an LEA under section 7, and any accrued interest, would remain

available to the LEA until expended. This will allow LEAs to provide facilities as the need to do so arises.

Section 8 of the Act. Section 8(a) of the Act would authorize the Secretary to continue to provide assistance for school facilities provided by the Secretary under section 10 of Public Law 81-815 as currently in effect. (Section 10 of P.L. 81-815 directs the Secretary to make arrangements for constructing or otherwise providing school facilities for children who reside on Federal property if legal or other reasons prevent the LEA from spending State or local funds on the education of federally connected children.) Funds for this purpose would be separately authorized by section 13(e) of the Act.

Section 8(b) would direct the Secretary, as soon as practicable, to transfer to the LEA or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of Public Law 81-815, or under sections 204 or 310 of Public Law 81-874 as in effect on January 1, 1958. Any such transfer would be without charge to the LEA or other entity and would be subject to such terms and conditions as the Secretary finds appropriate.

Section 9 of the Act. Section 9 of the Act would govern the relationship of payments under the Act to State programs of aid to education, and would replace current section 5(d) of the Act with a more rational and understandable approach.

Section 9(a)(1) would prohibit a State from considering payments under the Act in determining, for any fiscal year, the eligibility of any LEA for State aid for free public education or the amount of such aid. Section 9(a)(2) would prohibit a State from making such aid available to LEAs in a manner that results in less State aid to any LEA that is eligible for such a payment than it would receive if it were not eligible.

Section 9(b) would provide a limited exception to the prohibition in subsection (a). Section 9(b)(1) would allow a State to reduce State aid to an LEA that receives a basic payment under section 3(b) of the Act for any fiscal year if the Secretary determines, and certifies under this section, that the State has in effect a program of State aid that equalizes expenditures for free public education among LEAs in the State.

Section 9(b)(2) would provide that a program of State aid equalizes expenditures among LEAs if, in the second preceding fiscal year, the amount of per-pupil expenditures made by, or per-pupil revenues available to, the LEA 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 LEA in the State with the lowest such expenditures or revenues by more than 25 percent. In determining whether a State's program falls within the acceptable 25 percent disparity, the Secretary would disregard LEAs with per-pupil expenditures or revenues above the 95th percentile, and would take into account the extent to which the program of State aid reflects the additional cost of providing free public education in particular types of LEAs, such as those that are geographically isolated, or to particular types of students, such as children with disabilities.

If the Secretary determines that the State has substantially revised its program of State aid, section 9(b)(3) would allow the Secretary to certify the program for any fiscal year only if: (1) the Secretary determines, on the basis of projected data, that the State's program will meet the 25 percent disparity standard described in subsection (c)(2) in that fiscal year; and (2) the State provides an assurance to the Secretary that, if final data do not demonstrate that the State's program met that standard for that year, the State will pay to each affected LEA the amount by which it reduced State aid to the LEA on the basis of that certification.

Section 9(c) would establish the procedures for Secretarial review of State equalization plans. Section 9(c)(1) would require any State that wishes to consider payments under section 3(b) of the Act in providing State aid to LEAs to submit to the Secretary, not later than 120 days before the beginning of the State's fiscal year, a written notice of its intention to do so. This notice would have to be in the form and contain the information the Secretary requires, including evidence that the State has notified each LEA in the State of its intention to consider payments under the Act in providing State aid. Section 9(c)(2) would require the Secretary to afford the State, and LEAs in the State, an opportunity to present their views before determining whether the State's plan meets the 25 percent disparity standard of subsection (b).

If the Secretary determines that a program of State aid qualifies under that standard, section 9(c)(3) would direct the Secretary to certify the program [for two years?] and so notify the State, and afford an opportunity for a hearing to any LEA adversely affected by the certification. If the Secretary determines that the State aid program does not qualify, the Secretary would notify the State and afford an opportunity for a hearing to the State and to any LEA adversely affected by that determination.

Section 9(d)(1) would permit a State whose program of State aid has been certified by the Secretary to reduce the amount of State aid provided to an LEA that receives a payment under section 3(b) of the Act. The reduction could be taken in

proportion to the degree to which the State aid program is equalized. For example, if the disparity between LEAs in the State, as determined under subsection (b), is 15 percent, the State could reduce the State aid payment to an Impact Aid LEA by 85 percent (100 minus 15) of the Impact Aid payment. In no case, however, could a State make such reductions before its program of State aid has been certified by the Secretary.

Section 9(e)(1) would authorize the Secretary or any aggrieved LEA, without exhausting administrative remedies, to bring an action in United States district court against any State that engages in conduct prohibited by section 9 or fails to carry out an assurance that it will reimburse LEAs whose State aid payments it reduced in expectation that a substantially revised State aid program would meet section 9's maximum disparity standard. Section 9(e)(2) would provide that a State would not be immune under the 11th Amendment to the Constitution of the United States from such action. Section 9(e)(3) would direct the court to grant such relief as it determines is appropriate, which could include compensatory damages and attorney's fees to a prevailing LEA. Section 9(e)(4) would require the Secretary to use any monetary relief awarded to the Secretary to compensate LEAs aggrieved by the actions of the State.

Section 10 of the Act. Section 10(a) of the Act would direct the Secretary to administer the Act, and would authorize the Secretary to issue such regulations and perform such other functions as the Secretary finds necessary. Section 10(a) is based on section 401(b) of the current Act.

Section 10(b) would retain the requirement of the first sentence of current section 5(b)(1) of the Act that the Secretary round any payments under the Act to the nearest whole dollar amount.

Section 10(c) would retain the requirement of current section 402(b) of the Act that each Federal agency administering Federal property on which children reside, and each agency principally responsible for an activity that may occasion assistance under the Act, comply, to the maximum extent practicable, with requests of the Secretary for information the Secretary may need to carry out the Act.

Section 11 of the Act. Section 11 of the Act would provide for administrative hearings and judicial review of the Secretary's actions under the Act.

Section 11(a), which is similar to section 5(g) of the current Act, would require the Secretary to provide an administrative hearing, in accordance with the Administrative Procedure Act (APA) to any LEA or State that is adversely affected by any action of the Secretary under the Act. This

entails a hearing on the record before an administrative law judge.

Section 11(b) would change current law by providing for direct judicial review of the Secretary's final decisions in the U.S. Courts of Appeals, rather than in the district courts, as under current law. This change will make the review procedures under the Act consistent with those procedures under other Federal programs of elementary and secondary education and under Part E of the General Education Provisions Act.

Section 11(b)(1) would authorize any LEA or any State aggrieved by the Secretary's final decision following an agency proceeding under section 11(a) to file a petition for review of that action with the United States court of appeals for the circuit in which the agency or State is located, within 60 days after receiving notice of the decision. The clerk of the court would be required promptly to transmit a copy of the petition to the Secretary. The Secretary would be directed to 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.

Under section 11(b)(2), the findings of fact by the Secretary, if supported by substantial evidence, would be conclusive, but the court, for good cause shown, could remand the case to the Secretary to take further evidence. The Secretary could thereupon make new or modified findings of fact and could modify his or her previous action, and would file in the court the record of the further proceedings. Any new or modified findings of fact would likewise be conclusive if supported by substantial evidence.

Section 11(b)(3) would give the court exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court would 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 12 of the Act. Section 12 of the Act would define the following terms as used in the Act: "Armed Forces", "average daily attendance", "average per-pupil expenditure", "child", "construction", "current expenditures", "Federal property", "free public education", "Indian lands", "local contribution percentage", "local educational agency", "parent", "school facilities", "Secretary", "State", and "State educational agency". In general, these definitions are taken from sections 3(d)(3)(D)(ii) and 403 of the current Act and from section 15 of Public Law 81-815.

Section 13 of the Act. Section 13 of the Act would authorize the appropriation of such sums as may be necessary to carry out the various provisions of the Act for each of the fiscal years 1995 through 1999.

Section 13(a) would authorize appropriations for basic payments under section 3(b).

Section 13(b) would authorize appropriations for supplemental payments, under section 3(c), for children with disabilities.

Section 13(c) would authorize appropriations for payments, under section 6, for substantial increases in average daily attendance due to the enrollment of children of military personnel. These funds would remain available to the Secretary until expended.

Section 13(d) would authorize appropriations for payments, under section 7, for construction.

Section 13(e) would authorize appropriations to assist school facilities under section 8. These funds would remain available to the Secretary until expended.

Section 3. Section 3 of the bill would repeal Public Law 81-815. The authorities provided by that statute would either be subsumed in the revised Act or are no longer needed.

Section 4. Section 4 of the bill would repeal various other statutory provisions and make technical and conforming amendments to other statutes.

Section 4(a)(1) would repeal section 505(c) of the Omnibus Budget Reconciliation Act of 1981 (OBRA), Public Law 97-35. That section has made section 402(d) of the Act inoperative since 1982. Since the revised Act would not retain section 402(d), the OBRA language is no longer needed.

Section 4(a)(2) would repeal section 302 of the Education Amendments of 1984, Public Law 98-511, which provides excessive repayment periods for LEAs that were overpaid under section 2 of the current Act, which authorizes assistance to LEAs whose tax bases are reduced by the presence of certain Federal property.

Section 4(a)(3) would repeal section 306 of the Department of Education Appropriations Act, 1991, Title III of Public Law 101-517, which relates to the Secretary's administration of the school construction authorities in section 7 of the current Act and in section 16 of Public Law 81-815. This provision is no longer needed and could cause confusion in the administration of the completely revised section 7 of the Act.

Section 4(a)(4) would repeal section 3(a)(2) of the National Assessment of Chapter 1 Act, Public Law 101-305, which governs how payments are prorated under the Act. The provision to be repealed is no longer needed and could cause confusion in the administration of the completely revised Act.

Section 4(a)(5) would repeal section 2 of Public Law 92-277, enacted in 1972, which provides that real property that was transferred to the United States Postal Service, and that was treated as Federal property for purposes of the Act before it was transferred, shall continue to be treated as Federal property under the Act for two years after it was transferred. This provision is no longer needed. As under the current Act, U.S. Postal Service property that is being used primarily for the provision of postal services is excluded from the definition of "Federal property". Repealing the 1972 provision would make the treatment of Federal property that loses its eligibility due to transfer to the Postal Service consistent with the treatment of other Federal property that loses its status as Federal property, i.e., it would retain its eligibility for one additional fiscal year after the sale or transfer.

Section 4(b) of the bill would make technical and conforming amendments, to reflect amendments made by other provisions of the bill, to sections 420 and 433 of the General Education Provisions Act and to section 302(1)(C) of the Toxic Substances Control Act.

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May 27, 1993

**DRAFT SPECIFICATIONS FOR REAUTHORIZATION
OF THE NATIONAL CENTER FOR EDUCATION STATISTICS**

Section 406(a)(1) - National Center for Education Statistics

Current law - This paragraph establishes the National Center for Education Statistics within the Office of Educational Research and Improvement, and describes the general design and duties of the Center.

Proposed amendments - No change proposed.

Section 406(a)(2) - Commissioner of Education Statistics

Current law - This paragraph specifies that the Center shall be headed by a Commissioner, and specifies the manner and term of the Commissioner's appointment and the Commissioner's level of pay. It says the Commissioner shall serve for terms of 4 years, except that the initial appointment shall commence June 21, 1991.

Proposed amendments - No change proposed.

Section 406(b) - Purpose of the Center

Current law - This subsection describes the purpose and work of the Center.

Proposed amendments - No change proposed.

Section 406(c) - Advisory Council on Education Statistics

Current law - This subsection establishes an Advisory Council on Education Statistics, prescribes its membership, the terms of its members, and stipulates that the Commissioner of Education Statistics shall serve as the non-voting, presiding officer of the Council.

Proposed amendment - Rewrite paragraph (c)(4), which stipulates that the Commissioner of Education Statistics shall serve as the non-voting presiding officer of the Council. The revised paragraph should provide that the presiding officer of the Council is to be appointed by the Secretary.

Explanation - Because the Council advises the Commissioner, the effect of the current provision is that the Commissioner advises him or herself. The proposed amendment remedies this and ensures the independence of the Council as an advisory body.

Section 406(d)(1) and (2) - Annual reports to the Congress

Current law - Paragraph (d)(1) specifies that the Commissioner shall describe the activities and projected activities of the Center, and the projected costs, and shall provide a statistical report on the condition of education in the United States. Paragraph (d)(2) specifies that the Secretary shall report on the state of education in the nation, critical needs, and the most effective manner for addressing those needs.

Proposed amendments - No changes proposed.

Section 406(d)(3) - Standards for data

Current law - Paragraph (d)(3) stipulates that the Center shall develop and enforce standards to protect the confidentiality of persons in the collection, reporting, and publication of data.

Proposed amendments - No changes proposed.

Section 406(d)(4)(A) through (H) - Confidentiality of individually identifiable data

Current law - Subparagraphs (A) through (H) stipulate that individually identifiable data must be kept confidential, and make provisions for limiting its use and maintaining its confidentiality.

Proposed amendments - Amendments are proposed, and discussed below, for subparagraphs (G) and (H). No other changes are proposed, except that "(4)" should be deleted to correct a technical error.

Subparagraph (G) - Exclusions from confidentiality provisions and liability for violating the provisions

Current law - Clause (i) exempts from the confidentiality requirements the student aid recipient survey required by section 1303(c) of the Higher Education Amendments of 1986 and any longitudinal study concerning access, choice, persistence progress, or attainment in postsecondary education; clause (ii) stipulates that those who violate confidentiality requirements may be fined or imprisoned, except those who are sworn to observe

confidentiality requirements; and clause (iii) exempts employees of the Center or of institutions of higher education from criminal liability under subparagraph (C) if such employee has taken reasonable precautions to ensure the confidentiality of data.

Proposed amendments - Revise subparagraph (G) as follows:

-delete clause (i) in its entirety; it exempts the survey required by section 1303(c) of the Higher Education Amendments of 1986, and certain postsecondary longitudinal studies;

-renumber clause (ii) to make it simply subparagraph (G); revise the language of the renumbered (G) by deleting the exception for "those sworn to observe the limitation of this subsection", and by deleting the words "as described in clause (i)"; and by deleting the parenthetical "(including de-encryption)"; and

-delete clause (iii) which exempts employees or staff members of the Center or of an institution of higher education from being found criminally liable under subparagraph (C).

Explanation - There is no rationale for excluding postsecondary surveys from confidentiality requirements. The reference to data in clause (ii) must be clarified when clause (i) is deleted; the reference to encryption is deleted because there is no reason to single out one technique. There is no need for clause (iii) given that subparagraph (C) already prohibits disclosure.

Subparagraph (H) - Access by Legislative Branch Offices

Current law - This subparagraph permits the Comptroller General of the United States and the Librarian of Congress to access any reports or records in the Center's possession, including those identifying individuals. This subparagraph also imposes restrictions on disclosure of individually identifiable information to the General Accounting Office and to the Library of Congress.

Proposed amendments - Revise this subparagraph to include also the Director of the Congressional Budget Office as one who is permitted unimpeded access to NCES records; stipulate also that the restrictions in subparagraphs (B) and (C) shall apply to the Congressional Budget Office. Provide the same access to offices in the Department, under the same restrictions.

Explanation - This would provide all legislative branch offices with the same access to data, and it would allow the Planning and Evaluation Service the same access as these congressional entities.

Section 406(e)(1) - Making statistical records available

Current law - This paragraph authorizes the Center to make statistical records generally available, and to furnish special compilations and surveys, if they are otherwise authorized, subject to the payment of the cost of the work. It also authorizes the Center to furnish special compilations and surveys as requested by certain Committees of the Congress.

Proposed amendments - No change proposed.

Section 406(e)(2) - Consortium of Federal agencies

Current law - This paragraph authorizes the Center to form a consortium with other Federal agencies having a need for educational data.

Proposed amendments - No change proposed.

Section 406(e)(3) - Contracts or other financial arrangements

Current law - This paragraph authorizes the Commissioner, in carrying out responsibilities under this section, to enter into contracts under regular competitive procedures of the Federal Government or other financial arrangements.

Proposed amendments - Modify this paragraph to include the authority for making grants and entering into cooperative agreements, as well as entering into contracts and other financial arrangements.

Explanation - This would make it clear that NCES has the authority to make grants and to enter into cooperative agreements.

Section 406(e)(4) through (9) - Various authorities for gathering and reporting data

Current law - Paragraphs (4) through (7) authorize the Commissioner to prepare and publish various information, documents, and reports, to use information collected by other offices in the Department and by other executive agencies, to enter into interagency agreements for the collection of

statistics for the purposes of this section, and to use sampling to carry out this section. Paragraph (8) stipulates that the Commissioner, to assure the technical quality and coordination of statistical activities of the Department, shall provide technical assistance to Department offices that gather data for statistical purposes. Paragraph (9) authorizes the Commissioner to select and appoint officers and employees; this paragraph also governs compensation of the Center's employees.

Proposed amendments - No changes proposed.

Section 406(f)(1) - Authorization of appropriations.

Current law - This paragraph authorizes appropriations for the purposes of this section.

Proposed amendment - Authorize such sums for fiscal years 1995 through 1999.

Section 406(f)(2) - Contracts with States

Current law - This paragraph authorizes the Commissioner to contract with States to carry out subsection (h).

Proposed amendment - Revise to give the Commissioner the authority to contract with each State educational agency to carry out subsection (h).

Explanation - This will permit contracts with State educational agencies for the purpose of carrying out subsection (h), and will obviate the need for competition in such contracts.

Section 406(g)(1) through (9) - Data on Education

Current law - These paragraphs stipulate that the Center, in addition to its other responsibilities, shall regularly conduct surveys and report on a variety of topics, including: uniform data on the financing of elementary and secondary education; national dropout and retention rates; financial aid; and access, choice, persistence, curriculum, and attainment in education. Paragraph (6) requires that the Center shall submit a report to the appropriate subcommittees of the Congress concerning the social and economic status of children who reside in areas served by different local education agencies, and stipulates that the report shall be based on data collected during the most recent decennial census. Paragraph (8) requires the Center, with the assistance of State library agencies, to develop and support a cooperative system of data collection for public libraries; and

paragraph (9) requires that NCES conduct a study on the effects of higher standards.

Proposed amendment - Delete paragraph (3), and also subparagraph (4)(B).

Explanation - Delete paragraph (3), because the Education Indicators Panel has finished its work, and subparagraph (4)(B) because the special task force to develop methods of measuring dropout and retention rates has finished its work, too.

Section 406(h) - National Cooperative Education Statistics System

Current law - This subsection establishes a System to produce and maintain, with the cooperation of the States, comparable and uniform information and data on elementary and secondary education, useful for policymaking at the Federal, State, and local level.

Proposed amendment - No changes proposed.

Section 406(i) (proposed) - Postsecondary Cooperative Education Statistics System

Current law - Subsection (h) establishes an elementary and secondary system. There is currently no established postsecondary system.

Proposed amendment - Add a new subsection (i) that would authorize the Commissioner to establish a National Cooperative Postsecondary Education Statistics System for the purpose of producing and maintaining comparable and uniform information and data that are useful for policymaking at the Federal, State, and local level. Include language which would authorize NCES to contract with appropriate State agencies, appropriate postsecondary associations, or consortia of such agencies and associations to implement the system.

Explanation - This would give NCES explicit authority to develop a postsecondary cooperative statistics system. Such a system would coordinate data from the vast array of postsecondary institutions. The authority to contract with postsecondary associations, as well as with States agencies, is important because of the way postsecondary education is organized.

Section 406(i) - National Assessment of Educational Progress (NAEP)

Current law - Paragraphs (1) through (8) authorize NAEP and make provisions for its conduct.

Proposed amendments - Reletter this subsection making it (j). See discussion of specific paragraphs below.

Explanation - This is to accommodate the new subsection (i) for the Postsecondary Education Cooperative Statistics System.

Section 406(i)(1) - Authorization of NAEP

Current law - This paragraph authorizes the Commissioner to carry out NAEP, with the advice of the National Assessment Governing Board established by paragraph (5), to assess the performance of children and adults in the basic skills of reading, mathematics, science, writing, history/geography, and other areas selected by the Board.

Proposed amendments - Revise the end of this paragraph to say "and other areas selected by the Secretary and the Board."

Explanation - This would permit both the Secretary and the Board to determine subject areas to be assessed.

Section 406(i)(2)(A) - NAEP data collection and reporting

Current law - Subparagraph (A) stipulates that NAEP should be conducted using sampling techniques to produce data that are representative on a national and regional basis, and on a State basis pursuant to clauses (C)(i) and (C)(ii). Clause (i) stipulates that data should be collected and reported for certain subjects according to a certain schedule - for reading and mathematics at least once every 2 years; for writing and science at least once every 4 years; and for history/geography and other subjects selected by the Board at least once every 6 years; clause (ii) stipulates that data should be collected and reported every 3 years on students at ages 9, 13, and 17 and in grades 4, 8, and 12; clause (iii) stipulates data should be used for valid and reliable reporting of trends in student achievement; and clause (iv) stipulates that the reports should include information about the achievement of special groups.

Proposed amendment - Revise clause (i) by deleting the schedule prescribed; rewrite this clause to require only that data be collected and reported at least every 2 years, and that reading, math, writing, science, history, and geography be assessed on a regular, periodic basis, as determined by the Secretary and the Board.

Explanation - Eliminating the current schedule for specific subjects would provide a more flexible schedule for NAEP. Requiring that data be collected at least biennially would maintain NAEP's usefulness as a sound, common benchmark of what students know and can do, and would permit NAEP to be conducted annually.

Section 406(i)(2)(B) - Frequency of certain data collections

Current law - This subparagraph stipulates that at least one of the following subjects shall be included in each 2 year cycle of data collection: writing, science, history/geography.

Proposed amendment - Delete this subparagraph.

Explanation - Eliminating the current schedule would provide a more flexible schedule for NAEP.

Section 406(i)(2)(C) - State-level assessments

Current law - This subparagraph authorizes trial State-level assessments in States that wish to participate with the purpose of determining whether such assessments yield valid, reliable State representative data: clause (i) authorizes a trial assessment in 1990 in mathematics in grade 8; clause (ii) authorizes a trial assessment in 1992 in mathematics in grades 4 and 8, and in reading in grade 4; clause (iii) stipulates that there should be a representative sample of students from each State that participates in the State-level assessments; clause (iv) stipulates that States participating should have full knowledge of the process used to obtain consensus on the objectives to be tested, and of the standards for sampling, test administration, test security, data collection, validation, and reporting; requires that each participating State sign an agreement developed by the Commissioner; and stipulates that, before results from any test of students within a State can be released, the State must give permission for the release; and clause (v) stipulates that the Commissioner shall provide for an independent evaluation to assess the feasibility and validity of the pilot State-level assessment programs, and the fairness and accuracy of the data they produce; it stipulates that the independent evaluation report should also describe technical problems encountered, and stipulates the report should be provided the Congress within 18 months of the time trial State-level assessments are conducted.

Proposed amendments - Rewrite subparagraph (C) to authorize, but not to require, State-level assessments on a regular basis, of students at ages 9, 13, and 17 and in grades 4, 8, and 12. Delete clauses (i) and (ii), which restrict State-level

assessments to certain years, grades, and subjects, and clause (v), which required an evaluation of the trial assessments. Maintain clauses (iii) and (iv), but re-letter, as appropriate.

Explanation - Allowing the Department flexibility to determine the schedule for State-level assessments would mean that all three grades would not have to be assessed for each subject each time NAEP is conducted. That may be important for cost and other reasons. A later amendment would require continuing evaluation of State assessments, but they would no longer have to be conducted on a "trial" basis.

Section 406(i)(2)(D) - Assessments of adult literacy

Current law - This subparagraph authorizes NAEP to develop and conduct, upon the direction of the Board and subject to the availability of appropriations, assessments of adult literacy.

Proposed amendments - No changes proposed.

Section 406(i)(3) - Limitations on NAEP data collection and requirement that NAEP provide technical assistance

Current law - Subparagraph (A) stipulates that NAEP shall not collect any data that are not directly related to the appraisal of educational performance, achievements, and traditional demographic reporting variables; nor to the fair and accurate presentation of such information; subparagraph (B) stipulates that NAEP shall provide technical assistance to States, localities, and other parties that desire to participate in the assessments designed to yield State-level data.

Proposed amendments - No changes proposed.

Section 406(i)(4) - Public access to NAEP data

Current law - Subparagraph (A) provides that the public shall generally have access to all NAEP data, questions, and test instruments; subparagraph (B) treats certain exceptions: (B)(i) ensures the confidentiality of certain personally identifiable information; and (B)(ii) authorizes the Secretary to decline to make available to the public for a period not to exceed 10 years following their initial use cognitive questions that the Secretary intends to reuse in the future.

Proposed amendments - No changes proposed.

Section 406(i)(5) - National Assessment Governing Board (Board)

Current law - See the discussion below, of subparagraphs (A) through (E).

Proposed amendments - See discussion below, of specific subparagraphs.

Section 406(i)(5)(A) - Authorization

Current law - Clause (i) establishes the Board; clause (ii) stipulates that the Board shall formulate the policy guidelines for NAEP.

Proposed amendments - No changes proposed.

Section 406(i)(5)(B) - Membership

Current law - Subparagraph (B) provides that Board members are appointed by the Secretary; clauses (i) through (xiii) stipulate that the Board shall be composed of 23 members from specified categories, including, for example, two Governors or former Governors, two State legislators, one superintendent of a local educational agency, two curriculum specialists, two testing experts, and three members who are representatives of the general public, including parents. This subparagraph also stipulates that the Assistant Secretary for Educational Research and Improvement shall serve as an ex officio member of the Board and as a nonvoting member.

Proposed amendments - Modify the language of clause (x) to increase the number of testing experts from 2 to 3, and require that the testing experts have training and experience as such. Modify the clause (xiii) to increase from 3 to 4 the number of public members on the Board.

Explanation - Increasing the number and strengthening the requirement for training and experience would give the Board additional technical expertise. Given the change proposed for clause (x), increasing by 1 the public members would maintain an odd number of Board members.

Section 406(i)(5)(C) - Balance of membership, independence, staff

Current law - Clause (i) stipulates that the Secretary and the Board shall ensure that the membership of the Board reflects balance and diversity, and that it exercises independent judgment; clause (ii) stipulates that, in the exercise of its functions, powers, and duties, the Board shall hire its own staff

and shall be independent of the Secretary and the other offices and officers of the Department; clause (iii) authorizes the Secretary to appoint, at the direction of the Board, for terms not to exceed 3 years, not more than 6 technical employees to administer this subsection; clause (iii) also exempts those technical employees from certain "normal" government rules regarding both pay and competition for appointments.

Proposed amendments - No changes proposed.

Section 406(i)(5)(D) - Transition from "old" Assessment Policy Committee to "new" Board; Vacancies

Current law - Clause (i) stipulates that members of the Assessment Policy Committee, serving on the date of enactment of the National Assessment of Educational Progress Improvement Act, shall become members of the Board for the remainder of the terms of their appointment to that Committee; clause (ii) explains how the Secretary is to complete the initial membership of the Board; and clause (iii) stipulates that, as vacancies in the Board occur, new members shall be appointed by the Secretary from among individuals who are nominated by the Board.

Proposed amendments - Clauses (i) and (ii) can be deleted, as the transition from Committee to Board has been accomplished; clause (iii) should be re-lettered to become subparagraph (D).

Section 406(i)(5)(E) - Terms of membership

Current law - This subparagraph provides that Board members shall be appointed for terms not to exceed 4 years, staggered, as determined by the Secretary. It also provides that any member of the Board who changes status under subparagraph (B) during the term of his or her appointment may continue to serve until the expiration of his or her term.

Proposed amendments - In the first sentence, delete "subject to the provisions of subparagraph (D)(i)."

Explanation - If subparagraph (5)(D) is modified as suggested--by deleting clauses (i) and (ii), as the transition to the Board has already occurred--then the reference to the provisions of subparagraph (D)(i) makes no sense.

Section 406(i)(6) - Responsibilities of the Board

Current law - Subparagraph (A) clauses (i) through (viii) list the responsibilities of the Board, including things such as selecting subject areas to be assessed, identifying appropriate

achievement goals for each age and grade in each subject area to be tested, developing assessment objectives and test specifications; subparagraph (B) authorizes the Board to delegate any functions described in subparagraph (A) to its staff; subparagraph (C) gives the Board final authority on the appropriateness of cognitive items; subparagraph (D) stipulates that the Board shall ensure that all items selected for use in NAEP are free from racial, cultural, gender or regional bias; subparagraph (E) stipulates that each learning area assessment shall have goal statements devised through a national consensus approach, and provides for the participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the public; subparagraph (F) requires the Secretary to report to the Board at regular intervals the Department's action to implement the decisions of the Board; and subparagraph (G) stipulates that any activity of the Board or of the organization described in paragraph (1) shall be subject to the provision of this subsection.

Proposed amendments - No changes proposed.

Section 406(i)(7) - Authorization of funds, Applicability of the Federal Advisory Committee Act

Current law - Subparagraph (A) provides that not to exceed 10 percent of the funds available for NAEP may be used for administrative expenses (including staff, consultants and contracts authorized by the Board) and to carry out the functions described in subparagraph 6(A); subparagraph (B) provides that, for the purposes of its administrative functions, the Board shall have the authorities authorized by the Federal Advisory Committee Act and shall be subject to its provisions for open meetings.

Proposed amendments - No changes proposed.

Section 406(i)(8) - Voluntary participation in NAEP, Non-federal share of costs

Current law - Subparagraph (A) provides that participation in national and regional assessments by State and local educational agencies shall be voluntary; subparagraph (B) provides that participation in State-level assessments shall be voluntary, and pursuant to an agreement between the Secretary and each State that desires to participate providing that the State will pay from non-Federal sources the non-Federal share of the cost of participating, and that the State agrees with certain terms and conditions.

Proposed amendments - No changes proposed.

Section 406(i)(9) - Continuing review and reporting responsibilities of the Commissioner and the Secretary concerning NAEP

Current law - Subparagraph (A) stipulates that the Commissioner shall provide for continuing review of NAEP, including validation studies, and that the Secretary shall report to the Congress, the President, and the Nation on the findings and recommendations of such reviews; subparagraph (B) requires that the Commissioner shall publish a report setting forth plans for the collection of data for the 1990 assessment, plans for the 1992 and later assessments, and setting forth methods by which the results of NAEP may be reported better; and subparagraph (C) provides that the report required in (B) shall be submitted to the Congress and made available to the public.

Proposed amendments - Amend subparagraph (A) to provide for continuing reviews of both National and State-level assessments. Delete subparagraphs (B) and (C).

Explanation - Broaden section (A) to provide for continuing reviews of both State-level and National assessments. Delete subparagraphs (B) and (C) because the report required in subparagraph (B), and referred to in subparagraph (C), was due within six months of the enactment of the National Assessment of Educational Progress Improvement Act.

Section 406(j) - Definitions

Current law - For the purposes of this section, the terms "United States" and "State" include the District of Columbia and Puerto Rico.

Proposed amendments - Re-letter this subsection making it (k); no other changes proposed. Add the Department of Defense Dependents Schools to the definition of State.

Explanation - Re-letter to accommodate the new section (i) for the Postsecondary Education Cooperative Statistics System. Broadening the definition of State would permit the Department of Defense Dependents Schools to participate in State-level NAEP and in the National Cooperative Education Statistics System.

Tom C.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

May 25, 1993

MEMORANDUM

TO : Sally H. Christensen

FROM : Michelle L. Doyle *M. Doyle*
Office of Private Education

SUBJECT: Fund for Innovation in Education

Thank you for the opportunity to review specifications for The Fund for Innovation in Education. I have one comment regarding the proposed amendment to provide the Secretary with the authority to announce binding priorities for grant competitions without formal rulemaking.

In the past, binding priorities have included only a subset of the eligible applicants. For example, when the absolute priority called for the development of state curriculum frameworks, applicants were limited to SEAs. This absolute priority excluded the ability of private schools (as non-profit organizations) to apply for a grant. This happened in FIRST, FIE, and Eisenhower National Program. OPRE has met with the OERI staff for these programs to express our concern and to work out a clearer way of alerting organizations that would not be eligible to apply earlier in the rulemaking process.

If the Secretary is to be granted the authority to set binding priorities without rulemaking, he should be limited to setting priorities applicable to the full set of applicants specified in the statute. If applicants will be limited by the setting of the binding priority, then the rulemaking requirements should hold.

BS-
DUE 6/4
3 PM



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

Memorandum:

June 2, 1993

TO: Legislative Services Officers
Attn: Mr. Smith, OS
Mr. Hazzard, OMB/CFO
Ms. Rairdin, OLCA
Mr. Hays, OERI
Ms. LeTendre, OESE
Mr. Tinsman, OIIA
Ms. Henderson, ODS
Mr. Borches, OIG
Mr. Link, ES
Mr. Newell, OHRA
Office of the General Counsel
Attn: Ms. Craig
Mr. Hauptert
Mr. Rosenfelt

JUN 2 1993 4:45

FROM: Randy Hansen, DLC/OGC (RM 4098, FAX 401-3769,
TEL 401-2685)

SUBJECT: The Department's draft legislative language for
reauthorization of title IV-A of ESEA (WEEA)

Please review the attached draft legislative language and give me your comments by COB Friday, June 4, 1993. Although the full text of each chapter and title of the ESEA will be provided when the bill goes to the Congress, this version will allow you to identify and comment on only the changes set out in the final specifications. If I do not hear from you by the deadline, I will assume that you have no objections to the attached changes. Thank you.

Attachment

cc: Mr. Petersen, OS
Ms. Dozier, OS
Ms. Winston
Mr. Kristy
Ms. Ellis
Ms. Casstevens
Mr. Winnick
Mr. Riddle
Ms. Heindel

See attached
one-pager and
markup.

T. Winnick 6/4-9:00

PB30603002

Comments on Draft Amendments to the Women's Educational Equity Act

We have marked up the draft bill to indicate where it deviates from the specifications and to respond to OGC questions. In addition, we would like to offer the following substantive comments on this legislative proposal.

- o We question the strategy of changing the focus of the program from demonstration projects of national, general, or Statewide significance to local implementation of gender equity programs and practices. WEEA is only a \$2 million program. Even if it grows by several magnitudes, it can do little to assist efforts by individual schools, LEAs, or IHEs to comply with Title IX or otherwise eliminate gender bias and stereotyping. Federal projects along this line are likely to have marginal impact and generate few replicable models or practices.

The 1986 evaluation of the WEEA program found that, even with its current structure, it funded far too many projects that generated, at best, benefits only for the most directly affected individuals and schools. The 1992 WEEA program report seems to indicate that this situation hasn't changed. We recommend that the program make a greater effort to identify and validate high-quality, nationally replicable models rather than spreading around a little bit of money in a way that will achieve no national purpose.

- o We recommend deletion of current Section 4003(b)(2), which requires the Department to give special consideration to applicants on the basis of geographical distribution. In a small program, it is impossible to cover all regions of the country. In addition, this provision makes the program vulnerable to manipulation of the peer review process. The very best projects should be funded.
- o Rather than changing the report on WEEA projects to a report on the status of women's educational equity, we recommend that the requirement for a report be deleted entirely. The report generated under current law is not useful for policy analysis or decision-making purposes and clearly should be deleted as a requirement. However, it is uncertain that we will have enough program funds to support a major research-based study of gender equity along with the project grants and data-gathering and dissemination activities also authorized. The Secretary may want to publish a gender equity study, and this could be supported with OERI research funds. There is no reason to require that this be done with scarce WEEA funds.

M&B/DESVA
6/4/93