

Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.

(b) *Maximum amount.* The maximum amount of the grant a State may receive under section 611 of the Act is—

(1) For fiscal years 2005 and 2006—

(i) The number of children with disabilities in the State who are receiving special education and related services—

(A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by—

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717); and

(2) For fiscal year 2007 and subsequent fiscal years—

(i) The number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—

(A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by

(i) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717);

(iii) Adjusted by the rate of annual change in the sum of—

(A) Eighty-five (85) percent of the State's population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(B) Fifteen (15) percent of the State's population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.

(Authority: 20 U.S.C. 1411(a) and (d))

§ 300.701 Outlying areas, freely associated States, and the Secretary of the Interior.

(a) *Outlying areas and freely associated States—(1) Funds reserved.* From the amount appropriated for any fiscal year under section 611(i) of the Act, the

Secretary reserves not more than one percent, which must be used—

(i) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(ii) To provide each freely associated State a grant in the amount that the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State—

(A) Meets the applicable requirements of Part B of the Act that apply to States.

(B) Meets the requirements in paragraph (a)(2) of this section.

(2) *Application.* Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance—

(i) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act.

(ii) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;

(iii) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and

(iv) Such other information and assurances as the Secretary may require.

(3) *Special rule.* The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to the outlying areas or to the freely associated States under Part B of the Act.

(b) *Secretary of the Interior.* From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with §§ 300.707 through 300.716.

(Authority: 20 U.S.C. 1411(b))

§ 300.702 Technical assistance.

(a) *In general.* The Secretary may reserve not more than one-half of one percent of the amounts appropriated

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under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act.

(b) *Maximum amount.* The maximum amount the Secretary may reserve under paragraph (a) of this section for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(c))

§ 300.703 Allocations to States.

(a) *General.* After reserving funds for technical assistance under § 300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under § 300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.

(b) *Special rule for use of fiscal year 1999 amount.* If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(c) *Increase in funds.* If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) *Allocation of increase.*—(i) *General.* Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year—

(A) To each State the amount the State received under this section for fiscal year 1999;

(B) Eighty-five (85) percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(C) Fifteen (15) percent of those remaining funds to States on the basis of the States' relative populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty.

(ii) *Data.* For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(2) *Limitations.* Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:

(i) *Preceding year allocation.* No State's allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.

(ii) *Minimum.* No State's allocation may be less than the greatest of—

(A) The sum of—

(1) The amount the State received under section 611 of the Act for fiscal year 1999; and

(2) One third of one percent of the amount by which the amount appropriated under section 611(i) of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999;

(B) The sum of—

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(C) The sum of—

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by 90 percent of the percentage increase in the amount appropriated for section 611 of the Act from the preceding fiscal year.

(iii) *Maximum.* Notwithstanding paragraph (c)(2)(ii) of this section, no