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# Impact Aid, Title VIII of the Elementary and Secondary Education Act: A Primer

(name redacted)

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## Summary

The Impact Aid program, administered by the U.S. Department of Education (ED) and authorized by Title VIII of the Elementary and Secondary Education Act (ESEA) is one of the oldest federal education programs, dating from 1950. Impact Aid compensates local educational agencies (LEAs) for “substantial and continuing financial burden” resulting from federal activities. These activities include federal ownership of certain lands, as well as the enrollments in LEAs of children whose parents work or live on federal land and children living on Indian lands. The federal government provides compensation because LEAs are unable to collect property or other taxes from these individuals (e.g., members of the Uniformed Services living on military bases) even though the LEAs are obligated to provide free public education to their children. Thus Impact Aid is intended to compensate LEAs for the resulting loss of tax revenue. Authorizations of appropriations for the program were explicitly authorized through FY2007. Congress has not acted to reauthorize the Impact Aid program, though it continues to receive annual appropriations (which are thus considered to be implicitly rather than explicitly authorized).

The Impact Aid program authorizes several types of payments:

- Federal Property (Section 8002),
- Federally Connected Children: Basic Support Payments (Section 8003(b) and Payments for Children with Disabilities (Section 8003(d),
- Construction (Section 8007), and
- Facilities Maintenance (Section 8008).

Overall, the Impact Aid program received about \$1.3 billion in FY2015. The largest Impact Aid payment is basic support payments for federally connected children (Section 8003(b)), accounting for nearly 90% of the total appropriation. Federally connected children are children who reside with a parent who is a member of the Uniformed Services living on or off federal property; with a parent who is an accredited foreign military officer living on or off federal property; on Indian lands; in low-rent public housing; or with a parent who is a civilian working or living on federal land. Basic support payments are allocated directly to LEAs based on a formula that uses weights assigned to different categories of federally connected children and cost factors to determine maximum payment amounts.

This report begins with a general overview of the various payments made under the Impact Aid program, followed by a detailed discussion of each section of Title VIII. This discussion is followed by information about recent appropriations for Impact Aid. The report concludes with an overview of programs administered by the U.S. Department of Defense (DOD) that are often referred to as the “DOD Impact Aid” programs.

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## Introduction

The Impact Aid program, administered by the U.S. Department of Education (ED), is one of the oldest federal education programs, dating from 1950. Impact Aid compensates local educational agencies (LEAs) for a “substantial and continuing financial burden” resulting from federal activities. These activities include federal ownership of certain lands, as well as the enrollments in LEAs of children whose parents work or live on federal land and children living on Indian lands. The federal government provides compensation because LEAs are unable to collect property or other taxes from these individuals (e.g., members of the Armed Forces living on military bases) or their employers, even though the LEAs are obligated to provide free public education to their children. Thus Impact Aid is intended to compensate LEAs for the resulting loss of tax revenue

The Improving America’s Schools Act of 1994 (P.L. 103-382), which reauthorized and substantially revised the Elementary and Secondary Education Act (ESEA), also reauthorized and revised the Impact Aid program, incorporating Impact Aid into Title VIII of the ESEA.<sup>1</sup> Title XVIII (the Impact Aid Reauthorization Act of 2000) of P.L. 106-398 (Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001), signed into law in 2000, made changes to the Impact Aid program and reauthorized it through FY2003. On January 8, 2002, the President signed the No Child Left Behind Act of 2001 (NCLB; P.L. 107-110), which reauthorized the ESEA. The act made certain technical amendments to the Impact Aid program, including extending its authorization of appropriations through FY2007.<sup>2</sup> As Congress has not acted to reauthorize the Impact Aid program, appropriations for it are currently not explicitly authorized. However, because the Impact Aid program continues to receive annual appropriations, these appropriations are considered to be implicitly authorized.<sup>3</sup>

During the 114<sup>th</sup> Congress, the House Education and the Workforce Committee reported the Student Success Act (H.R. 5), which would provide for a comprehensive reauthorization of the ESEA. The bill was subsequently passed on the House floor on July 7, 2015. The Senate Health, Education, Labor, and Pensions (HELP) Committee reported the Every Child Achieves Act (ECAA; S. 1177), which would also provide for a comprehensive reauthorization of the ESEA. S. 1177 was subsequently passed on the Senate floor on July 16, 2015.<sup>4</sup> Both H.R. 5 and S. 1177 would reauthorize the Impact Aid program.

This report begins with a general overview of the various payments made under the Impact Aid program, followed by a detailed discussion of each section of Title VIII. This discussion is followed by information about recent appropriations for Impact Aid. The report concludes with an

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<sup>1</sup> Impact Aid was previously authorized by P.L. 81-874.

<sup>2</sup> For detailed information about changes to the Impact Aid program resulting from P.L. 103-382, P.L. 106-398, or P.L. 107-110, see CRS Report RL30075, *Impact Aid: Status and Overview of 2000 Reauthorization and 2001 Amendments*, by (name redacted) (out of print but available upon request from the author of this report).

<sup>3</sup> The General Education Provisions Act (GEPA) provided a one-year extension of ESEA program authorizations. GEPA provides that “The authorization of appropriations for, or duration of, an applicable program shall be automatically extended for one additional fiscal year unless Congress, in the regular session that ends prior to the beginning of the terminal fiscal year of such authorization or duration, has passed legislation that becomes law and extends or repeals the authorization of such program” (20 U.S.C. 1226a). As Congress did not pass legislation to reauthorize the ESEA by the end of the 2005 calendar year, the authorizations of appropriations for the programs were automatically extended through FY2008. While appropriations for ESEA programs are no longer authorized, they continue to receive annual appropriations. This is considered an implicit authorization of appropriations.

<sup>4</sup> For a more detailed discussion of ESEA reauthorization proposals in the 114<sup>th</sup> Congress, see CRS Report R43916, *ESEA Reauthorization Proposals in the 114th Congress: Selected Key Issues*, by (name redacted) and (name redacted).

overview of programs administered by the U.S. Department of Defense (DOD) that are often referred to as the “DOD Impact Aid” programs.

## Overview of Impact Aid Payments

ESEA Title VIII authorizes several types of Impact Aid payments. These include payments under Section 8002, Section 8003, Section 8007, and Section 8008,<sup>5</sup> which are discussed briefly below.

### Section 8002

Section 8002 compensates LEAs for the federal ownership of certain property. To qualify for compensation, the federal government must have acquired the property, in general, after 1938 and the assessed value of the land at the time it was acquired must have represented at least 10% of the assessed value of all an LEA’s real property. About 216 LEAs receive Section 8002 payments annually.<sup>6</sup> Payments are usually used by LEAs for general operating expenses (e.g., teacher salaries, books, supplies, and utilities).<sup>7</sup> In FY2015, \$66.8 million was appropriated for Section 8002 (5.2% of total Impact Aid appropriations) and payments are expected to range from \$150 to \$5.0 million.<sup>8</sup>

### Section 8003

Section 8003 compensates LEAs for enrolling federally connected children. These are children who reside with a parent who is a member of the uniformed services<sup>9</sup> living on or off federal property; with a parent who is an accredited foreign military officer living on or off federal property; on Indian lands; in low-rent public housing; or with a parent who is a civilian working or living on federal land.

Two payments are made under Section 8003. Section 8003(b) authorizes “basic support payments” for federally connected children.<sup>10</sup> In FY2015, 1,151 LEAs are eligible to receive payments under Section 8003(b). These LEAs serve over 900,000 federally connected students.<sup>11</sup> In FY2015, \$1.1 billion was appropriated for Section 8003(b) (89.3% of total Impact Aid appropriations) and payments are expected to range from \$100 to \$53 million. Section 8003(d)

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<sup>5</sup> Other significant Impact Aid provisions include Section 8004, which details policies regarding children residing on Indian lands, and Section 8009, which prohibits states from considering Impact Aid payments in determining state aid to LEAs, unless the state has an approved program to equalize expenditures among LEAs. Prior to the 2000 reauthorization, Section 8006 authorized compensation for school districts experiencing rapid and substantial increases in children of military parents. P.L. 106-398 repealed this section.

<sup>6</sup> U.S. Department of Education, *Justifications of Appropriation Estimates to the Congress: FY2016*, 2015. (Hereinafter referred to as ED, *FY2016 Budget Justifications*.)

<sup>7</sup> U.S. Department of Education, “Impact Aid Section 8002 Payments for Federal Property-Awards,” <http://www.ed.gov/programs/8002/awards.html>.

<sup>8</sup> ED, *FY2016 Budget Justifications*.

<sup>9</sup> The term “uniformed services” means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service (37 U.S.C. 101). For the purposes of this report, children with a parent in the uniformed services are also referred to as military children or children of military parents, as this is how they are commonly referenced.

<sup>10</sup> Prior to the 2000 reauthorization, Section 8003(f) provided additional payments for about 30 “heavily impacted LEAs”—those that enroll large numbers or high proportions of federally connected children. P.L. 106-398 repealed subsection (f) and incorporated payments for these LEAs in the basic payments under Section 8003(b)(2).

<sup>11</sup> ED, *FY2016 Budget Justifications*.

authorizes additional payments to LEAs based on the number of certain federally connected children with disabilities who are eligible to receive services under the Individuals with Disabilities Education Act (IDEA).<sup>12</sup> Payments are limited to federally connected IDEA-eligible children—those with a parent who is a member of the Armed Forces (residing on or off federal property), those with a parent who is an accredited foreign military officer (living on or off federal property), and those residing on Indian lands. In FY2015, \$48.3 million was appropriated for Section 8003(d) (3.7% of total Impact Aid appropriations) and about 878 LEAs are expected to receive these payments, ranging from \$515 to \$1.2 million.<sup>13</sup>

## **Section 8007**

Section 8007 provides funds for construction and facilities upgrading to certain LEAs serving high percentages of children living on Indian lands or children of military parents. These funds are used to make formula and competitive grants.<sup>14</sup> In FY2015, \$17.4 million was appropriated for Section 8007 (1.4% of total Impact Aid appropriations) and, per provisions included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), grants will be awarded only by competition. It is estimated that 6 to 10 LEAs will receive competitive grants, ranging from \$50,000 to \$5.0 million.<sup>15</sup>

## **Section 8008**

Section 8008 provides funds for emergency repairs and comprehensive capital improvements to schools that ED currently owns but LEAs operate and use to serve federally connected military dependent children. Statutory language requires that ED transfer ownership of these facilities to LEAs or other entities. In FY2015, \$4.8 million was provided for Section 8008 (0.4% of total Impact Aid appropriations).

# **Impact Aid: Section-by-Section Analysis**

This part of the report provides a section-by-section analysis of ESEA Title VIII. Sections are generally discussed in order. There is also a summary of the Title VIII sections that focus primarily on program administration and are not otherwise discussed in the section-by-section analysis, including Section 8005 and Section 8010 through 8014.<sup>16</sup>

## **Section 8001: Purpose**

Section 8001 includes the purpose of the Impact Aid program. This section clearly states that there are activities of the federal government that place a financial burden on LEAs and that the

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<sup>12</sup> For more information about the IDEA, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted).

<sup>13</sup> ED, *FY2016 Budget Justifications*.

<sup>14</sup> For the past several fiscal years, provisions included in the Labor, Health and Human Services, Education, and Related Agencies (L-HHS-ED) appropriations acts have specified that Section 8007 grants be made using formula grants only or competitive grants only and have specified which of the two grant types would be used for a given fiscal year. For example, for FY2014 only formula grants were awarded, while for FY2013 only competitive grants were awarded.

<sup>15</sup> ED, *FY2016 Budget Justifications*.

<sup>16</sup> Section 8006 was repealed by Section 1810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106-398).



purpose of the program is to assist LEAs serving areas in which such activities take place, including assisting federally connected children in meeting challenging state academic standards. The federal government provides financial assistance to these LEAs in such a way as to promote control by LEAs with little or no federal or state involvement. More specifically, the purpose of the Impact Aid program is to provide financial assistance to LEAs that (1) “experience a substantial and continuing financial burden due to the acquisition of real property by the United States,” (2) educate children residing on federal property whose parents also work on federal property, (3) educate children of parents who are in the military services and children residing in low-rent housing, (4) educate heavy concentrations of children whose parents are civilian employees of the federal government but do not live on federal property, or (5) need assistance with capital expenditures for construction due to the enrollment of substantial numbers of children who reside on federal land and have difficulty raising local revenue through bond referendums due to the inability to tax federal property.

## **Section 8002: Payment for Federal Property**

Section 8002 authorizes a program to compensate LEAs for the federal ownership of certain property. LEAs may receive a payment under this section if they can demonstrate, among other things, that the federal government has acquired property in the LEA since 1938 and the property had an assessed value at the time it was acquired of at least 10% or more of (1) all the real property in the LEA at the time the federal property was acquired, or (2) the greater of all real property as assessed in the first year preceding or succeeding the acquisition of the property, if the property was not assessed at the time it was acquired and state law requires an assessment of property acquired. About 216 LEAs receive Section 8002 payments annually.<sup>17</sup> Payments are generally used by LEAs for general operating expenses (e.g., teacher salaries, books, supplies, and utilities).<sup>18</sup>

The National Defense Authorization Act for Fiscal Year 2013 (NDAA; P.L. 112-239) amended the formula used to calculate Section 8002 payments for LEA applications received for FY2010 and subsequent fiscal years.<sup>19</sup> These amendments, however, were required to be repealed on January 2, 2015 (two years following their enactment). The Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291) subsequently changed the date of repeal of the amendments to January 2, 2018.<sup>20</sup> As of January 3, 2018, barring further action by Congress, the amendments will be repealed and the formula used to calculate grants under current law prior to the enactment of the amendments will once again be in effect.

This section of the report first describes the formula used to calculate Section 8002 grants under current law, which applies to FY2009 and earlier, and which is scheduled to take effect again beginning January 3, 2018. This discussion is followed by an overview of the Section 8002 formula enacted by the NDAA amendments.

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<sup>17</sup> ED, *FY2016 Budget Justifications*.

<sup>18</sup> U.S. Department of Education, “Impact Aid Section 8002 Payments for Federal Property-Awards,” <http://www.ed.gov/programs/8002/awards.html>.

<sup>19</sup> As it may take several years for ED to determine final Section 8002 grants for a given fiscal year appropriation, it was possible to apply the NDAA provisions retroactively to LEA applications submitted for FY2010 and FY2011. According to ED, the NDAA amendments applied to FY2010 through FY2015 payments (ED, *FY2016 Budget Justifications*.)

<sup>20</sup> Based on ED’s position that the first set of NDAA amendments would remain in effect through the determination of FY2015 payments (ED, *FY2016 Budget Justifications*), presumably the second set of NDAA amendments would remain in effect through the determination of FY2018 payments.



## Current Law Formula

The maximum payment an LEA is eligible to receive for a fiscal year is determined by multiplying the current real property tax rate for current expenditures levied by fiscally independent LEAs, or imputed real property tax rate for fiscally dependent LEAs, by the estimated current aggregate assessed value of the federal property. The assessed value of the federal property is determined on the basis of the “highest and best use” of property adjacent to the federal property.<sup>21</sup> This value must be determined by the local official responsible for assessing the value of real property in the jurisdiction in which the LEA is located for the purpose of levying a property tax.

When full funding for maximum payments is not appropriated, as has been the case in recent years, payments are made based on a hold-harmless formula designed to preserve historical funding levels for individual LEAs.<sup>22</sup> First, payments are made to LEAs that were eligible for a Section 8002 payment from 1989 to 1994<sup>23</sup> (referred to as foundation payments). Pre-1995 recipients receive grants equal to 38% of the LEA’s maximum entitlement amount for FY1994.<sup>24</sup> If funds are not sufficient to make these grants, the grants are ratably reduced. If funds remain available after providing the foundation payments to the pre-1995 recipients, LEAs that received a payment for FY1995 or LEAs determined to have filed their applications in a timely manner to receive payments in subsequent years receive a proportional share of the funds determined by subtracting the amount used for foundation payments for pre-FY1995 recipients from the total FY1995 appropriation for Section 8002. Following the distribution of funds through foundation payments and payments for 1995 grant recipients, a special payment is made to the Highland Falls-Fort Montgomery Central School District in New York.<sup>25</sup>

If funds still remain available after making these payments, the remaining funds are distributed among pre-FY1995 recipients and FY1995 recipients based on two proportional share formulas: 25% of the remaining funds are distributed to LEAs that received foundation payments, and 75% are distributed to all LEAs. The 25% of funds provided to foundation payment recipients are allocated based on the proportion that each LEA’s foundation payment was of all foundation payments made. The 75% is distributed based on the proportion that each LEA’s maximum payment was of all maximum payments for the current fiscal year.

Section 8002 payments are subject to two caps. First, the combination of payments under Section 8002 and Section 8003(b) may not exceed an LEA’s maximum Basic Support Payment under Section 8003 or maximum payment under Section 8002, whichever is greater. The second cap reduces an LEA’s Section 8002 payment if the combination of the calculated payments and any

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<sup>21</sup> ED updated the regulations for how to make this determination. For more information, see U.S. Department of Education, “Impact Aid Programs; Final Rule,” 73 *Federal Register* 70569-70581, November 20, 2008, <http://www.ed.gov/legislation/FedRegister/finrule/2008-4/112008a.html>.

<sup>22</sup> ED, *FY2010 Budget Justifications*.

<sup>23</sup> Some LEAs were deemed to be eligible after 1994 by statutory language.

<sup>24</sup> If an LEA was not eligible for a payment in 1994, the calculation is based on the most recent year for which the LEA was eligible.

<sup>25</sup> Section 8002(i) authorizes a special payment for the Highland Falls-Fort Montgomery Central School District provided it continues to meet the eligibility requirements to receive a payment. These criteria include the following: (1) the LEA received a Section 8002 payment in FY1996; (2) the LEA serves a school district that contains all or a portion of a U.S. military academy; (3) the LEA serves a school district in which the local tax assessor has certified that at least 60% of the real property is federally owned; and (4) the LEA demonstrates to the satisfaction of the Secretary that such agency’s per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.

revenue the LEA receives from the federal property exceeds the LEA's calculated maximum payment under Section 8002.

An LEA that was eligible for Section 8002 payments prior to the Impact Aid Reauthorization Act of 2000 was eligible to receive a payment only if it submitted an application for payment within seven years of the enactment date of this law. LEAs that became eligible for Section 8002 payments after the 2000 reauthorization have seven years from the date of acquisition to apply for a Section 8002 payment.

### **Formula Under NDAA Amendments**

The maximum payment an LEA is eligible to receive for a fiscal year is determined by multiplying the current real property tax rate for current expenditures levied by fiscally independent LEAs, or imputed real property tax rate for fiscally dependent LEAs, by the current estimated taxable value of the federal property.<sup>26</sup>

When full funding for maximum payments is not appropriated, payments are made based on a hold-harmless formula with four steps. First, a "foundation payment for pre-2010 recipients" is made to eligible LEAs that were also eligible for a Section 8002 payment in FY2009. The amount of the payment is equal to the greater of (1) 90% of the payment the LEA received in FY2009, or (2) 90% of the average payment the LEA received for FY2006, FY2007, FY2008, and FY2009. Second, after making these payments, a special payment is made to the Highland Falls-Fort Montgomery Central School District in New York, provided the LEA continues to meet the eligibility requirements to receive this payment.<sup>27</sup> Third, a "foundation payment for new applicants" is made from the remaining funds to LEAs that were not eligible to receive a Section 8002 payment in FY2009. Payments for these LEAs are calculated by multiplying 90% of the LEA's maximum payment by the ratio of the appropriation to the total of all LEAs' maximum payments in the most recent year in which payments have been completed. Fourth, if funds remain after the foundation payment for new applicants, they are distributed to LEAs based on prorated shares of maximum payments for the current year.

According to ED, the two caps that apply to payments under current law would only apply to any remaining funds distributed in the last step of the formula to LEAs that received a foundation payment for pre-2010 recipients. LEAs that are newly eligible for Section 8002 payments would have their foundation payment for their first year limited by both caps in the third step of the formula and would have their payment under the last step of the formula limited by both caps in all years.

Limits on the amount of time an LEA has to submit an application for a Section 8002 payment following the federal government's acquisition of property were not changed by the NDAA amendments.

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<sup>26</sup> The estimated taxable value for eligible property is calculated through a three-step process. First, the Secretary must determine the total taxable value for the purpose of levying property tax for school purposes for current expenditures of real property located within the boundaries of a given LEA. The Secretary must then determine the per acre value of the eligible federal property by dividing the total taxable value for all property in the LEA determined in step one by the difference between the total number of acres located within the boundaries of the LEA and the number of eligible federal acres within the boundary of the LEA. The total taxable value of the eligible federal property is then determined by multiplying the per acre value calculated in step two by the number of eligible federal acres.

<sup>27</sup> For more information about the eligibility requirements see Section 8002(i).

## Section 8003(b): Basic Support Payments

Section 8003(b) authorizes payments to LEAs to compensate them for the cost of serving certain groups of federally connected children. The presence of these children can both increase the number of students the LEA must serve and decrease taxes that support public education. As previously discussed, federally connected children include children of parents in the military, children living on Indian lands, children of civilian federal employees, and children living in low-rent housing. To be eligible for Section 8003(b) payments, an LEA must have at least 400 federally connected children, or such children must represent at least 3% of an LEA's average daily attendance (ADA).<sup>28</sup> Of the more than 18,000 LEAs nationwide, about 1,140 LEAs currently meet one of these eligibility criteria.<sup>29</sup> Thus, about 6% of all LEAs qualify for Section 8003(b) payments.

The Impact Aid basic support grants formula for Section 8003(b) has several components:

- LEAs provide ED with counts of various types of federally connected children.
- Weights are applied to each count with the intention of reflecting differences in tax revenues lost and educational costs.
- A cost factor or Local Contribution Rate (LCR, basically a per pupil expenditure amount) is determined for each LEA.
- Maximum grants are calculated by multiplying the weighted child count by the LCR.
- Actual payments are reduced if appropriations are insufficient to make maximum grant payments.<sup>30</sup>

### Types of Federally Connected Children and Their Formula Weights

**Table 1** shows the categories of federally connected children and the weights that the act assigns to them. As **Table 1** shows, children residing on Indian lands receive the highest weight. The next highest weight is given to children who live on federal land<sup>31</sup> and whose parents are

- employed on federal land,
- members of the uniformed services,<sup>32</sup> or
- accredited foreign military officers.

These relatively high-weighted children (including children living on Indian lands) are sometimes known by a shorthand designation as “3(a)” or just “a” children, which is a reference to a subsection of the previous Impact Aid statute (P.L. 81-874). Although no longer relevant to the current law, this shorthand designation is still widely used and will be referenced in this report.

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<sup>28</sup> In addition, to receive payments for children of parents employed, but not residing, on federal property or certain children residing on federal property, an LEA must serve 1,000 or more of such children or such children must represent at least 10% of the LEA's total ADA.

<sup>29</sup> ED, *FY2016 Budget Justifications*.

<sup>30</sup> Appropriations for FY2015 are insufficient to make maximum payments.

<sup>31</sup> See Section 8013(5) for a definition of federal land.

<sup>32</sup> As previously mentioned, these children are generally referred to as “military children” or “children of military parents.”

Those receiving much lower weights are children

- with a parent in the Armed Forces living off-base,
- with a parent who is a foreign military officer not living on federal land,
- residing in low-rent public housing,
- living on federal land but whose parents do not work on federal land, and
- whose parents otherwise work on federal land but do not live on federal land.

These children receiving lower weights are sometimes known as “3(b)” or just “b” children, According to ED, “b” children create a lesser, but still significant, burden on LEAs compared to “a” children.<sup>33</sup>

**Table I. Types of Federally Connected Children and Weights Assigned to Them in the Impact Aid Basic Support Payments Formula**  
(Section 8003(a)(1))

Children Attending School in the LEA Who	Weight	Shorthand Designation
reside on federal property with a parent employed on federal property situated in whole or in part within the boundaries of the LEA—(A)(i)	1.0	“a” children
reside on federal property with a parent who is an official of, and accredited by, a foreign government and is a foreign military officer—(A)(ii)	1.0	“a” children
reside on federal property and have a parent on active duty in the uniformed services—(B)	1.0	“a” children
reside on Indian lands—(C)	1.25	“a” children
have a parent on active duty in the uniformed services but do not reside on federal property—(D)(i)	0.2	“b” children
have a parent who is an official of, and has been accredited by, a foreign government and is a foreign military officer but do not reside on federal property—(D)(ii)	0.2	“b” children
reside in low-rent public housing—(E)	0.1	“b” children
reside on federal property and are not described in Subparagraph (A) or (B)—(F)	0.05	“b” children
reside with a parent who works on federal property situated in whole or in part in the county in which such LEA is located, or in whole or in part in such LEA if such LEA is located in more than one county—(G)(i); or if not in such county, in whole or in part in the same state as such LEA—(G)(ii) <sup>a</sup>	0.05	“b” children

**Source:** Table prepared by CRS based on an analysis of relevant statutory language.

**Note:** “Uniformed services” is defined in 37 U.S.C. 101 to include the Army, Navy, Air Force, and Marines, as well as the Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

- a. These children include, for example, children who live with parents working for the federal government in a federal building (e.g., the Hart Senate Office Building).

To illustrate how child count weighting works, suppose that a school district has 215 students whose parents are in the military and live on the base, 100 students who live on Indian lands, and 300 students whose parents are in the military but live off the base. The school district’s weighted student count would be

<sup>33</sup> ED, *FY2016 Budget Justifications*.

215 military/on base	*	1.00 =	215
100 on Indian lands	*	1.25 =	125
300 military/off base	*	0.20 =	60
<b>615 Total,</b>	but under the formula,		<b>400</b>

Thus, this hypothetical district has 615 federally connected children, but for the purposes of the formula the weighted count of these children is 400.

## Local Contribution Rate and Maximum Payments

The weighted student count (or “weighted student units”) is multiplied by a cost factor (or LCR), which is the greatest of

- one-half of the state average per-pupil expenditure (APPE),
- one-half of the national APPE,
- the previously determined LCR for comparable districts with unusual circumstances, such as those serving a particularly large number of disabled children, or
- the state APPE times the local contribution percentage (i.e., the percentage of educational revenues that come from the local level).<sup>34</sup>

Thus, the LCR may vary from LEA to LEA, even within the same state.

The weighted student count is multiplied by whichever of these amounts is greatest for a given LEA. For example, suppose in the hypothetical LEA that one-half of the national APPE was the highest LCR amount, and it is estimated at \$5,200. The maximum basic support payment would be  $\$5,200 * 400 = \$2,160,000$ .

## Reduction Due to Insufficient Appropriations

Providing maximum payments to all eligible LEAs in FY2015 would require approximately \$2.15 billion.<sup>35</sup> Because Section 8003(b) appropriations are well below this “full funding” amount, statutory language provides a mechanism for reducing payments to LEAs. The general principle is that more heavily impacted districts (i.e., those more dependent on Impact Aid payments) receive higher percentages of their maximum payments than less-impacted districts. This principle is achieved by calculating a Learning Opportunity Threshold (LOT) payment. This is a percentage of the maximum payment determined by adding

- the percentage of an LEA’s average daily attendance that is federally connected children, and
- the percentage of an LEA’s total current expenditure that is Section 8003 payments.<sup>36</sup>

This total percentage must not exceed 100%. It is multiplied by the maximum payment to produce the LOT payment.

<sup>34</sup> This alternative would be used in states in which local funds account for more than one-half of the APPE.

<sup>35</sup> ED, *FY2016 Budget Justifications*.

<sup>36</sup> Payments for certain heavily impacted LEAs (Section 8003(b)(2)) are excluded from the calculation.

If, in the hypothetical LEA, federally connected children account for 20% of all children in average daily attendance and Impact Aid funds are 30% of the LEA's current expenditures, then the LOT percentage would be 50%<sup>37</sup> and the LOT payment, assuming appropriations were sufficient to provide the full LOT payment, would be \$1,080,000 (50% of \$2,160,000).

If current appropriations were not sufficient to make all LOT payments, only a percentage of the LOT payment would be made. That is, if appropriations were sufficient to pay 80% of the full LOT payments for all LEAs, the hypothetical LEA would receive 40% (50% \* 80%) of its maximum basic support payment. That is, the LEA would receive \$864,000 (40% of \$2,160,000).

Conversely, the statute provides that funds in excess of what is needed to provide all LEAs with 100% of their LOT payment be distributed in proportion to LEAs' LOT payments; however, no LEA may receive a payment in excess of its maximum support payment. This provision gives priority for additional funding to LEAs with higher LOT payments; that is, priority for funding goes to LEAs that are more affected or impacted by federally connected children or more dependent on Impact Aid as a revenue source.

Returning to the hypothetical LEA, if funds were sufficient to pay 125% of LOT, the LEA would receive 62.5% (50% \* 125%) of its maximum basic support payment. That is, the LEA would receive \$1,350,000 (62.5% of \$2,160,000).

## Heavily Impacted LEAs

In addition to the “regular” Impact Aid LEAs, certain LEAs are specifically classified as “heavily impacted” (Section 8003(b)(2)). In general, there are two classifications of these LEAs: (1) those that received heavily impacted payments in FY2000 (referred to as “continuing heavily impacted LEAs”), and (2) those that were not eligible to receive such a payment until FY2002 or later (“new heavily impacted LEAs”). With certain exceptions, eligibility is based on the LEA's percentage of total ADA composed of federally connected children and the LEA's tax rate. For example, most continuing heavily impacted LEAs must have at least 35% of their ADA composed of federally connected children and have a tax rate that is at least 95% of their states' average tax rate or have at least 30% of their ADA composed of federally connected children and have a tax rate that is at least 125% of the average tax rate of comparable LEAs in their state. In FY2015, 26 LEAs received payments as heavily impacted LEAs.<sup>38</sup>

**Table 2. Heavily Impacted LEAs: FY2015**

LEA	State
Annette Islands School District	AK
Fort Huachuca Accommodation Schools	AZ
El Paso County School District 8	CO
Camden County Board of Education	GA
Liberty County Board of Education	GA
North Chicago School District 187	IL

<sup>37</sup> The LOT percentage for the hypothetical LEA is calculated by adding 20% and 30% to get 50%.

<sup>38</sup> In the *FY2016 Budget Justifications*, ED estimated that 28 LEAs would receive payments as heavily impacted LEAs in FY2015. Based on more recent data on FY2015 grants provided to CRS by ED, 26 LEAs received payments as heavily impacted LEAs.



LEA	State
Fort Leavenworth Unified School District 207	KS
Geary County Unified School District 474	KS
Knob Noster R-VIII School District 051-155	MO
Waynesville R-VI School District 085-046	MO
Grand Forks Air Force Base School District 140	ND
Minot Air Force Base School District 160	ND
North Hanover Township Board of Education	NJ
Andes Central School District 11-1	SD
Bennett County School District 3-1	SD
Douglas School District 51-1	SD
McIntosh Independent School District 15-1	SD
South Central School District 26-5	SD
Timber Lake School District 20-3	SD
Wagner Community School District 11-4	SD
Copperas Cove Independent School District	TX
Fort Sam Houston Independent School District	TX
Killeen Independent School District	TX
Lackland Independent School District	TX
Randolph Field Independent School District	TX
Central Kitsap School District 401	WA

**Source:** Table prepared by CRS based on unpublished data provided by the U.S. Department of Education, Budget Service.

Calculations for these LEAs' payments differ in three ways from calculations for regular Impact Aid LEAs. First, weights for certain classifications of federally connected children are greater for some heavily impacted LEAs. For example, LEAs that qualify as heavily impacted and have 100 or fewer federally connected children have their entire count of federally connected children weighted at 1.75 (as opposed to using the weights depicted in **Table 1**). Second, the maximum basic support payment for most heavily impacted LEAs is based on 80% (rather than 50%) of the state or national APPE, whichever one is higher. Finally, given sufficient funds, the LOT percentage for these LEAs is 100%. That is, they receive 100% of their maximum basic support payment if funds are sufficient to provide these amounts. If funds are insufficient to provide regular LEAs with 100% of their LOT payments, payments to heavily impacted LEAs are ratably reduced by the same percentage as payments to regular LEAs.<sup>39</sup>

As a result of these provisions, the 26 heavily impacted LEAs are estimated to receive about \$292 million, or about 34.0%, of the total funding for basic support grants under Section 8003(b) in

<sup>39</sup> When grant amounts are ratably reduced, all LEAs have their grant amounts reduced by the same percentage but not by the same dollar amount. That is, the larger an LEAs' grant, the larger the dollar reduction funding will be for a given percentage decrease in funding.



FY2015. In terms of per student payments, these 26 LEAs receive over four times the amount per child that regular Impact Aid LEAs receive.<sup>40</sup>

### **Use of Impact Aid Section 8003(b) Payments**

Impact Aid payments differ from funds provided by most other federal elementary and secondary education programs. Impact Aid funds provided under Section 8003(b) are not limited to specified uses (such as improving the educational achievement of disadvantaged students). While funds are generally used for current local education expenditures,<sup>41</sup> they may also be used for capital expenditures.<sup>42</sup> In addition, funds need not be spent just on federally connected children. Finally, because Impact Aid payments are not aimed at specific educational goals, accountability requirements for the use of funds or specific outcomes are minimal.

### **Section 8003(d): Payments for Children with Disabilities**

In addition to basic support payments, Section 8003 authorizes payments to LEAs serving certain federally connected children who are eligible to receive services under the IDEA. Payments are limited to certain federally connected IDEA-eligible children—those with a parent who is a member of the Uniformed Services (residing on or off federal property), those with a parent who is an accredited foreign military officer (living on or off federal property), and those residing on Indian lands. ED determines weighted counts of children with disabilities by multiplying more heavily weighted eligible children under Section 8003(b) (i.e., children with disabilities who live with a parent in the military on federal property, live with a parent who is an accredited foreign military officer on federal property, or live with parents on Indian lands) by 1.0 and lower weighted children (i.e., children with disabilities who live with a parent in the military or an accredited foreign military officer on non-federal property) by 0.5. An LEA's payment is simply its percentage share of the total weighted child count multiplied by the funds appropriated for Section 8003(d).

Unlike basic support payments, LEAs receiving 8003(d) payments must use the funds to meet the needs of the federally connected children with disabilities for whom they received the payments. In addition, the funds must be used to provide a free appropriate public education to these children in accordance with the provisions of IDEA.<sup>43</sup>

### **Section 8004: Policies and Procedures Related to Children Residing on Indian Lands**

Any LEA that claims children residing on Indian lands for purposes of Section 8003 payments must establish policies and procedures to ensure the following:

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<sup>40</sup> ED, *FY2016 Budget Justifications*.

<sup>41</sup> Current local education expenditures mean expenditures for free public education, such as expenditures for administration, instruction, attendance and health services, transportation, and operation and maintenance of plant. These may be contrasted with capital expenditures for construction and related debt service.

<sup>42</sup> U.S. Department of Education, "Impact Aid Section 8003 Payments for Federally Connected Students—Frequently Asked Questions." Available at <http://www.ed.gov/programs/8003/faq.html>.

<sup>43</sup> For more information about IDEA, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted).

1. Children living on Indian lands must participate in programs and activities supported by Section 8003 funds on an equal basis with all other children.
2. Parents of such children and Indian tribes must be provided with an opportunity to present their views on such programs and activities, including being able to make recommendations regarding the needs of such children.
3. Parents and Indian tribes must be consulted and involved in planning and developing such programs and activities.
4. All relevant applications, evaluations, and program plans must be disseminated to parents and Indian tribes.
5. Parents and Indian tribes must have an opportunity to present their views to the LEA regarding the LEA's general education program.

LEAs claiming Indian children for purposes of Section 8003 payments must maintain records demonstrating that the agency is in compliance with the aforementioned requirements. An LEA may receive a waiver related to the establishment of the aforementioned policies and procedures and the related record maintenance requirement with respect to any Indian tribe if such tribe provides a written statement saying the LEA does not have to meet the requirements because the tribe is satisfied with the provision of the educational services provided by the LEA.

Section 8004 also contains provisions requiring the Secretary to provide technical assistance to LEAs, parents, and Indian tribes to enable them to carry out the requirements of this section. The Secretary is required to enforce the provisions of this section, including through the withholding of funds.

## **Section 8007: Construction**

Section 8007 provides funds for construction and facility repair and renovation to certain LEAs with high percentages of children living on Indian lands or children of military parents. These funds are used to make formula and competitive grants.

### **Formula Grants**

Under current law, 40% of the funds appropriated under Section 8007 are used to make construction payments by formula to LEAs receiving Section 8003 payments and in which either (1) students living on Indian land constitute at least 50% of the LEA's total student enrollment or (2) military students living on or off base constitute at least 50% of the LEA's total student enrollment. The funds available for construction payments are divided equally between these two groups of LEAs (with 20% of the total Section 8007 appropriation going to each group). Grants for LEAs impacted by military dependent students are calculated by dividing the total amount of available funding by the total number of weighted student units of military children living on or off base across all eligible LEAs, and multiplying this result by the total number of weighted student units of these children enrolled in an LEA. A similar calculation is made for LEAs impacted by children living on Indian lands.

### **Competitive Grants**

The remaining 60% of Section 8007 appropriations are used to make school facility emergency and modernization competitive grants. Emergency grants must be used to repair, renovate, or alter a K-12 public school facility to ensure the health and safety of students and staff. Modernization

grants may be used to relieve overcrowding or upgrade facilities to support a “contemporary educational program.”<sup>44</sup> Statutory language requires that emergency grants be given higher priority than modernization grants in the grant competition. Within each category of award, the Secretary is required to prioritize grant awards based on specified criteria.

### ***Emergency Grant Criteria***

The top priority for emergency grants is for LEAs meeting the following criteria:

1. The LEA must have no practical capacity to issue bonds, have minimum capacity to issue bonds and is at not less than 75% of the LEA’s limit of bonded indebtedness, *or* is a heavily impacted LEA under Section 8003; and
2. The LEA is eligible for a formula grant under Section 8007 and has a school facility emergency (as determined by the Secretary) that poses a health or safety hazard to students and staff at the facility.

Since 2002, all competitive grants that have been awarded have gone to LEAs based only on the top priority.<sup>45</sup>

If funds are still available for emergency grants after awarding grants based on the aforementioned criteria, the next priority for emergency grants is for LEAs that meet the following criteria: it receives a basic support payment under Section 8003, students living on Indian land or military students living on or off base constitute at least 40% of the LEA’s total student enrollment, and it meets specific requirements related to bond indebtedness and assessed value of real property. In addition, an individual school that is not located inside an LEA that would otherwise be eligible for an emergency grant also may apply for a grant if it meets specific criteria, including students living on Indian land constituting at least 40% of the school’s total enrollment or military students living on or off base constituting at least 40% of total enrollment.

### ***Modernization Grant Criteria***

If funds remain after awarding emergency grants, the top priority for modernization grants is for LEAs meeting the following criteria:

1. The LEA is eligible to receive assistance under ESEA Title VIII;
2. The LEA meets the first criterion for receiving an emergency grant (see above); and
3. The LEA has facility needs resulting from the presence of the federal government (e.g., enrollment of federally connected children).

If funds are still available for emergency grants after awarding grants based on the aforementioned criteria, the next priority for modernization grants is for LEAs that meet the following criteria: it receives a basic support payment under Section 8003, students living on Indian land or military students living on or off base constitute at least 40% of the LEA’s total student enrollment, and it meets specific requirements related to bond indebtedness and assessed value of real property. LEAs that are eligible to receive a grant under Section 8002 and that meet specific requirements related to bond indebtedness and assessed value of real property also are

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<sup>44</sup> U.S. Department of Education, Purpose of the Impact Aid Section 8007B Discretionary Construction Grant Program, <http://www.ed.gov/programs/8007b/index.html>.

<sup>45</sup> ED, *FY2016 Budget Justifications*.

eligible to receive a modernization grant. In addition, an individual school that is not located inside an LEA that would otherwise be eligible for a modernization grant also may apply for a grant if it meets specific criteria, including students living on Indian land constituting at least 40% of the school's total enrollment or military students living on or off base constituting at least 40% of total enrollment.

### **Factors Considered in the Award of Emergency and Modernization Grants**

In awarding emergency and modernization grants, the Secretary is required to consider specific factors. The Secretary must take into account the ability of the LEA to respond to the emergency or pay for the modernization project. The Secretary must also consider the percentage of property in the LEA that is nontaxable due to the presence of the federal government, as well as the number of federally connected children that reside on federal property with a parent employed on federal property, reside on federal property with a parent who is an official of a foreign government and is a foreign military officer, reside on or off base and have a parent on active duty in the uniformed services, or reside on Indian lands that are served in the school facility with the emergency or modernization proposal. With respect to emergency grants, the Secretary must consider the severity of the emergency. With respect to modernization grants, the Secretary must consider the severity of the need for modernization, as measured by such factors as overcrowding, the LEA's inability to use technology to offer a curriculum aligned with state standards due to the physical limitations of the facility, and the age of the facility.

Emergency and modernization grants are limited to 50% of the total cost of the project receiving assistance. They cannot exceed \$4 million over a four-year period if the LEA qualifies for the grant based on its minimal capacity to issue bonds or as a heavily impacted LEA under Section 8003, or qualifies for the grant based on the lower priority criteria for each type of grant. During the most recent award cycle (FY2015), ED only accepted applications for competitive grants under the first and second priorities for emergency grants.<sup>46</sup> During past award cycles (FY2004-FY2005, FY2005-FY2006, FY2008-FY2009, FY2012, and FY2013), all competitive grants were awarded to LEAs under the first priority for emergency grants<sup>47</sup> and nearly all of the competitive grants were awarded as emergency grants to LEAs serving students living on Indian land.<sup>48</sup>

### **Appropriations Process and Formula Versus Competitive Grants**

It should be noted that while current law requires Section 8007 funds to be used for both formula and competitive grants, since FY2006 appropriations language included in the Labor, Health and Human Services, Education and Related Agencies appropriations acts has altered the distribution of funds. For example, the FY2014 act (P.L. 113-76) required that funds be used only for formula grants, while the FY2015 act (P.L. 113-235) requires that Section 8007 appropriations be used only for competitive grants.

**Table 3** indicates whether Section 8007 grants were awarded by formula, competition, or both since FY2006. The Administration has argued that Section 8007 grants should be awarded by competition rather than formula as competitive grants often result in larger grant amounts that

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<sup>46</sup> U.S. Department of Education, "Applications for New Awards; Impact Aid Discretionary Construction Grant Program," 80 *Federal Register* 19643, April 13, 2015, <http://www.gpo.gov/fdsys/pkg/FR-2015-04-13/pdf/2015-08376.pdf>.

<sup>47</sup> ED, *FY2016 Budget Justifications*.

<sup>48</sup> U.S. Department of Education, Purpose of the Impact Aid Section 8007B Discretionary Construction Grant Program, available online at <http://www2.ed.gov/programs/8007b/awards.html>.

allow “districts with the greatest needs” to receive “meaningful amounts of funding to make emergency repairs.”<sup>49</sup> It should be noted, however, that although the provision of competitive grants generally results in larger grant amounts for grant recipients, there are usually fewer grantees than there would be when funds are awarded by formula.

**Table 3. Section 8007 Distribution of Funds**

Fiscal Year	Funds Awarded by Formula	Funds Award by Competition
2006	Yes	No
2007	Yes	No
2008	No	Yes
2009	No	Yes
2009 (ARRA, supplemental)	Yes	Yes
2010	Yes	No
2011	Yes	No
2012	No	Yes
2013	No	Yes
2014	Yes	No
2015	No	Yes

**Source:** Table prepared by CRS, September 2015, based on CRS analysis of FY2006-FY2015 appropriations acts.

**Notes:** Since FY2006, the annual Labor, Health and Human Services, Education, and Related Agencies appropriations acts have specified whether Section 8007 funds should be allocated by formula, competition, or both.

**ARRA:** American Recovery and Reinvestment Act (P.L. 111-5)

## Section 8008: Facilities Maintenance

Section 8008 provides funds for emergency repairs and comprehensive capital improvements to 12 schools that ED currently owns but LEAs operate and use to serve federally connected military dependent children. Statutory language requires ED to transfer ownership of these facilities to LEAs or other entities.

Since 1983, the Department of Defense (DOD) has assumed funding responsibility for other facilities owned by ED but located on domestic military bases that serve students whose parents are in the Armed Forces. These were formerly known as Section 6 schools in reference to that section of P.L. 81-874. Since FY2008, ED has transferred the titles to 47 facilities that DOD operates as Domestic Dependents Elementary and Secondary Schools (DDESSs) to DOD. Of the remaining 26 facilities owned by ED and located on military bases, DOD is responsible for 14. ED is in the final stages of transferring the titles to these facilities to DOD. ED is responsible for the other 12 facilities, which are operated and used by LEAs to serve military dependent students. ED may not charge LEAs for their use of these facilities and must gain an LEA’s consent to accept ownership of them. Many of the 12 facilities operated by LEAs are deteriorating, overcrowded, or fail to meet building standards. Most LEAs will not assume ownership of the

<sup>49</sup> ED, *FY2016 Budget Justifications*.

facilities unless ED provides funding for needed repairs. The estimated cost of repairs and renovations for all 12 schools is approximately \$72 million (approximately \$6 million per school).<sup>50</sup>

## **Section 8009: State Consideration of Payments in Providing State Aid**

State school finance equalization programs seek to increase educational equity by structuring state school finance formulas to take into account local capacity to raise educational revenue. An equalization formula would compensate LEAs to reduce discrepancies in APPE or the ability to raise revenues for public K-12 education throughout the state. With one exception, state school finance formulas are not permitted to take into account funds LEAs receive from Impact Aid. The exception, which is contained in Section 8009 of the Impact Aid statute, involves a state equalization program that is approved by the Secretary. If a state's program is approved, the state may consider as local funds for the purpose of equalizing educational expenditures some, or all, of an LEA's Impact Aid funding. Currently, Alaska, Kansas, and New Mexico have approved state equalization programs.

The statute specifies the criteria the Secretary must use to evaluate a state's equalization program. The general principle is that the Secretary must find that the state program results in a discrepancy between those LEAs with the highest APPE and those with the lowest (excluding the APPEs of the top and bottom 5% of LEAs) that is no more than 25%.<sup>51</sup>

The appendix to the regulations related to Section 8009 provides several examples of the application of this test. The following is an example for determining whether spending disparity is 25% or less:

In State X, after ranking all LEAs organized on a grade 9-12 basis in order of the expenditures per pupil for the fiscal year in question, it is ascertained by counting the number of pupils in attendance in those agencies in ascending order of expenditure that the 5<sup>th</sup> percentile of student population is reached at LEA A with a per pupil expenditure of \$820, and that the 95<sup>th</sup> percentile of student population is reached at LEA B with a per pupil expenditure of \$1,000. The percentage disparity between the 95<sup>th</sup> and 5<sup>th</sup> percentile LEAs is 22 percent ( $\$1,000 - \$820 = \$180 / \$820$ ).<sup>52</sup>

That is, after LEAs are ranked based on expenditures, ED identifies the LEAs with the highest expenditures that collectively enroll 5% of the student population. This process is repeated for the LEAs with the lowest expenditures. Thus, ED currently implements this provision based on both LEA expenditures and student enrollment in the LEAs with the highest and lowest expenditures.

Two LEAs in New Mexico (Zuni and Gallup-McKinley) sued ED over the implementation of the equalization formula.<sup>53</sup> The LEAs argued that ED should identify the 5% of LEAs with the highest and lowest APPE based on expenditures only with no consideration given to student enrollment. Doing so, they argued, would only have enabled ED to eliminate 10 rather than 23 of the state's 89 LEAs from consideration in determining whether the remaining LEAs met the 25%

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<sup>50</sup> ED, *FY2016 Budget Justifications*.

<sup>51</sup> The Secretary must also consider the extent to which the state program takes into account the additional cost of providing a free public education in specific LEAs, such as those that are geographically isolated, or to specific types of students, such as children with disabilities.

<sup>52</sup> 34 C.F.R. Pt. 222, Subpt. K, App. 1, Example.

<sup>53</sup> *Education Week*, "Supreme Court Backs Ed. Dept.'s Interpretation of Impact Aid Act," April 25, 2007.



spending disparity requirement. If implemented based on expenditures only, the LEAs noted that New Mexico would not have qualified as an equalized state. The case went to the Supreme Court, which ruled that the procedures used by ED to determine whether educational expenditures were equalized across LEAs were appropriate.<sup>54</sup>

## **Other Sections of Title VIII**

In addition to the sections already discussed, Title VIII contains several sections that are related to program administration and function. Each is described briefly below.

- Section 8005: prescribes the process by which an LEA may apply for a Section 8002 or Section 8003 payment.
- Section 8010: prescribes requirements related to the federal administration of the Impact Aid program, including requirements related to child eligibility under Section 8003(a) and timely payment requirements.
- Section 8011: prescribes requirements related to administrative hearings and judicial review.
- Section 8012: includes provisions related to the forgiveness of overpayments under any Title VIII program if the overpayment was made as a result of an error by the Secretary or an error by the LEA if repayment of the full amount of the overpayment would result in an “undue financial hardship on the agency and seriously harm the agency’s educational program.”
- Section 8013: includes definitions that apply to Title VIII.
- Section 8014: includes the authorization of appropriations for Title VIII programs.

## **Impact Aid Appropriations**

Appropriations for the Impact Aid program are made through the annual Departments of Labor, Health and Human Services, and Education, and Related Agencies appropriations acts (L-HHS-ED). Appropriations to provide additional funding to LEAs serving significant numbers of military dependent students and federally connected children with severe disabilities have also been made available through the Department of Defense appropriations acts (see subsequent section for more information). This section provides detailed information about Impact Aid funding provided through L-HHS-ED appropriations from FY2008 through FY2015.

### **Impact Aid Appropriations Provided Through the L-HHS-ED Appropriations Act**

**Table 4** details the most recent appropriations for Impact Aid (FY2008-FY2015). Congress has slightly increased appropriations for Impact Aid payments over the eight-year period examined. The overall increase has been 3.9%. More specifically, basic support payments for federally connected children (Section 8003(b)) rose by 4.1% (\$46 million). Payments for federal property

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<sup>54</sup> *Zuni Public School District No. 89 v. Department of Education* (Case No. 05-1508).



(Section 8002) also increased 4.1%, but the dollar increase was less than \$3 million. Payments for children with disabilities, facilities maintenance, and construction decreased.<sup>55</sup>

As **Table 4** shows, payments for federally connected children (Section 8003) accounted for more than 90% of Impact Aid appropriations in FY2015. Moreover, the basic support payments (Section 8003(b)) alone accounted for 89.3% of the appropriations. In comparison, payments for federal property accounted for 5.2%, payments for construction accounted for 1.4%, and payments for facilities maintenance accounted for less than 0.4%.

From FY2014 to FY2015, appropriations for the Impact Aid program overall and each individual payment remained constant. For FY2016, the President’s budget request would continue to fund the Impact Aid program at its FY2015 level of \$1.289 billion. However, the Administration has proposed to eliminate payments for Section 8002 and increase funding for Section 8008 by a commensurate amount.<sup>56</sup> The Administration believes that the “majority of LEAs receiving assistance under [Section 8002] have now had sufficient time—more than 60 years—to adjust to the removal of the property from their tax rolls.” In addition, the Administration points out that many of the LEAs receiving Section 8002 funds do not meet the basic eligibility requirements to receive them. This scenario can occur when multiple LEAs consolidate into one LEA. While at least one of the LEAs involved in the consolidation met the requirement that the property acquired by the federal government has an assessed value of at least 10% or more of the aggregate assessed value of the real property in the LEA, the “new” LEA could no longer meet this requirement as a result of the consolidation. Thus, ED argues “the consolidated LEAs are no longer demonstrably burdened by the historic loss of taxable property.”<sup>57</sup> All other Impact Aid payments would continue to be level funded at their FY2015 amount.

Unlike many other federal education programs, the Impact Aid program is not forward funded, meaning that the earliest appropriations could be made available to LEAs is the first day of the fiscal year. Education programs that are forward funded generally have funds made available for a 15-month period, starting nine months into a fiscal year. For example, FY2016 funds became available on July 1, 2016, for forward-funded programs, and will remain available through September 30, 2017. On the other hand, current-funded programs, including Impact Aid, have funds available for the 12-month fiscal year. Funds become available on October 1 of a given year and remain available through September 30 of the following year.<sup>58</sup>

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<sup>55</sup> The American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5) included \$100 million for Construction (Section 8007) for FY2009. For more information on Impact Aid Section 8007 funding in ARRA, see CRS Report R40151, *Funding for Education in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)*.

<sup>56</sup> ED, *FY2016 Budget Justifications*.

<sup>57</sup> It should be noted that ED has proposed eliminating funding for Section 8002 since FY2013, but Congress has continued to appropriate funds for the payment.

<sup>58</sup> For more information about how funding is provided to the Impact Aid program, particularly Section 8003(b), and the issues associated with being a current-funded program rather than a forward-funded program, see CRS Report R43657, *Funding for the Impact Aid Program: Options for Budget Year Appropriations, Forward Funding, and Advance Appropriations*, by (name redacted) and (name redacted).

**Table 4. Impact Aid Appropriations: FY2008-FY2015**

Dollars in thousands

<b>Impact Aid Payments</b>	<b>FY2008</b>	<b>FY2009</b>	<b>FY2009 ARRA</b>	<b>FY2010</b>	<b>FY2011</b>	<b>FY2012</b>	<b>FY2013</b>	<b>FY2014</b>	<b>FY2015</b>	<b>% of Total Funding FY2015</b>
Basic support payments (Section 8003(b))	\$1,105,535	\$1,128,535	\$0	\$1,138,000	\$1,135,724	\$1,153,540	\$1,093,203	\$1,151,233	\$1,151,233	89.3%
Payments for children with disabilities (Section 8003(d))	\$48,602	\$48,602	\$0	\$48,602	\$48,505	\$48,413	\$45,881	\$48,316	\$48,316	3.7%
<b>Subtotal</b>	<b>\$1,154,137</b>	<b>\$1,177,137</b>	<b>\$0</b>	<b>\$1,184,602</b>	<b>\$1,184,229</b>	<b>\$1,201,953</b>	<b>\$1,139,084</b>	<b>\$1,199,549</b>	<b>\$1,199,549</b>	<b>93.1%</b>
Facilities maintenance (Section 8008)	\$4,864	\$4,864	\$0	\$4,864	\$4,854	\$4,845	\$4,591	\$4,835	\$4,835	0.4%
Construction (Section 8007)	\$17,509	\$17,509	\$100,000	\$17,509	\$17,474	\$17,441	\$16,529	\$17,406	\$17,406	1.4%
Payments for federal property (Section 8002)	\$64,208	\$66,208	\$0	\$67,208	\$67,074	\$66,947	\$63,445	\$66,813	\$66,813	5.2%
<b>Subtotal</b>	<b>\$86,581</b>	<b>\$88,581</b>	<b>\$100,000</b>	<b>\$89,581</b>	<b>\$89,402</b>	<b>\$89,233</b>	<b>\$84,565</b>	<b>\$89,054</b>	<b>\$89,054</b>	<b>6.9%</b>
<b>Total</b>	<b>\$1,240,717</b>	<b>\$1,265,718</b>	<b>\$100,000</b>	<b>\$1,276,183</b>	<b>\$1,273,631</b>	<b>\$1,291,186</b>	<b>\$1,223,649</b>	<b>\$1,288,603</b>	<b>\$1,288,603</b>	<b>100.0%</b>

**Source:** Table prepared by CRS based on data available from the U.S. Department of Education (ED), Budget Service spreadsheets, various years.

**Note:** Details may not add to totals due to rounding. This table only includes appropriations data for the Impact Aid program administered by ED.

**ARRA:** American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

## Department of Defense “Impact Aid” Programs

The DOD Impact Aid program was established in the early 1990s to supplement the Impact Aid programs administered by ED.<sup>59</sup> The most recent DOD authorization bill, the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for FY2015 (P.L. 113-291), specifically authorized funding for two DOD Impact Aid programs that provide additional funding for LEAs serving significant numbers of military dependent children and LEAs serving military dependent children with severe disabilities. In the past, DOD authorization bills have also authorized a DOD Impact Aid program for LEAs affected by base closures, force structure changes, or force relocation. The authorizations of appropriations for these programs have been lower than those provided for the Impact Aid programs administered by ED. Funds for these programs are appropriated in the DOD annual appropriations acts under operation and maintenance for Defense-wide activities, but line item appropriation levels are not provided for these programs in the appropriations bills. The annual National Defense Authorization Act (NDAA) provides the authorization of appropriations for these programs.<sup>60</sup> This section provides an overview of the three Impact Aid programs administered by DOD and their appropriations.<sup>61</sup>

### Supplemental Assistance<sup>62</sup>

The Supplemental Assistance program (also referred to as “DOD Supplemental Impact Aid” and “Assistance to Schools with Significant Numbers of Military Dependent Students”) provides funds to LEAs with significant numbers of military students. Funds are provided to eligible LEAs if, without the additional funding, an LEA would be unable to provide students with a level of education equivalent to the minimum level of education available in the schools of other LEAs in the state.<sup>63</sup> LEAs are eligible for assistance if at least 20%<sup>64</sup> of their students in average daily attendance during the preceding school year were military dependent students counted under Section 8003(a)(1) of ESEA, Title VIII. About 120 districts receive funds through Supplemental Assistance.<sup>65</sup>

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<sup>59</sup> Section 306 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (P.L. 101-189) authorized supplementary funds from DOD for LEAs serving military dependent students. Subsequently, the Department of Defense Appropriations Act, 1991 (P.L. 101-511) set the eligibility criteria for this program and appropriated \$10 million.

<sup>60</sup> Each fiscal year, Congress generally passes a DOD appropriations act and an authorization act. The DOD appropriations acts generally authorize funding for additional funds to LEAs serving military children, additional impact aid for children with severe disabilities, and special assistance to LEAs in broad statutory language that provides funding for operation and maintenance expenses Defense-wide. The DOD authorization acts provide substantially more information about program requirements and have also been used as vehicles to amend the Impact Aid program authorized by the ESEA.

<sup>61</sup> For more information on DOD Impact Aid, see U.S. Department of Defense Education Activity, DOD Impact Aid for Military Connected School Districts, available online at <http://www.dodea.edu/Partnership/impact.cfm>.

<sup>62</sup> Authority to provide assistance to LEAs under this program is provided under subsection (a) of Section 572 of the National Defense Authorization Act for Fiscal Year 2006 (P.L. 109-163).

<sup>63</sup> The determination of whether an LEA is able to provide students with at least the minimum level of education available in schools in other LEAs in the state is made by the Secretary of Defense in consultation with the Secretary of Education.

<sup>64</sup> The requirement is 20% “as rounded to the nearest whole percent.” Thus, an LEA with 19.5% of students in average daily attendance that were military dependent in the preceding year could be eligible for Supplemental Assistance. 20 U.S.C. §7703b(a)(2).

<sup>65</sup> U.S. Government Accountability Office, *Education of Military Dependent Students: Better Information Needed to Assess Student Performance*, GAO-11-231, March 2011, <http://www.gao.gov/assets/320/316048.pdf>. (Hereinafter (continued...))

## **Military Students with Severe Disabilities**

DOD appropriations for military students with severe disabilities are provided to reimburse LEAs for money previously spent on providing such children with a free appropriate public education.<sup>66</sup> Section 363 of the Floyd D. Spence National Defense Authorization Act for FY2001 (P.L. 106-398) authorized payments for this purpose beginning in FY2002. An LEA may receive funding if it serves at least two severely disabled students who are military dependent (ESEA, Section 8003(a)(1)(B) or (D)(i)) or have a parent who is a foreign military officer (ESEA, Section 8003(a)(1)(A)(ii) or (D)(ii)). Payments may only be made on behalf of children with severe disabilities whose cost of educational and related services exceed (1) the lesser of five times the national or state average per pupil expenditure for a child who receives services in a program outside of the boundaries of the LEA that pays for the services; or (2) three times the state average per pupil expenditure for a child receiving services through a program offered by the LEA or provided within the boundaries of the LEA.

The payment provided to an LEA for each child with severe disabilities is based on the expenditures made by the LEA on behalf of the child that are in excess of the average per pupil expenditure in the state in which the LEA is located, less the sum of funds received by the LEA

- from the state to defray the costs of educational and related services for the child;
- under the IDEA to defray the costs of services for the child; and
- from any other source to defray the costs of services for the child provided specifically because the child has a severe disabling condition.

If the amount of funds appropriated is insufficient to pay the full amount for all eligible LEAs, the Secretary of Defense is required to ratably reduce payments to all eligible LEAs by an equal percentage. Approximately 40 to 50 LEAs are awarded funds through this program each year.<sup>67</sup>

## **Large Scale Rebasing (BRAC) Program**

The Large Scale Rebasing Program (also referred to as the DOD Impact Aid BRAC Program or Assistance to Schools with Enrollment Changes Due to Base Closures, Force Structure Changes, or Force Relocations) provides assistance to LEAs affected by base closures, force structure, or force relocation. Funds are available to LEAs that experienced an overall increase or reduction in student enrollment of not less than 5% of military dependent students or not less than 250 military dependent students in daily attendance. Eligible LEAs have to meet two additional criteria: (1) military dependent students constituted at least 20% of the average daily attendance (or would have if not for the reduction in students), and (2) the change in military student enrollment was due to DOD's global rebasing plan, the official creation or activation of one or more new military units, the realignment of forces as a result of BRAC, or a change in the number of housing units on a military installation. No LEA is permitted to receive more than \$1 million in assistance in a fiscal year under this provision. In FY2006 and FY2007, 45 LEAs received BRAC funding

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(...continued)

referred to as GAO report number GAO-11-231).

<sup>66</sup> Only children of active duty military personnel, including active duty Guard and Reserve, are eligible. (For more information, see U.S. Department of Defense Education Activity (DODEA), Impact Aid for Children with Severe Disabilities Program, <http://www.dodea.edu/Partnership/disabilities.cfm>.)

<sup>67</sup> GAO report number GAO-11-231.

through DOD Impact Aid.<sup>68</sup> Although appropriations for this program were authorized through FY2013, it has not received funding since FY2007.

## **Appropriations**

In recent years, appropriations for the Supplemental Assistance and Military Students with Severe Disabilities programs have ranged from \$45 million to \$30 million. The Large Scale Rebasing program was only funded in FY2006 and FY2007. **Table 5** shows the amount appropriated for each of these three activities for FY2008 through FY2015.

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<sup>68</sup> GAO report number GAO-11-231.

**Table 5. Department of Defense: Program Appropriations Levels for Assistance to Local Educational Agencies (LEAs)**

Dollars in millions

Type of Payment	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015
Supplemental Assistance	\$30	\$40	\$37	\$40	\$40	\$36.6	\$25	\$25
Military Students with Severe Disabilities	\$5	\$4	\$4	\$4	\$5	\$4.6	\$5	\$5
Large Scale Rebasing (BRAC)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**Source:** U.S. Government Accountability Office, *Education of Military Dependent Students: Better Information Needed to Assess Student Performance*, GAO-11-231, March 2011, <http://www.gao.gov/assets/320/316048.pdf>; and U.S. Department of Defense Education Activity (DODEA)'s Impact Aid Annual Funding Table, <http://www.dodea.edu/Partnership/impact.cfm>.

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