

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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*Impact Aid for Public K-12 Education: Reauthorization
Under the Elementary and Secondary Education Act*

Rebecca R. Skinner and Richard N. Apling, Domestic Social Policy Division

March 21, 2008

Abstract. This report provides a general overview of the Impact Aid program, details recent appropriations, and provides detailed information about several Impact Aid payments, including information on how Impact Aid basic support payments are made.

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CRS Report for Congress

Impact Aid for Public K-12 Education: Reauthorization Under the Elementary and Secondary Education Act

Updated March 21, 2008

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Prepared for Members and
Committees of Congress

Impact Aid for Public K-12 Education: Reauthorization Under the Elementary and Secondary Education Act

Summary

Administered by the U.S. Department of Education (ED), the Impact Aid program, authorized by Title VIII of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB; P.L. 107-110), 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 of parents who work or live on federal land (e.g., children of parents in the military and children living on Indian lands). The federal government provides compensation because these activities deprive LEAs of the ability to collect property or other taxes from these individuals (e.g., members of the Armed Forces 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. The program is explicitly authorized through FY2007 and was automatically extended for one additional year under the General Education Provisions Act (GEPA).

The largest Impact Aid program is basic support payments for federally connected children (Section 8003(b)). These are children who reside with a parent who is a member of the Armed Forces living on or off federal property; reside with a parent who is an accredited foreign military officer living on federal property; reside on Indian lands; reside in low-rent public housing; or reside 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.

From FY1996 through FY2005, Congress steadily increased appropriations for Impact Aid payments. The FY2006 appropriation marked the first decrease in total funding since FY1996. FY2007 appropriations were level-funded at the FY2006 level. FY2008 appropriations provided a slight increase in appropriations for the Impact Aid program. For FY2009, the President’s budget request would continue to fund the program at its FY2008 level of \$1.2 billion.

This report provides a general overview of the Impact Aid program, details recent appropriations, and provides detailed information about several Impact Aid payments, including information on how Impact Aid basic support payments are made. It will be updated to reflect major legislative action, which could occur when, as is generally assumed, the 110th Congress considers legislation to amend and extend the ESEA.

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Introduction

Administered by the U.S. Department of Education (ED), the Impact Aid program 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 of parents who work or live on federal land (e.g., children of parents in the military and children living on Indian lands). The federal government provides compensation because these activities deprive LEAs of the ability 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) in 1994, also reauthorized and revised the Impact Aid program, incorporating Impact Aid into Title VIII of the ESEA.¹ 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 ESEA. The act made certain technical amendments to the Impact Aid program, including extending its authorization through FY2007.² The program was automatically extended for one additional year when Congress did not act upon reauthorization legislation by December 1, 2005.³

¹ Impact Aid was previously authorized by P.L. 81-874.

² 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 Richard N. Apling (out of print but available from the author: 7-7352).

³ The General Education Provisions Act (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 (continued...)”

This report provides a general overview of the Impact Aid program, details recent appropriations, and provides detailed information about several Impact Aid payments, including information on how Impact Aid basic support payments are made. It will be updated to reflect major legislative action, which could occur when, as is generally assumed, the 110th Congress considers legislation to amend and extend the ESEA.

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 8008.⁴ Each of these types of payments is 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 220 LEAs receive Section 8002 payments annually.⁵ Payments are usually used by LEAs for general operating expenses (e.g., teacher salaries, books, supplies, and utilities).⁶ In FY2007, payments ranged from \$500 to \$6 million.⁷

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 Armed Forces living on or off federal property; reside with a parent who is an accredited foreign military officer living on federal property; reside on Indian lands; reside in low-rent public housing; or reside with a parent who is a civilian working or living on federal land.

³ (...continued)
that becomes law and extends or repeals the authorization of such program" (20 U.S.C. 1226a).

⁴ 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.

⁵ U.S. Department of Education, *Justifications of Appropriation Estimates to the Congress: FY2009*, 2008. (Hereafter referred to as ED, *FY2009 Budget Justifications*.)

⁶ U.S. Department of Education, "Impact Aid Section 8002 Payments for Federal Property-Awards." Available at [<http://www.ed.gov/programs/8002/awards.html>].

⁷ ED, *FY2009 Budget Justifications*.

Two payments are made under Section 8003. Section 8003(b) authorizes “basic support payments” for federally connected children.⁸ In FY2007, payments were made to 1,244 LEAs, educating about 955,000 federally connected students.⁹ Payments ranged from \$56 to \$45 million. Section 8003(d) 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). More specifically, payments are limited to certain IDEA-eligible children, most notably those whose parents are members of the Armed Forces (residing on or off military bases) and those residing on Indian lands. In FY2007, 907 LEAs received these payments, ranging from \$387 to \$1.5 million.¹⁰

Section 8007

Section 8007 provides funds for construction and facilities upgrading 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. In FY2007, 171 LEAs received a formula payment for construction.¹¹ The average LEA payment was \$104,000. The FY2006 Labor, Health and Human Services, and Education Appropriations Act (L-HHS-ED; P.L. 109-149) required that FY2006 appropriations be used for formula grants only. This restriction on the use of funds was extended to FY2007 appropriations by Section 104 of P.L. 110-5, Revised Continuing Appropriations Resolution, 2007.¹² The FY2008 Consolidated Appropriations Act (P.L. 110-161, Division G, Title III), however, required that funds for FY2008 be used to support competitive grants only.¹³

⁸ 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).

⁹ ED, *FY2009 Budget Justifications*.

¹⁰ ED, *FY2009 Budget Justifications*.

¹¹ ED, *FY2009 Budget Justifications*.

¹² The Administration’s FY2007 budget request would have supported competitive grants only. For FY2007, the L-HHS-ED bill reported by the House Committee on Appropriations would have continued to restrict the use of funds to formula grants only (H.R. 5647, H.Rept. 109-515). The FY2007 L-HHS-ED bill reported by the Senate Committee on Appropriations, however, would have funded both formula and competitive grants (S. 3708, S.Rept. 109-287).

¹³ The Administration’s FY2008 budget request would have supported competitive grants only. For FY2008, the L-HHS-ED bill as passed by the House would have continued to restrict the use of funds to formula grants only (H.R. 3043). The FY2008 L-HHS-ED bill as passed by the Senate would have restricted the use of funds to competitive grants only (HR. 3043).

Section 8008

Section 8008 provides funds for emergency repairs and comprehensive capital improvements to 24 schools that ED currently owns but LEAs use to serve federally connected children.¹⁴ Two of the schools are located on closed military bases and operated by ED, and the remaining facilities are operated by LEAs. Statutory language requires ED to transfer ownership of these facilities to LEAs or other entities.¹⁵ In FY2007, emergency repairs were made to one school, and two facilities were transferred.

Recent Appropriations

Appropriations for the Impact Aid program are made through the Departments of Labor, Health and Human Services, and Education Appropriations Acts. 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 (DOD) Appropriations Acts. The DOD appropriations, however, are substantially lower than those provided through L-HHS-ED appropriations. This section provides detailed information about Impact Aid funding provided through L-HHS-ED appropriations and related funding made available through DOD appropriations.

Impact Aid Appropriations Provided Through the L-HHS-ED Appropriations

Table 1 details the most recent appropriations for Impact Aid (FY2002-FY2008). As the table shows, Congress has generally increased appropriations for Impact Aid payments over this period. The overall increase during this period has been 8.5%. More specifically, payments for federally connected children (Section 8003) rose by 11.8% from FY2002 to FY2008, with basic support payments (Section

¹⁴ Since 1983, the Department of Defense (DOD) has assumed funding responsibility for 46 other facilities located on domestic military bases. These were formerly known as Section 6 schools in reference to that Section of P.L. 81-874. Since 1999, the number of schools for which ED is responsible has decreased from 53 to 22. (For more information, see ED, *FY2009 Budget Justifications*.)

¹⁵ ED plans to transfer the two schools located on the closed military bases to the DOD or to local school authorities, whichever is appropriate based on the communities' plans for redevelopment. In the past, however, environmental problems have been identified at similar facilities, and the military branch that owned the land refused to accept the facilities until the problems were corrected. Many of the 22 facilities operated by LEAs are deteriorating, overcrowded, or fail to meet building standards. Most LEAs will not assume ownership of the facilities unless ED provides funding for needed repairs. The estimated costs of repairs and renovations for all 24 schools is approximately \$48 million. (ED, *FY2009 Budget Justifications*.)

8003(b)) rising by 12.5% (\$123 million).¹⁶ Payments for federal property (Section 8002) experienced the largest percentage increase of any Impact Aid payment over this time period at 16.7%, but the dollar increase in funding was less than \$10 million. Payments for facilities maintenance and construction decreased from FY2002 to FY2008 by 39.2% and 63.5%, respectively.

Further examination of **Table 1** shows that payments for federally connected children (Section 8003) accounted for more than 90% of Impact Aid appropriations in FY2007. Moreover, the basic support payments (Section 8003(b)) alone accounted for 89.1% 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 0.5% of appropriations. For this reason, this report includes a detailed discussion of the Section 8003(b) basic support payments for federally connected children.

From FY2007 to FY2008, appropriations for the overall Impact Aid program increased by \$12.3 million or 1.0%. At the individual payment level, however, only the basic support payment received an increase in funding for FY2008. The increase for basic support payments was \$13.7 million or 1.3%. This increase was able to exceed the overall program increase because all of the other Impact Aid payments were actually decreased by amounts ranging from \$86,000 for facilities maintenance to \$864,000 for children with disabilities.

For FY2009, the President's budget request would continue to fund the Impact Aid program at its FY2008 level of \$1.2 billion. Each of the specific Impact Aid payments would remain at their FY2008 levels, with basic support payments continuing to receive \$1.1 billion.

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, for forward-funded programs, FY2008 funds became available on July 1, 2008, and will remain available through September 30, 2009. On the other hand, current funded programs, including Impact Aid, have funds available for the 12-month fiscal year. That is, funds become available on October 1 of a given year and remain available through September 30 of the following year.

¹⁶ Some of this increase is due to the incorporation of payments for certain "heavily impacted" LEAs, previously funded under Section 8003(f), into the appropriation for Section 8003(b) payments.

Table 1. Impact Aid Appropriations: FY2002-FY2008
(in \$000s)

Impact Aid Payments: ESEA Title VIII	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	% of Total Funding FY2008	% Change from FY2002- FY2008
Payments for federally connected children (Section 8003)									
Basic support payments (Section 8003(b))	\$982,500	\$1,025,292	\$1,063,687	\$1,075,018	\$1,091,867	\$1,091,867	\$1,105,535	89.1%	12.5%
Payments for children with disabilities (Section 8003(d))	50,000	50,668	50,369	49,966	49,466	49,466	48,602	3.9%	-2.8%
Subtotal	\$1,032,500	\$1,075,960	\$1,114,056	\$1,124,984	\$1,141,333	\$1,141,333	\$1,154,137	93.0%	11.8%
Facilities maintenance (Section 8008)	\$8,000	\$7,948	\$7,901	\$7,838	\$4,950	\$4,950	\$4,864	0.4%	-39.2%
Construction (Section 8007)	48,000	44,708	45,936	48,544	17,820	17,820	17,509	1.4%	-63.5%
Payments for federal property (Section 8002)	55,000	59,610	61,634	62,496	64,350	64,350	64,208	5.2%	16.7%
Subtotal	\$111,000	\$112,266	\$115,471	\$118,878	\$87,120	\$87,120	\$86,581	7.0%	-22.0%
Total	\$1,143,500	\$1,188,226	\$1,229,527	\$1,243,862	\$1,228,453	\$1,228,453	\$1,240,717	100.0%	8.5%

Source: U.S. Department of Education, Budget Service spreadsheets, various years. The FY2008 appropriations are based on the U.S. Department of Education, Budget Service, December 19, 2007, budget table.

Note: Details may not add to totals due to rounding. FY2003, FY2004, FY2005, FY2006, and FY2008 appropriations include the across-the-board reduction. The table excludes payments made available under DOD authorizations for “dependents of members of the armed forces and Department of Defense civilian employees and for other purposes.” Also excluded is the \$500,000 provided in FY2002 appropriations for ESEA Title V, Part D, Subpart 20, related to certain federal lands.

Relevant Funding Provided Through Department of Defense Appropriations

In addition to appropriations made available through L-HHS-ED appropriations, funds have been appropriated through the Department of Defense (DOD) to provide additional assistance to LEAs.¹⁷ In recent years, DOD appropriations have provided additional funding for LEAs serving significant numbers of military dependent students. The 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.¹⁸ LEAs are eligible for assistance if at least 20% 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. For FY2006, \$30 million was appropriated for this purpose. For FY2007, appropriations were increased to \$35 million. For FY2008, appropriations were reduced to \$30 million.¹⁹

DOD appropriations also include funding for children with severe disabilities to assist LEAs in providing such children with a free appropriate public education. 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 for this purpose if it serves at least two severely disabled students who are military dependent students [Section 8003(a)(1)(B) or (D)(i)] or who have a parent who is a foreign military officer [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 does not 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

¹⁷ DOD FY2006, FY2007, and FY2008 appropriations also provided support for LEAs experiencing changes in enrollment 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 Base Realignment and Closure (BRAC) actions, or a change in the number of housing units on a military installation. For example, for FY2008, \$10 million was provided for this purpose. For more information on this funding, see CRS Report RL33137, *Military Base Closures and the Impact Aid Program for Education*, by Rebecca R. Skinner.

¹⁸ 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.

¹⁹ Each fiscal year, Congress generally passes a DOD appropriations act and an authorization act. The DOD authorization acts generally authorize funding for additional funding 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. These acts provide substantially more information about funding requirements than the DOD appropriations acts, as appropriations for the relevant programs are consolidated with funding for other activities. For more information about DOD FY2006 appropriations and authorizations, see P.L. 109-148 and P.L. 109-163, respectively. For more information about DOD FY2007 appropriations and authorizations, see P.L. 109-289 and P.L. 109-364, respectively. For more information about DOD FY2008 appropriations and authorizations, see P.L. 110-116 and P.L. 110-181, respectively.

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 is 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 Individuals with Disabilities Education Act (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. FY2006, FY2007, and FY2008 DOD appropriations have each contained \$5 million to aid children with severe disabilities.²⁰

Payment for Federal Property (Section 8002)

Under current law, 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. In practice, making these determinations may be difficult if the transaction occurred several decades ago.

The maximum payment an LEA is eligible to receive for a fiscal year is determined by applying the current real property tax rate for current expenditures levied by fiscally independent LEAs, or imputed real property tax rate for fiscally dependent LEAs, to the current annually determined 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. This value must be determined by the local official responsible for assessing the value of real property

²⁰ For more information about DOD FY2006 appropriations and authorizations, see P.L. 109-148 and P.L. 109-163, respectively. For more information about DOD FY2007 appropriations and authorizations, see P.L. 109-289 and P.L. 109-364, respectively. For more information about DOD FY2008 appropriations and authorizations, see P.L. 110-116 and P.L. 110-181, respectively.

in the jurisdiction in which the LEA is located for the purpose of levying property tax.

Under current law, two types of payments are made under Section 8002: payments for pre-FY1995 recipients (referred to as foundation payments) and payments for FY1995 recipients. Pre-1995 recipients receive grants equal to 38% of the LEA's maximum entitlement amount for FY1994. If funds are not sufficient to make these grants, the grants are ratably reduced. If funds remain 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. 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 is distributed to LEAs that received foundation payments, and 75% is distributed to all LEAs. The 25% of funds is provided to LEAs 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.

Under current law, an LEA that was eligible for Section 8002 payments prior to the 2000 reauthorization of Impact Aid law was eligible to receive a payment only if it submitted an application for payment within seven years of the date of enactment of the Impact Aid Reauthorization Act of 2000. A similar seven-year time limit is placed on LEAs with other federal property that had property acquired by the federal government prior to the 2000 reauthorization. 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.

Basic Support Payments (Section 8003(b))

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 children 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 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).²¹ Of the more than 14,000 LEAs nationwide, 1,261 LEAs meet

²¹ 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.

one of these eligibility criteria.²² Thus, fewer than 10% of all public school districts qualify for Section 8003(b) payments.

The Impact Aid basic support grants formula for Section 8003(b) has several components, as follows.

- 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 (as they currently are) to make maximum grant payments.

Types of Federally Connected Children and Their Formula Weights

Table 2 shows the categories of federally connected children and the weights that the act assigns to them. As **Table 2** shows, children residing on Indian lands receive the highest weight. The next highest weight is given to children who live on federal land²³ and whose parents

- are employed on federal land,
- are members of the Armed Forces, or
- are accredited foreign military officers.

These relatively highly 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 used in this report.

Those receiving much lower weights are

- children with a parent in the military living off the base,
- children residing in low-rent public housing,
- children living on federal land but whose parents do not work on federal land, and
- children whose parents work on federal land but do not live on federal land.

²² ED, *FY2007 Budget Justifications*.

²³ See Section 8013(5) for a definition of federal land.

These children receiving lower weights are sometimes known as “3(b)” or just “b” children, which again refers 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 used in this report. According to ED, “b” children create a lesser but significant burden on LEAs than the burden created by “a” children.²⁴

Table 2. 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)	0.05	“b” children

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.

²⁴ ED, *FY2007 Budget Justifications*.

To illustrate how the first part of the formula works, suppose that a school district has 200 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

200	military/on base	*	1.00	=	200
100	on Indian lands	*	1.25	=	125
300	military/off base	*	0.20	=	60
600	Total,		but under the formula,		385

Thus, this hypothetical district has 600 federally connected children, but for the purposes of the formula, the weighted count of these children is 385.

Local Contribution Rate and Maximum Payments

Next 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).²⁵

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

The weighted student total is multiplied by whichever of these amounts is greatest for a given LEA. Suppose for our hypothetical example that one-half the national APPE was the highest amount, and it is estimated at \$4,000. The maximum basic support payment for our hypothetical school district would be \$4,000 * 385 = \$1,540,000.

Reduction Due to Insufficient Appropriations

Providing maximum payments to all eligible LEAs in FY2007 would require approximately \$1.78 billion.²⁶ Since 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

²⁵ This alternative would be used in states in which local funds account for more than one-half of the APPE.

²⁶ ED, *FY2007 Budget Justifications*.

- the percentage of an LEA’s average daily attendance that is composed of federally connected children, and
- the percentage of an LEA’s total current expenditure that is composed of Section 8003 payments.²⁷

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

If, in our 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% and the LOT payment would be 50% of \$1,540,000 or \$770,000.

If current appropriations were not sufficient to make all LOT payments, only a percent of the LOT payment would be made. In recent years, however, appropriations have been sufficient to provide all LEAs with more than 100% of their LOT payments. 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 our hypothetical example, if funds were sufficient to pay 125% of LOT, the LEA would receive 50% * 125% or 62.5% of its maximum basic support payment. That is, the LEA would receive 62.5% of \$1,540,000 or \$962,500.

Heavily Impacted LEAs

In addition to the so-called “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 the 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 FY2006, 28 LEAs received payments as heavily impacted LEAs. **Table 3** provides a list of these LEAs and the states in which they are located.

²⁷ Payments for certain heavily impacted LEAs (Section 8002(b)(2)) are excluded from the calculation.

Table 3. Heavily Impacted LEAs: FY2006

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
Mascoutah Community Unit School District 19	IL
North Chicago School District 187	IL
Fort Leavenworth Unified School District 207	KS
Knob Noster R-VII 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
Bellevue Public Schools	NE
North Hanover Twp. Board of Education	NJ
Andes Central School District 11-1	SD
Bonesteel-Fairfax School District 26-5	SD
Douglas School District 51-1	SD
Isabel School District 20-2	SD
McIntosh Independent School District 15-1	SD
Oelrichs Public Schools 23-2	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 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 2**). 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 support payment, if funds are sufficient to provide these amounts.

As a result of these provisions, the 28 heavily impacted LEAs received about \$230 million or about 20% of the total funding for basic support grants under Section 8003(b) in FY2006. In terms of per student payments, these 28 LEAs receive over 4 times the amount per child as regular Impact Aid LEAs.²⁸ For the 9 largest heavily impacted LEAs, their average per child payments are 10 times higher than the average payment per child received by the regular Impact Aid LEAs.

Use of Impact Aid Section 8003(b) Payments

Impact Aid payments differ from funds provided by other federal elementary and secondary education programs. Impact Aid funds provided under Section 8003 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,²⁹ they may also be used for capital expenditures.³⁰ In addition, except for funds distributed based on disabled students (Section 8003(d)), Impact Aid 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 for specific outcomes are minimal.

Payments for Children with Disabilities (Section 8003(d))

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 Individuals with Disabilities Education Act (IDEA). Payments are limited to certain federally connected IDEA-eligible children — those children whose parents are members of the Armed Forces (residing on or off military bases) and

²⁸ ED, *FY2007 Budget Justifications*.

²⁹ Current local education expenditures means 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.

³⁰ 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>].

those residing on Indian lands. ED determines weighted child counts by multiplying more heavily weighted eligible children (i.e., children with disabilities of military parents living on base and children with disabilities living on Indian lands) by 1.0 and lower weighted children (i.e., children with disabilities of military parents living off base) 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.

Construction (Section 8007)

Section 8007 provides funds for construction and facilities upgrading 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. Under the statute, 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 students living on Indian land constituted at least 50% of the LEA's total student enrollment or 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 (20% of the total Section 8007 appropriation going to each group). Grants for LEAs impacted by military dependent students are determined 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. The same calculation is made for LEAs impacted by children living on Indian lands.

The remaining 60% of Section 8007 appropriations are used to make school facility emergency and modernization competitive grants. Emergency repair 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."³¹ Emergency grants are given higher priority than modernization grants. Due to this directive and possibly due to limited appropriations, for the past four grant competitions, only emergency grants have been awarded.³²

In addition to other requirements, an LEA is only eligible to receive a competitive grant under Section 8007 if it receives a payment under Section 8003 and

³¹ U.S. Department of Education, *Purpose of the Impact Aid Section 8007B Discretionary Construction Grant Program*, at [<http://www.ed.gov/programs/8007b/index.html>].

³² U.S. Department of Education, *Awards: Impact Aid Section 8007B Discretionary Construction Grant Program*, at [<http://www.ed.gov/programs/8007b/awards.html>].

students living on Indian land or military students living on or off base constitute at least 40% of the LEA's total student enrollment. An LEA is also eligible to receive a modernization construction grant if the LEA is eligible for a grant under Section 8002 and meets specific requirements related to bond indebtedness and assessed value of real property. During the two most recent award cycles (FY2004-2005 and FY2005-2006), 21 of 22 grants have been awarded to LEAs serving students living on Indian land.³³

State Consideration of Payments in Providing State Aid (Section 8009)

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 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 one exception to this prohibition, 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%.³⁴

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 5th percentile of student population is reached at LEA A with a per pupil expenditure of \$820, and that the 95th percentile of student population is reached at LEA B with a per pupil expenditure of \$1,000. The

³³ Ibid.

³⁴ 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.

percentage disparity between the 95th and 5th percentile LEAs is 22 percent (\$1,000-\$820 = \$180/\$820).³⁵

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) recently sued ED over the implementation of the equalization formula.³⁶ 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 LEAs rather than 23 of the state's 89 LEAs from consideration in determining whether the remaining LEAs met the 25% 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.³⁷

³⁵ 34 CFR Pt. 222, Subpt. K, App. 1, Example.

³⁶ *Education Week*, "Supreme Court Backs Ed. Dept.'s Interpretation of Impact Aid Act," April 25, 2007.

³⁷ *Zuni Public School District No. 89 v. Department of Education* (Case No. 05-1508).